POLICY BRIEF
November 2016

MyJustice is a four year access to justice programme funded by the European Union and implemented by the British Council, the overall objective of which is to improve access to justice and legal aid for the poor and vulnerable.

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Funded by:

European Union

Implemented by:

Overseas Development Institute
ODI is the UK's leading independent think tank on international development and humanitarian issues.

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DEBT DISPUTES IN MYANMAR

INTRODUCTION

People in Myanmar face a wide range of justice problems, from land disputes to drug trafficking to violence against women. Yet in MyJustice research, debt disputes emerged as the most common dispute people spoke of, affecting large numbers of people in both Mon State and Yangon Region (Denney et al., 2016).[1] Yet debt disputes have been largely overlooked to date. They highlight the importance and challenge of equitable access to credit in a transitioning country like Myanmar, without which there are both justice and developmental consequences. As with most justice problems, debt disputes and a lack of formal credit access affect the poor and vulnerable most acutely.

THE PROBLEM OF POOR ACCESS TO CREDIT

People in Myanmar access loans for a range of reasons – from making large investments in property or businesses, to daily subsistence, to paying off existing loans. For daily wage labourers, or those with seasonal work, loans are often taken out in periods when they have no work to cover basic subsistence. People who have been sick take out loans to make up for lost earnings. And women report taking out loans to cover household costs, including when their husbands spend income on alcohol.

1 This briefing paper draws on research that informed the MyJustice report: '"Making big cases small and small cases disappear": Experiences of local justice in Myanmar,' involving interviews and focus group discussions with 600 respondents in Mon State and Yangon Region in June and August 2016. The findings reflect experiences in the research locations but cannot be said to be representative more broadly. See Denney et al., 2016 for further information on research methods.

Banks are rarely used in Myanmar, with only 5% of the population having access to a bank account, and less than 5% having a savings account (Duflos and Luchtenburg, 2014). Non-government organisations (NGOs)[2] are generally the preferred lender in the communities where they exist, with interest rates of around 2.5% per month and monthly repayment terms. However, such NGOs do not operate everywhere; and even where they are present, to access loans borrowers claim they must provide their identity card, family registration document and proof of property ownership. Many of the most vulnerable do not have these supporting documents and are thus cut off from formal capital. For instance, Muslims, Hindus, unregistered migrants and the poor can struggle to get identity cards, and, the poor more generally often do not have formal property ownership. As one Hindu woman told us:

Since I was young my parents died and I don't even have a birth certificate. And because I don't have an identity card, my children also cannot get one. Not having an identity card is sometimes really difficult because it means that I can't get a microfinance loan. Since I don't have this card, I can't access a loan.

In reality, only some microfinance organisations require all of this documentation – with some specifically providing microcredit without collateral. It was not clear which organisations require which documentation, suggesting knowledge of microfinance requirements is low. Nonetheless, people

2 While respondents spoke only of NGO microfinance, it is likely that some of the organisations are in fact for-profit companies.

believe such documentation is a requirement and can lead them to seek alternative options.

Where microfinance schemes are absent or inaccessible because of lack of documentation, people rely on informal lenders. In some cases, those who access microfinance loans also rely on informal lenders where they are unable to meet their repayments. This was said to be especially necessary for microfinance schemes where credit is provided to a group of people (often groups of five), because it is not uncommon that someone in the group will run away, leaving the others unable to cover the repayment amounts, leading them to take informal loans to pay off the microfinance loan.

Often insisting on houses or assets as collateral, informal lenders loan money at high interest rates (reportedly ranging from 25% to 60% per month), with repayments to be made on a weekly or even daily basis to people who are unable to afford the repayments and, ultimately, default. This can start a cycle in which it is difficult for people to get out of debt – high interest rates mean that repayments generally only pay off the interest and not the principal. Once embroiled in spiralling repayments that they cannot meet, borrowers resort to a range of options. These include taking out additional high-interest loans to pay off the first, stealing, withdrawing children from school, fleeing the community, making money through sex work or illegal gambling and pawning their house for below market rates. Duflos and Luchtenburg (2014) note that 'there are five times more people who borrow from informal sources than from a formal provider. Nearly 6 million adults borrow from unregulated money lenders each year, and there is a total outstanding debt of $3.9 billon.'

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These loans often are made without a formal contract, making the issue particularly difficult to resolve when lenders and borrowers end up in dispute over loan defaults. Even with a contract the cases remain in a grey zone, because many informal lenders are not registered and are thus illegal. While borrowers are clearly vulnerable, the lack of contracts means lenders, too, are unprotected. Some focus group discussion participants spoke about how commonly lenders lose money they lend because they have no legal recourse without evidence of the agreement. As a result, many informal lenders are reportedly also out of pocket.

From a justice perspective, there are at least three aspects to these debt problems. First, disputes between informal lenders and borrowers were the most commonly experienced disputes in the MyJustice research, affecting large numbers of people with limited resolution options, especially when loan agreements lack a contract. This is not to suggest that disputes do not also take place in relation to formal loans but these were not spoken about by respondents. Second, at least some informal lending is illegal under Myanmar law and yet continues apace. Third, a lack of civil documentation amongst many groups due to discrimination on the basis of poverty, religion and displacement, means such people are forced to rely on informal lending.

MONEY LENDING IN MYANMAR

Myanmar has a long history of peasant indebtedness. From as early as the mid-1800s, as the British introduced land titling and rice cultivation was commercialised, indigenous and foreign money lenders provided credit to farmers to invest in rice production and tide them over until harvest (Turnell, 2009: 14-15). It was common for multiple loans to be taken throughout the year and land was often used as collateral. When international rice prices plummeted with the Great Depression, many farmers lost their land or became bonded labourers (Ibid., p. 26; 44). Indebtedness is thus not a new phenomenon and is widely talked about as a normal part of life with revolving loans a common way of making ends meet.

The Money Lenders Act of 1945 requires that money lenders are registered, and those providing loans without registration may face a fine or three months imprisonment. More recently, the Microfinance Law of 2011 has formalised the microfinance industry and allowed licensed for-profit microfinance companies to begin lending to clients alongside licensed NGOs (some of which have been lenders since the mid-1990s) (Duflos et al., 2013: 14-15). Over 250 licences have been approved since, with estimates of about 170 active organizations today. Yet in 2013, more than 70% of Myanmar adults still had no access to the formal financial sector (UNCDF and MAP, 2014). Providing microfinance without a license is prohibited under section 54 of the Microfinance Law, with punishment by fine or imprisonment for up to five years. Yet unregistered money lending persists despite its criminalisation and the increased availability of licensed microfinance.

AVENUES FOR RESOLUTION

The shame involved for those who experience indebtedness means that people unable to make repayments tend not to talk to the justice facilitators who are commonly relied on as a first port of call in other disputes (this includes 10 and 100 household heads, elders and community based organisations, for instance).[3] For debt disputes, the only justice facilitators community members mentioned were family members and loan brokers (who introduce lenders and borrowers).

3 See MyJustice Policy Brief 2 on Myanmar's plural justice providers and the role of justice facilitators.

Participants in focus group discussions claimed that W/VTAs usually refuse to deal with debt disputes where there is no contract in place, because there is no proof of the agreement. This is supported by signs hanging in WA offices that state they do not deal with money disputes. However, W/VTAs noted that, in practice, they had little choice but to try and mediate debt disputes whether there is a contract or not, because they could threaten the peace. W/VTAs say that, if there is a contract, the matter is relatively easy to resolve. This usually involves trying to reach a compromise whereby the borrower pays back some of the original loan amount. The W/VTA then draws up a new contract setting out the terms of the agreement that the parties sign. A small number of community members claimed that W/VTAs receive part of the loan repayment in return for resolving the dispute.

In one example in a rural community in Ye Township, a VTA explained how in mediating loan disputes he considers the amount of money that has been lent, as well as the financial capacity of the borrower to repay. He then proposes a compromise repayment contract that means the lender will recoup some (but not all) costs and the borrower will not face financial hardship in repaying. If either party is unwilling to accept a compromise, or in some cases if there is no contract, the W/VTA refers the matter to either the police or the Ethnic Armed Organisation courts (in Mon State), although this reportedly happened in only one case.

In rare occurrences in Mon State, community members said that people who are dissatisfied with the outcome of W/VTA negotiations of loan disputes can go to the Border Guard Forces (BGF) and request their assistance. This is by way of the BGF extorting monies owed through the threat of violence, in return for a cut of the money recouped.

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Some respondents claimed that it is common for people to take out loans with no intention of repaying the full amount, knowing that there is little legal recourse for lenders. This highlights how both lenders and borrowers can lose out and the limited protections available to them.

IMPLICATIONS

It is clear that debt disputes are a widespread problem affecting large numbers of people. They can have devastating consequences on household wellbeing. Debt disputes also appear to disproportionately impact groups that face wider vulnerability – either due to poverty or discrimination (with those denied an identity card unable to access formal credit). Finding ways to address debt disputes could thus alleviate a common justice problem, offset some of the effects of discrimination, as well as deliver developmental dividends.

For those working on justice programming, debt disputes offers one tangible and widely experienced problem that support could concentrate on, and which may avoid the more entrenched political sensitivities involved in some other widely experienced justice problems, such as land and drugs.

A range of practical steps could potentially be taken – such as developing a standard and simple contract that would offer protections to both lenders and borrowers and enable disputes that arise to be adjudicated; working with microfinance organisations to develop documentation requirements that are sensitive to the realities of poor and marginalised communities; and strengthening the collective bargaining of poor and vulnerable communities to access formal credit. Relatedly, given the challenges that discriminated groups face in obtaining identity documentation to facilitate access to credit (among other services), support could also focus on addressing blockages in the process of issuing identity cards. These cards are key to accessing basic rights and obtaining services like microfinance loans.

Given the prevalence of informal sector lending, further research is needed on the factors that drive debt disputes that are 'off the books.' Support may focus on improving resolution options and protections for both informal lenders and their borrowers to create a more effective, inclusive credit environment. As in many areas of the Myanmar justice sector, informal activities vastly exceed those in formal institutions. Thus, engagement in this area by reform actors is critical. It is also important to build a deeper understanding of the processes around W/VTA mediation of debt disputes – including whether the contracts they mediate on the basis of, or issue as part of negotiations, are formally registered or not.

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DISCLAIMER

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