

# POLICY BRIEF

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# MYANMAR'S PLURAL JUSTICE SYSTEM

## INTRODUCTION

Understanding justice provision in Myanmar requires grappling with the universe of providers that people use to resolve disputes.<sup>1</sup> There is no single justice provider with recognised authority to enforce the rule of law throughout Myanmar. Long-running political conflicts and plural power structures mean providers and systems are distinct in some places and overlap in others. This briefing maps the different justice chains people follow, providing an 'end-user' perspective on how they navigate justice providers.

## MYANMAR'S PLURAL JUSTICE PROVIDERS

Local justice in Myanmar includes a wide range of actors:

- Justice facilitators: includes 10 and 100 household heads,<sup>2</sup> elders, community-based organisations (CBOs), political party representatives, religious leaders, astrologers and fortune tellers
- Ward and village tract administrators (W/ VTAs)
- Township, district high supreme courts
- Ethnic armed organisation (EAO) courts

- Police and Border guard forces (BGF)
- Labour Unions and related committees

These actors make up the reality of Myanmar's plural justice system in MyJustice's research sites.

## COMMON LACK OF REPORTING

The most common response to disputes or injustice is not to report. A lack of reporting is connected to historically rooted fears and distrust of the state, limited understanding of how to use the law to achieve resolution, and socio-religious preferences for accepting problems as the result of fortune and the manifestation of karma. A focus on the plural providers that people use to resolve disputes should not detract from the fact that reporting a dispute at all is relatively rare. When people do report, the preference is for resolving disputes at the lowest level possible and avoiding escalation. Women, in particular, have virtually no experience of engaging with the formal justice system. A lack of reporting is especially apparent among groups facing discrimination such as women, the poor, religious minorities, migrant workers, people of non-conforming genders and sex workers. For such groups, the content of the law and wider societal attitudes can be a source

1 This briefing paper draws on 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 three Townships each in Mon State and Yangon Region in June and August 2016. The findings reflect experiences in these locations but cannot be said to be representative more broadly. See Denney et al., 2016 for further information on methods.

2 10 and 100 household heads, also called village heads or village administrators, were part of the colonial administrative system and support the VTA. While not part of the formal government structure, they are elected by communities or appointed by VTAs. In 2012, 100 household heads were abolished but remain active in some places. (UNDP, 2015: 61).

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of discrimination, compounded by justice providers dispensing discriminatory justice.

## JUSTICE FACILITATORS AS THE FIRST STEP

Justice facilitators are the first people called upon when someone experiences a dispute, including family members, neighbours, elders, 10 and 100 household heads, CBOs, political party representatives, religious leaders and, in rare cases, astrologers or fortune-tellers. These actors are not classed as providers but facilitators who typically listen and attempt to ‘soothe’ complainants. In many cases, disputes (particularly those involving women or religious minorities) do not proceed further, demonstrating the general preference for resolving issues at the lowest level possible.

In cases of rape of minors, facilitators can be critical in making the formal justice system work – with neighbours convincing parents to report and CBOs providing financial and legal support to victim’s families. Political party representatives play an important role in resolving land disputes – assisting in writing letters and informing people on the process to reclaim land. Where they are unable to ameliorate a situation or satisfy an aggrieved party, facilitators act as connectors to justice providers.

## MULTIPLE JUSTICE PROVIDERS

W/VTAs are ‘the main mediators in petty crimes and civil disputes’ (Kyed et al., 2016: 2). W/VTAs described mediating disputes by listening to all parties, encouraging reconciliation, investigating (by calling witnesses and visiting crime scenes) and attempting to find swift resolution, ideally through compromise. They draw on a combination of Union Law and custom or village law. In most instances this is usually as far as a case will go. Where the W/VTA

cannot resolve the matter, or where a party is dissatisfied with the result, cases can be referred to higher levels – although this is not common given power asymmetries between disputants, lack of confidence and financial resources on the part of complainants, as well as distrust of higher authorities. Cases may be referred to the township administrator for civil matters, or the police for criminal ones. From here a case may go to the Township Court – the lowest level court in the formal justice system – and, although rare, appeals are possible from here to the District, High and Supreme Courts.

In parts of Mon State, parties to a dispute can request a matter be referred from the W/VTA to the New Mon State Party (NMSP) or the Karen National Union (KNU). In Ye Township, in rare cases, people might opt to go to the BGF, principally for debt disputes to extort money through the use of force. For religious minorities, religious leaders feature as a dispute resolution mechanism. Labour unions and government committees play a role in resolving labour disputes in industrial areas.

## NAVIGATING PLURALISM: HOW DO PEOPLE DECIDE WHICH PROVIDER TO USE?

While the justice chains depict a range of options, this should not imply there is a ‘justice marketplace’ in which people can shop for the best option available. Rather, people face an array of intimidating avenues that are poorly understood and widely distrusted. A range of factors influence people’s decisions on where to report. When initially asked why people go to certain providers, people tended to respond that this was simply the process or custom. This can trump other influences on decision-making and reflects the fact that people tend to do what is expected of them according to their identity and understood role in society.

## Pluralism and justice providers

*A general rule of thumb ... was that you go to the W/VTA for mediation, the police for investigation and the courts or EAOs for punishment.*

Beyond this, the most determining factors directing how people engage with plural systems are shared identity with, and perceived effectiveness of a provider. Mon people spoke about preferring NMSP courts over formal ones, for example, because they were ‘fairer, quicker’ but, perhaps more importantly, ‘not the government’. This suggests that, to an extent, pluralism reflects ethnic and other identity divisions, so that Mon use the NMSP, Karen the KNU, and others the police. Similarly, religious minorities such as Muslims and Hindus are often more comfortable managing disputes within their own religious communities, and women prefer going through women’s CBOs to access justice. Most respondents spoke about their W/VTA in the same way, saying the W/VTA was part of their community and understands people’s issues, in contrast to the police and the formal court system which are more removed and made up of officials that people do not identify with.

The influence of trust and identity can be reinforced or challenged by considerations of the effectiveness of a provider (including the provider’s authority to enforce decisions). Many who used the NMSP did so not just because they trusted it, but because it was seen to have the power to resolve issues. As a respondent in Mon State noted ‘the armed groups have authority and power [to finish issues]’, if they decide something, ‘we have to obey.’ By contrast, others who identified with and trusted the NMSP used the VTA instead, because they perceived the NMSP’s authority to be limited.

Other considerations when navigating pluralism relate to more tangible barriers to justice, including timeliness, cost, language and procedural comprehension. Justice processes are upsetting and infringe on people’s work time, so people tend to want them finished as soon as possible. The formal justice system is seen as very time

consuming, with court hearings lasting up to three years, whereas the W/VTAs and the NMSP courts provide swifter decisions.

Cost also influences people’s paths through pluralism. As one respondent said, *‘money is everything. If you have money you can get everything. If you don’t have money you have to know how to be very patient because it will take a long time.’* If an issue goes to the formal court system, people have to pay a range of costs to file a case, for witness statements, for typewriter fees, transport fees and so on. In addition to hiring a lawyer for the formal court system, these costs are prohibitive for the vast majority of people. Yet people do not always prefer the cheapest option – some will pay for an outcome in their favour. Others will accept costs associated with using W/VTAs and the NMSP, which are often spoken of as ‘donations’ and considered fair payment for services provided.

Fairness does not appear to be a strong driver of decision-making about where to report. Most people conceded that no systems were guarantees of fairness – justice can always be bought. The only people who appear to factor issues of fairness into their decision-making are groups that are discriminated against: Muslims and Hindus who feel they will not get a fair hearing vis-à-vis Buddhists; non-conforming genders and sex workers who feel their criminalised identities mean they will not receive fair treatment; and women who feel they cannot win cases against men. But considerations of fairness act more to push people out of the justice system entirely – with people deciding that a lack of fairness means they are better off not reporting – than to lead them to seek better justice outcomes.

While the above factors all play a role, there is no hard and fast division of disputes between providers. Ultimately, if a matter is understood as minor it is likely either to not be reported or to be resolved at a level no higher than the W/

VTA. If a matter is deemed serious (severity is measured in terms of injuries or financial costs suffered) either the police or (in Mon State) the NMSP will more likely be involved. A general rule of thumb men expressed was that you go to the W/VTA for mediation, the police for investigation and the courts or EAOs for punishment.

## IMPLICATIONS

For those working on justice policy and programming in Myanmar, it is important to acknowledge and engage with legal pluralism. People in Myanmar have become adept at coping with problems through a range of justice providers. It cannot be assumed that problems can be resolved by establishing new processes and institutions that adhere to external ideas of justice. Investing in understanding the complex and varied ways in which people already resolve disputes is more important. Access to justice tools may be able to work with, expand or improve existing processes but must be carefully considered.

Discriminated groups such as women, religious minorities and the poor have more limited dispute resolution options. Support should focus on finding ways to expand or renegotiate existing justice options available to them within the plural providers available.

Myanmar is a contested state with hybrid political orders and legal pluralism. Existing justice providers are entrenched in systems of power and rules and are strongly linked to identity. Conflict sensitivity is paramount in a country still working towards peace. Given ongoing transitions, who and what gets supported in justice reform will have ramifications for local configurations of power. Justice programming should be conscious of not defaulting to a formal, state-centric approach. It is not, for instance, viable to work on justice in EAO or mixed authority areas without engaging with EAO justice systems. Entry points might be found by working with locally trusted organisations to build relationships and understanding of the range of locally relevant justice actors.

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