

Gendered aspects of access to justice in Southern Mon State

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Abstract

This article explores the gendered aspects of access to everyday justice in 2 Mon villages, 1 officially under Myanmar government control and 1 that is controlled by the New Mon State Party, which is the main Mon ethnic armed organisations (EAO). I argue that while there is a general tendency for villagers to feel more comfortable seeking justice with village authorities than with formal state and EAOs, women are even less likely to report their cases in public or even to raise complaints inside the family. There is a mixture of cultural, religious and social reasons for this. Seeking secular justice is seen to create shame and the loss of face for society as a whole. Being a victim is seen as a punishment for past life deeds. Another reason why women do not report cases is due to lack of knowledge of women's rights and legal procedures, and due to most justice providers being men. Thus, the majority of women hide their criminal and civil cases. Many instead seek spiritual justice, going to religious and spiritual actors such as monks and spirit mediums.

Introduction

This article explores the gendered aspects of access to justice in Southern Mon State. I both look at a village in an area controlled by an Ethnic Armed Organisations (EAO), the New Mon State Party (NMSP) and at a village that officially is controlled by the

Myanmar government, but which is *de facto* influenced by the NMSP. Both villages have a majority of Mon people, and are Buddhist. The article focuses on how women perceive and seek justice and how they resolve their disputes. I argue that while villagers in general feel more comfortable to seek justice with village authorities and local EAOs than with Myanmar state institutions, women find it unpleasant even to raise complaints inside the family. Seeking justice by women is seen to create shame and the loss of face for the family and for society as a whole. There is a Mon saying, *Dee jaka jaka halike dapao kaw nyee danaow pue* (similar to the English proverb: Do not air your dirty laundry in public), associating public complaints with shame and loss of dignity. This saying also applies to men, but has a stronger effect on women. Women very rarely report their cases to the formal institutions, because they have less knowledge of who the available justice providers are and how the justice procedures operate. Women do not even like to ask questions about justice, because they do not want to cause and be involved in a dispute with others. There is also a widespread notion that justice will not be provided to people who have little experience dealing with the official Myanmar legal system. Women also feel disadvantaged in the EAO justice system, as they feel they have a less chance to speak, and they fear to travel to the EAO courts. Thus, the majority of women hide the criminal and civil cases that they face. This is further related to the fact that most justice providers from village level and upwards are men, and that acts like domestic violence and rape are not regarded by many villagers as crimes. Religious and customary beliefs in past life deeds also discourage women from seeking public justice.

These insights of the article have been based on qualitative research in 2016–2017 in the 2 Mon villages.¹ The methodologies of qualitative interviews, case tracings, and participant observation are used in this research. One village is located in Ye township, southern Mon State, in which, though officially administered by the Myanmar government, in reality people also use and view the

¹I conducted fieldwork alone as well as with other EverJust researchers, including Lue Htar, Annika Pohl Harrisson and Helene Maria Kyed.

NMSP as an authority, including for justice. The second village is in an NMSP controlled area some three hours south-east of Moulmein, the capital city of Mon State, and is fully administered by the NMSP, although it is actually located in what the Myanmar government calls Kayin State. I explore both the similarities and the differences between these 2 sites in terms of women's access to justice.

Theoretically, I draw on the literature on legal pluralism, and especially focus on gender, and forum shopping (von Benda-Beckmann 1981). Legal pluralism is defined as a situation in which 2 or more legal system coexist in a social field (Pospisil 1971; Griffiths 1986, Moore 1986). Legal pluralism is the opposite of legal centralism, which refers to an ideology that situates state law as superior to other legal orders (Griffiths 1986: 3). I agree with Griffiths (1986) that legal centralism is an obstacle to the development of a descriptive theory of law, because in reality, people are not only using the state courts and the formal law, but also informal and even illegal options like the NMSP court system. Griffiths (1989: 4) explains that legal pluralism is the empirical reality, whereas legal centralism is a myth, an ideal, and an illusion that supports central state authority. This applies to Myanmar. I claim that in Myanmar, the government applies legal centralism officially, but this precisely fails to ensure justice for everyone, especially for more vulnerable groups like rural ethnic women. My empirical research shows that because the Myanmar government does not recognize the justice system of the ethnic armed organisation, the NMSP, the women in government-controlled areas can get their disputes resolved only at the village level, because the NMSP is treated as illegal. Women do not want to go to the official Myanmar system because of language barriers, time consumption, and of fear of legal officials, complex legal procedures, high bribes and their lack of knowledge of the law. Although men also do not prefer the Myanmar courts, these issues affect women more. Additionally, the traditional and social norms, as well as religious beliefs shape women's access to justice, and these norms and beliefs are also re-enforced by justice providers, including village leaders and the NMSP court system. Religion is

also seen by women as a form of justice, and this inhibits them from reporting cases to a third party. Being victim of a crime or a dispute, women see as paying for past life deeds and as bad luck. Men by contrast usually have a more secular punitive perspective. For instance, when asked about rape cases men typically say that they want the perpetrator to be punished, whereas the majority of women understand that the female victims have been raped due to their own past life deeds. If the perpetrator is punished, the victim will continue within a cycle of debt for past life deeds.

The first section of this article discusses the theories dealing with the gendered aspects of legal pluralism, and in particular, how gender plays a role in dispute resolution and affects the rule of law within the state. The second section moves to Mon state and outlines the justice system from an empirical perspective. I compare the justice system in the government-controlled area with the area that is fully controlled by NMSP. Legal pluralism is found in both areas, including the informal justice system that is not recognized by the Myanmar state government, but is recognized by the ethnic Mon people. The informal justice system seems to be accessible for people in the NMSP area and to be more accessible to women due to the many difficulties they face in going to the formal justice system, although there are some difficulties for women in using the informal justice system. In the government-controlled area, the formal and the informal justice system is used by the majority of the population, but the NMSP is still an option. In the NMSP controlled area the people use the NMSP much more, whether they prefer it or not, because the Myanmar system is not really seen as an option. The third section highlights how gender discrimination in justice provision takes place and begins with an empirical understanding of how women perceive and practice access to justice. The 2 extended case studies demonstrate a deeper understanding of the formal and informal justice systems in practice. It also shows how people navigate within the context of legal pluralism and how they use forum shopping in their search for justice, meaning that they go to different places with the same case. I then move to discuss the

silence and the spiritual justice that characterize female practices. I argue that many women seek spiritual rather than secular justice. In the conclusion, I come up with some recommendations for promoting justice and equality in the current Myanmar transformation.

Gender and legal pluralism

The concepts of legal pluralism and forum shopping are useful for understanding the dispute resolution landscape of Mon state and the obstacle women face in getting their disputes resolved. Brian Tamanaha (2008: 375) explains that legal pluralism is everywhere and that there are multiple uncoordinated, coexisting or overlapping legal settings as well as diversity among these. The different styles and orientations of the law and authority, social norms and religious beliefs, create uncertainty and risk among individuals and groups as they are not sure which legal system fits with their situation, and which legal authorities would benefit them. The law characteristically claims to rule whatever it addresses, but the fact of legal pluralism challenges this claim. Similarly, the empirical findings in Mon state show that legal plurality applies to everyday interactions, irrespectively of who the authorities are. Tamanaha (2008) highlights that people can find different institutions for resolving disputes in order to ensure their own benefits. Informal institutions usually are substitutes when the formal institutions are weak, distant or mistrusted. The concept of forum shopping as used by von Benda-Beckmann (1981) is relevant here. It is applied to describe situations where litigants try to get their disputes resolved by going to a number of different institutions until they achieve a satisfactory outcome. Even though some of the institutions do not have official jurisdiction, people still go to them and shop between the existing institutions to get the outcome that is best for them. In Mon state, people are aware of the official state justice system in their area and know they are supposed to resolve the disputes there, but in reality people go to the unofficial justice systems of the NMSP. In areas under mixed control, people prefer to have their cases resolved by the EAO that represents their

ethnic group (Mon or Karen), irrespective of the territorial boundaries and jurisdictions.

In reality, most people in Asia and Africa use informal legal institutions more than the formal legal institutions, because the latter are more complex and people lack knowledge of the legal procedures and fear formal authority. This especially regards women. For this reason, Chopra and Isser (2012: 344) argue: 'promoting formal mechanisms exclusively will have little impact on the many women who are unable to access the system due to social pressures'. When women do bring cases to the formal system those in power may undermine their access to justice. Simply put, the formal justice system in practice may provide no better access to justice for women than other institutions, because they reproduce the social inequalities of the societies in which they function (Chopra and Isser 2012: 342). This also applies to Mon state. Male domination exists in every sector, including at the local level, where women resolve disputes with male village administrators. Women prefer to settle their disputes at the local level. They even request the local administrators to resolve cases that the administrators do not have the legal authority to resolve such as divorce and suicide cases. However, because men dominate village leadership, the local system creates constraints for women in dispute resolution.

Gender relations therefore affect legal pluralism. Elizabeth (1997: 9) explains about gender:

Gender is the social construction of sexual difference. It is the outcome of struggles over the ways societies define and regulate femininity and masculinity. By its nature gender is multi-dimensional. It is recreated and transformed through an inseparable mix of norms and behaviors that are cultural, economic, historical, sociological, linguistic, scientific, and always political.

The lack of access to justice by women are influenced by power relations and male dominance and this adds to other barriers such as language barriers, lack of legal awareness and

local authorities' role. Astrologers and spirit mediums are an exception to male dominance at the village level, and women turn to these female actors to get inner justice. Conversely, women tend not to report cases like rape and domestic violence, which they consider private matters, to local leaders, because they are men.

What this shows is that legal pluralism does not mean that there are no power relations. Not everyone can benefit equally from legal pluralism and get access to local institutions. Such access is shaped for instance by gendered power relations, which implies gender inequality. In the context of Mon State, it is equally important to look at the role of religion in legal pluralism, and the gendered dynamics of this. Moore (1993) argues that the concept of legal pluralism must include religious actors, even though such actors may not necessarily consider themselves part of the legal sector. In the villages of Mon State², analyzed here, women believe more than men in religious actors when it comes to resolving disputes. For instance in one situation, a woman who had lost valuable gold did not go to the local administrator or the police, but to a monk. She asked the monk what she should do and then the monk told her to wait for some days, without reporting the case, and the thief would return the gold. On the day predicted by the monk, the woman found her gold in the place that it had been stolen. Thus, the case finished without being reported to neither the formal nor the informal justice system. There was no secular resolution process. From the perspective of the villages in Mon State, the situation of legal pluralism is strongly influenced by both gender relations and religious beliefs, and the linkages between these 2. A common pattern is that women tend to seek religious solutions and turn to religious and spiritual beliefs when dealing with disputes and when being victims of crime. This is because the secular institutions, including the informal ones that deal with secular punishments, are dominated by and tend to favor men. Monks are men also, but they are considered to

²□ All person and place names have been changed in this article in order to ensure anonymity and confidentiality of the respondents.

provide spiritual rather than secular justice. Moore (1993) found a similar pattern among rural women in India who are more likely to approach the religious actors, including men, because the secular justice institutions undermined women. Moore argues that this reflects wider gendered power relations at local levels and above.

Background and justice systems in Mon state

The Mon ethnic group is among the main 8 ethnic groups (of the 135 officially accepted ethnic groups) in Myanmar. The majority of the Mon people live in Mon and Kayin States, though many are also established in Bago and Tanintharyi Regions, and around the Gulf of Martaban. Mon people live alongside Bamar, Pa-O, Dawei, Karen, and Shan groups. Mawlamyine (Moulmein) is the capital of Mon State and has 2 districts, 10 townships, 463 wards and village tracts. The population is about 3,165,275 (UNHCR, Mon State Profile, updated June 2014). The Mon people have been a major source of cultural influence, including by bringing the basis of the Myanmar writing (Pali) and Buddhism (see Lwin Lwin Mon in this issue). Most Mon are bilingual, speaking Burmese as well as Mon languages. The Mon ethnic group does not have a range of sub-language groups like other ethnic groups, such as Karen or Chin. The majority of Mon have strong Buddhist belief as well as traditional beliefs and customs of everyday life.

This article draws on studies in 2 Mon villages which are governed by 2 different authorities, the Myanmar government, and the NMSP. The first village, which I call Kwan Sar Yar, is situated in what today is Ye Township in southern Mon State. According to the village elders, the village is around 100 years old. Shortly after Independence when the main Karen ethnic armed group, the Karen National Union (KNU), began the fight against the government the village was partly under KNU control and even though it was officially governed by the national government. The situation of mixed control by KNU in collaboration with the NMSP continued into the 1970s. There was no open combat in the village, but it occurred very close to the village until 1995 when the NMSP agreed on a ceasefire with the government. After the ceasefire the village came more strongly

under Myanmar government control, while the NMSP continued to control areas in the interior, from its headquarters 45 minutes' drive from the village. The villagers still consider the NMSP as an authority and use the NMSP justice system to resolve the cases. Young villagers join the NMSP armed wing as well as working for the civilian bodies of the NMSP. There is a Mon school in the village along with a Myanmar government school. The NMSP has put up signs in public places of the village that warn against drug abuse. In other words, it is a government-controlled village, but the majority of the Mon villagers still support the NMSP. I chose this village because it is my home village, which allowed for easy access and information. Also, it is highly relevant for my study because of its mixture of government control with the use of the NMSP justice system.

The second village, which I call Kwan Jaral Chan, has been under civilian governance by the NMSP since the 1995 ceasefire. The village is inside what the NMSP call its Moulmein District, although it lies inside what the KNU and the Myanmar government call Karen/Kayin State. The control by the NMSP is coordinated with the KNU. This area also has some Karen villages that are governed by the KNU, but most are Mon and governed by the NMSP. The joint administration between the KNU and the NMSP is to ensure the protection of borders and to make a compromise on the jurisdiction of the 2 groups. This is complex in practice. Another worrying aspect of this village is that people fear that the Tatmadaw will instigate conflict between the NMSP and the KNU regarding the control of territory. The reality is that the parallel systems are unclear and complex, and at the same time Myanmar state expansion creates fears among EAO actors (Harrison and Kyed 2017). This village was studied in the course of 4 visits which also included stays and interviews with the NMSP district and township headquarters. It was chosen for EverJust research based on a long dialogue with the NMSP liaison office in Moulmein, whose officers indicated the places where we could do research. Although we did not make the choice ourselves, we found the area highly relevant because of its long period of full

EAO control post-1995-ceasefire. There are significant comparisons with the other village.³

Myanmar-controlled justice system – Kwan Sar Yar

Kwan Sar Yar village officially has to use the Myanmar justice system. From 1962 to 2011 Myanmar was under authoritarian military rule which also affected the formal justice system. During 5 decades of military rule the legal system was imposed all the way down to the village and ward level, including lay persons acting as judges. Despite this extensive system down to village level, the legal system was centralised and politicised. It did not operate independently from the executive branch of the central government (Myint Zan 2000). The importance of actual legal knowledge was subordinated to the pursuit of political imperatives, which according to Cheeseman (2015) dictated the courts to maintain a *perception* of order, rather than actually enforcing law and providing justice. Because the justice system was driven by political, rather than legal imperatives, the actors in the justice system were also able to insert a market logic into the system whereby convictions and sentencing became dependent on the available extractive resources. This laid the grounds for bribes and favours, which continues today (Prasse-Freeman 2015: 92).

In the new constitution in 2008, the judiciary has officially become more independent, but at the same time it has been detached from the village level institutions. The 2008 Constitution and the 2010 Union Judiciary Law established and organized the justice system into 4 levels; the Supreme Court, State and Regional/Divisional courts (14), District and Self-Administered Area Courts (67), and Township Courts (342). There are also special courts established by law, such as the Juvenile Courts and courts to try traffic offences. A significant change from the past is that today the township courts constitute the lowest level, whereas during the socialist period (1973–2008), the 1973 Constitution also established People’s Courts down to the ward and village tract level. This latter level is not an integrated part of the judicial system today, but falls under the General Administration Depart-

³Fieldwork was carried out in collaboration with other EverJust researchers, Annika Pohl Harrisson and Helene Kyed.

ment (GAD) under the Ministry of Home Affairs, and is administered by the Ward and Village Tract Administration Law of 2012. This law provides for locally elected Ward and Village Tract administrators who have the duty to maintain security, peace, and law and order in their respective villages and wards. However, there is no prescribed system or procedure for relating these administrators to the judiciary in civil or criminal cases (Kempel and Aung Tun 2016: 9; Kyed 2017: 22). In practice these village leaders play a strong role in dispute resolution.

This can be seen in Kwan Sar Yar village. As the village is situated in what is considered a Myanmar government-controlled area, people there should use the formal Myanmar justice system. However, as the village is situated close to a NMSP controlled area, the nearest NMSP township court is just 45 minutes away by motorcycle. It is not uncommon for the village administrator to allow people to make a free choice of going to the NMSP or the government system. This happens when the village administrator cannot find a solution to a case. In addition to the village administrator, religious and spiritual actors play a role in everyday dispute resolution. Those acting as justice facilitators include monks, fortunetellers, astrologers and spirit mediums. Monks also play other powerful roles in the village, including in the selection of the local administrator. Sometimes this means that they choose leaders not preferred by the majority of villagers. Men predominate in the village administrative system; only the clerk is a woman. Most of the fortunetellers and astrologers are women.

NMSP justice system - Kwan Jaral Chan

The NMSP has developed its own governance mechanisms to provide social and legal services since the 1950s and 1960s, such as legal institutions within their area of control, as have other EAOs. These systems operate in parallel to the Myanmar state system. The legal framework of the NMSP comprises penal and civil codes, courts in the form of justice committees, and prisons. This system is comparable to the state legal system, but can be considered an informal justice system because it is not recognised by the Myanmar state. From the perspective of the village, the NMSP is recognised by the majority of the Mon ethnic population, including by

those Mon people who live within government-controlled areas of Mon State.

The NMSP justice system is a three-tiered system, including justice committees at central, district and township levels. This system is directly linked to the village- and village-tract justice committees. Formally, the resolution process follows a step-by-step system, whereby cases that cannot be dealt with at village level are appealed up the system.

The people in Kwan Jaral Chan utilise the NMSP justice system. People can appeal directly to the NMSP justice committees, and they can use them as appeal institutions after village-level resolutions. The villagers relate to the NMSP institutions as if they were formal institutions and regard them as legitimate, even though the government does not recognise them. While the informal institutions are advantageous for many villagers, women still face constraints in their access to justice. As in government-controlled areas, men dominate justice institutions and village leadership. Only since 2016 has the NMSP district justice committee had 1 female member among 3 districts. At the village level, as of 2016 all were men. In the next section, I will draw on extended case studies to address how gender discrimination occurs in the 2 villages inside the different justice systems.

Gender discrimination in secular justice provision

Cultural norms strongly influence the view of women in society and this affects how informal justice systems operate and treat cases related to women. Among Mon villagers in my research sites, there was a widespread cultural norm that women obtain justice by being silent and keeping a good name in the community. This belief inhibited women from seeking knowledge outside the village and from travelling to distant areas. When I was a young woman growing up in a village in Southern Mon State I often heard that girls need only little education because when they grow up they will stay at home to look after children, do the household chores, and serve the husbands as good housewives. If women failed to adhere to these expectations, they were blamed by the community. As I show in the following case studied, laws and norms applied by village and NMSP justice systems were also

influenced by these norms. Divorce was seen as shameful for women and therefore was to be avoided, because a good woman is someone who makes a good family. Offences against women such as domestic violence were not fully recognised, and remained unpunished. It was very difficult for women to raise complaints and when they did seek secular third party solutions, it was difficult for them to get compensation. I begin with a case about domestic violence in Kwan Jaral Chan, which falls under the NMSP governance system.

Case 1 in NMSP village: Domestic violence

A woman started to have problems with her husband 5 years earlier. He was violent. First she returned to her parents, but when she went back home, the husband was violent again. She then decided to approach the village headman. She explained the conflict and requested a divorce, but the husband did not agree. The village committee told her to take some time to reconsider the divorce, and asked the couple to sign a promise letter, in which they pledged that there would be no more violence. The husband agreed not to drink alcohol at home and not to be physically or psychologically violent. The wife agreed not to go out at night, for example, not going for social events, and promised to get her husband's approval for anything she wanted to do. However, physical and psychological violence from the husband continued. The wife went to the village justice committee several times over the years, but the committee members always told her to give it some more time and reconsider.

As the violence continued, the village justice committee saw that the wife and husband had both broken the agreement and finally they granted the divorce. The committee decided that one-third of the couple's property should go to the victim as she left the home first — i.e., she was the one who asked for the divorce. This decision was based on NMSP law, which holds that whoever leaves the home first should get only one-third of the common property. The justice committee ignored the domestic violence aspect of the case, and thus the husband received no punishment. The case was treated as a divorce case, rather than a domestic violence case. However, the woman disagreed with the decision

about the division of property, so the case was transferred to the village tract committee. This committee already knew about the case. It was difficult for them to negotiate because the husband had harassed the village administrator when the divorce was decided at that level.

The tract committee forwarded the case with a referral letter to the township level. With this, the case entered the NMSP system, because in NMSP law, cases related to harassment of authorities cannot be negotiated at the village tract level. Therefore, the husband had committed 2 crimes at the same time, but the 2 crimes became integrated into 1, which made the divorce case too complicated to rule on. So the case went to the NMSP district level. The investigation and the case reports from the village level took 15 days to reach the district level. The district justice committee made the same decision as the village committee, but again the victim was not satisfied with the verdict. So the case was investigated again by the district committee, which went back to ask the opinions of the village administration. The village administration kept advising that the woman should only get a third of the property. In late 2016 the case was still pending, and the woman did not know what more she should do.

I have chosen this case to illustrate the gender imbalance in the justice system. In the village, where divorce is shameful for women, many women believe and accept this perception. They get used to having to tolerate assaults and they hesitate to report domestic violence and even rape cases.

In this case, we saw that the woman filed a complaint to get a divorce, rather than filing a complaint about domestic violence. The focus of the village committee was also on divorce rather than on punishing the husband for violence against the wife. The reaction of the village committee to the initial complaint also reflected deeply entrenched norms about how women should behave. Giving the married couple more time to reconsider when the women filed for a divorce, delayed any resolution of the woman's problems. The promise-letter agreement also illustrated the common beliefs of a social norm concerning women. The woman was told not to go outside the house without her

husband's agreement, which was seen as the way for women to avoid violence. This reminded me of the police placards seen around Mon State, saying what women should do to eliminate the rape cases: 'Women should not go outside alone, should not wear short skirts or sexy clothes, and should have a companion to go out. Women should not ride on a motorbike with strange men.' In this way, women are told how to behave, whereas the men who commit the crime are not told how to behave.

In the decision of this case, it is also clear that the woman was not recognised as the victim; she was seen as a kind of perpetrator. Even though the village committee in the end granted the divorce, the woman was regarded as the person who 'left the home first' — i.e., dissolved the marriage — and thus she was awarded only one-third of the common property. Conversely, the husband received no punishment for his violence towards her. While the law on divorce and division of property applies equally to women and men, domestic violence is ignored when women bring cases of divorce. This is on the one hand because many women do not have the knowledge of legal procedures needed to make a complaint about domestic violence. On the other hand, domestic violence is not regarded as a crime by most villagers, nor by those who provide the justice. This can be linked back to the social norm of a good woman as someone who has 1 family in a lifetime. A divorced woman loses face in the community. These 2 aspects leads to a kind of legal hybridity in dispute resolution where the law (division of property in cases of divorce) is mixed with cultural and customary norms, which is focused on reconciling and creating harmony (keeping the couple married so they do not lose face in the community). This hybridity in legal pluralism produces adverse results for women, like the one in the above case.

Asked more generally about access to justice for women, an informant told me: 'Women will have less opportunity for justice because they speak less. They give less time for the women.'⁴ This illustrates how cultural norms influence the justice system, produ-

⁴Interview, victim's house, 03 June 2016.

cing an adverse effect on women. For example, there is a common saying ‘too much speaking creates more mistakes’. I argue that women believe and practice this saying more than men, because men get used to speaking, including with strangers and authorities, as they go outside the village more often than women. Many women are frequently restricted from going outside due to a concern for their security by parents, family and society as a whole. Another important factor that makes women feel out of place and shy when speaking their case to the justice committee is the fact that almost all justice providers are men.

The next case from the Myanmar-government controlled area also confirms these insights, and adds the importance of the role of local leaders and spiritual beliefs.

Case 2 - Debt and abuse of power by local leader.

Five years before the interview, a woman who lived in Thailand loved a man. She supported him with whatever he wanted. When her salary was not enough to support the man she took salary advances from her boss. One day, the man eloped with another woman. The woman could not afford to pay back the salary advances in time, so the boss threatened her with death if she did pay up within a month. She asked her parents, who live in the village, to borrow money for her from other local people. Mi Rot Chan, who told me about the matter and who is a member of the village administrative body, said, ‘The woman has a lot of past life deeds.’ She believed the woman had to repay in this life for deeds in her past life. The next day the woman’s parents told the whole story to Nai Piung, a rich person in the village. Nai Piung had sympathy for the parents and gave them 5,000,000 kyat (about US\$3700). They made the moneylending contract at the village office in front of Nai Mya, a former Village Tract Administrator (VTA), and the village clerk. The amount of money was too much to borrow without collateral, so Nai Piung took the parents’ house as collateral.

Five years later the borrowers had not paid back the debt. The moneylender told them that he would take the house if they did not pay the debt. They made a contract at the VTA office for the sale of the household plot. According to the contract, the sellers had to move by 2012, but they did not move. The moneylender

then wanted to make a complaint to the township court. Neither seller nor buyer had a copy of the contract, which was kept at the VTA office. When the buyer requested a copy of the contract, the VTA said the contract was lost.

According to Mi Rot Chan, the former VTA asked the woman who had borrowed the money for sexual favours in exchange for arranging for her win the case. She slept with him. Mi Rot Chan did not know the case resolution. But one day Nai Piung sent the case to the Thuriya Nay Win Journal. Mi Rot Chan showed me a copy of the journal.⁵ In the letter Nai Piung tried to win the case by appealing to the chief minister for intervention to support the justice process. Thus, he tried to appeal to higher levels, not through the formal legal channels, but by using the media. However, he did not succeed.

Mi Rot Chan thinks that the former VTA fell from a tree and broke a leg because of his misbehaviour. At the time of the interview, in her opinion he was suffering for his deeds. She said again that the borrower had a lot of deeds in her past life.

In addition, neighbours from the woman's side gave some unhelpful suggestions. According to the township court decision, the family received a letter through the police to move from the house. They prepared to move, but her neighbours suggested that they did not need to move. Mi Rot Chan suggested that they apologise to Nai Piung. He was very angry and said that he helped them when they needed it but now he was insulted by the persons whom he helped. He decided to appeal to higher and higher levels until he was satisfied with the resolution.

Before Nai Mya, it was U Maung who was the VTA and he was also bad with the villagers. In his time, when the illegal migrants returned to the village from Thailand, he used to ask for or get things illegally. One day, Mi Rot Chan visited a friend who had come back from Thailand. At that time, if someone came from Thailand, all the villagers came and looked at them. It was a village tradition. As soon as she arrived at her friend's house, the VTA also came and asked what was happening. She lied to the

⁵ This journal is an independent journal that is usually critical towards the government in power.

VTA, saying that people were there ‘because someone slipped and they were looking at it’.

At the time of writing U Maung was paralysed. Some believed this happened to him because he was suffering for his bad deeds, including corruption in the dispute cases.

This case also highlights how local authorities abuse their power in cases involving women. In this case, the administrator demanded sexual favours from the female victim, asking her to sleep with him in exchange for winning the case. The administrator did not get any secular punishment for this and also the woman who was sexually abused did not speak out about it. Instead, she saw the case as shameful and blamed herself. The community, including the other women, blamed her for being crazy when she was supporting her lover in Thailand. This is due to the social norm that holds that women should never initiate love relationships with men. The cultural norms do not allow women to support men and it is not seen as acceptable if it is the woman who approaches or proposes to marry the man first.

The woman in this case performed sexual favours to get a kind of justice, and finally she left for Thailand, because she no longer had a house in the village and because after the case she feels too ashamed to live in the community. The woman, her family, and her female neighbours lack knowledge of women’s legal rights. The gender imbalance in the informal justice resolution process is evident because the dispute resolver, the VTA, made a decision in the woman’s favour conditional on her providing him sexual services. This is an example of a person in authority abusing power in dispute resolution.

Conversely, the case shows that the women believe in spiritual justice. They believed the local administrator’s broken leg was payment for his bad deeds in this life. This belief can be seen as a way to satisfy their justice needs: they witness the perpetrator paying for his bad deeds, and this was seen as a kind of justice. According to Buddhist beliefs, in the above case both the parties finish the cycle of bad life deeds. The women with whom I spoke about this case believed that it was better that the VTA paid for

his bad deeds by falling ill rather than by having accusations being raised against him.

In sum, the case shows how women in reality face many obstacles to access to justice, including: 1) social norms of women keeping quiet; 2) religious beliefs that strongly support inner and spiritual justice; 3) a tendency in society to see women as always guilty when they report and get involved in a case; and 4) the media playing a strong rôle in the justice process, though, as the long letter to the authorities, published in a journal, shows, not necessarily in support of women's access to justice. Now I want to address in more detail the meaning of spiritual justice for women.

Silence and spiritual justice by women

Apart from feeling shame and loss of dignity, women also refrain from reporting cases to secular institutions, because they interpret cases as spiritual and religious matters. The latter also means that they keep disputes and crimes to themselves or that they seek advice from monks, astrologers, fortunetellers and other spiritual-religious actors. The majority of women believe in the spiritual aspects of disputes and crimes in the 2 Mon villages discussed here.

I asked a woman who lost a large amount of gold a long time ago why she did not report it to the village administration. She told me that reporting the case in public would be shameful and unnecessary, even though she knows the procedure of doing so now. Instead, she asked a monk to give her clues about the person who stole the gold. In another case, the female head of a village faced a land boundary dispute. Her family bought a house plot with an oral agreement. The land owner's son destroyed the fence and assaulted her, but she did not make a complaint, because she believed that it was due to her past life deeds. She listened to the advice of a Buddhist abbot, who told her, 'Do not quarrel with bad characters.'⁶ When people do not follow this advice, they quarrel and no better than the troublemakers.

While the male respondents that I spoke with said they would take legal action in rape and domestic-violence cases, female respondents believed that being victim of such assaults is due to

⁶Kwan Sar Yar, 07.06.2016

past life deeds. This belief makes them unlikely to take legal action against the perpetrator, as this could prevent the end the life-deeds cycle. One woman working in the village development and land management committee in Kwan Sar Yar told me that if a woman is raped by a strange man, it is due to her past life deeds. The evidence for this is that among many women, she is the only woman to be raped. She herself would, however prefer that the if the perpetrator is a neighbour, he get the death penalty.⁷ However, few women in the village would wish for that to happen.

Many women did not think in terms of punishing perpetrators. The same women said that while women were getting more aware that justice was for everyone, no matter what their gender, lack of knowledge of women's legal rights still pushed women to consider the cases they faced as private matters and the result of their bad deeds. She advised the mother and teacher of a child who was the victim of attempted rape by a Burmese migrant to report the case to the VTA. At first, the parents were afraid of the father of the perpetrator, because the father used *out lan* (bad spirit medium) and they feared that this would harm their family. She told them that if the case was not reported to the VTA, the perpetrator would be a risk for the other children in the future. The case was in the end reported to the VTA and the perpetrator signed a pledge (*kan won*), in which he promised that he would not sexually assault again. The letter also stated that if he repeated the act, he would either be sent to the township court or be expelled from the village. This is an example of how women's participation in the local administration may create a space for women and young girls to feel safer about bringing cases forward.

Mon women play a central role in taking care of the family's spiritual security, which is also believed to support the socio-economic situation of the family. They mostly go to see spirit mediums for the family's justice and other matters, including health, education, and economic or income situations. They protect the family's securing and inner peace by spending money on *yatayar* (spiritual protection), prepared according to the advice of spirit mediums. Ideas about spiritual security have existed

⁷Interview, 10 June 2016.

among Mon people for a long time, but according to my research today, it affects women more than men. They used amulets from religious leaders, spiritual mediums, and astrologers to secure against bad spirits and bad luck. A female spiritual medium told me that many people, especially women, spent 50,000 kyats (US\$37) or more on spiritual protection each time they came to her. I remember as a child my mother telling me she used to argue with my father about her beliefs in spiritual protection. My father told her that *yataryar* is nonsense and not true protection, but my mother firmly believed it, as other women in the village do.

Spiritual belief in the effects of past-life deeds also affect people's livelihood. For instance, I met a woman working in the bridge construction industry, where working conditions were poor. She was skinny and had diseases because of the smoke at the workplace. However, she told me that she would not run away from this work, even if there was an opportunity, because working for the employer and making regular payments on her debt lets her pay her past-life debt as well. She had taken loans from her boss to survive, especially during the rainy season, and was paying him back with her labour. Thus, it was hard for her to repay the debt and to paying off her past-life debt. This put her in a vicious circle that was difficult to escape. She believed that she must have stolen from her boss in her past life, and so she must repay him.

Conclusion

This article highlights that rural Mon women faced a number of obstacles in getting access to justice, not only in the formal system, but also in the informal system of the ethnic armed group, the NMSP, and at the village level. Cultural and social norms, religious beliefs and structural constraints inside the justice systems in combination affected women's access to justice. This was deeply embedded in unequal power relations between men and women in society at large. Rural Mon women's lack of knowledge of legal procedures and language barriers were also important to consider when discussing women's access to justice in the formal system. Cultural norms restricting women's travel and going outside the

village were also important, as were ideas of shame associated with reporting crimes and disputes, which were seen as bringing problems into the public domain. Finally, this article highlighted women's greater use of spiritual justice than secular justice, compared with men. This was an effect of stronger beliefs in spiritual security among women. However, it may also be seen as a consequence of the lack of access to secular justice, which means we could see spiritual justice as a kind of substitute for the secular justice which was lacking for women.

Empirical research into the justice-seeking practices and beliefs of and about women in society are very important for enhancing understandings of women's (lack of) access to justice in Myanmar in general, and among ethnic minority women in particular. This article is one step in that direction, and I hope it can help inform efforts by the government to improve women's access to justice. Based on my empirical research I propose a number of recommendations. With respect to the formal justice system, it is important that there are justice providers who can speak local languages, as many rural Mon women do not adequately master Burmese. It is also important that the legal language and procedures are made more clear and understandable to accommodate lower education among women.

Having more women in justice systems, including the informal justice systems, is also important. But, it is equally important to know that this does not provide a guarantee for better justice to women. This is also a step to changing deeper social and cultural norms and attitudes towards gender equality. It is necessary to properly train women as well as men in the justice systems in matters of gender equality and women's rights. Also it is important to note that when women participate in the justice system, they may not in reality be seen as equal to men. Empowering women is vital to ensuring equal access to justice. In addition, it is important that ethnic minority women are also included as justice providers in formal and informal institutions.

The Myanmar government must focus more on investigating women's legal rights and consider setting aside a budget for gender mainstreaming in the justice system. Legal advisors for

women can also be important, but as of this writing, they are rare in rural areas among ethnic minorities in Mon State. They tend to be situated in larger urban settings, where women have better access to legal services, and to news and social media, which can also enhance women's legal knowledge.

The empirical findings show that both social and cultural norms and Buddhist beliefs influence women to the extent that they seek spiritual justice or are silent about injustice. It is important that awareness raising is given not only to women but also to men, because if the men do not understand the legal rights of women it can create more conflict in society.

The government should collaborate with NGOs and legal experts to build capacity of female correction officers, who have to speak the local language, as language is a core obstacle for women when it comes to reporting cases. It is also necessary to encourage national prison services to increase the number of women correction officers, and thereby enhance the capacity of national prison authorities to protect female prisoners from sexual and gender-based violence and discrimination. Finally, more research on women's access to justice should be conducted in Mon State and elsewhere in Myanmar, as currently the research related to women's access to justice is limited. There is some research, but I strongly believe that we need to conduct more qualitative research, using anthropological methods to get a deeper understanding of the situation and be able to improve and strengthen the system to support women's access to justice.

Reference

- Cheesman, Nick. 2015. *Opposing the Rule of Law: how Myanmar's courts make law and order*. Cambridge: Cambridge University Press.
- Chopra, Tanja and Isser Deborah. 2012. "Access to Justice and Legal Pluralism in Fragile States: The Case of Women's Rights." *Hague Journal on the Rule of Law* 4: 337-358.
- Elizabeth, Dore (ed.). 1997. "Gender politics in Latin America: debates in theory and practice". *New York Monthly Review Press*. January 1997
- Griffiths, John. 1986. "What is legal Pluralism?" *Journal of Legal Pluralism* 24: 1-20.
- Harrisson, Annika Pohl and Kyed, Helene Maria. 2017. "Ceasefire State-Makings: Justice provision in areas governed by the Karen and Mon armed groups", Paper presented at the Myanmar Update, Australian National University, February 2017.
- Kempel, Susanne and Aung Tun. 2016. "Myanmar Ward and Village Tract Elections in 2016: an overview of the role, the laws and the procedures." Norwegian People's Aid, Myanmar, January 31 2016.
- Kyed, Helene Maria. 2017. Community Dispute Resolution. Exploring Everyday Justice in Southeast Myanmar. IRC: *Unpublished report*, January 2017.
- Merry, Sally Engle. 1988. "Legal Pluralism". *Law and Society Review* 22, no.5: 869-896.
- Moore, Erin P. 1993. "Gender, Power, and Legal Pluralism: Rajasthan, India". *American Ethnologist*, vol.20, no.3: 522-42.
- Myint Zan. 2000. "Judicial Independence in Burma: No March Backwards Towards the Past." *Asia-Pacific Law and Policy Journal* 1, no. 5: 1-38.
- Poine, Sar Yar. 2015. "Perceptions Regarding the Participation and Representation of Young Women in Political Parties in Mon

- State, Myanmar: A Focus on Mon Women”. MA dissertation, Kimmage development studies centre.
- Prasse-Freeman, Elliot. 2014. “Conceptions of Justice and the Rule of law” in *Myanmar: Dynamics of an Evolving Polity*, edited by David Steinberg, 89-114. Kumarian Press: Lynn Reinner.
- Tamanaha, Brian. 2008. “Understanding Legal Pluralism: Past to Present, Local to Global.” *Sydney law Review* 30, no. 3: 375-376.
- UNHCR South-east Myanmar Information Management Unit. 2014. “Mon State Profile” report published, updated June 2014.
- Von Benda-Beckmann, Keebet. 1981. “Forum shopping and shopping forums: dispute processing in a Minangkabau village in west Sumatra.” *Journal of Legal Pluralism* 13, no. 19: 117-159.