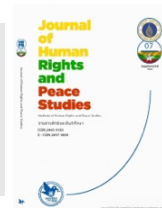




Journal of Human Rights and Peace Studies

journal homepage: <https://www.tci-thaijo.org/index.php/HRPS/index>



Human Rights and Refusing the First Information Report in Pre-trial Process in the Criminal Justice System of Myanmar

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ARTICLE INFO

ABSTRACT

Article History:

Received: 23-Mar-2021

Revised: 20-Jun-2021

Accepted: 29-Sep-2021

Keywords:

First Information Report,

Access to Justice,

Police

This research focuses on how refusing the First Information Report in the pre-trial process in the Criminal Justice System of Myanmar, which has been under control of dictatorship since 1962, leads to the violation of basic human rights. The First Information Report (FIR) is the information reported by victims or persons who have witnessed or have awareness of a crime scene or criminal act by hearsay. As one of the most important legal enforcement institutions, the Myanmar Police Force (MPF) is under a legal obligation to register a FIR in order to advance an investigation, which is the primary measure to establish the rule of law. Therefore, an outright refusal to comply with this legal obligation is problematic, since it would lead not only to peoples' distrust in the administration of justice but also to the violation of human rights. Findings of interviews showed that refusing a FIR threatens a violation of human rights such as those to a fair trial, equality before the law and non-discrimination; it weakens the principle of access to justice; and negatively impacts the rule of law.

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Introduction

Peace, freedom and justice, which seek to be guaranteed by the Universal Declaration of Human Rights, are closely interrelated. Freedom and justice can provide equality and liberty, and a society where there is no freedom or justice cannot enjoy peace. In seeking justice, law enforcement institutions are vital to build public trust. Criminal justice administration is responsible for the protection of both victims and accused persons. To establish the credibility of justice, the pretrial process is key in ensuring the right to a fair trial as well as the right to an effective remedy. The pretrial process is conducted by prosecutor, police and judges and state-based legal aid providers. The role of the MPF is to protect the citizen on behalf of government. The basic duty of police is to detect crimes and apprehend offenders in the community.

The present research attempts to undertake an analysis of access to justice issues with regard to the legal obligation of an officer-in-charge of a police station to receive the First Information Report (hereinafter referred to FIR). The police have a duty to start an investigation upon receipt of an FIR, but if they refuse to accept it, they cannot conduct an investigation and hence those submitting the FIR lose their legal rights. A loss of such rights threatens to negatively impact the rule of law. This research is motivated by first-hand experience of an officer in charge of a police station rejecting an FIR. In 2017, an acquaintance of the author asked for help in response to a mischief crime which had been committed by his neighbour. As the victim, our acquaintance went to the nearest police station, but the police refused to accept the case and, later, following our advice, the victim took his case directly to court. After that, driven curiosity about this phenomenon, we made informal interviews with acquaintances who are lawyers, judges and police officers. All admitted that they had previous personal experience of the rejection of FIRs. If an officer in charge of a police station refuses to receive an FIR, then no investigation will be carried out, hindering the procedure to ensure justice. The purpose of the criminal justice system is to deliver justice and protect the innocent. In refusing an FIR, police are ignoring potential crimes and thereby blunting the purpose of the criminal justice system. This degrades the

image of the rule of law, reduces equality before the law and reduces legal certainty to support the equality of all citizens in Myanmar.

Research Methods

The analysis focuses on two research questions: 1) how does the prescribed legal procedure for receiving a First Information Report differ from the practices in Myanmar, and 2) which specific human rights have been negatively impacted by the refusal to register an FIR?

The research employs a qualitative approach, using interviews with responsible persons in the criminal justice system and others to analyse the consequences of police rejection of an FIR. The data collected in interviews relates to the perceptions and experiences of the professionals and experts who shared their own stories. Moreover, the research identifies a number of people who experienced a refusal of an FIR and its adverse consequences. The interview data are supported by a literature review encompassing laws and cases related to FIRs. In addition, a legal review addresses relevant human rights and rule of law issues with particular focus on articles in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.

It was not possible to make interviews everywhere in Myanmar due to time and resource constraints but is nevertheless feasible to generate insights regarding the research questions from a representative sample. For the present study, the scope of analysis involves a sample of respondents who live in Patheingyi District, including Kyaik Latt and Kangyi Downt, the largest commercially affluent district located in Irrawaddy Delta region, and Taungtha, the largest commercial town in Bago Division located on the borders of Karen State. These two cities were chosen because they provide a number of reliable interviewees, and those cities are large commercial urban centres with high population, that are readily accessible.

An additional constraint was that it is impossible to interview relevant professionals, experts, and judges from across the entire criminal justice system within the time and

resource constraints available to the project. As a result, data collection focuses on appropriate individuals who can contribute their knowledge and the facts of their experience. Research subjects were selected based on a purposive sampling method that chose 15 key participants for the interviews. Sampling selected professionals including police officers, legal aid providers, lawyers, judges and community members based on their experience relating to the research topic. Interviews used semi-structured approach and open-ended questions. Because the research was conducted during the COVID-19 crisis, most of the interviews were conducted by phone to strictly abide by the government's restriction on travelling and gathering with others. The interviews were made in June 2020 and took one to three hours. Most respondents are men because of the highly gendered nature of their occupations in Myanmar. For example, less than 2% of Myanmar police officers are women (Selth, 2012).

Respondents were first given an explanation of the purpose of this research and the research title. Second, they were asked to give their informed consent to conduct the interview via phone or face to face. If they agreed, they were asked again if they were happy to permit recording or note-writing. As a result, some interviews were recorded while others saw notes taken, in accordance with respondents' consent. Interview data were transcribed and analysed to provide further understanding regarding the perceptions and motivations of interviewees.

The list of the respondents is shown in the following table.

No.	Code	Occupation	Gender	Age	Date of Interview
1	1G1	Retired (Police)	Male	61	1.6.2020
2	1G2	Retired (Police)	Male	62	30.4.2020
3	1G3	Retired (Police)	Male	42	2.6.2020
4	2G1	In Service (Police)	Male	46	10.6.2020
5	2G2	In Service (Police)	Male	34	12.6.2020
6	2G3	In Service (Police)	Male	34	27.6.2020

No.	Code	Occupation	Gender	Age	Date of Interview
7	2G4	In Service (Police)	Male	36	2.6.2020
8	3G1	Legal Aid	Male	45	12.5.2020
9	3G2	Legal Aid	Male	65	13.5.2020
10	4G1	Lawyer	Male	43	27.4.2020
11	4G2	Lawyer	Female	36	2.6.2020
12	5G1	Community Leader	Male	62	7.6.2020
13	5G2	Community Leader	Male	54	7.6.2020
14	6G1	Judge	Male	32	18.6.2020
15	6G2	Judge	Male	28	20.6.2020

Literature Review

Administration of justice is particularly weak in Myanmar. Myanmar's judiciary is seen as inactive and subordinate to the military, with allegations of judicial corruption, inefficiency, and susceptibility to executive influence that are so widespread that they cannot be sensibly discounted. (2018 Fact Sheet, Global Justice System) Across Myanmar there is a common understanding that justice is based on principles of fairness and equality. This view is held by the vast majority of the population (92%). Justice issues of justice and the rule of law have featured prominently in the long road to democracy in Myanmar. The main actors, people see as relevant in providing justice services are the police, judges and, to a much lesser extent, lawyers. Confidence in all of these actors is low. (My Justice, 2018) As to the police performance of crime, crimes recorded by the police came via citizen reports, not police detection. To ensure that crime is controlled in a lawful manner; ensure that citizens are not subject to abuses primary value efficiency, reliability in police

operational activities. (Daly, 2012) One of the important function of the police is to investigate criminal activities. Police can exercise power under sections 154 to 176 of the Code of Criminal Procedure to investigate a criminal case. After completion of investigation, police submit a charge-sheet for prosecution or final report for release of the accused. (Islam, 2019).

Police as a Law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. When they ignore their duty concerns ordinary citizens, nobody cannot afford to fulfil this duty in nowhere in Myanmar. **As to the current research, it is the first initiative study about the consequences of refusing FIR by police in Myanmar. Primary data are not available through the courts because they are either not documented or are not public.** All of previous research and report focus to free trial right and pretrial detention. All research have been done with the analysis of international standards for challenging arbitrary or unlawful arrest or detention and Myanmar's current legal framework for the Constitutional writ of habeas corpus. It should not ignore the roles of ordinary citizens in reporting crime, working with officials, and participating in the process. Although it is impossible for the police to eliminate all crime from society but it can be controlled and retained in a public satisfactory view. The meaning of refusing the first Information report is denying the police duty of investigation through reporting from ordinary citizen.

The First Information Report and Myanmar Police Force

The term FIR is not mentioned anywhere in the Criminal Procedure Code of 1898 (CrPC) in Myanmar. It is a term only used in Myanmar and some neighbouring countries such as Pakistan, Bangladesh, Nepal, Singapore and India to report information regarding the notification of crimes. A First Information Report (FIR) is a report registered by police regarding the commission of a recognised crime (FIR Registration Book Code No. 20, Chapter 55, Paragraph 1411). The police registration book is form No. 20, it is the earliest information regarding the commission of a crime (FIR Registration Book Code No. 20, Chapter 55,

Paragraph 1411).

To begin any investigation of an offence under the Criminal Procedure law, the police have a responsibility to register information that an offence has been committed by the accused person. The Myanmar Criminal Procedure code has been in force since 1898 (hereinafter referred to as CrPC) (Code of Criminal Procedure, 1898, 25). In simple wording, any person who knows, sees or hears about an offence can come to the police station to give information. According to Section 4(p) of the Criminal Procedure Code, an officer in charge of a police station is the first and foremost responsible for receiving the FIR and the others are responsible only if the officer is officially absent from the duty-station.

The information given by an informant is called the First Information Report (FIR). Under Section 154 of the CrPC (Code of Criminal Procedure, 1898, 72), the FIR applies for cognizable offences. A cognizable offence is defined as an offence where the police can investigate without the approval of a judge. These offences, including rape, theft, criminal trespass and kidnapping, are listed in Schedule 2, Column 3 of the CrPC. Informants are able to give information orally or in writing. If information is given to an officer-in-charge of the police station orally, then, it shall be recorded in writing by the officer; such information shall then be read out to the informant; the signature of the informant shall be made on the written information; and finally, it shall be entered in the diary or book meant for this purpose by an officer.

In addition, the police manual, provided as a handbook for police officers, offers guidelines, orders, and rules. Paragraph 1414 of the Code of Criminal Procedure concerns FIRs and states that it is important for information about the commission of a cognizable case to be recorded without delay. The information may be merely hearsay, given by someone personally unacquainted with the facts, it may be a statement of a person with a slight knowledge of the facts, or a person with full knowledge thereof. Whatever the nature of the information, it must be recorded immediately under the provisions of Section 154 of the Code of Criminal Procedure. The frequent practice however is to deem information illegal any information received as hearsay, or which appears to be unsatisfactory, or omits

information that has been received, unless there is a visit to the scene of crime and eye-witnesses have been examined, to confirm the information. An FIR is not substantive evidence regarding the facts relating to the commission of the crime mentioned therein, but evidence of what was said in the first report to the police and at the date and time of report, and therefore is frequently a document of the highest importance. However, in regard to the facts of the case an FIR is not considered evidence at all and can only be used to corroborate or contradict the evidence under oath of the person who made it, under the provisions of sections 145, 155 and 157 of the Evidence Act. Any failure to record information immediately may give rise to a plausible argument that no First Information Report was recorded until the investigation had been made and a case against the accused connected. Furthermore, any statement made to the police during an investigation which includes so-called recorded information or which alters an investigation that has already begun is precluded from consideration as evidence under section 162 (Myanmar Police Manual, 1940).

In addition, under the Police Manual, there are orders and rules divided into three parts. In the first part, an FIR must be accepted and recorded in the book without delay. Police have no responsibility to evaluate whether the informant is a direct eyewitness or reporting hearsay. Police have no right to reject an FIR provided by the informant, in the second part, it is provided that police have a discretionary power. In other words, police can dismiss the investigation, preventing it from proceeding. Where the police have sufficient cause, satisfactory reason, or evidence to not proceed further on the FIR, for example where they determine the information received to be false, police can decide not to investigate the FIR (Myanmar Police Manual, 1940, Paragraphs 1414, 1438). In the third part, the weight and basic value of an FIR is specified, with police having the right to close a case according to Police Manual paragraph 1438 and 1439 (Myanmar Police Manual, 1940).

The following cases illustrate the well-established rules for taking an FIR in Myanmar. An FIR, not being substantive evidence, may be used in the trial either for corroborating or contradicting the evidence. It is crucial for a person filing an FIR to know about these

features or consequences and that they are not responsible to report every detail of the case (see *U Ba Shwe v. Socialist republic of Myanmar, 1978*). The FIR can be used as a previously given statement for the purpose of either corroborating the informant or contradicting him or her as a hostile witness, as in *King Emperor v. Nga Hlaing (1928)*. It cannot be used only for the purpose of corroborating or contradicting witnesses (see *Mg Tin Hlaing v. Union of Myanmar, 1966*) and it is essential is for a person filing an FIR to know these principles.

In summary, the registration of an FIR is for the purpose of gathering information about an alleged offence so as to be able to take suitable steps to trace and bring the guilty person before the court for the maintenance of peace and order. This is the primary measure for access to fair trial and the right to a hearing before the court. In Myanmar, the Police Department is an important legal enforcement institution and as such the police must accept an FIR and conduct an investigation, and only then decide if they have a satisfactory reason to dismiss the complaint. As a result, refusing an FIR is a failure in their obligation and a cause of distrust in the administration of justice.

Refusing a First Information Report as a Human Rights issue

Police must receive an FIR from an informant without delay, and – once the FIR has been received - they have the discretionary power not to investigate the offence if they think there are insufficient grounds under Section 157 (b) of CrPC (1898): “if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case” (Code of Criminal Procedure, 1898, 74). The procedure for an FIR is summarized as follows: Whenever a layman is aggrieved by an offence, approaching the police is his only recourse for redress of his grievance. The majority of people are unaware whether the offence committed against them is cognizable or non-cognizable. In such a scenario it would be asking for too much to expect them to know the procedure of sending the contents of their complaint in writing and by post to the superintendent of police or approaching a magistrate in cases where the police officer

refuses to register an FIR. Section 157 already permits discretion to police officers in deciding whether the case is fit for investigation or not. Thus this is the time when the police officers would be justified to hold a preliminary inquiry in order to decide whether the case merits a full-fledged investigation or not and this decision should be arrived at, after carefully considering all the legal and constitutional aspects of a case. But registration of FIR should be absolutely mandatory as this is the only way to inspire confidence in the general public. Frivolous or nebulous complaints can always be weeded out at the second stage by conducting a preliminary inquiry into the facts of the complaint before conducting investigations or arrests in any matter. (Deswal, 2013)". Despite this, non-registration of FIRs by the police remains problematic because it particularly affects the poor and illiterate who are most often victims of crimes due to their poverty and lack of awareness of the law.

An exemplary case of police refusing an FIR occurred in 2014 and is the only reported case decided at the highest court in Myanmar regarding refusal of an FIR. In *U Than Htut v. In Charge of Naung Cho Police Station (2014)*, U Than Htut, an investor and businessman in agriculture, received a permit to grow a mango orchard issued by the Central Land Committee, constituted according to the Vacant, Fallow and Virgin Land Management Act (2012). Once he started the orchard in the area of Kyauk Me District, Southern Shan State, a group of men entered without his consent and destroyed the mango trees with swords. They then put up signboard stating that the orchard was on landowner's land, meaning that they owned the land and it was not vacant. U Than Htut sought to report the trespass to the officer in charge of Naung Cho police station. The police station in Naung Cho Township refused to receive the FIR concerning the offence provided under Chapter 9 of the Vacant, Fallow and Virgin Land Management Act (2012). There are three types of offence under this law: mischief, trespass, and illegal interference without the approval of a responsible authority. Trespass is identified as a cognizable offence. The police officer failed in his duty according to section 154 CrPC and Police Manual para 1414. Therefore, the writ of mandamus was called for restitution for the omission of his legal obligation in the nature of a public duty. The Supreme Court decided that there are rights protecting those who

suffer legal injuries arising from a person in authority neglecting to perform his legal obligation. The assumption is that the victim in the rejection of the FIR was the investor. As a wealthy person, he can afford not only the costs for his legal process but also access to legal knowledge. If he were not a wealthy person, he would not have the finances to appeal to the highest court.

In addition, in the matter of the police failure in their legal duty, in this respect, to receive the FIR, an appropriate punishment shall be meted out to irresponsible police according to the existing law. As to their omission, the Myanmar Police Force Maintenance of Discipline Law (1995) provides that:

If a person subject to this Law- (a) fails to take action in his official capacity or delays in taking action without sufficient reason, on a complaint made by the aggrieved person that there is infringement on security and regional peace and tranquility, causing damage and injury to another person or any violation of law by a person; on conviction by the Police Court shall be punished with imprisonment for a term which may extend to 1 year or such less punishment as is mentioned in this Law.

Moreover, with regard to registering the FIR, section 9 of the Law Protecting the Privacy and Security of Citizens (2017) provides as follows:

On receiving any report concerning the need to take action in pursuant to this law, or on receiving a tip-off, a Police Station Master shall take action immediately in accordance with Section 154 of the Penal Code. Section 11 of this law also stated ; Whosoever is found guilty of failing, without due cause, to assume their responsibility under Section 9 shall, in addition to a sentence for a period of at least one year, and up to five years, also be required to pay a fine of between five hundred thousand (500,000) and twenty-five hundred

thousand (2,500,000) kyats. But section 9 only concerns the offences relating with the law protecting the privacy and security of citizen.

Following from the above, it is crucial that the punishment for refusing an FIR be adequate. Further, police have an undeniable duty to accept an FIR, raising concerns as to why police often reject FIRs and what issues exist in such rejections.

Refusing an FIR means police do not record necessary information that may be a decisive factor in commencing an investigation and making arrests. The information in an FIR is also important in fair trial proceedings necessary to protect the freedom and fundamental rights of a person during the criminal investigation and judicial process in both pre-trial and trial periods. Refusing an FIR is an abuse of power by the Department of Police and serves to eliminate victims' access to judicial remedy, thereby creating a means of escape for criminals from the administration of justice.

The Attorney General of the Union, H.E. U Tun Tun Oo, states in the Foreword to The Fair Trial Guidebook: "The rule of law is the cornerstone for the strengthening democracy and development of the country. One of the basic principles of the rule of law is to promote the establishment of a rule-based society in the interest of legal certainty and predictability" (Manara, 2017, p 7). This statement shows that he, as a high-profile official in Myanmar, clearly accepts the rule of law and human rights standards. Police officers are members of public prosecution institutions. If they refuse to receive FIRs, this should be considered misconduct since it means that victims have been denied their rights to fair trial enshrined in the Article 10 of Universal Declaration of Human Rights (UDHR): Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him (United Nations General Assembly, 1948, Articles 14, 16). Moreover, this right is also stated with more detailed definition in Articles 14 and 16 of the International Covenant on Civil and Political Rights (ICCPR), which recognize that every person has the right to fair trial both in civil and criminal cases. However, the primary process to reach fair trial involves the FIR as a first step.

Additionally, the Constitution of the Union of Myanmar 2008 recognizes fair trial rights with several provisions: enhancing the eternal principles of Justice, Liberty and Equality in the Union, (Constitution of the Republic of the Union of Myanmar, 2008), and every citizen shall enjoy the right of equality, the right of liberty and the right of justice, as prescribed in this Constitution (Constitution of the Republic of the Union of Myanmar, 2008). Furthermore, The Union shall guarantee that every person enjoys equal rights before the law and shall equally provide legal protection, (Constitution of the Republic of the Union of Myanmar, 2008). The legislative and respective administrative bodies are required to implement policies to grant the citizens' their right to fair trial in accordance with the Constitution. All laws that are enacted by a legislative organ such as Parliament or Pyidaungsu Hluttaw must be obeyed and enforced by justice mechanisms. The refusal of FIRs by the MPF, a powerful engine of public safety, is a dereliction of their mandatory duty, blocking citizens from access to justice, and stripping them of their fundamental rights. This effectively leads to non-compliance with the state obligation to ensure access to justice. International law does not regulate in detail the question of protection and redress for victims of ordinary crime which depends upon the support and help the concerned government.

Findings and Discussion

All interview respondents confirmed that they had encountered unfair dismissal of their FIRs. Most respondents said that access to registration of the FIR depends on the social, educational and commercial status of informants and victims. Legal knowledge and wealth of informants play vital roles in registration of the FIR, as seen in how the number of FIRs received differs according to the population density and economic affluence of the regions. For example, in Patheingyi, the capital city of Ayeyarwaddy division, there are over 1,000 FIRs received annually, while in Wundwin there are 300, indicating that in urban areas people are aware of the FIR process than in rural areas.

Two respondents (6G1 and 6G2) said that most victims complained to courts

regarding cognizable offences under Section 190 (1) CrPC. This section allows victims to make a direct complaint before the courts for cognizable offences and empowers district and sub-divisional district judges to accept a criminal case related to cognizable crimes. However, the judge will refer to the police to undertake the investigation process, and so a denial of an FIR means a delay in investigation and potential loss of evidence. However, one respondent (6G1) said that citizens should first go to a police station for cognizable offences, but that in the vast majority of cases people have a tendency to complain directly to courts. This tends to hinder the investigation. In particular cases, evidence may be lost, leaving them with little chance to seek appropriate legal remedies. To aggravate their loss, the offender would be subject to no accountability process due to the delay in taking measures and the absence of evidence. 6G2 and 4G1 made a reference to claims that bribes are demanded by some police officers to register an FIR. In such cases, the performance of the police department weakens public trust in the administration of justice and in their legal, professional and mandatory accountability. This is a major reason why complaints are made directly to the courts.

Unfortunately, in the vast majority of cases, police officers are ordered to investigate according to section 202 CrPC by the court which received the complaint. Some respondents said that in practice, the police have a tendency to refuse to register the FIR, since there are some barriers for the Police Department to overcome. A large fraction of senior officers of the Police Department are reassigned from the Defence Services. The MPF is under the control of the Ministry of Home Affairs which reports to the Defence Service (Constitution of the Republic of the Union of Myanmar, 2008, Section 232 (b)) and is thus not competent to perform such duties. According to those interviewed, they tend to abuse their power and interfere with their staff's duties. For example, they may demand with undue influence not to register a particular FIR or may exercise undue influence to prevent a registration.

One experience reported in the interviews stood out. Most efforts to register offences concerning bars with musical entertainment (i.e. karaoke bars) are refused by the police

(5G1), in ways that raise suspicions. In one case, an informant's complaint about a karaoke restaurant regarding illegal prostitution and the selling of alcohol without a license was denied. He managed to spread information about his case through social media and weekly journals. He reported that he witnessed police officers making twice weekly visits to the karaoke restaurant, indicating a close relationship between the police and illegal activity. Consequently, the informant was sued under for defamation through media or online, under the Telecommunications Law. The prosecutor rejected his case before filing a charge due to a lack of evidence. The informant offered bribes to the prosecutor beforehand to dismiss the charge under the above-mentioned section (5G1) who is the victim of this case. Another case was reported where a 19-year-old was beaten by three men working as security guards for a bar with musical entertainment who thought that he was a non-paying customer, but this is false. Police unethically and unlawfully refused to register the FIR (4G2).

Additionally, police officers tend to be unmotivated to investigate crimes due to heavy workloads and the pressure of living on an insufficient salary. The government provides expenses for investigations of 50,000 kyats for warrant cases and 10,000 kyats for summons cases, through the whole process. Both are insufficient to satisfy the costs of such processes. To make matters worse, the majority of police officers are not sufficiently trained to have adequate knowledge of their legal obligations. In many cases, police have been found to have never read the criminal procedure code and police manual thoroughly. This is an underlying pitfall that seems deep rooted in an institution essential to public safety (1G3).

In light of the corruption which is the outcome of the above conditions, the United Nations General Assembly Agenda 2030 for sustainable development requests all states to sustainably reduce corruption and bribery in all their forms. Corruption destabilizes the legal framework, thereby increasing illegal acts and leading to mismanagement and arbitrary action in justice. Moreover, it also decreases certainty and accountability of the judicial process. Obviously, corruption in the administration of justice endangers the basic right to judicial protection and the right to fair trial without undue delay. Unfortunately, this agenda cannot be established in Myanmar without additional legal measures and reform. This can

be seen by examining the issue in detail. . A corrupt act committed by a police officer may violate human rights and reduce human dignity. The United Nations Convention against Corruption requires that State parties adopt a series of preventative measures, ranging from the establishment of an anti-corruption body and the reorganization of public service to the enactment of a code of conduct for public officials. Myanmar became the 165th member of the United Nations Convention against Corruption in 2012 and joined the anti-corruption framework of the United Nations. Although an anti-corruption law had been passed in Myanmar in 2013, with most recent amendment made in 2018, ingrained corruption and bribery known as ‘the under the table culture’ continue to play a major role in Myanmar’s judicial system and in the Police Department (MPF). Corruption, being a major challenge to implementing the rule of law, and to ensure justice and equality, accelerates the violation of human rights.

In addition, one of the respondents (1G1) said that the FIR must be properly documented as prescribed by law. But, in practice, police do not properly perform their legal obligation to record an FIR. For example, whilst the books of FIR should be distributed and printed by the union police department, the respective institution does not carry out this duty and police stations administer FIR books in their own ways. This may include misconduct such as illegally destroying important data relevant to a case, or the list of witnesses. The main reason for this is lack of monitoring by the hierarchy in the Police Department.

Another factor is that some police officers do not adequately perform their duty to investigate criminal cases, since they have no time to investigate due to other public and emergency duties and little salary which does not even meet family expenses: police may lack motivation to do their duty.

Below are discussed types of criminal cases which are rejected or denied to be entered into an FIR by MPF. These cases show that poor police performance of leads to violations of fair trial rights and delays justice.

Rape Cases

Interview respondents mentioned several rape cases and as such these will be discussed here. In the first (2G1), the Victim was seventeen years old and when she and her father came to police station to register the rape, she was pregnant. Police refused the FIR because the officer in charge was away, travelling on official duty. The station police asked the daughter and father to wait until the officer in charge returned and so they returned to their village. Later, the victim and her father complained to senior district police officers about the refusal of the FIR and the officer in charge was punished with two years suspension from promotion and transfer to a remote and undeveloped area of Myanmar.

In the second case the respondent (4G2) reported that an 18 year old boy and a 14 year old girl eloped without the consent of their respective parents. The girl's parents went to register a FIR of rape to the police. The police initially declined to register the FIR, reasoning that there was mutual consent to sexual intercourse. However, the legal age for consent is fifteen in Myanmar and later, the police decided to register the FIR. The eighteen-year-old boy was sentenced to ten years in prison even though the parents of both young people agreed to their marriage. In the third rape case (3G2), the victim was six years old and the accused a male MPF cadet of 31. The officer in charge of the police station declined to register the FIR and at a later point, , the father of the victim no longer wanted to register the FIR. In this case, community leaders (5G2) reported that the victim's family was extremely poor while the accused was an ex-police cadet and his family was wealthy. There is a suggestion that the victim's family accepted money from the accused, while the victim's father said that the law cannot ensure the security of his daughter as the principal witness. In the fourth case, the victim was twelve years old and the accused was a corporal in the defence service, who committed the offence while drunk. The victim's father was also a corporal. The military tribunal referred to the police to register an FIR for rape, but the police declined to register the FIR because the victim could not come to the police station. The victim's father said that her daughter did not want to come to the police station because she suffered from serious anxiety. Ultimately, the accused escaped by

deserting from the defence service and never appeared in court. These cases who how women, especially minor girls, are very vulnerable and have no right to equal protection under the law in Myanmar. Even if a law exists to protect women and is implemented, the consequence of a potential refusal of an FIR discourages women from starting appropriate legal proceedings. The Myanmar legislature sought to prevent rape cases by raising punishments to twenty years imprisonment and amending the definition of underage victims to twelve years accordingly. But, while legal provisions provide apparently strong protection to women in Myanmar, the responsible official institution of the MPF does not follow the required procedures to receive FIRs and, as a result, they fail to protect the rights of women and girls.

In Myanmar, despite the nominal national reach of the judicial system, in most rural areas justice and appropriate remedies for serious crimes, especially those against women and young girls, are not available through the court system because of police refusal of the FIR. Refusal of FIR on a rape case means that police have refused their basic duty to investigate which is the gateway to take offenders to Court. Consequently, people in Myanmar still believe that the Courts are expensive, slow, remote from reality and untrustworthy institutions. The MPF as a law enforcement institution in Myanmar cannot prevent guilty offenders to go free and their refusal of FIR erodes public confidence and support. It becomes devastating for the rule of law as victims of crime are left without justice. In addition, international human rights law provides a right to truth for victims and the public that is integral to effective investigation, accountability and justice. Although the Myanmar government supports the newly enacted laws and has amended the law to eliminate violence against women and underage girls, the police fail to investigate these case by refusing FIR, representing a failure to respect, protect and fulfil the human rights of ordinary citizens.

International human rights law prohibits sexual and gender-based violence in all its forms. Myanmar is also a state party to the Convention on the Elimination of Discrimination of Women (CEDAW) and prohibit sexual and gender-based violence against women and girls

as a form of discrimination. A human rights violation arises when authorities know or should know of the risk of violence but failed to prevent it or when they fail to investigate prosecute and punish violence and to provide reparation to victims of acts such as CEDAW. In addition, international human rights law provides a right to truth for victims and the public that is integral to effective investigations, accountability and justice. Myanmar is also a party to the convention on the Convention on Rights of the Child (CRC), and protection of a child's right to life requires the state to protect children from sexual abuse (Convention on Rights of the Child). Although the Myanmar government is taking steps towards addressing some legal protection gaps, such as increasing punishment for rape, it is not able to protect the women and children due to the poor performance of police. Police who are responsible for accepting the FIR should do so without reason. It is assumed that rejecting a rape case, especially for underage girls, poses issues regarding gender-based violence issue and insecurity of victims' life. In addition, some of the victims cannot further appeal rejections of an FIR due to cost, lack of legal awareness, and embarrassment in the community from a crime of sexual violence.

Theft

Police often deny FIRs in theft cases, particularly when they concern motorcycle and mobile phone theft (5G1). For petty theft cases, they usually deny registration of the FIR because there are not enough investigating police officers or because they may be sanctioned or denied promotion if they cannot catch the offenders. One of the respondents said that some of the theft cases occurred within families, such as when a son brought something expensive without his parents' consent and they then went to register an FIR. Sometime later, they changed their mind since they didn't want to prosecute their own son and they wanted to close the case. Despite this change of heart, the police officer suffered a demotion because he refused to register the FIR (1G1). Another respondent said that thefts for motorcycles and mobile phones are increasing because of police ignorance of these offences. As a result, most people do not inform the police about motorcycle and mobile

phone theft. Whilst police can arrest an offender linked to a series of stolen motorcycles, they cannot find the owners of those motorcycles as witnesses (2G2). Motorcycle theft is the most common case in many areas of Myanmar, with the exception of Yangon. Police do not want to investigate these cases because they insufficient time due to a lack of manpower or excessive duties, and the fact that it is difficult to identify motorcycle thieves. The right to property, a basic human right, concerns private ownership. At the national level, the MPF has the obligation to monitor, safeguard and secure the property of all citizens, Therefore, refusal of an FIR for theft cases undermine the people welfare and unrest the rule of law.

Trespass

Land disputes are a long-term unsolved problem in Myanmar. Cases related to trespass however are usually denied FIRs. In one case, complainants were rich and influential in their community and police denied the FIR. Some trespasses involved family members because of changes in ownership rights under farmland law: they wanted to sell the land although they did not cultivate it in previous years, initiating an ownership dispute among family members (6G2 and 4G1). In another case (6G1), changes in the farmland law gave rights to heirs in sales and mortgage. The prior law had given no right to transfer farmland and they only had the land holder status. The eldest son used an ownership document (known as form no. 7) to gain a joint ownership certificate, including the parents and siblings. After the parents' deaths, the eldest son declared that this farmland was his own property, and he complained to the police that his siblings are offenders of trespass. The police refused to register the FIR.

The farmland law was a positive attempt to put in a place a system for securing rural land tenure through a land-use certificate and registration system. In creating this system, the legislative body in Myanmar created private land use property rights. These rights include the right to sell, exchange, access credit, r inherit and lease (Farm Land Law, 2012). Under the law, a land use certificate (LUC) recognizing rights granted will be issued to farmers by newly created farmland bodies and registered to the Settlement and Land

Records Department after payment and required fees (Farm Land Law, 2012). The process of how a farmer applies for LUCs and registration of the land use right is not however clearly articulated. As a result, the number of trespass cases increased due to this weakness in the law. In our penal code, trespass is a criminal case which concerns possession of land. But some trespass cases involve deep ownership problems and are very complex. In many cases, disputants are siblings and close relatives, and after they have complained to the police and the police accept the FIR, they solved their problems themselves in their traditional ways. This led to the police not wanting to take action and register an FIR in such cases.

Refusing the FIR by police did not related to a nature of the case, as earlier mentioned that police did not want to investigate and they gave some excuses such as lack of man power, excessive duty and weakness of laws. These findings demonstrated there is no rule of law in Myanmar because of long term discrimination on marginalized people is deeply rooted. Through interviews, Victim reported lived in rural area and the come from lowest income family. It is an evidence thatThe latest Myanmar Asian Barometer Survey (2016) found that the police is the least trusted institution in Myanmar with only 27 per cent of the population trust the police. Only 25 per cent of respondents believe they have access to services delivered by the police. This is by far the lowest number in any ASEAN country. Half of Myanmar's citizens accessing police services had to pay bribes (Pring, 2017)

Conclusions and Recommendations

Remedies are measures that redress harm, for instance through restitution or compensation and when guaranteed by law or by customary norms they are called legal remedies. Justice remedies are legal remedies that typically involve a third party, i.e. the justice institution or mechanism whose functions are regulated by norms in settling the dispute. Justice systems serve to recognize people's entitlement to remedies when these are in dispute. For this reason, they are particularly important in the context of power inequalities, when people's inability to claim remedies through other means may put their

well-being at risk (United Nations Development Programme, 2005, p.5). When involved in disputes or conflicts of interest, legal remedies are measures, being guaranteed by law or customary norms, which are required to make amends through restitution or compensating those who have suffered from possible damage or loss caused by others. Thus, the police department is a powerful and key institution of justice that assures peoples' entitlement to remedies. When police refuse to receive an FIR, people may suffer a loss of ability to seek remedies and a fair judicial process.

The fundamental duty of the police is to safeguard lives and property, to protect innocent people and to respect law, equality and justice. The police both prevent crime and play a key role in bringing criminal offenders to court for justice. The first step to be taken by the police towards starting an investigation is registering an FIR for cognizable offences. Police refusals to grant FIRs drives a loss of public trust in the criminal justice system and undermines accountability for criminal offences and of justice delivery to victims. Rule of law standards include measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of power, participation of decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (2004, Report of the Secretary General, UN). Refusing the FIR is a violation of such rule of law principles, particularly supremacy of law, equality before the law, and accountability to the law. It is unlawful for a public authority to act in a way which is incompatible with international conventional human right and statutory provisions. The authority should not have acted differently from primary legislation.

Victims who have been denied an FIR may have a right to complain directly to the court. There has been only one reported case filed to the court that has later returned to the original police officers who had denied the FIR, leaving victims with more devastating consequences. This case demonstrates the degraded reputation of the legal system where the public no longer has access to justice. Considering the primary purpose of law is meant to bring about justice, the case shows that the process of refusing FIRs is illegal.

The authority of the MPF in the criminal justice system makes them key participants in implementing the supremacy of law and fair application of the law. Therefore, a monitoring system has to be established by means of a legislative body to provide better ways to prevent the police refusal of FIR and/or more efficient procedures. Another potential solution would be to ensure there is less incentive for corruption and make it easier for police to conduct investigations, by providing an adequate salary and all required facilities for police to do their job. Police fulfilment of their mandatory and statutory duty to register FIRs is important in achieving the goals of access to justice and rule of law. Further, all complainants and informants who come to police stations for cognizable offences should be given a copy of their FIR record to ensure transparency to the public.

Impunity, corruption, and inequality show how they drive failure in criminal justice system. The findings of this study show not only how challenges to the rule of law and access to justice emerge because of influences such as impunity and abuse of power, but also how these broader ideas play out in everyday events. The significance of this paper is to show how difficult it can be in some situations to have court cases accepted and run in a timely manner for trial. In addition, even though procedures are established, often simple decisions made by a police officer can have serious effects on access to justice. It is not just the implementation of law in criminal justice system. As a result, this research supports to understand and improve the criminal justice system in Myanmar from a perspective of how it currently operates in legal context. Myanmar court system suffers from many problems. For poor and marginalized communities, access to justice may depend entirely on a police officer accepting and writing up the FIR, while that decision can depend on the type of case or the capacity and workload at the station. The finding reveals larger systemic problems through the study of everyday practices in criminal process. It is seen that an accurate understanding of access to justice should include looking at access at the ground level when a person walks into a Police Station.

The reasons identified in this study as the root causes of an outright refusal of an FIR, include:

- insufficient numbers of police officers;
- undue influence of senior officers;
- connections between the registration of FIRs and police promotion prospects;
- deprivation of support and cooperation from other institutions such as the General Administration Department;
- lack of facilities including manpower and vehicles to conduct legal investigations’
- extreme poverty, which leads to nomadic lifestyles that make it difficult to conduct investigations;

A rejection of the FIR debilitates public trust in the administration of justice, demanding immediate measures, including reform of the MPF as a stronger mechanism for supporting the criminal justice system of Myanmar.

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