

Enhancing Access to Justice: Examining the Contributions and Challenges of Criminal Legal Aid Institutions in Myanmar Post 2021

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Key Finding

The clients who received legal assistance satisfied and often refer others in need of legal support about the criminal legal aid organisation, however, the public is not well-informed about their contributions and functions.

Lack of understanding poses significant challenges for both the public and these organizations, leading to missed opportunities for justice and a lack of confidence in the legal system.

Significant challenges: legal barrier, security concerns/threat, and financial challenges are impacting community empowerment and access to justice.

Executive summary

This study examines the vital role of criminal legal aid organizations in enhancing access to justice in Myanmar, especially in the context of the significant political and social changes that have taken place since 2021. Many criminal legal aid institutions in Myanmar temporarily suspend work after 2021 compared to the past due to several obstacles encountered by the organizations and due to the fact that the public suffer great loss in achieving access to justice as a result. The policy brief intends to offer a comprehensive analysis of the contributions these organizations have made in addition to the difficulties they have in the current political and legal environment.

Introduction

In Myanmar, accessing the justice system is a considerable obstacle for several people, which has gotten worse and worse by economic restraints together with negligence from authorities. In

action to this pushing concern, criminal legal aid institutions have become a sensible remedy for the community because they guarantee access to justice, safeguard legal rights, and handle a variety of related issues, all of which support the rule of law and the justice system as a whole. Before 2021, many criminal legal aid institutions were able to operate access to justice activities freely and conduct various community awareness-raising events and legal internship programs publicly. After the military coup in 2021, the number of people needing criminal justice assistance reached its peak and due to several hindrances, the nature of criminal legal aid institutions shifted to operate lowkey on ground and both on social media, and many of them led to temporarily suspending.

This policy brief paper examined criminal legal aid institutions in Myanmar by discovering the diverse features of

their institutional background, activities, performances to accessibility to justice, methods for community empowerment as well as the obstacles they deal with after 2021 and lastly, recommendations and approaches for reliable community empowerment in numerous contexts coupled with referencing meetings to collect real ground information from the general public as well as area legal assistants.

Methodology

This policy brief integrates actual voices and perspectives from the local community and criminal legal aid institutions by collecting data regarding qualitative questions through the google form. The questionnaire is distributed to trusted six criminal legal aid institutions who are involved in supporting access to justice through criminal defence and legal knowledge sharing to the community. Random sampling is used to select six individuals from different regions, including

Mandalay, Yangon, Nay Pyi Taw, and Bago to represent multiplicity gender, ethnicity, and experience levels, expecting to enrich the interview data and provide comprehensive insights.

While collecting answers to questionnaire, participants are fully informed about the research procedures, risks, and benefits and ethical considerations were included through obtaining informed consent, ensuring participant confidentiality and respecting participants' autonomy and dignity.

Background and Involvements of Criminal Legal Aid Organizations in Enhancing Access to Justice in Myanmar

Access to justice is recognized as a fundamental human right in the universal declaration of human rights, which was adopted by the United Nations general assembly promoting a system of impartial and fair justice for all. (General assembly, united

nations, 1948) Moreover, access to justice is characterized by the ability to pursue and attain fair resolutions to legal issues through a diverse array of legal and justice services. (OECD library, 2019)

By recognizing fundamental and universally acknowledged human rights, the human rights-based approach to justice aims to fortify the protection, respect, and enjoyment of rights such as access to justice, access to law, the right to a fair trial, and associated rights.

Criminal legal aid institutions have emerged in Myanmar by providing legal aid services include hiring a lawyer, lecturing legal awareness, offering legal advice and giving assistance and information to claimants entitled to request legal aid (Legal Aid Law, 2016) and many individuals feel more comfortable seeking legal help from these institutions, often finding their

assistance more effective than traditional court proceedings.

Challenges they faced

In a series of interviews with online form conducted with criminal legal aid institutions (OA, OB, OC, OD, OE, OF June 2024), several significant challenges impacting community empowerment and access to justice were identified. Institution OA reported suffering from legal barriers that impede their ability to operate effectively since 2021 and institution OB, OC and OD cited are facing security concerns or threats while performing their works. Also institution OF highlighted financial constraints as a major obstacle, limiting their capacity to extend their services.

Legal barriers

The enactment of the legal aid law in Myanmar 2016 marked a significant step by the government to regulate and establish guidelines for legal aid institutions, thereby enhancing their ability to assist individuals in need of legal aid

which strengthened access to justice and empower those seeking legal assistance. The amendments to the Legal Aid Law in 2021 have led to unintended consequences, affecting both criminal legal aid institutions and individuals in need of free legal aid.

A major alteration in 2021 was the amendment to Section 2(b) of the Legal Aid Law, which introduced restrictions on certain vulnerable groups from receiving legal aid which affected stateless persons, asylum seekers, foreigners, and migrant workers, limiting their right to claim legal aid. Similarly, the revocation of Section 3(e) which provided the reduction of the period of detention and unlawful detention, may result in a lack of adherence to fair standards and procedures regarding the duration of arrests and custody for victims. The removal of Section 29, which previously provided legal aid to criminal witnesses upon request for special reasons,

could leave witnesses without necessary legal assistance, potentially impacting the fairness of trials. There may be a lack of representation for accused people, crime victims, and criminal witnesses as a result of the restriction of Section 32, which compelled legal aid providers to help certain parties. This could compromise more difficult for them to successfully handle the judicial system. Additionally, the cancellation of Section 38, which outlined cooperation between government bodies and the Union Legal Aid Board, and Section 42, which required government assistance upon request, could hinder the Union Legal Aid board's ability to provide necessary support to those in need of free legal aid. By restricting access to legal aid for those facing criminal charges and marginalized groups, especially during pretrial detention, these amendments could exacerbate vulnerabilities and undermine

fundamental rights of access to justice.

Security Concerns / Threats

Institutions OB and OC admitted they have encountered security concerns and received threats from individuals related to their cases. Additionally, institution OC reported instances where judges and police pressured clients not to seek assistance from legal aid institutions and coerced them into dropping charges.

Myanmar's criminal legal aid institutions and lawyers face significant security challenges when they are trying to ensure access to justice. Even before 2021, criminal legal aid institutions and lawyers faced security issues and threats from the opposite sides in criminal cases and the danger arose greatly after 2021 because of the targeted repression against lawyers, including arbitrary arrests and intimidation, who provide services for abductees and political detainees by military government

and frequent arrest of lawyers and human rights defenders underscores the risks for legal professionals amidst pervasive insecurity. (Robert Bociaga, 2021)

Financial challenges

From the responses of the Interview form, one-third of criminal legal aid institutions are suffering financial difficulties. Criminal legal aid institutions are volunteer institutions and provide access to justice for marginalized groups without any charges, the budget capacity is important to boost larger legal assistance to the public and for the continuance of these institutions.

Some institutions receive support from national and international donors associations, while others are self-funded or operate on limited budgets. With greater monetary support, criminal legal aid institutions in Myanmar can expand their reach and effectiveness in addressing legal issues within local communities.

Recommendations

- Policy implementation that guarantee legal aid providers' protection and long-term funding by the government sector should be performed.
- The collaboration of government sectors such as related ministries, legal departments and courts should smooth the activities and functions of criminal legal aid institutions in processes like registration matters.
- Government and donors should collaborate with national and international associations to support financially to criminal legal aid institutions within Myanmar.
- CSOs should organise community awareness-raising events to introduce criminal legal aid institutions and the provided services, to allow

dialogue or consensus-building around action for a community-level case and to educate people on specific laws and government processes.

- Criminal legal aid Institutions should frequently share their legal activities through social networks and direct communication within local communities and receive positive feedback from the community.

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