Transparency International Anti-Corruption Helpdesk Answer

Overview of corruption and anti-corruption in Myanmar

Author: Mathias Bak, tihelpdesk@transparency.org

Reviewers: Matthew Jenkins, Transparency International Secretariat and Ondřej Cakl, Transparency International Czech Republic

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Myanmar has undergone a significant transformation since the transition towards democracy. Anti-corruption has become a national priority, and the government has worked towards implementing an anti-corruption framework. This legal anti-corruption framework may be in a rudimentary stage, but adjustments are being made and relevant initiatives taken.

Nonetheless, corruption is still rampant in Myanmar, rule of law is weak, and many of the systemic issues that enable corruption and organised crime are yet to be addressed. Of particular concern is the influence of military-linked cronies in various sectors, the continued ability of the military to act with impunity, the fragility of the state and the disputed state authority in Myanmar's peripheries.

Myanmar is therefore likely to continue to face challenges with high levels of corruption. In spite of this, there are trends that could be interpreted as genuine attempts to tackle corruption issues in some sectors.

Query

Please provide an overview of corruption and anti-corruption in Myanmar, with a focus on the justice, extractives, education, police, agriculture and fisheries sectors.

Caveat

To complement information available from the literature, the Helpdesk spoke with a number of academics, experts and practitioners with knowledge of governance and corruption issues in Myanmar. This Helpdesk Answer is based partly on the findings from these informal interviews. The interviews were conducted in confidence and the interviewees are not named in this answer.

Contents

Background

Emerging from decades of isolation, Myanmar has experienced profound changes in recent years. With the initiation of a transition process towards democracy and the appointment of Aung San Suu Kyi as state counsellor in 2016, there was a remarkable burst of optimism for Myanmar's future.

The democratisation process, however, is neither linear, nor complete. The military maintains a dominant role in the process and, for this reason, analysts frequently refer to Myanmar as a "disciplined democracy" (for example, Jones 2014). The military has a large proportion of parliamentary seats reserved, continues to control the defence, border and home ministries, and enjoys a great degree of

Main points

— Corruption is a widespread issue in Myanmar and is particularly worrying in the extractive industries, land management, policing and the judiciary.

— In many sectors, there are relevant initiatives to curb corruption and the legal and institutional anti-corruption framework of Myanmar is gradually improving in many respects.

— However, corruption is an endemic and systemic issue in Myanmar and there are multiple gaps in current efforts. These gaps will have to be addressed for Myanmar to continue to tackle corruption.

control over important appointments in the bureaucracy.

Moreover, Myanmar continues to face numerous challenges to its security and development. There are ongoing armed ethnic conflicts with little sign of reconciliation, and the military continues to commit systematic crimes against humanity with impunity (Ellis-Petersen 2018).

The issue of national identity underpins many of the dynamics that reproduce corruption in Myanmar. The Citizenship Law that was introduced in 1982, for instance, only acknowledges the rights 135 "national races" to obtain full citizenship. Those not belonging to any

of these might be able to obtain a form of citizenship with less rights such as second-tier 'associate citizens' or third-tier 'naturalised citizens' (Wallace 2016). The state, therefore, does not perform equally towards all groups in society and exclude certain groups from entering into a social contract. The most notable example is the Rohingya minority (who have been re-labelled as Bengalis), but there are hundreds of other minorities who also suffer from from derived status.

In its 2018 national sustainable development plan, the government of Myanmar signalled its commitment to peace, justice, and building efficient and inclusive institutions. Yet, it faces serious challenges in its attempts to do so. Central to these challenges is putting an end to state capture by the military, and making all security actors subject to civilian control (Stokke et al. 2018). This remains a key issue not only in securing peace but also in tackling the corruption challenges facing the country.

In spite of its hybrid status as a disciplined democracy, Myanmar has taken a number of important steps towards more transformative change. In most sectors, we can identify reforms that, in theory, should make corruption less prevalent, even though the effectiveness of their implementation remains an open question.

Extent of corruption

The consensus among analysts is that corruption is well entrenched within Myanmar's institutions.

Myanmar's score on the Transparency International's Corruption Perceptions Index remains low. In 2018, the country ranked 132 out of 180 assessed countries and had a score of 29/100 (where 100 is the best score). This makes Myanmar the sixth most corrupt country in the Asia Pacific region after Afghanistan, Bangladesh, Cambodia, Papua New Guinea and North Korea. On the other hand, Myanmar has improved more than any country in the period

between 2012 and 2018, increasing its score by 14 points.

A similar trend can be identified by assessing Myanmar's scores on the World Bank's Worldwide Governance Indicators (2018) where Myanmar scores poorly on regulatory quality, control of corruption, rule of law and government effectiveness. According to the latest Asian Barometer Survey (2016), only a third of respondents believe that the government is responsive to the needs of the population.

While all indicators show that corruption remains an endemic issue, Myanmar has made steady improvements across most governance indicators in recent years. Indeed, 47 per cent of respondents in the Asia Barometer Survey (2016) believed that corruption had decreased to some extent in the previous 12 months[1].

It is important to note that the capacity of the Myanmar state differs significantly across the country. The organs of state are incapable of penetrating some of the peripheral areas where various armed factions are in charge of governance, taxation and delivering public services (Bertelsmann Stiftung 2018). The 2008 constitution does allow for decentralisation. However, local governments are more likely to lack capacity, and significant disparities remain between governance in the Bamar heartland and the peripheries (Bertelsmann Stiftung 2018). In this respect, it is not entirely surprising that the OECD (2018) considers Myanmar to be a fragile state.

Forms of corruption

Bureaucratic corruption

Petty corruption in the bureaucracy, such as everyday facilitation payments, is prevalent in Myanmar. Evidence suggests that rent-seeking behaviour pervades most public institutions and affects both small, everyday interactions as well as larger tendering processes.

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[1] These numbers, however, could potentially be influenced by the election of the NLD in 2015.

Bribes are common to obtain permits, process applications or receive various forms of public services. According to Transparency International's Asia Pacific Global Corruption Barometer (2017), 40 per cent of people in Myanmar paid a bribe when accessing a basic service.

Facilitation payments are sometimes required to access basic services such as education and healthcare, and to register with authorities (Transparency International 2017; Quah 2016). The citizenship law creates permissive conditions for corruption, and in practice some form of second- or third-class citizenship can be obtained through a long and expensive process of bribing various officials. Some of those who can't afford this are not entitled to receive basic social services (Wallace 2016).

Indeed, the completion of most standard bureaucratic procedures involving the interaction between state and citizen are vulnerable to requests for bribes and facilitation payments (Quah 2016). Rich people are more likely than poor to pay bribes (Transparency International 2017).

The high rates of bribery have multiple drivers. One is low salaries (Quah 2016). For instance, police officers are not paid very well (around US$120-180 a month), and it can take many years of progressing through the ranks to exceed US$200 a month (Quah 2016). Extraction of bribes is a common coping mechanism for civil servants with low salaries, providing them an important source of income to supplement their wages.

Bureaucratic corruption in Myanmar is also in part enabled by cumbersome bureaucratic procedures. Excessive red tape provides a pretext for civil servants to extract rents in return for speeding up various administrative procedures. In particular, this affects the private sector, which typically needs various licences and permits to operate (Quah 2016). The vast

majority of companies in Myanmar report having to pay bribes. According to a 2016 survey, more than 70 per cent of larger firms report paying bribes, while for small and medium-sized enterprises this number is only slightly lower (Soans and Abe 2016)[2]. World Bank data from the Enterprise Survey (2016) however, put this number at around 30 per cent, and there is thus significant uncertainty around these numbers.

Moreover, there are researchers who claim that various social customs, such as gift-giving, and "tea money" further inculcate a culture of bribery in Myanmar's bureaucracy (Andrews and Htun 2016).

Bureaucratic corruption also greatly affects the judiciary, thereby impeding the rule of law that would be needed to act as a check on systemic bribery. The International Commission of Jurists (ICJ 2013) found that the majority of lawyers interviewed admitted participating in corrupt practices. The reason often given was that bribery is so deeply entrenched and systematic that it is difficult to avoid using bribes; even the likelihood of graduating law school is relatively low without facilitation payments.

The fact that everything from obtaining licences to accessing basic information requires some form of payment greatly reduces the ability of courts to rule with impartiality. Batesmith and Stevens also describe what they find to be "a culture of passivity among ordinary practitioners" of law (2018:1) in the face of pressure by the armed forces and the police to conform to their demands.

Cronyism, clientelism and 'nascent oligarchy'

Personal relationships and patron-client networks have long been among the chief forms of market governance in Myanmar.

Since the late 1980s, the Myanmar government has introduced a number of privatisation programmes. These processes have been

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[2] The mentioned survey was carried out by OECD, UN Economic and Social Commission for Asia and the Pacific (ESCAP) and the Myanmar Chamber of Commerce.

opaque and heavily dominated by political interests.

The Privatisation Commission for State Owned Economic Enterprises, which is largely controlled by military staff, has on many occasions refused to release the terms of transfer, failed to publish adequate information about asset valuations, declined to publicly announce competition winners and kept transfers of state assets secret (Ford et al. 2016).

Moreover, state assets have often been sold to favoured firms below the market price and, in many cases, these companies were directly controlled by the military (Ford et al. 2016). As a result, privatisation programmes have benefitted strategically selected individuals and have led to the formation of domestic conglomerates with strong ties to the ruling military.

Privatisation and the sale of state assets has been employed as an instrument for state elites to foster patronage networks with cronies who can wield a form of market power that resembles monopoly (Jones 2013). This can of course be seen as both a way to shore up the political economy of (indirect) military rule, as an expression of greed and abuse of power by individual generals or both.

Some analysts (for example, Ford et al. 2016) fear that cronies are now so economically powerful that they use their wealth and personal networks in the state apparatus not only to benefit from coming waves of privatisation but also to skew the nature of reform processes in their favour. These networks, some argue, have come to constitute a class of Burmese "nascent" oligarchs in their own right (Jones 2013; Ford et al. 2016). Well-connected individuals are still able to consolidate monopolies over certain sectors under shady circumstances and without public tendering processes (Saw 2015).

However, in line with broader shifts in the political landscape, there is perhaps some potential for reforms towards technocratic decision making and increased transparency. The government seems to increasingly conform to policies favoured by international financial institutions such as the World Bank, IMF and the Asian Development Bank by providing more opportunities for foreign investment (Ford et al. 2016). For instance, foreign companies have increasingly been bidding for tenders (Ford et al. 2016).

World Bank (2016) data also suggests that foreign companies are less affected by demands for bribes (though many still report paying bribes). Moreover, some of the conglomerates that benefitted from rapid privatisation programmes have now started to gradually distance themselves from the military and former patrons (Ford et al. 2016). These trends will have to be followed closely in the coming years, as they inevitably will affect both the extent and forms of corruption in Myanmar.

Ceasefire capitalism and organised crime

A third common form of corruption happens in the context of the armed forces' attempt to establish authority in conflict-affected territories where the state's authority is disputed. The military and connected elites have used various tactics to co-opt armed actors into client networks. In doing so, the state of Myanmar has used ceasefire agreements to convert former zones of insurgencies into sources of wealth for armed groups and political allies. In other cases, the military has cultivated rather than co-opted such organisations (International Crisis Group 2019). Insurgent groups, such as the Kachin Independence Army, are not currently covered by these agreements, but have made agreements with external powers to export various resources to finance their insurgencies. In some cases, former rebels have received legal concessions to exploit resources upon signing ceasefire agreements (Einzenberger 2016). This process is often described in the literature as "ceasefire capitalism" (Woods 2011; Jones 2014). This allows the state to gain some level of control, or at least breaking the monopoly of hostile insurgents over their income sources. In other words, ceasefire capitalism has allowed the military-state to enter disputed areas, co-opt non-state actors that are

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signatories to ceasefire agreements into its networks, and increase its influence over capital flows in disputed territories (Woods 2011).

Particularly important in this regard is the fact that Myanmar is the world's second largest producer of opium (Meehan 2015) and the world's largest producer of methamphetamine (Hogan 2018).

Though Myanmar is still number two globally in terms of heroin exports, and though Shan state alone accounts for over 90 per cent of Southeast Asia's illegal opium (Meehan 2015), many armed groups have shifted their production towards methamphetamine in the recent decade. Shan state, in particular, has become an enclave for the production of crystal methamphetamine and yaba, a low-quality tablet that contains a mix of caffeine and speed (International Crisis Group 2019). Methamphetamine production is a complex process that requires trained chemists, laboratory equipment and the ability to produce on an industrial scale. The illicit drugs economy has grown over decades of armed struggle and now dwarfs the formal economy (International Crisis Group 2019).

The drug trade is a good example of ceasefire capitalism as it is an opportunity for the state of Myanmar to establish control in areas where it is contested. By permitting politically obedient militias to trade in narcotics, the military has tacitly approved the illicit enrichment of militias through which it can exercise indirect control. The income generated from such illicit activities – methamphetamine and poppy cultivation in particular – has provided an ideal means of financing counter-insurgencies in the peripheries through enabling counter-insurgent or politically expedient militias to finance themselves (Meehan 2015; International Crisis Group 2019). Large parts of the drugs trade and other illicit flows are therefore, directly or indirectly, sanctioned by the army (Meehan 2015).

Consequently, Myanmar's conflict-affected peripheries has witnessed, over decades, the emergence of an increasingly dominant war economy. There are many economic incentives to maintain ongoing conflicts (in their current state) and few incentives to demobilise various armed groups and militias. The drugs trade, in other words, have become an active driver of ethnic conflict and a good reason for maintaining it (ICG 2019).

Myanmar is also exposed to a high risk of money laundering, coming from drugs, environmental crime and extractive industries. According to the Financial Action Task Force (FATF) it has a poor framework for addressing the issue (APG 2018). It falls behind international standards on many levels, due to poor coordination, lack of capacity and strategies for how to address the issue of money laundering, among other reasons. Given that it is unlikely that Myanmar will get to implement FATF's recommendations, it could be placed on the list of high risk jurisdictions in the next meeting in February 2020 (expert interview)

Sectors

Justice

Myanmar's judicial sector suffers from systemic failure, impunity and glaring dysfunctionalities (Pritchard 2016). Most people in Myanmar tend to have little trust in the ability of the justice sector to be fair (MyJustice 2018). The judiciary is the country's second least trusted institution (after the police), and only 32 per cent of citizens report that they have some trust in the courts (Asian Barometer Survey 2016); 40 per cent of respondents in the 2017 Myanmar Justice Survey (MyJustice 2018) believe that there is no affordable means of accessing justice through statutory institutions, a significant number of people do not trust their neutrality and the majority do not take legal action through statutory courts.

Tea money and facilitation payments are involved in many transactions with justice institutions, if not all (ICJ 2013; Batesmith and Stevens 2018). Women and (ethnic and religious) minorities are particularly likely to suffer from exclusion from justice services (MyJustice 2018) as well as from extortion and

unfair treatment (ICJ 2013, expert interview). Instead of statutory institutions, it is often the village tract administrators who settle disputes and provide some form of justice (MyJustice 2018).

Corruption within courts is rife. Most cases in civil courts are handled not just by judges and lawyers but "brokers" who, in exchange for a fee, often agree with judges on a pre-defined settlement (expert interview). The courts, Bateman and Martin (2018) argue, therefore function much like an open market where the highest bidder wins. Recent cases have included murderers whose cases have been acquitted after paying bribes (Aung 2018).

The individual lawyer's agency to object to this system is highly constrained, and corruption "... underlies and affects every aspect of a lawyer's career" (ICJ 2013: 3). One reason is the extent to which patronage networks are embedded into judiciary institutions. Civil servants are recruited at a young age, for a very low wage (US$120 per month). In return, they are beholden to their "supervisor" who too is beholden to his patrons (and so on). The result of these hierarchical network structures is a complicated "political economy of being a lawyer" (expert interview) where rents and brokerage fees circulate. Junior officers who refuse to participate in corrupt practices find themselves excluded from these networks and consequently often end up doing uninteresting jobs in undesirable locations for a very low wage.

At higher levels, judges are known to get phone calls directing them on how to rule in a particular case (expert interview). These calls reflect a culture of surveillance and indirect coercion. It is uncertain exactly who are at the top of these informal command chains. Batesmith and Stevens (2018) claim that the military or military-linked actors ensure some compliance in the top, and it appears that the practice of appointing military officers in the judiciary is widespread (ICJ 2015). Lawyers also generally agree that professional independence is particularly difficult in cases that are politically

sensitive and where, for one reason or another, the security services are involved (ICJ 2013).

However, this may not exclusively be the case and the military cannot be blamed for all high-level corruption in the judiciary (expert interview).

Patronage networks in the judiciary also extends into the police forces. Police officers sometimes take bribes from lawyers in exchange for referring exclusively to those lawyers. By forming such relationships, private lawyers can ensure a steady stream of "clients" (expert interview).

In some cases, the police also wields significant influence over the decisions of lawyers, and defence lawyers are well aware that they often defend against forged evidence (Batesmith and Stevens 2018). The police, moreover, is known to be able to remove such evidence in exchange for bribes. For instance, in drugs-related cases the police can forge "clean" medical tests after being paid a fee (Mon and Mon 2019). Moreover, there is a tendency to view lawyers, not as independent professionals needed to guarantee the right to counsel but as representing the crimes of their clients (ICJ 2013).

Another fundamental issue in overcoming corruption in Myanmar is the denigration that decades of dictatorship and corrupt practices have brought to the legal profession. Unlike in many other countries, being a lawyer in Myanmar is not considered particularly prestigious (Batesmith and Stevens 2018) and enjoys low public standing (ICJ 2013). Law studies at universities are of low educational quality (ICJ 2013) and sometimes purposefully so (expert interview). Professors of law are poorly paid and often supplement their wages through private classes that require private tuition. The main teaching sessions are deliberately low quality to encourage law students to attend these private classes (expert interview).

These corruption issues are perhaps a symptom of a deeper issue. The most recent Myanmar Justice Survey (MyJustice 2018) finds that the vast majority Myanmar citizens believe the rule of law to mean something akin to the maintenance of a particular socio-political order. The term rule of law has been in use for decades, and is not simply a novel innovation of the transition towards democracy (Cheesman 2015).

However, in line with the findings from the justice survey, the concept of rule of law obviously means different things to different groups in society: some, such as the National League for Democracy (NLD), often emphasise rule of law as equality before the law – a law that can protect the citizenship rights for all[3] (Cheesman 2015). Others, most notably the military, often operationalise the concept of rule of law in a manner that seems to conflate it with political stability (Cheesman 2015).

Though the NLD-government has taken a strong stance on corruption, there has been no significant systematic sector-wide crackdown or intervention. Though they may have had a significant impact in a few isolated cases, anti-corruption measures seem to be more general in scope and have mostly had indirect effects. There are individual cases of judges standing up to impunity, and these provide important legal precedents to counter issues such as prosecution on the basis of forced confessions, but the issues of the judicial sector are systematic (Pritchard 2016).

There is considerable pressure to undertake a long overdue comprehensive judicial reform, but so far this pressure has not resulted in any major legislation (expert interview). The judiciary has conducted a self-assessment of article 11 of the UN Convention against Corruption (measures relating to the judiciary and prosecution services). The document remains unpublished, but it could be used in the second cycle review of the UNCAC in 2019.

Extractive industries

With little regulatory oversight, transparency or means of distributing revenue equitably, corruption is particularly rampant in Myanmar's extractive industries. The Natural Resource Governance Institute (NRGI) ranked Myanmar 83 out of 89 countries on the 2017 Resource Governance Index. NRGI therefore places Myanmar in the "failing" category, signalling that Myanmar is among the worst performers in the world in terms of transparent and responsible governance of its extractive industries (NGRI 2017). More than 85 per cent of Myanmar's operators in the extractive sector state that they need to pay bribes or pay other kind of extra charges to be able to operate (Soans and Abe 2016). The consequences of Myanmar's resource curse are massive, and addressing it is a government priority.

Industries of particular concern include the jade industry, logging, oil and gas, gold mining, coal mining, gem mining, copper and zinc. The scope and scale of mismanagement in each of these sectors is well documented[4] (NRGI 2017,) and an analysis of each extractive industry is outside the scope of this answer. Nonetheless, a few words on the most significant industries are in order.

Myanmar, Kachin state in particular, has the world's largest jade reserves, and the industry is worth billions of dollars. In 2014, 31 billion USD worth of Jade was extracted - equivalent to half of Myanmar's GDP (Global Witness 2019). Yet, a large part of the jade trade is unregulated and revenues are not distributed responsibly. On the contrary, the jade industry is responsible for funding armed insurgencies (and counter-insurgencies) and is associated with massive environmental damages. Large corporations and informal miners operate in the jade industry, and armed groups run many operations, most of which show scant regard for sustainability. The

informal market dwarfs the legal traders (such as the Myanmar Gems and Jade Emporium) and the majority of jade is smuggled out of the country (NRGI 2018). Most companies who extract and sell jade are controlled by military generals, though these connections are often hidden through networks of front companies (Global Witness 2019).

Illegal and legal logging is another major concern. In 2014, Myanmar's government banned the export of logs in a bid to prevent rapid deforestation. Yet, the volume of exports of timber and teak (which was not covered by the ban) reached an all-time high (Phillips 2015). It is likely that the timber trade continues at the same rates as in 2015. Chinese companies who obtain permits from local armed groups in Myanmar tend to do the logging, while many armed actors rely on the cross-border timber trade with China as a source of income (Phillips 2015). Likewise, much of the logging that appears legal is not. In fact, according to the Environmental Investigation Agency (2019), the "Burmese teak kingpin" has been able to establish a system of parallel teak trade that is largely operated by the military/state-owned enterprise Myanmar Timber Enterprise. Chinese companies are directly engaging with both government and armed non-state actors in the teak trade and actively nourish corruption in the sector (EIA 2019).

Problems also abound in the oil and gas sector, where concessions are often shrouded in secrecy. Companies awarded drilling licences (blocks) are often structured to ensure that their true owners remain anonymous (Global Witness 2014) and can thus act with impunity. Stakeholder consultations have been very rare, and complaints mechanisms are almost entirely absent (Cornish and Vivoda 2016). Worse still, the oil and gas sector, as with Myanmar's other extractive industries, has become a driver of conflict, not just because various armed actors seek control over the licences but because the poor sense of redistribution and the lack of benefits to locals become a source of grievances (Myanmar Centre for Responsible Business 2014).

In spite of these challenges, Myanmar's regulatory framework for managing resources responsibly has improved notably in recent years. In 2014, Myanmar became a candidate country for the Extractive Industries Transparency Initiative (EITI), which requires it to take measures towards increased transparency and reform the framework for regulation of the extractive industries (Cornish and Vivoda 2016).

In 2016, the government introduced reforms that made the division of regulatory tasks between ministries more straightforward and introduced clearer divisions between operators and regulators (Cornish and Vivoda 2016). Concrete steps have also been taken to increase the use of environmental impact assessments and evaluate bids submitted as part of procurement processes in a more structured manner. In addition, some ministries have undertaken a number of donor-led capacity building programmes intended to improve transparent practices in procurement and better impact assessment (Cornish and Vivoda 2016). Owing to EITI, Myanmar has taken some measures towards improving its revenue reporting and stakeholders now have a more inclusive platform to discuss regulation of extractive industries, with some participation by civil society organisations (CSOs) (Cornish and Vivoda 2016).

In 2016, Myanmar launched its first report containing publicly available data on revenues in the extractive industries (World Bank 2016b). The report contains many gaps, and there is still little data on the jade industry or the activities of military-linked companies. Nonetheless, the fact that Myanmar has actually published a report on extractive industry revenues is still considered a milestone (World Bank 2016b).

Having said that, a number of major issues remain and the regulatory systems are still largely unfit for purpose. The Myanmar government has so far failed to undertake reforms of powerful state-owned enterprises that would allow for better revenue sharing and distribution (Wai 2019).

Other ongoing challenges include the fact that resources still fund armed conflicts, the lingering dominance of powerful companies with connections to the military, fragmented regulatory frameworks, the lack of technical capacity in line ministries, rampant cronyism and the fact that inclusive stakeholder consultations remain occasional (Cornish and Vivoda 2016).

Education

According to the 2017 Global Corruption Barometer, 16 per cent of people who engaged with a school paid a bribe (Transparency International 2017). This makes education the public service least affected by bribery. Nonetheless, the education system in Myanmar faces serious challenges related to management, leadership and catching up to decades of underfunding (Hayden and Martin 2013). More than a million children are not provided with schooling due to conflict, displacement and poverty (MIMU 2019).

One of the major issues is the governance of the education sector, which fails to allow the kind of self-governance that may be necessary in a country like Myanmar. Decision making in the education sector is highly centralised, leaving the individual school administration, principals and teachers limited scope to determine their own curriculum and language (Hayden and Martin 2019). Another issue is that the education system has a system of promotions that gives few incentives (in terms of salary) to specialise in primary schools. Simultaneously, the system leaves little ability for individual teachers to be rewarded for excellent results and performances (Hayden and Martin 2013).

Recent anecdotal evidence paints a picture of an education sector in which personal networks often trump merit in accessing education and gaining employment after graduation (Andrews and Htun 2016) and within the sector. In human resources, there is often a mismatch between qualification, academic background and the level of responsibilities, which can be an indicator for corruption in daily administration (expert interview). Nepotism and favouritism benefit well-connected families to the detriment of those who are not. For instance, a student with a powerful family may pass an exam despite being below the threshold for passing, while a talented student cannot be admitted despite obvious skills (Andrews and Htun 2016). Teachers, who typically receive very low salaries, sometimes give private classes to students in return for a fee. Students who participate these private classes may receive not only a better education but also special treatment (Andrews and Htun 2016).

Ethnic groups who sometimes cannot access education in their native language are known to form alternative educational institutions to overcome linguistic issues. Particularly in areas with a near-absent presence of statutory institutions education is often being delivered by armed ethnic groups and organisations (Christophersen and Stave 2018). While in many cases, these services are delivered by insurgents or organisations hostile to the state, there are also examples of collaboration and partnerships between ethnic minority organisations and the central state (Christophersen and Stave 2018).

Despite this seemingly bleak picture, Myanmar's education system is presently undergoing a process of recovery and reform, with a number of encouraging initiatives. A National Education Sector Plan (NESP) was launched in 2017 with the intention to set the strategic direction for various forthcoming reforms. The Myanmar government also engages in high-level dialogue with donors and development actors through a Joint Education Sector Working Group. Moreover, there are thematic working groups that bring together various stakeholders, including the government, CSOs and development partners.

A significant positive development is the fact that the percentage of GDP going into education has more than doubled in the past decade (OBG 2019). Consequently, the number of employed teachers has increased significantly and many schools have been renovated (OBG 2019). The state has expanded education spending to parts of Myanmar that used to be neglected.

This otherwise positive development could have negative side-effects, however. Firstly, such a rise in spending comes with heightened corruption risks when they are not accompanied by improved oversight mechanisms. The state bureaucracy in Myanmar particularly lacks capacities to establish adequate monitoring and evaluation frameworks, so there could be heightened corruption risks during the process of expanding the education sector (for example, in procurement, such as in the construction of new facilities) (expert interview). Secondly, the rate of execution of the union budget for the education sector is around 80 per cent, meaning that 20 per cent of the education sector's budget is unspent and is transferred to the general budget. This process lacks the transparency to guarantee that these funds will not be diverted or embezzled (expert interview)

Another potential positive trend in the education sector is the decentralisation of decision making, away from the Ministry of Education – an objective identified in the NESP. This can potentially improve accountability between relevant authorities, teachers and students by rooting governance in more local needs and demands and by empowering lower levels of the hierarchy in the education sector (OBG 2019). The majority of funds for education are now disbursed at state level, and the process of budgeting is becoming more participatory, taking place more locally. There are, however, also risks involved in this process: higher level decision making can technically override these local, participatory budgeting processes. This does not happen always, but it is possible (expert interview)

Another critical area that is set to change with the NESP is the question around teacher salary and promotion mechanisms. The reforms will increase the pay for primary school teachers and there will be the option to specialise in teaching younger children (OBG 2019). These steps are likely to increase both education outcomes and – where accompanied by greater oversight and accountability mechanisms – could potentially help curb levels of corruption.

Police

The 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 trusting the police "quite a lot" or "a great deal". 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. There are also indications that slightly more than half of Myanmar's citizens accessing police services had to pay bribes (Transparency International 2017)

The Myanmar Police Forces (MPF) play a very important political role and, in spite of its civilian status, is instrumental to the maintenance of the dominant political order and the status quo (Selth 2012). The MPF's loyalty to the dominant political order means that it tends to exercise its power in coercive ways against those it views as being a threat to the status quo (Selth 2012). To do so, it relies on a number of dedicated units, including para-security battalions and a special branch. These bodies have been instrumental in suppressing protesters and activists and tend to show strong loyalty to the military (Selth 2012).

Simultaneously, the police forces suffer from serious mismanagement, low levels of discipline, low pay and other drivers of corruption (Selth 2012). The police forces have been accused of protecting illegal enterprises in a bid to increase their incomes through rent-seeking activities and extortion. For instance, there are accusations that police officials are involved in narcotics trafficking and take bribes to look the other way (Thompson 2015). In other cases, minorities have been rounded up and been brought to remote places where their families or villages have to pay ransoms (up to US$2000) for their return (expert interview). Stories of corruption and abuse are widespread and have led to greater degrees of public suspicion of the police service (Selth 2012). These have been made worse by the absence of a reliable complaints mechanism to redress grievances (Thompson 2015) as well as the lack of a sufficiently independent, effective and transparent judiciary.

Particularly worrisome accusations come from human rights NGOs who claim that police officers have taken advantage of the Rohingya issue both by participating in their persecution and as complicit beneficiaries of human trafficking networks. There are documented cases where police forces have blackmailed up to US$7,000 from a boat of refugees (Fortify Rights 2014). Police officers also often extract bribes from victims of human (or "bride") trafficking on the Myanmar-China border and regularly refuse to assist victims of human trafficking without extensive payments (Human Rights Watch 2019).

The MPF is a member of Interpol and is the recipient of institutional capacity building programmes by international donors, including EU funded ones like MyPOL (http://www.mypol.eu). However, such interventions alone are unlikely to curb corruption in the police. Tackling corruption in the police forces is going to be a long-term endeavour requiring political will, reform and sustained efforts.

Agriculture

Corruption and mismanagement in the agriculture sector is a serious issue, resulting in both lower agricultural output and issues such as insecurity of tenure. A recent survey found that 62 per cent of firms operating in the agriculture sector report paying bribes (Soans and Abe 2016).

The failures of Myanmar's agriculture policies during the military era are particularly evident in terms of rice exports, which are significantly lower in the modern period (1.3 million tons per annum) than before the Second World War (3 million tons) (Nehru 2015). Today, conglomerates wield some degree of monopsony in the sector by dominating the purchase of agricultural produce from farmers (Nehru 2015). Prices fluctuate dramatically, undermines prices received and encourages speculation (Nehru 2015). In addition, the licensing system for rice exports is complex, unproductive and disrupts agricultural development (Nehru 2015).

A paramount concern in the agriculture sector is the widespread practice of land grabbing and forced evictions. Generally speaking, land deals lack transparency: sales documents can be missing and compensation is not always paid. Part of the issue may be due to a lack of legal clarity. Myanmar has over 30 land laws, some of which date back to the colonial era, and the mandate to manage land is divided between a dozen different authorities (Peel 2016).

The ensuing insecurity of land tenure has negative impacts on food and nutrition security, productivity growth in the agriculture sector and is perhaps one of the most tangible outcomes of corruption in land administration and agriculture more broadly. A parliamentary committee has recorded more than 17,000 cases of land grabbing since 1988, though the real number of unregistered cases is likely much higher (Peel 2016). According to government figures, the amount of confiscated land in 2016 alone amounted to 2 million acres (Yeung 2019). Uncertainty around land rights is perhaps one of Myanmar's biggest development challenges, and affects agricultural output, food security and the investment climate (Peel 2016).

Major concessions have been given to various domestic and international investors under the pretext of smallholder land being "waste" land. Smallholder "customary" land in ethnic minority uplands tend to be the most vulnerable to expropriations, while beneficiaries are often firms with connections to the military or Chinese firms in the agribusiness sector (McCarthy 2016). Land eviction is often the result of the establishment of special economic zones or ventures related to resource extraction.

Simultaneously, the government has encouraged investment in the agricultural sector, which is identified as one of Myanmar's main potential engines of growth. To this end, the government of Thein Sein introduced land reforms and legislation, such as the Farmland Law; the Vacant, Fallow, and Virgin Law; and the Foreign Investment Law, aimed at encouraging foreign and domestic investment in agriculture (McCarthy 2016). The new legal framework combined a bias towards large-scale

agriculture with some provisions of good governance, yet their impacts on tenure security have been perverse due to a convoluted land classification process (McCarthy 2016).

The laws were been passed in parliament without real consultations with relevant stakeholders. The farmland law, for instance, requires farmers to obtain a land use certificate from agricultural administration authorities, farmland administration boards. These authorities also have the ability to strip farmers of their certificates if the farmer is in breach of contract. In practice, the process of obtaining certificates for farming is often opaque and requires forms of personal identification that many smallholders do not have. There are no dispute mechanisms that include independent arbiters, and in general land re-classification can be difficult in Myanmar (McCarthy 2016).

The national land use policy was launched in 2016 (McCarty 2016). The drafting process included many more stakeholders, and the policy is seen by some as a positive step towards potentially increased security of tenure and better governance mechanisms, including channels for farmers to access dispute mechanisms (McCarthy 2016; National Land Use Policy 2016).

Yet, the national land use policy contained some contradictory concepts of land being "vacant, fallow or virgin" that formed the basis of a law of the same title some years prior. According to this law's September 2018 amendment, the state can classify a piece of land as either "vacant, fallow or virgin". Farmers who have claims to land have to apply for permission to occupy it. In practice, anyone can claim the land until the permission has been granted (Human Rights Watch 2019b).

People have not been systematically informed about these procedures and, as a consequence, millions of farmers residing on customary land could face potential eviction. The "vacant, fallow or virgin law" was amended in 2018, strengthening the rights of ethnic minorities to stay on customary land. This could be a positive step if implemented adequately and equally

(Yeung 2019). However, critics are sceptical that this will be the case, claiming that the authorities tend to enforce land laws only where these benefit powerful military-linked conglomerates (Yeung 2019).

Human Rights Watch (2019b) reports that farmers are at risk of being arrested for "trespassing" onto land they claim is theirs. A number of Myanmar CSOs also call for the government to abolish the vacant, fallow and virgin law altogether, claiming that is a step back from the 2016 national land use policy, and that it removes the recognition of customary land rights, criminalises people for residing on customary land and ultimately fuels the conflicts in Myanmar. They also argue that since these laws were introduced, cases of land grabbing have increased (Land in Our Hands 2018).

Fisheries

In general, the fisheries sector is poorly managed, regulated and monitored (Tezzoa et al. 2018). The Department of Fisheries is underfunded, and the sector has little political clout. There is, moreover, a weak framework for collaboration and coordination between relevant authorities and uncertainties around the division of tasks and jurisdictions (Tezzoa et al. 2018).

The fisheries sector is characterised by weak regulation and enforcement owing to a poor monitoring, control and surveillance capacity. There is a lack of transparency in licensing, and the absence of enforcement of regulation sometimes enables a prevalence of illegal fishing by foreign fleets. Moreover, there is poor management of fishery boundaries, and in some cases uncertainty regarding what is offshore and inshore fishery. In the aquaculture sub-sector, the process of securing tenure is a complicated, informal process that can require multiple bribes (Tezzoa et al. 2018). Likewise, in the inland fisheries sector, there are accusations of corrupt allocations of licences, systematic discrimination against smaller fisheries and de-facto monopoly rights to larger firms (Tezzoa et al. 2018).

Concerns over land grabbing in favour of the establishment of large-scale industrial fisheries –

a common practice under the military regime – continue to be prevalent. There are also some reports of conflicts between inland fishers and farmers. These are potentially exacerbated by uncertainties of ownership boundaries and land tenure rights (Tezzoa et al 2018).

Recent reforms have sought to address many of these issues. Measures have attempted to decentralise the governance of the sector and allow regional governments to manage revenues, distribute fishing licences and oversee tenders. However, reforms in the fisheries sector often encounters opposition from powerful groups benefitting from current fishery policies (Tezzoa et al. 2018).

Maritime affairs

Myanmar's important geostrategic location has meant that the territorial waters outside of Myanmar has been subject to increased attention. In addition to the occasional territorial stand-off with Bangladesh, Myanmar's navy has been increasingly concerned about trafficking of arms into Myanmar as well as people out of the country (Gamage 2017). In particular, there are worries of an increased inflow of arms smuggled through boats at the Andaman Sea into Rakhine state. Moreover, Indian fears that the Pakistani intelligence service is supporting and recruiting jihadist militias among desperate Rohingya has caused the Indian navy to act, increasingly, as a security provider outside of the coast of Myanmar. This can be seen as part of India's 'Act East' policy (Gamage 2017).

Though the vast majority of human trafficking happens by land routes, the maritime routes off the coast of Rakhine state have also become increasingly popular route for human traffickers (UNODC 2017). The smugglers are believed to be loose networks of people who facilitate different part of the trafficking process and many vessels are registered in Thailand rather than Myanmar (UNODC 2017). Human smuggling often happens with the complicity of corrupt coast guards and police officers who are either active parts of trafficking networks or receive bribes to turn the blind eye (UNODC 2017).

Legal and institutional framework for countering corruption

In recent years, Myanmar has installed a framework for preventing and countering corruption. This framework still has its issues and is often subject to criticism. However, while gaps do remain, the framework for countering corruption has received gradual improvements due to legal amendments and relevant initiatives. These have translated into improved efforts to counter corruption.

Around the beginning of the transition to democracy, the government of Myanmar initiated campaigns to institute Good Governance and Clean Government, resulting in some of the first crackdowns and firings for corrupt practices. In 2012, Myanmar introduced the first anti-bribery bill and ratified the UN Convention against Corruption (UNCAC). However, the first step at establishing a more comprehensive framework for countering corruption came with the adoption of the anti-corruption law and the establishment of an anti-corruption commission. This anti-corruption law is Myanmar's primary legal framework for preventing, countering and punishing corruption (Saw 2015) and the anti-corruption commission is the primary anti-corruption framework.

Anti-corruption law

Adopted in 2013, the anti-corruption law aims to improve governance and promote government accountability. The law was amended in 2018 to replace the word "bribery" with "corruption".

The objectives of the amended anti-corruption law are as follows (Law No. 20/2018):

(a) to carry out anti-corruption initiatives as a national responsibility
(b) to be of benefit as a clean government and through good governance
(c) to enhance the integrity and accountability in the public governance

(d) to protect state-owned properties, humanity and rights, and interest of the citizens by corruption
(e) to take effective action against persons who commit the corruption
(f) to be more transparent in rule of law and governance and to develop the economy through domestic and foreign investment

The anti-corruption law contains provisions for punishing current and former holders of political posts for corruption, with prison sentences of up to 15 years (article 55). People who do not hold political offices can be sentenced to up to 10 years for corruption (article 56). The law also requires certain elected officials within parliament to declare their assets publicly (Saw 2015).

However, the law does not directly address the issue of small facilitation payments and leaves some ambiguity to be exploited (Soans and Abe 2016; Saw 2015). Moreover, until recent amendments, the law covered only "authoritative persons" (meaning public servants). This meant that the law could not be used to charge private sector actors with corruption.

Anti-corruption commission

The anti-corruption law also established the anti-corruption commission (ACC) as Myanmar's primary anti-corruption agency. The ACC is mandated to investigate claims of corruption, prosecute violations of the 2013 law and to produce recommendations to counter corruption. The ACC also has the powers to request help from international organisations (Quah 2016).

The ACC consists of 15 members as well as a permanent body of staff. Five of these members are appointed by the president and five each by the lower and upper houses of parliament. For this reason, a common criticism is that the ACC is not entirely politically independent (Quah 2016), and its composition changes with elections (expert interview). The ACC is also accused of having members who could defend powerful vested interests, especially since some members have a background in the military (Saw 2015).

Observers have noted the lack of tangible evidence of the ACC's impact in curbing corruption in Myanmar, which is viewed to be a result of low capacity and an absence of political will (Quah 2016; Soe 2018). The ACC allegedly investigated only 66 out of the 4,500 allegations of corruption it received up until 2017, while a little more than 1,000 cases were forwarded to line ministries for "internal" investigations (Soe 2018). However, as will be investigated later, the ACC has recently become more forceful and active.

Recent reforms to the legal and institutional framework

In 2016, UNODC conducted the Myanmar First Cycle UNCAC Review. It examines the 2013 anti-corruption law specifically through Chapter III (criminalisation and law enforcement) and Chapter IV (international cooperation). The review concluded that a number of reforms were needed, including ones that clarify what actually constitutes a bribe. The law was also judged to require better provisions for punishing corruption in the private sector. Moreover, the ACC needed greater political independence and the means to provide some protection for whistleblowers (Soe 2018).

Recent amendments to the law, made in 2018, addressed some of these criticisms. They introduced two new features to the definition of corruption (and thus what is covered as such by the criminal code). Importantly, whereas the law used to cover "authoritative persons" it now covers "any person" misusing their post, position of authority or abuses what they have been entrusted. Secondly, the amendments gave the ACC broader powers to investigate claims and launch preliminary proactive investigations prior to receiving formal complaints. Whereas before the ACC could only investigate and prosecute public servants, it is now entitled to investigate private entities and can require that businesses establish anti-corruption codes of conduct (expert interview). The lack of protection for whistleblowers remains an issue, however.

The extent to which the ACC can work independently of political interests is still in

question. The ACC still has to report to the president and the Hluttaw (parliament) speakers, and as such may be subject to their interference behind the scenes (Quah 2016). Moreover, anti-corruption efforts typically work in a top-down fashion (expert interview). Crucially, the ACC cannot prosecute the military. On one hand, military personnel are considered civil servants, but they are simultaneously governed by military laws and thus have to be tried in military courts (Aung and Hammond 2018).

However, in spite of the fact that the ACC still faces some constraints, the organisation has been rather bold of late.

In February 2019, the ACC began investigating the chief minister of the Tanintharyi region, Daw Le Le Maw, on suspicions of awarding contracts without calling for tenders and unclear spending of revenue (Nanda 2019). In late 2018, the ACC filed cases against six officials, including Yangon's attorney general on the basis of accusations of allegedly dropping charges against three suspected murderers of a comedian in exchange for bribes (Aung 2018).

Other prominent cases include prosecutions on charges of bribery against: the former director general of the ministry of health and sports (Winn 2019); a Nay Pi Taw city official for extracting bribes from traders (Kyaw 2019); and land registration officials who allegedly accepted payments in return for land transactions and registration (Zaw 2019).

The ACC has also been turning its attention to the extractives sector, and there are rumours of ongoing (albeit not public) investigations against extractive companies (expert interview). This is both ambitious and politically risky.

The ACC, in other words, appears to be more assertive and proactive in investigating and prosecuting corrupt behaviour. It has not only gone after high-ranking civil servants but has charged private sector accomplices for "aiding and abetting" corruption (expert interview).

Moreover, the ACC is expanding, setting up offices in Yangon and Mandalay. This could potentially translate into increased capacities to file complaints faster (Aung 2018b). The ACC is also working on establishing an asset declaration system which is supposed to be rolled out by the end of 2019 and has pushed for measures to protect whistleblowers, though that will be difficult in the current environment (expert interview).

A major initiative currently being implemented by the ACC are the so-called corruption prevention units that monitor and report bribery in the line ministries in which they are embedded (Mon 2018). The units are mandated to refer larger corruption cases in public institutions directly to the ACC for investigation. This way, the ACC hopes the corruption prevention units can help prevent corruption from happening in the bureaucracy. The staff of the corruption prevention units are still either in training or early deployment at the time of writing. However, the activities of these units are likely to a subject of much attention throughout 2019 (expert interview).

Conclusively, the ACC has been using its operational mandate and appears to have been doing so with a great deal of autonomy. While a potential risk is that it will turn into a politicised "attack dog" (Quah 2017) we do not see signs currently that this is what is happening (expert interview). Paradoxically, a more short-term risk is that the ACC will end up either overstretching or going too fast into sensitive cases against the will of some powerful interests (expert interview). However, some see this as testament to the ACC maturing.

Other stakeholders

Civil society

Since the reform process began in Myanmar, the conditions for the country's civil society organisations have somewhat improved. In 2014, a new law was passed allowing CSOs to register, a significant step towards increased openness. However, there are still many restrictions against freedom of assembly

inscribed in laws such as the anti-defamation law (International Center for non-profit Law 2019). Freedom House ranks Myanmar as 5 out 7 (where 7 is the worst performance) on its freedom score, making it "partly free".

That said, civil society has a role to play when it comes to securing and consolidating gains in anti-corruption efforts. One notable example of a civil society group that works on governance issues is the Myanmar Alliance for Transparency and Accountability (MATA). MATA is a consortium of over 450 civil society organisations whose aim is to advocate for increased accountability and good governance in Myanmar. The organisation was formed around the time that Myanmar began participating in the EITI and therefore has an emphasis on transparency in the extractive sector. Another relevant organisation is the Land in Our Hands, which advocates for justice and comprehensive reform in land administration (https://lioh.org/). The Access to Justice Initiative (A2JI) is a coalition of CSOs that advocate for structural change in Myanmar's justice sector. The A2JI produces analytical products and baseline data, undertakes reviews, monitors government performance and advocates for systemic change to improve access to justice across Myanmar (https://www.a2ji.org).

Other initiatives by CSOs are supported or led by international donors and NGOs. For instance, throughout Myanmar, so-called Rule of Law Centres have recently opened. These centres provide training for community-based groups to raise awareness of legal issues (UNDP 2016).

The private sector

Corruption is an obstacle to foreign investment, healthy competition and creates unnecessary risks for firms in Myanmar. Surveys show that the majority of private sector actors see corruption as an obstacle and an impediment to growth rather than as a chance to do lucrative insider-deals (Soans and Abe 2016). The latest data from the Global Corruption Barometer shows that citizens of Myanmar have a relatively positive view of the private sector's role in corruption. Only 1 per cent of respondents report

that "all" business executives are corrupt, and just 19 per cent think that "most" are. These figures are low compared to other countries in Southeast Asia.

The Myanmar Centre for Responsible Business (MCRB), led by the Danish Institute for Human Rights, has a specific focus on encouraging accountability and responsibility in the private sector. It works together with civil society actors, government and businesses to build capacities to facilitate more transparent private sector practices (DIHR, undated).

Media

In 2018, Myanmar fell six spots to a rank of 137 (out of 180) on the 2018 World Press Freedom Index. In 2017, more than 20 journalists were prosecuted under the Telecommunications Act (anti-defamation law).

Some of Myanmar's media outlets are controlled directly by military-linked individuals while others are "compromised" (expert interview).

A particularly sensitive issue is the ethnic conflicts in Shan, Kachin, Rakhine and other peripheral parts of Myanmar (Reporters without Borders 2018). A recent high-profile case include two Reuters journalists who were arrested for investigating the violence in Rakhine, creating worries that journalists could be subject to increased censorship (Al Jazeera 2018).

Lacking press freedom greatly limits the ability of investigators to uncover and report corruption. Those journalists who do so often work at great personal risk (expert interview). There is also a lack of capacity of investigative journalists with regards to understanding available legal provisions, understanding the respect of presumption of innocence (innocence until proven guilty) and greater capacity to systematically protect whistleblowers.

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