Access to Whose Justice? Survivor-Centered Justice for Sexual and Gender-Based Violence in Northern Shan State

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In 2019, the United Nations (UN) Security Council adopted Resolution 2467. The resolution was to encourage the international system to promote a survivor-centered response to conflict-related sexual violence. The role of local women-led civil society organizations has been identified as the crucial “first-response” mechanism to institute survivor-centered justice. In a situation of ongoing conflict, what agency do civil society organizations have to safely operate “first-response” survivor-centered justice? In this article, we examine the local practices of responding to conflict-related sexual violence in northern Shan State in Myanmar. This article finds that women-led local civil society organizations are indeed crucial first responders and a vital resource for promoting survivor-centered justice-seeking practices. The article also identifies the compromises and risks these civil society organizations experience that limit their agency to deliver survivor-centered justice. Local civil society organizations are constantly navigating local gendered norms, a patriarchal, unrepresentative formal legal system, and a hostile conflict environment. The positionality of local civil society organizations to local armed ethnic organizations and the state itself requires strategic consideration by the international community when recommending local civil society to deliver survivor-centered justice.

Introduction

In 2018, the United Nations Human Rights Council received a report by the Independent International Fact-Finding Mission on Myanmar (i.e., “the Mission”), which concluded that “rape and other sexual violence have been a particularly egregious and recurrent feature of the targeting of the civilian population in Rakhine, Kachin and Shan States since 2011.” One year later, the Mission submitted a second thematic report titled “Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts.” The report found that there was a “prevailing context of insecurity in northern Myanmar, the culturally based stigmatisation and ostracism of sexual violence survivors, and the continuing presence of the military and armed groups, despite the current ceasefire, suggest significant under-reporting of human rights violations” (United Nations Human Rights Council 2019, 28).

The Mission provided twenty-one recommendations for the Government of Myanmar, ethnic armed organizations (EAOs) in Myanmar, the Security Council, and the international community. In 2019, the Mission recommended that the international community should:

279. Support civil society organizations throughout Myanmar, and in States hosting those affected by the conflicts in Myanmar, to report on human rights violations, especially those involving sexual and gender-based violence, provide services to survivors of gender-based violence, and support women’s participation and representation in decision-making, including in the upcoming elections.

280. Establish a trust fund in line with Human Rights Council resolution 39/2 for survivors of sexual and gender-based violence and their families to support their medical and psychosocial care, including for transgenerational trauma.

281. Work with development and humanitarian agencies to lay the foundation for justice and accountability, including but not limited to, reparations, through their work—building the confidence of survivors in the justice system and creating a safe platform for survivors and civil society to advocate for their justice demands. (United Nations Human Rights Council 2019, 61)

In conflict and humanitarian situations, the delivery of a survivor-centered approach often requires actors on the ground to provide these essential services to survivors (Henry 2016; Kreft 2019). In an environment where the state is directly implicated in acts of sexual and gender-based violence, civil society organizations (CSOs) become a, if not the, most vital actor for delivering a survivor-centered approach (Kreft 2019). However, civil society space can also be used as a “dumping ground” where much responsibility is placed on their shoulders, and they are denied access to the formal political sphere to enact structural change and transformative justice (Ni Aolain, Haynes, and Cahn 2011, 242). The complexity of supporting local civil society response to sexual and gender-based violence in conflict situations, such as Myanmar, has been presented as an opportunity for gender empowerment that also carries the risk of further insecurity and marginalization for local actors (Hedstrom and Olivos 2021).

United Nations Security Council Resolution (UNSCR) 2467 details access to justice process for sexual violence in conflict situations that seeks to address the failures in formal justice processes including the lack of protection mechanisms for survivors and witnesses, and the local ethnic and/or religious norms that may lead to stigma for survivors. The resolution recognizes survivors as rights-holders, not victims. In the resolution, local CSOs are also recognized as “powerful agents of change” that must be empowered to prevent and respond to sexual violence (Jackson 2019).
In this paper, we examine the agency available to CSOs that provide care and justice to survivors of sexual and gender-based violence in northern Shan State (NSS), Myanmar. With the introduction of the formal peace process in Myanmar since 2015, there has been increased discussion about how the transition from conflict to peace will affect informal and formal justice systems in the conflict-affected states and provinces. The Myanmar peace process includes prohibition language on sexual violence against women and girls in conflict (i.e., Military Code of Conduct between the Government of Burma and EAOs in accordance with the Nation-wide Ceasefire Agreement [NCA]). However, conflict-related sexual violence (CRSV) in Myanmar continues. In 2018 and 2019, the UN-appointed Independent Fact-Finding Mission found that the Myanmar state had continually failed to prevent gross human rights violations committed by both state and non-state armed actors in the conflict-affected areas of Rakhine and Shan state, including widespread and systematic acts of sexual and gender-based violence (United Nations Human Rights Council 2019).

This paper progresses in four parts. First, we briefly detail the evolution of survivor-centered approaches in response to sexual violence in conflict, as defined in Resolution 2467. In the second part, we provide a brief background on the NSS conflict. The third part of the paper discusses the practice of local civil society actors’ response to sexual violence and details the complex interplay of conflict, local practices and norms, and access to information that currently limit the delivery of survivor-centered justice responses in the NSS. In the fourth section, we identify the obstacles that CSOs experience when they seek to provide survivor-centered justice support. In a highly militarized state with strong-gendered identity politics at play, as the case in NSS, women CSOs are operating outside formal power structures. It is vital to support local civil society as powerful agents of change, as recommended in Resolution 2467, but women do occupy the civil society space at great risk to their own security. In these situations, civil society responses are daily curtailed by “patrimonial and gender-biased structures” that limit their operational power to prevent and respond (Ni Aoláin, Haynes, and Cahn 2011, 243; Shepherd 2017, 117).

Methodology
First, a brief note on the methodology and terminology we use in this paper. This is a qualitative study of civil society responses to reports of sexual violence in NSS, Myanmar. The study is based on an analysis of secondary data on gender, justice, and sexual violence in NSS (collection of government, international organizations, and civil society reports) and participant observations based on ethnographic experiences as a gender-based violence advisor (PPO) in NSS for two years (2015–2017). As not only a citizen of Myanmar, but also a professional appointment for an international organization, the first author was in the unusual situation of being both an “insider” and “outsider” in this role (Cronin-Furman and Lake 2018). As an “insider,” the author had a more intimate understanding of the “customs, taboos, history and politics” (George 2017; Dragomir 2019); as an “outsider,” the author had access to “assets, networks and leverage” (Cramer 2015). In their professional role, the first author was often observing regular contact concerning the issue of sexual and gender-based violence between international organizations, international non-government organizations, government representatives, community leaders, and local CSOs.

This paper will examine local CSOs’ responses to women and girl survivors of sexual and gender-based violence. The UN Independent Fact-Finding Mission found numerous instances of sexual violence committed against girls and women as well as boys and men in Shan state (United Nations Human Rights Council 2019). Support for men and boy survivors is “very limited” in Northern Myanmar (United Nations Human Rights Council 2019), and the first author did not witness discussions about men and boy survivors. The sites where the first author observed engagement and interaction between CSOs and survivors were primarily in internally displaced (IDP) camps. The first author is presently a higher degree research student and, in accordance with previous employment conditions, no direct interviews are cited in this paper. The observations that informed this article are triangulated with open-access literature available on the sexual and gender-based in NSS and, more broadly, Myanmar. Because of the singular presence of the first author in these observations, this article is presenting an observation rather than “truth” (Cramer 2015). Due to safety concerns and the right to privacy, the names of local organizations are not disclosed in this article.

Finally, this article acknowledges the ambiguity that continues to exist when reporting, recording, and prosecuting sexual crimes in domestic contexts (Boesten 2017). There are varied definitions and ambiguity about the term “conflict-related sexual violence.” The terms “conflict-related sexual violence” and “sexual violence in conflict” are often used interchangeably and scholars use other terms indicating broad to narrow forms of violence, for instance, “sexual and gender-based violence,” “wartime rape,” as well as gender-neutral and inclusive definitions (Freedman 2016; Touquet and Gorris 2016; Porter 2017; Baumeister 2018). Cohen (2016, 4) argues that there is no “clear definition exists of what constitutes sexual violence.” Wood (2014) argues that it is possible to define and, in turn, examine patterns of sexual violence in conflict that may not reflect pre-war (absence of conflict) patterns. Wood (2014) uses the 1998 Rome Statute of the International Criminal Court (ICC) definition of sexual and gender-based violence (as does Baumeister 2018). In Myanmar, there is no legal definition of “sexual violence”: there is no national prevention and protection of violence against women law. Male rape is not criminalized nor is rape in marriage. Myanmar’s existing penal code on rape does not meet international standards, including the 1998 Rome Statute. Myanmar has been reported to the UNSC every year in annual discussions on situations where CRSV is widespread and systematic (UN Secretary-General n.d.). The 2019 UN Independent Fact-Finding Mission found that widespread and systematic acts of sexual and gender-based violence are occurring in the Rakhine and Shan states. In the article when we refer to sexual violence in NSS we are referring to the acts of “sexual and gender-based violence” identified by the Mission in NSS, which include:

“[A]cts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering, threats of such acts, harassment, coercion and arbitrary deprivation of liberty. Sexual and gender-based violence is affected and often exacerbated by cultural, economic, ideological, technological, political, religious, social and environmental factors. Sexual and gender-based violence is also affected by political, economic and social crises, civil unrest, humanitarian emergencies, natural disasters and the destruction or degradation of natural
Resolution 2467: The Survivor-Centered Approach to Sexual Violence

In 2000, the United Nations Security Council (UNSC) adopted Resolution 1325 on Women, Peace, and Security (WPS). In the twenty years since then, a further nine resolutions have been adopted. Six of the ten resolutions on the WPS agenda have addressed the prevention, protection, and prosecution of CRSV. In 2019, the most recent resolution on CRSV was adopted: Resolution 2467. The resolution sought to advocate a “survivor-centered approach” to prevent and respond to CRSV. The draft resolution sought to establish a formal mechanism, that is, a Working Group (of UNSC members) on sexual violence in conflict, adopt language on the referral of cases to the ICC, and recognize Lesbian, Gay, Bisexual, Transgender, and Queer Identity (LGBTQI) as a vulnerable group. However, the German Presidency removed all these inclusions, as well as specific language on sexual health and reproductive services for victims, to secure the adoption of Resolution 2467. The United States had threatened to abstain, and ultimately despite these deletions and alterations of language, China and Russia did abstain.

The political machinations behind the adoption of Resolution 2467 perhaps received more focus than the resolution itself (Pouliot 2021). The uniqueness of Resolution 2467 was the effort to progress a long overdue survivor-centered approach to CRSV (UN Security Council 2019).

The preamble to UNSCR 2467 states:

“The need for survivors of sexual violence to receive non-discriminatory access to services such as medical and psychosocial care to the fullest extent practicable and need to be free from torture and cruel, inhumane or degrading treatment, and that violations of the obligations on the treatment of victims can amount to serious violations of international law.” (UN Security Council 2019)

The resolution contains thirty-seven operative paragraphs detailing the rights of survivors to access to justice, medical care, and protection from discrimination, and the obligation of member states to introduce legislative reform, health care services, security sector reform, and access to transformative justice processes. Taken together, the UNSCR 2467 affirms a continuing obligation for states to prevent and respond to CRSV. In 2019, the most recent resolution on CRSV was adopted: Resolution 2467. The resolution sought to advocate a “survivor-centered approach” to prevent and respond to CRSV. The language in Resolution 2467 “could herald a more central role for local, grassroots, women-led organizations in leading efforts to prevent and respond to sexual violence in conflict” (Jackson 2019). Article 19 and 20 detail the following regarding the recognition of a civil society approach:

“19. Recognizes the importance of supporting, and promoting civil society, especially local, grassroots, women-led organizations, and religious and community leaders, girls- and youth-led organizations, for all prevention and response efforts; while supporting community mobilization campaigns to help shift the stigma of sexual violence from the victims to the perpetrators, and to promote cohesion among community members where state security presence is weak;

20. Encourages concerned Member States and relevant United Nations entities to support capacity building for women-led and survivor-led organizations and build the capacity of civil society groups to enhance informal community-level protection mechanisms against sexual violence in conflict and post-conflict situations, to increase their support of women’s active and meaningful engagement in peace processes to strengthen gender equality, women’s empowerment and protection as a means of conflict prevention.” (United Nations Security Council 2019)

The experiences and consequences of sexual and gender-based violence are diverse among survivors. They often suffer physical, moral, emotional, and social harms with primary and secondary impacts experiencing long-term and sustained stigma, including rejection by families (Ni Aolain, O’Rourke, and Swaine 2015). Resolution 2467 responds to a long-standing call for the international community to recognize that responses to, and services for, sexual and gender-based violence in conflict-affected situations require a multidimensional and tailored approach that is transformative and gender-sensitive (Ni Aolain, O’Rourke, and Swaine 2015; Engle 2020).

What agency then, in the language of Resolution 2467, do local women-led organizations have when the state security presence is strong (not weak) as in the case of Myanmar (Naujoks and Thandar Ko 2018; Fishbein and Staff 2021)?

In such contexts, local CSOs experience a range of gender discrimination experiences including threats of violence, lowered social status, limited legal entitlement, lack of access to the public domain, stereotyping, and exclusion from formal legal processes (APWLD 2020, 36). Ni Aolain, Haynes, and Cahn (2011, 242) note that civil society is often viewed as a development concept rather than a competent one that is essential to security. The risk in conflict and post-conflict situations where the state security presence is stronger is that women-led CSOs may be essentialized in “highly problematic ways” (Ni Aolain, Haynes, and Cahn 2011, 243). There are important cases where women-led civil society has been able to exercise power outside of formal political structures (Krause, Krause, and Brännfors 2018; Kreft 2019). There are also cases where the state and, in turn, the community remains masculine, patriarchal, and violent: these “pre-conditions” may limit the
agency of women-led CSOs (Ni Aoláin, Haynes, and Cahan 2011, 243; Shepherd 2017, 116). Local civil society actors are powerful agents of change but the women who occupy the civil society space do so at great risk to their own security. If the international community is to financially and politically support the work of civil society response to CRSV as outlined in Resolution 2467, we need to document what support women-led CSOs need to implement survivor-centered approaches in situations where gender unequal norms and violence is widespread in everyday life. The remainder of this paper details the experiences of local women-led organizations responding to sexual violence in conflict-affected NSS where the militarized presence remains strong.

Context of NSS

Shan State is the largest of Myanmar’s fourteen states and regions with an area of over 60,000 km² and an estimated population of 5.8 million people, which is about 11.3 percent of the total population of the country and the fifth-biggest populated state after Yangon, Mandalay, Ayeyawady, and Sagaing regions (Department of Population 2015). Shan State is administratively one zone in the country. In the past, due to its large size, for better administrative arrangements, the state was subdivided into southern Shan (where the State capital is Taunggyi), northern Shan, and eastern Shan. Under the new Constitutional reform, these divisions of administrative structure no longer officially exist and subdivided states of Shan are experiencing growing administrative challenges. Myanmar is primarily a central decision-making political structure and central policy decisions do not always prioritize the needs of each subdivision of Shan. For instance, the ongoing local conflicts between separatist groups and the Myanmar government often create communication and policy implementation gaps due to the ethnic, geographic, and political diversity across three subdivisions with different levels of conflict intensity and resistance.

A unique feature of northern Shan State (NSS) from Shan, is its ethnic diversity which includes the Burman, Chinese, Kachin, Lahu, Lisu, Palaung/Ta’ang, Shan, and Wa ethnic groups. Language and cultural diversity is a key obstacle for accessing services from the state institutions (health, education, and law), which are delivered only in the major language of Burmese (ISDP 2018). The region is enriched with natural resources; however, decades of armed clashes have led to this region being one of the most economically undeveloped with a chronic lack of basic services (ISDP 2018). It is also important to note that NSS borders China’s Yunnan Province, Kachin State, the Sagaing and Mandalay regions, and the southern and eastern regions of Shan State, which raises an ongoing concern for illegal cross-border migration and human trafficking (ISDP 2018). The continuation of armed conflict has made it difficult to institute services that can protect populations and deliver adequate care across this vast, ethnically heterogeneous region.

Conflicts and the Peace Process in NSS

In Myanmar, civil society and international organizations record acts of CRSV in conflict-affected areas that are primarily located in Kachin, NSS, Karen, Rakhine states (United Nations Human Rights Council 2019). The Myanmar state has included a provision in the NCA that states all combatants should “Avoid killing or maiming forces conscription, rape or other forms of sexual assault or violence, or abduction of children” for all parties signing NCA. However, five years later, it remains unclear how this rule will be monitored and implemented under the domestic legal environment. For now, in the majority of conflict-affected areas in Myanmar, prevention and primary first response to sexual violence survivors are carried out by local CSOs (Education Initiatives and Asia Justice and Rights 2015). In conflict locations across Myanmar, local CSOs are vital—they are the first (and sometimes only) responders upon whom survivors depend to realize the type of care and justice articulated in Resolution 2467.

Myanmar has experienced internal armed conflicts for more than seven decades and the demand for ethnic people’s self-determination as per the 1947 Panglong Agreement² is yet to be fulfilled. The transition to democracy began with the formation of a civilian government since 2011; however, the constitution developed under the military regime in 2008 favored military influence in the key administrative services (budget, law, and defense) and gave the military 25 percent of seats in parliament (Lin n.d.). Despite the first democratic government elected in 2015, the continued strength of the military in the running of Myanmar state fueled mistrust among EAOs who were being asked to sign the NCA to stop fighting throughout ethnic areas (Lin n.d.). The annual twenty-first-century Panglong conference was initiated by the former National League of Democracy led government to progress EAO participation in the NCA. However, progress was slow, with ongoing conflict, especially in the northern part of the country (Lin n.d.). Politically influential EAOs in the country have been active in the NSS since independence, and they include the Kachin Independence Army (KIA), the Shan State Army/Shan State Progress Party (SSA/SSPP, also known as SSANorth), and the Shan State Army/Restoration Council of the Shan State (SSA/RCSS—also known as SSA-South and the only NSS-located combatant group that is a signatory of the NCA. Though not currently involved in fighting with the military, the United Wa State Army (UWSA), founded in 1989, is the strongest militarily of the EAOs in NSS. Three other EAOs that operate in NSS are the Myanmar National Democratic Alliance Army (MNDAA), the Ta’ang National Liberation Army (TNLA), and the Arakan Army (AA), with the latter two recently formed in 2009. However, all three of them are prohibited from participating in the NCA dialogue because Tatmadaw (Myanmar Army) insists that they first sign bilateral ceasefires and disarm, terms which are not accepted by the armed actors (ISDP 2018). The presence of so many ethnic armed groups distinguishes the NSS from other areas of the country, and its ethnic heterogeneity is a tool for armed groups to mobilize ethnic identity as a basis for generating support (ISDP 2018). While the main axis of fighting is between the Tatmadaw and armed groups, there are occasions when tension increases among EAOs themselves or alliances are formed between EAOs (ISDP 2018).

²The NCA is a negotiated agreement text between the government of Myanmar and EAOs. The draft text of NCA was agreed on March 31, 2015, and used as a platform for peacebuilding and national dialogue. It is available at https://peaceobserver.un.org/sites/peaceobserver.un.org/files/MM_151510_NCA Agreement.pdf.

³Panglong Agreement was the outcome of Panglong Conference held in February 12, 1947, attended by certain Members of the Executive Council of the Governor of Burma, representative of the Shan States, the Kachin Hills, and the Chin Hills. The agreement is about the formation of the Union of Burma after the independence of British colony and it offers freedom to Shans, Kachins, and the Chins by their immediate cooperation with the Interim Government.
Combined, this troop strength is the only alliance in Myanmar that has a military capability that rivals the Tatmadaw. Thus, it is fair to say that the participation of northern allies in a national peace process is one key to resolve the conflict (ISDP 2018).

**Impact of Conflicts on Civilians and Humanitarian Needs**

The continued presence of militarized violence in NSS has led to many civilians and soldiers deaths, and displaced thousands of people in these areas (Quadriini 2020). With the displacement, the community is trapped in extreme poverty, with no access to education, freedom of movement, or basic healthcare. Even if the conflict ended, there is a chronic lack of documentation and civil registration, misappropriation of land for conflict (unexploded mines and ordinances contamination in farmland is the highest in NSS), and a need to disarm, demobilize, and reintegrate thousands of soldiers, mostly men but also women and children (UNOCHA 2018). Currently, it is estimated that about 10,000 people (of whom over 40 percent are children and 77 percent are women and children) remain displaced across thirty-three camps or camp-like settings since the conflict escalated in 2011 (UNOCHA 2018, 2020). Continuous fighting in NSS since 2018 has also created additional temporary displacement in several conflict-affected townships, and the numbers are unstable. Temporary displacement followed by a return to areas of origin once fighting subsides continues to be a key characteristic of displacement in NSS, which makes it difficult for humanitarian actors to plan and respond, to monitor the protection risks upon their return, as well as address civilians livelihood and income insecurities (UNOCHA 2018). Among all the forms of displacements, protracted, multiple and repeated displacements, there remain huge protection concerns with the most common being human rights violations that include sexual and gender-based violence, forced recruitment, including recruitment of children by armed forces, forced labor and abduction, and human trafficking, particularly of women and children (UNOCHA 2018). The UN Human Rights Council heard in 2018 and 2019 that there is widespread sexual and gender-based violence in the northern part of Myanmar; and pervasive local and state-level practices of gender inequality, abuse, and discrimination (United Nations Human Rights Council 2019).

The NSS shares a border with Kachin State that, has been the site of escalating conflict with the Tatmadaw, which has led to rising forced civilian displacements into the NSS (ISDP 2018). Since June 2016, humanitarian access to conflict-affected populations in Kachin and NSS has been limited. International humanitarian service providers are only permitted access to government-controlled areas, and even then, there is limited access to certain towns for international staff (UNOCHA 2019). Unlike Kachin state, there is no non-government-controlled area in NSS, but there are a number of locations where multiple EAOs reside and are deemed too unsafe to travel for international staff. This compromises not only the delivery of humanitarian goods and services, but also the protection of highly vulnerable civilian groups located within these areas. In 2019, UNOCHA reported that access to people within government-controlled areas continued to decline and almost 20,000 people in remote areas could not be effectively accessed, as travel authorizations were not approved in both Kachin and NSS (UNOCHA 2019). Displaced people in remote areas suffer from a disproportionate lack of quality food, nutrition, shelter, water, health, and education, while the host community also suffers from a lack of basic services from the national government (UNOCHA 2018). In addition to the human rights violations committed by the EAOs and Tatmadaw, there are tensions within these communities that can lead to the type of human rights violations described above. For humanitarian and human rights organizations, partnerships with local CSOs have emerged as vital. International actors are dependent on local actors to reach and access remote areas. Often, these local CSOs are also local ethnic organizations and require the permission of ethnic armed actors within the community to access and provide humanitarian assistance (Dayal and Christien 2020). It is this complex interplay of conflict, federal laws, peace process, local ethnic practices and norms, and limited access that determines the delivery of access to justice and care for survivors of sexual violence in NSS.

**Gendered Local Practices and Survivor-Centered Justice in NSS**

Gender and power relations between men and women during wartime may be a continuity of gendered violence that existed pre-war (O’Rourke 2015). This understanding has led feminist scholars to locate the origin of conflict-related sexual violence against women in patriarchy, that is, in “a system of social structures, and practices in which men dominate, oppress and exploit women” (Kreft 2019). In the NSS of Myanmar, a small number of studies have suggested a similar interlinkage of gendered practices with the prevalence of sexual and gender-based violence (Naujoks and Thandar Ko 2018; Park and Pelletier 2020).

In Myanmar universal progress toward achieving social and gender equality is extremely low (GEN 2015). Culturally and normatively, men are the primary decision-makers in all aspects of households, particularly, when it comes to decisions on health, finances, and access to justice. The NSS has the most diverse ethnic group representation among all states and regions in Myanmar (ISDP 2018). The one common practice across the state is that women and girls in the northern Shan have little to no decision-making power in their homes (UN Women 2019). Conflict has sometimes been identified as a positive disruption to gender roles in NSS to advance women’s leadership opportunities in the community (Berry 2015). Although the disruption of gender roles during the conflict in the region has led women to occupy roles traditionally assigned to men—as “protectors” and “providers” for their family on top of existing care work—it has not translated in NSS to women’s empowerment; instead, women are still expected to be obedient to men in the community (UN Women 2019). Conflict has sometimes been identified as a positive disruption to gender roles in NSS to advance women’s leadership opportunities in the community (Berry 2015). Although the disruption of gender roles during the conflict in the region has led women to occupy roles traditionally assigned to men—as “protectors” and “providers” for their family on top of existing care work—it has not translated in NSS to women’s empowerment; instead, women are still expected to be obedient to men in the community (UN Women 2019). The NSS accommodates many different ethnic groups and hosts the highest number of EAOs with the least signatures to the NCA. The high degree of militarization in the region may explain the continued power imbalance with more men in the security sector and the continued privilege local community attaches to masculine stereotypes of strength and protection (Webster, Chen, and Beardsley 2019).

The highest number of violations against civilians including human rights violations, land mine explosions, and widespread drug use outside of Rakhine State (location of the ongoing conflict between Tatmadaw and the AA, and site of alleged genocide against the Rohingya population in 2017) is committed in the Shan State. The frequent and protracted displacements in the region have led to short-term emergency displacements and protracted (five to eight years) displacement cycles.
A long history of authoritarian rule and conflict has sustained unequal gendered power structures within the community (Naujoks and Thandar Ko 2018). Survivors of sexual and gender-based violence in conflict-affected settings are dependent on the local services available to them. Gender-based violence programs, administered by local CSOs, are part of the humanitarian operations delivered in NSS. Local civil society actors are doing this work, as we will discuss next, under immense pressure.

Local Civil Society Organizations and the Challenges to Provide Survivor-Centered Services

Local civil society actors attempt to deliver services that support survivors’ right to access law, justice, and care. They do so while facing significant barriers including a hostile conflict environment, a patriarchal, unrepresentative formal legal system, and unequal gendered norms that affect their own and survivors’ safety.

Conflict Environment

In Myanmar, women-led and women-focused CSOs are active in peacebuilding activities, raising awareness of sexual violence, promoting women’s right to access to income, employment, social welfare, and trauma support services (Lahtaw and Raw 2012). Most women CSOs work at the community level and they may, or may not, be registered with the state. Registration reluctance stems from their historical (and ongoing) need for political independence as well as their capacity to fulfill the requirements of the registration, for example, providing regular reports to the state government (Wallis and Jaquet 2011). As a result, many women CSOs are highly reliant on international donor agencies for technical and funding support.

The power of women CSO is, unsurprisingly, complex. Financial independence does not always provide freedom or security. Women CSOs’ physical existence is precarious in a strong militarized Myanmar state. They are dependent on the permission of the central government and, sometimes, ethnic political organizations to exist. Yet, international agencies such as UN Women and United Nations Fund for Population (UNFPA) lead a number of gender inclusion programs within the country that depend upon local CSOs for access (The Peace Support Fund 2016). These international agencies work not only with the national government, but also at the community level with women-only CSOs. Access to local women CSOs is sometimes more beneficial for program implementation for the international agencies and national government, as these local CSOs may be the only service providers with regular access to conflict-affected populations, especially to survivors of sexual and gender based violence. Their position can sometimes secure temporary funds for temporary programs, if not security or sustainable funding. Nonetheless, because local women activists’ contribution is not formally recognized in registration, funding, or policy (GEN 2018), local women civil society actors often find themselves in a precarious position when seeking justice for sexual and gender-based violence survivors. They are often liaising between UN agencies, EAOs, and government services, while their safety and personal requirements (to continue delivering these services) are often excluded from discussions.

Personal safety is a central concern for local women civil society actors: their own and that of the survivors they assist. Local CSOs that respond to sexual and gender-based violence are led by local ethnic women. The local women groups in northern Shan are depended upon by local populations, as well as international humanitarian organizations. They can access the hard-to-reach areas and often provide support in dangerous conditions where the EAOs and Tatmadaw often exchange live fire. Civil society is able to access the locations where EAOs reside due to shared language and belonging to the same ethnicity, and are therefore able to gain safe, secure, and continuous access. This “insider” access is crucial, but it can also lead to maintaining the status quo to maintain secure access. In professional exchanges on reports of sexual violence observed in these remote communities, local civil society actors would report time and again that the survivors of violence did not want to formally report their experience of violence nor seek to proceed with formal legal proceedings. Local civil society actors were concerned with the considerable challenges and stigma sexual violence survivors would face if they sought support. The agency available to these local women actors often fell into two competing categories: being a service provider at the community level and local rights defender within the community. These dual responsibilities often put the women civil society actors in a difficult position with competing norms and pressures from community members and humanitarian organizations. Similar to Kreft’s findings in Colombia, in the NSS a survivor-centered service agenda does not remove the conflict, nor the political and patriarchal challenges that exist at the local level (Kreft 2020).

Unrepresentative Formal Legal System

For ethnic minorities, the unequal relationship of the Myanmar police force to the Tatmadaw is uppermost in local’s minds if they report conflict-related acts of sexual violence (IDLO 2019). In one of the few open-access reports, International Development Law Organization (IDLO) interviewed a range of legal service providers and community members in the Shan and Kachin states in 2019. The report examined the formal justice chain available to sexual and gender-based violence survivors, and surveyed their experience of accessing informal and/or formal justice services in the Shan and Kachin states. The report found that survivors mostly sought access to the informal justice system. There were few if any protection and assistance services provided to victims in the formal system; and when formal justice was pursued (i.e., instances of rape committed by Tatmadaw soldiers), the experience was costly, confusing, and stigmatizing. When local EAOs commit crimes, including sexual violence, the anecdotal reports are that even fewer women will seek justice, informal or formal. There is little information available on which crimes are settled by EAOs’ court and how women are treated in these traditional justice proceedings, but the few survivors who reported their experience of sexual violence all went through the informal justice system (IDLO 2019).

Based on the first author (PPO) discussions with local providers, the justice-seeking behaviors of survivors in NSS appear to prefer the traditional or informal justice system over a formal justice system. This “preference” is in the absence of few alternative options for survivors. In the NSS, the formal justice system is a judicial process that is centralized and aligned to Myanmar law. Among local CSOs in Shan state, trust in authorities is low. Women and girls, the primary group reported as survivors of sexual violence in the region, face multiple challenges if they access the formal justice system. Practically, survivors may not be able to access the formal system due to the distance; they
most likely will not speak or read the language of the formal system, have no money to pay for transport to access the formal system, and have (legitimate) distrust of the system's confidentiality. The few survivors who pursue justice, if they can, do so under the informal justice system. It is also important to mention that survivors’ decisions are also affected by the preference of guardians, parents, family members, and community leaders. In one instance, the first author witnessed the father of a survivor prefer to settle with compensation at the local level rather than proceed with the formal legal process. The survivor herself was willing to go through the formal justice process, but the custom was to defer to the preference of the father of the survivor. When the majority of justice actors in the state system are Bamar ethnic and may only speak Burmese, it is not easy for victims—and their families—from ethnic ancestry to disclose violence experience to service providers at formal institutions, and there is a background tendency of being discriminated against for non-Burmese ethnic identity.

The informal justice path, often dispensed by men as the community leaders, is not always a just or safe path for survivors. It can be a stigmatizing and dangerous experience. For example, one belief in some communities in NSS is that sexual and gender-based violence crimes affect the image of the village. Therefore, while compensation may be demanded from the perpetrator, the survivors may also be demanded to pay a fine to the village to clear the “bad name” of the village resulting from the incident. Survivors are dissuaded from coming forward to report acts of violence, whether rape, incest, or domestic violence, which may bring shame to the community. In most conflict-affected areas, legal marriage is not common practice and there is no documentation of citizenship or parentage. As a result, women are usually not in a position to assert even the few legal rights available to them under Myanmar family and marriage law. In such situations, women often accept the male-led decisions made at the community level. In the few instances when survivors report to the police, they were told to return to the family or community to resolve the “dispute.” The use of the traditional justice system is common in the IDP camps, where the camp committee members are mostly male. The status of being an IDP compounds the survivor’s vulnerability and they have no option to access the formal justice sector. Survivors of sexual violence in IDP camps are completely dependent upon camp communities for justice. In sum, while there may be a lack of confidence and trust in the formal system for survivors if the perpetrator was a Tatmadaw soldier, the social and political implications are also high if the survivor seeks justice from the formal or informal sector if the perpetrator was an EAO soldier (IDLO 2019; United Nations Human Rights Council 2019).

Gender Norms

These conditions have, unsurprisingly, led to the understanding that most survivors remain silent about their experiences of sexual violence. In discussions with local CSOs working in the remote conflict-affected communities, their efforts to bring justice for survivors through the justice systems available (informal or formal) were often insurmountable. Not only the political and practical obstacles of the formal system prohibited them from coming forward, but also the presence of strong societal gendered norms and practices influenced both local civil society actors’ and survivors’ decision to seek justice. Silence in conflict-affected settings is a feature of sexual and gender-based violence incidents (Davies and True 2017). The presence of unequal and discriminatory practices in the societies not only prohibits women and girls from reporting these acts (Davies and True 2015), but also influences local CSOs’ options and advice to survivors (Ni Aoláin, O’Rourke, and Swaine 2015; Swaine 2018).

However, ethnic affiliation intersects with gender autonomy for women-led CSOs in ways that have been described as positive by these actors. By virtue of shared ethnic identity, local women have the networks and trust to access remote communities, including non-state armed groups, and create parallel services for women survivors, including health services. Local trust and local affinity create pathways for international funding and the delivery of support that otherwise would not arrive in these communities. The women who are instrumental in the delivery of these services and support are adopting transformative leadership roles.

The NSS case reveals a pattern of high reliance on informal support services delivered at the community level that is driven by local actors who (legitimately) fear survivors will not experience a formal system free of gender or ethnic discrimination. In this case, local CSOs weigh local gendered practices and norms against inefficient and partial formal systems. Women-led CSOs in the community are constantly juggling women and girls’ rights to safely access services in environments where increased gender autonomy threatens but also challenges the traditional structures of militarized power (Berry 2017; Kreft 2020).

Empowering the Role of Local Civil Societies in Local Survivor-Centered Justice Responses

Resolution 2467 calls for the safety of survivors to be at the center of all aspects of providing justice, especially in contexts that are fragile. At the implementation level, this requires that frontline justice responders—most often the local civil society providers—are featured more in the prevention of violence and sexual violence discussions in conflict situations (Shepherd 2020).

The Joint Communiqué signed by the Myanmar government and UN Secretary-General in December 2018 required UN agencies involved at the country level to support the national government and security forces for awareness training on gender equality, access to justice, and access to services for sexual violence survivors (UN Women and United Nations Development Program n.d). The group that is absent from the Myanmar Joint Communiqué are the local CSOs: very often the only service providers in far and remote areas. Local CSOs in NSS fulfill a major role in defending women’s rights and empowering sexual violence survivors, yet they are denied the right to be included in the formal discussions to secure their work and access to justice for their survivors.

In Myanmar, international agencies support local civil society actors’ role in disseminating knowledge about international standards and norms, including UNSC resolutions on WPS. Most women-led civil society actors are aware of Resolution 1325 because many are working on women’s participation in the peace process (Warren et al. 2018; UN Women 2019). However, knowledge of Resolution 1325 and subsequent WPS resolutions, including 2467, beyond the major cities like Yangon and Mandalay is harder to confirm (Warren et al. 2018). It must be said that one barrier to the communication of wider knowledge resides with the high degree of military control over the Myanmar state, even during its period of democratic transition. For example, Resolution 2467 recognizes the agency of CSOs to prevent
and address CRSV. As the regional conflicts, and now the aftermath of the February 2021 coup demonstrates, there has been ongoing opposition to strengthening the power and knowledge of civil society actors across the country.

The NSS case study reveals structural constraints women-led CSOs experience when a strong militarized state wishes to obstruct their work. The IDLO report (2019) and personal observation of local CSOs reveals that trust-building between ethnic communities and state institutions is a huge challenge and it limits the agency of women CSOs.

Research indicates that post-conflict environments are important moments for transitioning justice and reform process, and gender-inclusive practices are essential in this period of transition (Ní Aoláin, O’Rourke, and Swaine 2015). The international community encourages states to promote and protect women’s access to justice through accountability processes in the domestic environment that may be plural (formal and informal) (Coomaraswamy 2015). The Myanmar Constitution permits customary law and traditional justice practices but in a militarized state such as Myanmar, these customary laws and informal justice systems serve to support harmful patriarchal norms and limit the agency of CSOs to challenge such practices.

Awareness of and sensitivity to the climate in which local CSOs operate should be a key entry point for transforming justice systems to become survivor-centered. Despite their contextual knowledge and valuable role in the communities, the grassroots CSOs are often approached to implement, not design, programs on CRSV (Kret 2020). Resolution 2467 recognizes the need to empower local civil society, but there is an equal need to note their daily obstacles. Women-led CSOs from NSS are given no opportunity to engage in the formal reform process of the state’s justice system. They continually struggle to challenge long-held traditional gendered social norms held by the Tatmadaw and EAOs within the community. This case study reveals the ongoing efforts of front-line responders—and the significant obstacles they experience—to deliver survivor-centered justice. Local CSOs are constantly negotiating unequal local gendered norms, a patriarchal, unrepresentative formal legal system, and a hostile conflict environment.

Conclusion

UNSCR 2467 adopted survivor-centered response language for CRSV survivors. Crucially, this resolution sought to empower local CSOs to lead first-response survivor-centered approaches. We examined the agency of local CSOs to implement survivor-centered approaches and access justice services in the context of NSS, Myanmar, where the conflict is ongoing and CRSV incidents remain a major concern. The domestic conflict is being committed in a strong, militarized state. Despite their effective representation in the community, the experiences of local women CSOs in NSS indicate that without their inclusion in high-level donor meetings on this topic, they are being sent in to provide services that under structural conditions may compromise the advice and support civil society tries to provide to survivors. It is a breakthrough to have achieved a UNSC resolution that acknowledges the role of civil society in survivor-centered justice for CRSV; however, this realization requires the international community to ensure that local women CSOs are also included in the high-level donor discussions on how to support gender-inclusive local justice programs, demand civil-military sector reform, and invest in emergency response services that legitimize and empower local civil society actors.

Acknowledgments

This work was supported by the Australian Research Council Linkage Scheme and its partner organization, the Australian Department of Foreign Affairs and Trade (grant number LP160100085).

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