



Australian Government

Department of Foreign Affairs and Trade

Ways for Women to Participate in Peacebuilding

Consolidated Policy and Research Brief

Issue

How do plural and hybrid justice mechanisms work to respond to community conflicts in the Autonomous Region of Muslim Mindanao (ARMM), Philippines, in particular violence against women?

KEY MESSAGES

- Policy makers and development initiatives proposing reforms and interventions in the Philippines should recognize and understand the multiple legal systems and justice mechanisms that operate in Mindanao.
- When responding to VAW, the key issue is that gender violence is mostly driven by persistence of conflict and poverty, which exacerbate social and cultural inequities.
- Family/ clan and community-based forms of justice are the most trusted in Mindanao; people consider these to be the most effective and accessible justice mechanisms.
- State mechanisms such as the *Shari'ah* courts, Public Attorney's Office (PAO) and Fiscal's Office could potentially be developed into more sustainable and responsive hybrid justice institutions in Mindanao.

1: Mindanao has one of the world's most complex (and sophisticated) plural and hybrid justice systems

Policy makers and stakeholders need to recognize and understand the more than ten (10) forms of justice mechanisms and venues that serve community needs in Mindanao. Many of these mechanisms are routinely overlooked by national and international policy makers as key instruments and actors that contribute to the provision of justice, security and basic services to communities that are experiencing conflict. These justice providers include state justice mechanisms such as, the secular courts and state *shari'ah* (Islamic) courts, prosecution services and public legal aid services, as well as non-state and community-based traditional or indigenous justice forums, *shari'ah* adjudication provided by community or insurgent groups, and hybrid mechanisms that combine state and non-state personnel, such as the Agama Arbitration Council and municipal and provincial peace and order councils.

Legal hybridity in Mindanao is an outcome of its long history, and ethnic diversity and has been intensified by conflict. State and non-state, formal and informal justice mechanisms and processes have 'hybridized' to meet the challenges of the continued cycles of conflict and violence and emerge from the necessity to provide for individual and community needs – security, continuity of tradition, and provision of basic services.

The research study underpinning this *Policy Brief* confirms that Muslim, Indigenous and Christian people in Mindanao prefer family and clan-based forms of dispute resolution over any other form of dispute resolution. For those who reported having experienced disputes in their family (27.2% of 550 respondents), a high proportion (84.4%) reported their issues or complaints publically. The top six venues for first reporting their complaints were: (1) family/ clan member; (2) Katarungang Pambarangay (local village council); (3) community or village elders and leaders; (4) police; and (5) Public Prosecutor or Fiscal's Office; and (6) Public Attorney's Office.

The justice mechanisms that finally resolved their disputes were, in order of frequency:

- (1) family/ clan
- (2) civil court judge
- (3) village elders or traditional leaders

- (4) Katarungang Pambarangay (local village council)
- (5) state *shari'ah* court or Public Attorney's Office (PAO); and
- (6) Fiscal's Office.

Respondents would approach the following venues again when faced with another dispute: (1) family/ clan; (2) Katarungang Pambarangay (local village council); (3) community or village elders and leaders; (4) Public Attorney's Office; and (5) Fiscal's Office.

People who have used these justice mechanisms are generally satisfied with the outcomes of the dispute resolution. In the survey, 61.3% considered the resolution fair; 7.2% said 'not fair' while 11.7% said neither fair nor unfair; and 12.6% reported 'don't know'.

2: Violence against women in Mindanao in the Philippines should be understood within the broader structures of conflict and poverty, rather than cultural and religious practices

Muslims, who comprise almost 95% of the population in the Autonomous Region of Muslim Mindanao (ARMM), are also members of different ethnic communities. There are 14 identified Muslim-based ethnic groups, in addition to the numerous tribal affiliation of non-Muslim Indigenous peoples. This has led to the formation and practice of syncretic Islam and the co-existence of at least three layers of authority in Mindanao – the family/clan; the community; and the state.

Muslim women are highly respected and regarded within the family and community, and both families and clans fiercely defend the honour of their women when they are wronged. Both qualitative interviews with justice providers and our survey of justice mechanism users suggest that men and women in all of these communities have equal rights in financial decision-making. The user survey shows that more than 70% of respondents indicated that both spouses jointly make decisions on income spending, while about 17% stated that they are the only one who makes the decision (both male and female respondents claiming that they are the sole decision-makers).

Like any other society, violence against women in the ARMM exists and this is mostly engendered by conflict and poverty. Although a small percentage of respondents reported that they have been involved in disputes in the past three years (27.2%), they types of disputes affecting them were clearly defined, by both justice system users and justice providers.

Women's justice issues mostly involve land disputes -- either within or outside their families -- as well economic issues such as debts, fraud, theft, malicious gossip, public disturbance or scandal, and *rido* (clan feuding). An example would be complaints about women engaged in petty theft of infant formula milk after an insurgent siege in Zamboanga City, reported by civil court judges.

The user survey revealed that more men are engaged in paid work than women (68.7% vs 50.2%). Within the broader socio-economic context in the Philippines, ARMM continues to be ranked at the bottom of the ten provinces with the lowest human development index (HDI).

Large-scale and sporadic fighting between government forces and Muslim insurgent groups over decades have resulted in displacement of communities and these incidents have had a huge impact on women and children. **Respondents report inability to support families, children unable to go to school, and more women finding work abroad as key destabilizing issues.**

On the justice provider side, marriage problems are second to land conflicts, as the most common issues brought to them to be resolved. However, only 6% of those justice users surveyed had undergone divorce or separation from their spouses. This confirms the view that families and clans exert utmost efforts to reconcile the parties and preserve the family unit. The most common reasons given for divorce are:

- Irreconcilable differences (36.1%)
- Involvement of a third party (25% - articulated by NGOs as arising from the practice of polygamy)
- Lack of financial support (11.1%), and
- Abandonment (8.3%)

There are also other reasons mentioned that caused divorce (11.1% of cases), such as when spouse had gone missing, had gone abroad, and interference by other family members). Other reasons cited are physical violence, *rido*, and when one party did not choose their own spouse.

Domestic violence happens in Muslim communities. But how prevalent it is as a phenomenon is a question on which we lack conclusive evidence. Muslim NGOs reported that there is a culture of silence among women. On one hand, some community-based justice providers remarked that there are very few incidents of domestic violence reported to them because men are constrained by a culture of *maratabat* (pride and honour of family) and *rido* (clan feuds). They say that domestic violence is dealt with by families and clans.

In provinces within ARMM, conflict and poverty are key drivers of violence perpetrated against women and children, compounded by social and cultural inequities. Human trafficking, mainly of women and children -- particularly internally displaced persons (IDPs) -- is rampant and is being facilitated through the 'back door' provinces of Tawi-Tawi and Sulu. Women IDPs have become victims of trafficking and made to work as slaves or prostitutes within the Philippines (Visayas, Manila and other parts of Mindanao) and abroad (reported as the Middle East and Malaysia).

Justice providers and users have reported incidents of rape, domestic violence, family support and child custody disputes being experienced by women. Most rape cases of women are not being reported. For example, rape committed by certain powerful people in locations such as Sulu and Maguindanao

have been kept secret by the women victims and their families. In some instances, families or clans resort to *rido* to avenge the honour of the woman and exact revenge against the perpetrator and their family.

The phenomenon of *manggayod* (forcible abduction of women and girls for forced marriage) happens mostly in the island provinces of Basilan, Sulu and Tawi-Tawi. A participant recalled that her 'fate was sealed' when she was abducted in her teens, dashing her hopes of obtaining education. Justice providers reported that, in recent years, *manggayod* is being resorted to by armed men to force women teachers and professionals to marry them or to hold them hostage for ransom.

Under-age marriage, and in some instances child marriage, occurs in rural areas in Mindanao. The *Code of Muslim Personal Laws* (CMPL) permits marriage for females aged below 15 years, at the onset of puberty, but not below the age of 12 years (in contrast with the legal age of marriage for non-Muslim Filipinos, which is 18 years). In the survey of justice users, 12.9% of female respondents indicated that they were married at an age below 18 years, while 2.2% of female respondents stated that they were married at an age below 15 years old. Of all respondents to the survey who were married below the age of 18, women made up 92%. In the survey, the mean age for marriage among all respondents was 20 years old, and 19 years for women.

The lack of employment opportunities in the region contributes to pre-adult marriage. The prospects of receiving a dowry for women and thus extending support for the family and clan put pressure on young adults to get married. The research study underpinning this Policy Brief found that dowry and negotiating for an appropriate amount of dowry is a tedious process, particularly for the poor, that can result in threats of, or actual, *rido*.

Respondents in this research study also stated that, in at least 19.1% of cases, their children have no birth registration. A further 7.8% declined to answer the question. Unregistered Muslim children have real barriers to accessing basic services such as primary education and health care.

Muslim NGOs report that cultural and religious issues also put women in a disadvantaged position. Polygamy, or the taking of up to four wives by men, can put an emotional, physical and financial toll on wives and other family members. Polygamy is not commonly practiced among Muslims in Mindanao, largely because economic hardship has made it difficult to have multiple families. Some justice providers observe that polygamy has become more of an issue for Christian male 'converts' to Islam who take advantage of this 'practice' but who are not actually believers. For example, an interview with a Christian lawyer in Manila confirmed that it has become a lucrative practice for lawyers to facilitate conversion and allow Christian men to escape the criminal liability that they would otherwise face under state law. Polygamy is permitted under the CMPL, although it needs to comply with certain steps and requirements (as it does in Islamic jurisprudence elsewhere). Indigenous people also

reported the problem of *duwaya*, or the practice of having multiple spouses.

Talaq, or unilateral divorce by the husband among Muslims, is also not uncommon in practice, even although the CMPL restricts this practice and allows Muslim women to divorce men for cause.

3: Families/ clans and community-based justice mechanisms should be the entry point interventions seeking to reduce violence against women in conflict-affected areas in Mindanao

Intra-family issues, including violence against women, are mostly dealt with through family/clan and community-based justice mechanisms in Mindanao. Individuals and communities show a strong preference for these mechanisms, their values and outcomes, despite being aware of state-based forms of dispute resolution. The attributes of justice that are valued in these venues suggest that the twin pressures of conflict and underdevelopment are as, if not more, important in shaping justice preferences as custom, tradition or religion.

Survey respondents chose and ranked the following factors as being the most important in choosing their dispute resolution providers:

- (1) safety or security of the individual and family
- (2) trust and confidence in the mediator or adjudicator; and
- (3) cost of pursuing the action

Respondents also preferred the following justice outcomes when resolving their disputes: (1) reconciliation of parties; (2) expeditious resolution of the problem; (3) payment of 'blood money'; and (4) imprisonment of the offender. Trust is intricately linked to enforcement, such as in cases where the justice provider is able to find resources to pay 'blood money' and provide a *kanduri* (feast to celebrate reconciliation), as well as organise mechanisms for enforcement of the agreement. These are the 'justice attributes' that are considered paramount for resolving horizontal conflicts in Mindanao, including violence against women of whatever nature.

These are attributes that secular courts and state-based justice mechanisms are generally not in a position to perform, either because they lack the necessary community ties, or because they cannot mobilize such resources, or because these kinds of settlement would fall outside their institutional or legal mandate.

Individuals and communities want their justice providers to help prevent escalation of further violence, provide security, and give some form of immediate restitution to wronged parties in the most timely way possible.

Reliance on families/clans and community justice providers will persist in the absence of available, credible and reliable, state-based mechanisms performing those functions.

METHODOLOGY

- The research underpinning this Policy Brief used mixed methods (surveys, focus groups and interviews with a total of 740 participants)
- Over 200 interviews and 6 focus group discussions were conducted with justice providers from the state and non-state sectors. Scoping interviews were undertaken with experts and key resource persons from each provider institution.
- A justice user survey was administered in the five areas in the ARMM with 544 respondents – Marawi, Tawi Tawi, Cotabato, Basilan and Sulu, with a small sample taken in Zamboanga, and with participants from a range of ethnic and religious backgrounds.
- Survey respondents were identified through a combination of snowballing and selective sampling, with regard to the security issues in particular localities.
- Through a series of workshops with justice providers, the project sought to engage and connect justice providers and institutions that are usually siloed, instead promoting a 'justice web' and the beginnings of mutual understanding and cooperation among justice actors in the region.
- The project undertook institutional capacity-building with National Commission for Muslim Filipinos as a partner in carrying out data collection and promoting understanding of evidenced-based policy making.

Muslim women are not passive targets of disputes. They resist 'patronizing' interventions on violence against women in Mindanao. Despite the 'culture of silence', female respondents were more likely (84.4%) to report their disputes than their male counterparts (77.6%). More than 80% of petitioners or complainants in state-based *Shari'ah* courts are women. Women also perform the role of community justice provider - as mediators, adjudicators or go-betweens for the parties. They also perform a key economic role as provider for the family in times of conflict when their husbands are unable to work.

Further research is needed to probe women's level of satisfaction when they access different justice mechanisms. Each of the justice providers interviewed in this study claimed that women were satisfied with their mediation or decision. The state-based *Shari'ah* courts, in particular, see themselves as – and are perceived as – a 'woman's court', linked in part to the fact that their jurisdiction is limited to family law and personal status law. Much of their work is informal – mediation or provision of advice in the early stages of a relationship breakdown or family dispute. They form part of a landscape of justice providers in which Muslim women are increasingly exploring more effective resolution for their issues within the family and community.

The patterns of use of different justice providers shows that women in Mindanao are increasingly looking at a range of options when seeking justice for their disputes or conflicts.

Non-state and informal mechanisms have their limits in resolving conflicts. The non-state, informal and community-based justice providers in Mindanao offer *ad hoc* and temporary solutions to conflict and mostly cater to lower-status or economically disadvantaged community members – not to conflicts among more powerful groups. They also enhance the power of the elites, who make up the ranks of most of the community-based providers. Over reliance on non-state justice mechanisms may have the effect of furthering social and economic inequities.

In some cases, community mechanisms have tried to tackle social and economic justice issues (such as those involving land issues, business competition, poverty, and marginalization), and political disputes (such as disputed election results and corruption), as well the wider issue of governance and self-determination, but by design and operation they are constrained in what they can do.

State-based mechanisms, such as the secular civil courts, are under-utilized – but are oftentimes used by powerful politicians to serve their own interests. Civil courts are one of the least-used justice mechanisms in Mindanao. Judges in those courts often suffer from the same problems confronting the population – the lack of peace and order, need for security, and threats or influence from the disputants.

The state *shari'ah* courts, though still under-used, are increasingly being sought by women for their enforceable

decisions or resolution, providing more equitable solutions to their problems, and for the range of services that they provide (such as birth registration, marriage and divorce registration). These courts, however, suffer from 'legitimacy deficit': they are neither supported nor adequately resourced by the Supreme Court, to which they belong administratively, and the lack of state investment in professionalizing these courts makes them vulnerable to criticism from their secular state court peers and those who compete for the role of Islamic authority, including insurgent Muslim groups. Raising the *shari'ah* courts' legitimacy is important.

In the broader context of continuing cycle of conflict and poverty in the region, survey respondents (where 92.6% are Muslims, 57% women and 39.5% are men), expressed their priority needs as: (1) health services; (2) education; (3) peace and security; (4) employment and (5) basic utilities.

4: There is potential to build the institutional capacity and legitimacy of state-based justice mechanisms

The salience of informal and non-state forms of justice in the everyday lives of people in Mindanao – be they Muslims, Indigenous peoples or Christians, has been highlighted by the research underpinning this Policy Brief. Many observers note that ARMM is basically an 'ungoverned' space in the Philippines where clans/families, warlords, insurgents, and terror groups

compete and carve out their own spaces to 'govern'. As such, few state institutions flourish or function effectively.

The lack of attention by the state and local communities to building functioning state institutions, and their ambivalence about what these might look like in a post-conflict Mindanao creates a cycle of institutional fragility.

Instead, some *ad hoc* hybrid mechanisms have sprung up – and in some cases, have been supported by external actors – and many of these are dependent on local power-holders.

As justice providers, state institutions such as the *shari'ah* courts, secular courts, Fiscal's Office and the Public Attorney's Office (PAO) are perhaps the most overlooked – or sidelined, in dispute resolution and peacebuilding. The research underpinning this Policy Brief suggests that, in reality, these state institutions (particularly the *shari'ah* courts, PAO and the Fiscal's Office) are increasingly valued by community members for dispensing effective and equitable remedies for their problems.

There is scope to build on positive community attitudes to the state *shari'ah* courts. To enhance their legitimacy and capacity, there is need to raise judges' qualifications and knowledge of Islamic jurisprudence and to provide continuing professional development (on a par with what is provided for secular state judges). Competent and credible cohorts of Islamic scholars need to be developed from which judges can be recruited. The *shari'ah* courts need different and better-skilled personnel, (such as PAO lawyers servicing the courts) and adequate offices and facilities. There is also need to build the court's capacity to develop its role and jurisprudence and expand its mandate to cover mediation. On the user side, a more sustained campaign is needed to educate the community of the services and benefits of the courts to stimulate use of – and trust for the courts.

In the case of state *shari'ah* courts, survey results show that only 23.7% would take problems concerning crimes and business to an expanded *shari'ah* court, if the courts' jurisdiction were to be expanded.

The PAO and Fiscal's Office are even more highly regarded by the community, than either the *shari'ah* courts or the secular courts. They are sought for their capacity to resolve disputes on the basis of a combination of secular, traditional (or customary) and Islamic laws. **The PAO and Fiscal's offices tend to be staffed by young and dynamic Muslim lawyers, many of whom are women.** In particular, the PAO lawyers are highly regarded by both secular and *shari'ah* judges for their competence and dedication. Despite limited resources, PAO lawyers have been assiduous in engaging with the community through outreach and education. **The PAO and Fiscal's Office represent a rare, but potentially bright spots – and spaces, for developing sustainable and responsive hybrid institutions in Mindanao.**

Further reading

Deinla, Imelda and Taylor, Veronica. *Towards Peace: Rethinking Justice and Legal Pluralism in the Bangsamoro* (RegNet Paper Series 2015/63, 23 January 2015) at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2553541)

Deinla, Imelda and Taylor, Veronica. *An Annotated Bibliography on Legal Pluralism in Mindanao (Philippines)*, (RegNet Paper Series 2015/64, 23 January 2015) at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2474953;

Taylor, Veronica and Deinla, Imelda. *Law and peace: can the Philippines build a just peace in Mindanao* (Opinion piece, Advance, ANU, Winter 2014), at <https://crawford.anu.edu.au/news-events/news/4224/law-and-peace>

Forthcoming publications:

Deinla, Imelda. '(In)security and Hybrid Justice System in Mindanao' in *Hybridity in Peacebuilding and Development: Critical Conversations* (completed and forthcoming, ANU Press, 2017 – copy previously submitted)

Deinla, Imelda. 'Beyond Political Accommodation: making the Shari'ah Court work for women in the *Bangsamoro*' (completed and submitted for journal publication – copy attached)