



**NEGOTIATING IN PURSUIT
OF HUMAN RIGHTS AND
PEACE**

BROKERING FOR HUMAN RIGHTS IN BURMA/MYANMAR

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Individuals who are isolated, impoverished and threatened may see little benefit in standing up and claiming their human rights. This does not necessarily mean, however, that these individuals do not seek alternative pathways to their human rights. When conducting ethnographic interviews throughout Burma/Myanmar from the start of 2010 to the end of 2011, people from all walks of life explained why they avoided human rights claims, and, instead, opted to broker for their rights. Villagers and community members who felt that it was implausible to demand their human rights instead utilized brokerage – a game of sell, give and take – as a means of realizing their human rights.

This paper works through a fundamental question: what should stakeholders, including human rights activists and practitioners, observers and academics, make of this brokering practice? There are complex ethical and practical dilemmas which need to be considered. On one hand, the brokerage does not follow a rights holder – duty bearer arrangement. Brokerage does not involve any articulated commitments to human rights, and the international human rights system of standards, institutions and organizations is largely ignored. Moreover, brokering often involves bribery and some type of compliance with oppressive authority. On the other hand, brokerage could be seen as an innovative way to realize rights in the face of even the worst oppression. All of this considered, this paper proposes that brokerage should be tapped into as a means of mobilizing human rights to those who are not reached through the existing human rights system.

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1. Introduction

I know I have human rights. I understand what all of that means. But, I don't think the world really understands how it works here. If I stand up and start talking about my rights I will be arrested, or worse. Talking about human rights is the quickest way to lose all of your rights here. You can't demand things here. You have to be willing to trade something. You have to give something to get something.

-Middle aged male taxi driver near Mandalay

No one should have to broker for their human rights. Human rights are not to be earned or lost because they are inherent; we all have them by virtue of being human. All people should be able to claim their rights against duty bearers. When the rights holder-duty bearer relationship breaks down a robust international human rights system of standards, institutions, organizations and individuals, can be activated. Rights holders can reach out to this international system by making claims – in the form of formal and informal appeals or demands for human rights. However, when individuals are unable to reach this system, due to isolation, oppression or other factors, they may seek alternative pathways to realize their human rights. The people of Burma/Myanmar who inspired this paper forged their own pathway to human rights: brokering.¹

This paper is based on ethnographic data which was collected in Burma/Myanmar from the start of 2010 to the end of 2011. This was a time when thousands of political prisoners were in jail, and political opponents were targeted as enemies of the State.² In total over 330 ethnographic interviews were conducted throughout the country with people from all walks of life. This research was conducted for a PhD thesis, *Contrasting Pathways to Change in Burma/Myanmar: From Bullets to Bribery*. The research targeted citizens who were not plugged into formalized civil society or political parties, in an effort to obtain perspectives that may not be accounted for in dominant discourses. In addition to interviewing these everyday citizens, over 30 State informants, including soldiers, judges

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- 1 The use of Myanmar or Burma, writes Steinberg, “has become a surrogate indicator of political persuasion and even projected legitimacy, causing considerable antipathy and confusion in both official and popular circles” (2006, p.xx). This research uses Burma/Myanmar as opposed to either Burma or Myanmar as a way of protesting this binary. Both names were used by informants in the research, so both names are used in this paper.
 - 2 ‘State’, with a capital ‘S’ is used to describe an administrative system, and the sovereign territory that administrative system controls. This concept of a State is different from the concept of a nation. A nation suggests a unified identity and a level of popular approval and perceived legitimacy (Anderson, 1991, p.5). A State does not suggest necessarily a unified identity, or popular approval.

and other officials, were interviewed.³ These ethnographic interviews were supplemented by formal interviews with formal civil society actors in Burma/Myanmar, Thailand, and elsewhere. The research covered all of the States and Divisions of Burma/Myanmar, except Rhakine State. However, individuals from Rhakine State were interviewed elsewhere.⁴ Many of these informants did not believe that the international human rights system was capable of protecting them in their communities. These individuals explained that rights claims, and the human rights language in general, led to threats and reprisals from State authorities. Alternatively, they explained, many people preferred more hidden pathways to human rights, such as brokerage.

The brokering process which informants described entailed tactics ranging from calculated compliance and compromise, to relationship building, to bribery. These tactics were used by people who faced intense oppression, many of whom lacked access to the international human rights system. The notion that there are people around the world who are brokering for their rights may be unsettling. However, the notion that people around the world who lack access to the international human rights system have found less formal, more flexible pathways to human rights is a good reason for interest and further investigation. Individuals and communities throughout Burma/Myanmar were able to realize their human rights,

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- 3 The research design was inspired by human rights based approach (HRBA) principles. The HRBA designates that individuals who are impacted by programs, policies, and research have a right to participate, as agents who should be empowered. The research engaged informants throughout Burma/Myanmar as rights holders, as agents whose insights needed to be mobilized. The informants wanted speak for themselves, but they were rarely given the opportunity to do so. Basic precautions were taken to ensure the safety of informants. Firstly, most of the interviews were conducted with the assistance of translators or friends, who were familiar with the local dynamics. In some cases, friends and colleagues who wanted to assist in the research conducted interviews in their communities with the guidance of core questions. Secondly, the ethnographic interviews all began as ordinary conversation. Informants who seemed interested in the conversation were asked if they were willing to be interviewed and informed that they could avoid any questions or stop the discussion at any time. The nature of the interview questions were guided by the nature of the feedback from informants. In many cases few questions were needed, as one question would stimulate a monologue. Thirdly, potentially damaging or traumatic topics were avoided. Thus, informants determined the direction and length of the interview. Fourthly, interviews were conducted in locations that were deemed safe by informants, and informants were assured that full confidentiality would be upheld; specifically names and personal information that may reveal the identity of individual informants or their communities were avoided. This methodology promoted the right to participate, avoided potential distress, and, thus, had an empowering effect.
- 4 The field research consisted of six, one month trips in Burma/Myanmar as well as follow ups with contacts in the field. The first trip to the field was a preliminary field visit, which occurred in October 2009. This preliminary trip included conversations with individuals about sanctions and the socioeconomic and political context in Burma/Myanmar. This preliminary trip included trips to Yangon, Mandalay, Bagan, and Shan State. The second field trip occurred in August 2010. This trip included time in Yangon, Bago, Mandalay, Ayerwaddy Division, Sagaing Division, Magwe Division and Shan State. The October 2010 included time in Yangon, Bago Division, Kayah State, Karen State, Mon State and Tanintharyi Division. The January 2011 trip included time in Yangon, Mandalay Division, Magwe Division and Sagaing Division. The March 2011 trip included time in Yangon, Mandalay, Bagan, Bago Division Chin State, Sagaing Division, and Kachin State. The July 2011 trip focused on organizations in Yangon. Continuous interviews were conducted through research partners distributed throughout Burma/Myanmar.

in spite of facing isolation, impoverishment, and a State that openly hunted those who pursued human rights. Rather than criticizing the pathway they chose, it seems fitting to learn more about why and how they used this pathway to realize their human rights.

2. Responses to Rights Claims

The world that America seeks is not one that we can build on our own. For human rights to reach those who suffer the boot of oppression, we need your voices to speak out. In particular, I appeal to those nations who emerged from tyranny and inspired the world in the second half of the last century - from South Africa to South Asia; from Eastern Europe to South America. Do not stand idly by when dissidents everywhere are imprisoned and protesters are beaten. Because part of the price of our own freedom is standing up for the freedom of others.

-President Barack Obama Address to the UNGA (23 September 2010)

The international human rights system seeks out and responds to human rights claims, but so too dictatorships. A claim can be as informal as a person saying “this is my human right” to local officials, or as formal as submitting a complaint to a human rights body. Rights claims involve the use of rights language, they designate a rights holder and a duty bearer, and they can be seen and heard. When an individual living under a dictatorship makes a human rights claim, the dictatorship sees and hears the same visible and verbal cues as the international human rights system. While the international human rights system responds by attempting to deliver protection, dictatorships often respond with reprisal.

When this paper refers to the international human rights system this is meant to include the governments, organizations, and activists that work to promote the human rights principles and standards set in national and international law.⁵ When these principles and standards are threatened the international human rights system can respond in numerous ways. Complaints can be filed in national courts and commissions, or submitted to Regional or United Nations treaty bodies. Governments can pressure other governments through shaming or sanctions (Shelton, 2008, p.581). Organizations and activists can raise awareness and mount public pressure against governments. At the local level, campaigns and complaints can hold the local authorities accountable. The system is extensive, and the power of the system can lead to direct changes in policies and practices. This is not to say that the international human rights system functions solely on claims, civil society and international human rights mechanisms have monitoring and reporting procedures, such as the Universal Periodic Review, treaty body reporting obligations, and ongoing human rights research and reports, which do not depend on claims (Mertus, 2009). However, claims play a crucial role in delivering protection to specific individuals and communities.

5 Much of the literature in the field of human rights specifies different human rights systems, whether they be UN, Regional or National. This paper uses “international human rights system” in an attempt to be encompassing of all formal governmental and non-governmental human rights channels. This is done to enable the paper to investigate the role of claims in formal human rights protection in the broadest sense possible.

Human rights claims alert domestic and international human rights networks, and allow them to respond to specific situations. Claims can be made by individuals, or on their behalf. The human rights claims made by and for people do three important things: they reinforce the rights holder-duty bearer relationship, they harness the power of the human rights language, and they carry information about violations or threats to human rights.

Human rights cannot be realized without the contribution of a duty bearer. Human rights claims establish the terms of a relationship between those who have claim to rights (rights holders) and those who have obligations (duty bearers). Hence, human rights promotion is an attempt to strengthen the “capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations” (UNICEF, 2004, p.92). Rights claims are a way of establishing, or re-establishing this relationship. Rights claims effectively show that the rights holder recognizes that they possess rights, which they can exercise against duty bearers. Additionally, claims ensure that duty bearers are aware that the rights holder possesses human rights, and are conscious of their obligations to respect, protect and promote those rights.

By making claims, rights holders are able to harness the strength of the human rights language, which is summarized by Gasper:

Human Rights discourse has enormous strengths. It appears readily understandable and near universally acceptable as a format, by ordinary people as well as officially by governments...Further, in operational terms, HR discourse provides a rallying call and a set of benchmarks, which have definite, specific content, that do not allow the normative thrust to dissolve into nothing. It is connected to a vast legal apparatus, and is yet at the same time more struggle oriented than most development discourse (2007, p.23).

Thus, rights claims are a way of tapping into a system that is internationally recognized as legally, politically and morally legitimate. Wood (2003, p.23-24) makes an important observation: “typically the poor must confront the privileged and act with strength in order to be able to turn claimed or declared rights into delivered, honoured, entitlements.” Through rights claims those who are marginalized may be able to even imbalanced power relations.

Rights claims carry important information about what and whose rights are under threat, and who is threatening or failing to protect these rights. A rights claim may be the only way of knowing that human rights are being threatened or violated. Domestic and international viewers can take the initiative to search for concerning indicators of a human rights crisis, but rights claims provide tangible evidence. When rights claims surface, domestic and international viewers can respond accordingly.

Rights claims reveal an injustice and bring the legitimacy of a duty bearer into question. In other words, rights claims can challenge the legitimacy of local and national policies and practices. Rights claims can threaten the power or image of a system. The notion that rights claims can threaten power helps to explain why some people stand up and speak out when their rights are threatened or violated, and others do not. Standing up and speaking out is a public challenge. In ideal scenarios, organizations and governments are able to intervene, resulting in protection and accountability. At the same time, public challenges do not always yield favourable results.

Dictatorships see rights claims as threats and respond accordingly. Dictatorial systems, by definition, attempt to control populations. The rights holder – duty bearer relationship is dismissed. Furthermore, laws are enacted to ensure that human rights are limited, and opposition is outlawed. Rights claims are codified as illegal and dictatorships often boast their capacity and willingness to punish those who stand up and speak out. In addition, dictatorships often provide incentives to their supporters. Analysing the various carrots and sticks dictatorships have used in an attempt to control populations would be beyond the scope of this paper. However, it is safe to conclude that dictatorships attempt to deter rights claims by simultaneously promising punishment to individuals, families and communities who stand up and speak out, and offering incentives to those who protect the regime.

Dictatorships attempt to discourage rights claims by promising pain and suffering, but impoverishment and isolation are also important factors. For an individual to make rights claims they have to see the benefit, they have to believe in the possibility that the rights claim will be heeded. Many people living under dictatorships lack the necessary resources, networks and freedoms to be seen and heard by domestic and international viewers. A convenient illustration of this is the hypothetical farmer in rural North Korea.⁶ What will likely happen to this farmer if he or she makes a rights claim? The farmer likely struggles to feed his or her family. It is unlikely that the farmer has any disposable resources to fall back on should his or her food rations get cut. The farmer is likely unable to organize other farmers to gain power in numbers. The farmer has no social safety net, nor access to any channels of protection. And, finally, the farmer knows that whole families have been imprisoned or executed for asserting their rights. The probable outcome of a rights claim in this situation is awful.

In ordinary circumstances rights claims are made to gain protection, but in milieus such as dictatorial Burma/Myanmar, rights claims and the human rights language in general may be adamantly avoided. The perspectives of individuals who are in such circumstances are rarely considered. The ramifications of this are many because, as this paper will show, these individuals possess unique insights on attaining human rights in even the most oppressive contexts.

6 For dynamics and depictions of life in rural North Korea access Demick (2009) *Nothing to Envy: Ordinary Lives in North Korea*.

3. Agency and the Human Rights Language in Burma/Myanmar

I don't think people understand the consequences of walking up to a soldier or policeman and saying 'I have this right' or 'I deserve this.' You reveal yourself as a problem that they want to wipe out. Talking about human rights and telling the military what to do gets you a lot of bad attention here, for you and your family.

- Female teacher and community organizer in Karen State

The fight for human rights in Burma/Myanmar has evolved into an international movement. Following the brutal crackdown on a student led uprising in 1988, a mass migration of activists fled to the Thai-Burma border where they linked up with refugee communities who had fled military offensives occurring in their ethnic lands. Out of the 8/8/88 uprising came horrific stories of *Tatmadaw* (Burma/Myanmar Armed Forces) brutality, as well as stories of heroism, and the emergence of a soon to be international human rights icon, Aung San Suu Kyi. Domestic activism continued, and in 1990 Aung San Suu Kyi led the National League for Democracy to a sizeable victory in a democratic election. However, the military junta refused to hand over power. People in Burma/Myanmar continued to stand up and demand their rights, however domestic dissent was harshly punished. Thousands of political prisoners were locked up, others were tortured, threatened or killed. And, the world watched as Aung San Suu Kyi faced decades of threats and numerous bouts of extended house arrest. This oppression was being watched by human rights activists around the world.⁷

The border movement had formalized, grew and expanded its reach to the point that Burma/Myanmar campaigns in foreign capitals were commonplace. Activists from Burma/Myanmar joined forces with activists, diplomats and celebrities all over the world to spread the word. The international campaign was not only about building awareness, activists worked to guide foreign policies towards Burma/Myanmar by establishing lobbies in DC, London, Canberra, Brussels, and a range of other governing hubs.

The international movement for human rights in Burma/Myanmar shaped the world's understanding of what the fight for human rights in Burma/Myanmar entailed. The normative portrayal of this fight was channelled through two themes: brutality and bravery. While the political climate in Burma/Myanmar has recently changed for the positive, the Burma/Myanmar that this research focused on was one where the State was prepared to respond brutally to those who stood up and spoke out.

⁷ Much has been written on the 8/8/88 uprising and the struggles that continued in its aftermath. Notable literature on the dynamic discussed above include: Boudreau, 2004; Ferrara, 2003; Fink, 2001; Steinberg, 1999; Tucker, 2001; Wintle, 2007.

Informants from the field explained that the State was capable of punishing those who talked about human rights in a number of ways. Prasse-Freeman describes the system in Burma/Myanmar from that period as “a military-state with hybrid-imperial structures, characterized by high despotic but low infrastructural modes of power, and fuelled by rent-extraction” (2012, p.371). This type of system is capable of threatening people by targeting their bodies, their minds and their livelihoods. This type of system also proactively seeks out threats. A young woman who worked as a tourist guide in Yangon noted: “If you talk about human rights, they will see you as an opponent. If you reveal yourself as an opponent of the regime you should expect three things: you will be hurt or killed, your family will be hurt or killed, or you will be poor and lonely.”

Bravery and sacrifice is at the centre of the dominant discourse surrounding human rights in Burma/Myanmar. As many activists explained, a favourite saying in the international movement is “I would rather die on my feet than live on my knees.” An NGO worker from Bago Division analysed the dynamics surrounding the accentuation of brave stances: “Burma is famous for people sacrificing for human rights. That is what people think about when they hear Burma. There are a ton of organizations which are dedicated specifically to people who have been arrested or displaced. The headlines are all about sacrifice. There are all types of awards for those who are willing to face punishment.” It is understandable that those who stand up and claim their human rights receive a great deal of attention. However, when the focus on those who claim their human rights becomes exclusive there is a risk of ignoring and undermining the agency of those who avoid claims.

Burma/Myanmar organizations and analysts have recognized that some voices have been left out of the conversation. One such organization is Karen Human Rights Group (KHRG). KHRG consistently criticized the dismissal of often rural voices:

International journalism and advocacy around Burma has often contributed to portrayals of rural villagers as helpless victims passively terrorized by the Burma Army. By marginalizing the agency of rural villagers in this way, such portrayals have perpetuated the exclusion of these individuals from the ongoing political processes which affect them (2008, p.1).

In an interview, a representative from KHRG explained further: “A situation can develop where entire populations are painted as passive victims. Passive victims have no agency or capacity to respond. Passive victims can only be worked for, not worked with. Furthermore, when individuals are portrayed as agent-less their suffering can be used for political purposes.”

This research gathered the perspective of individuals who were often portrayed as passive victims. These individuals avoided rights claims for a number of reasons. Avoiding human rights claims was not only a means of avoiding punishment; informants avoided claims so that they could work towards change and human rights without tipping off the State.

Certainly, the fear of punishment is one reason people throughout Burma/Myanmar avoided human rights claims. Nay Win Maung, who founded Myanmar Egress, noted:

Not all of us are Daw Suu [Aung San Suu Kyi], if we disappear nobody will know and the international community won't care. Opposing the government is not a 'choice' if opposition leads to certain harm. While I'm talking about myself here I am talking more about my students. For some of them, asking them to join the democracy movement is like asking them to walk through a mine field.

While the fear of punishment is an important factor in avoiding rights claims, informants throughout Burma/Myanmar focused on other motivation.

A community organizer in Mingun who makes a living as a teacher explained: "If you don't talk about human rights, you have a lot of opportunities to improve things here. You can really improve the human rights situation for a lot of people, as long as you don't call it human rights work. The government doesn't interfere. You can even get some officials on board. But, the minute that you say 'human rights,' you're going to be shut down." Informants from all walks of life echoed this notion. For them, human rights claims were only one of many pathways to human rights. These individuals had little interest in symbolic gestures or protest which did not improve their lives or the lives of people around them.

Informants saw avoiding rights claims as a tactic. These individuals went out of their way to appear non-adversarial. Aung Naing Oo, founder of Vahu Development Institute noted: "This is a military government, their looking at the situation from a security point of view. When an initiative or a group appears to challenge the legitimacy of a duty or authority, we have a problem." As informants explained, when the human rights language was used the lines of communication between citizens and officials often closed, and instead of easing restrictions, State officials would put up more obstacles. One private English teacher in Karen State illustrated such a scenario. She was highly politically motivated, and explained that she had read about human rights online. She began to use her English classes as a platform to communicate what she had learned. She explained: "Like the word equal, I would spend thirty minutes talking about freedom and rights, without using those words. Sometimes local officials monitor my classes, but they never catch what I'm doing."

4. Brokering for Rights

Human rights are not meant to be realized through a process of give and take. However, when a State's mode of governing is to dictate who does what when, people are forced to deal with what is, not what should be. The State in Burma/Myanmar decided to play by its own rules. While some people attempted to challenge these rules, others sought ways to find a way around the rules. Those who did not claim their rights or publicly challenge the State were hard to punish. The challenge was to find a way to pursue and realize rights without making claims or using the human rights language. Brokerage, transactions involving gives and takes, was used to simultaneously avoid the human rights language, disguise any challenge to the State's power, and make advancements towards human rights.

Brokerage is something of an anti-thesis to rights claims. Brokering is about making a deal. With a rights claim, there is no deal to be made, because the terms of the deal are already set. Through brokering, people throughout Burma/Myanmar were able to negotiate the relationship with State officials. The concept of a rights holder – duty bearer relationship remains relevant, however rights holders work to convince duty bearers to fulfil their obligations, or at least to not interfere.

Informants explained that brokerage fit the Burma/Myanmar milieu for a number of reasons. Firstly, individuals could broker for rights without using the human rights language, allowing them to avoid unwanted attention. Secondly, the brokering process is non-adversarial. The military State in Burma/Myanmar fed off making enemies (Callahan, 2004), but the State was less prepared to deal with people who acted indifferent or friendly. Informants explained that soldiers had no code for how to react to non-adversaries, and this made it possible to restructure the citizen-State official relationship. As one young woman at a train station in Shan State noted: “No matter what, the soldiers have the guns. If they see you as an enemy, you will have no chance. If you want them to leave you alone or help you, they have to see you as a friend, or as a person with no agenda.” Thirdly, brokering was an effective disguise for the pursuit of human rights. People could repackaging projects and goals in order to sell them to State officials.

Fourthly, brokering does not necessarily implicate the system as a whole. A rights claim may focus on a local human rights crisis, but even this implicates the State system as a whole. The State is responsible for ensuring redress and restoration of the situation. This is a good thing, unless the State’s system of oppression radiates from the centre. Individuals throughout Burma/Myanmar were able to use brokering to target what they described as the soft or weak parts of the State. As an NGO worker in Yangon, who is from Irrawaddy division concluded:

These people recognize something that most analysts and researchers miss, the government is strong in the middle and weak on the outside. What I mean is that the laws and orders come from the centre, but these things can be thrown out by a local soldier or official. The people target the local authorities because they can manipulate them. I don’t mean this in a bad way. The soldier’s life here is really hard, and people know that if they can find a way to make the soldier’s life easier, they will have more opportunities. You can get really far with one of these local guys, but if you try to go up through the ranks you will be screwed.

This quote leads into the fifth benefit of brokering, brokerage can be used to create a mutually beneficial relationship. Even if a State official refused to do something favourable for an individual or a community, that individual or community could do something to convince the official that it was in his or her best interest. This could involve offering tangible things, such as money or food, or intangible things such as cooperation.

Brokerage for human rights occurred at many different levels of the Burma/Myanmar political system. Brokerage occurred in villages and communities throughout Burma/Myanmar, as well as at the highest level of the State. The so-called Third Force, a group of organizations and individuals which adopted an engagement approach to the military dictatorship, used brokerage to expand the presence of civil society in Burma/Myanmar and negotiate economic, social and political shifts towards human rights at the highest level of Naypidaw. This is not to say that the recent transitions were directly a product of the Third Force's brokering, there were many important forces involved, but there was some type of influence being exerted within the regime.

In an effort to illustrate how brokering can lead to the realization of rights, it is useful to look at different brokering techniques in action:

Calculated compliance: All informants who brokered for rights in Burma/Myanmar utilized calculated compliance. Calculated compliance involves actual compliance, however compliance is used as a means of avoiding unwanted attention and gaining something. The idea is to comply one minute as a distraction, or as a way of gaining something the next minute. A food stand owner in Mandalay explained: "Everyone in this market actually pays tax to the government. We know the tax is unfair, but we want to keep the suspicion low. We do a lot of things here that the government wouldn't like. As long as we pay the tax we are able to do what we want."

By actively complying at certain times individuals gain what a young lady in Karen State called "some free passes." She explained: "It is about making life easier for everyone. We do what we're told some times, so that we can do what we want most of the time. Soldiers will make your life easier if you make their life easier." One soldier, a low ranking officer who was stationed in Rakhine State, spoke to this same notion: "When I receive an order I tell people that if they cooperate with me I will cooperate with them." Through calculated compliance individuals attempt to minimize tension, lending to more space for different actions.

Negotiation: In order to gain access to opportunities and power in a dictatorial system individuals are often forced to negotiate. In some cases, very basic needs and services such as food and schools can only be secured through extensive negotiation. Hence, negotiation is not always an option. A Karen Women Organization report entitled *Walking Amongst Sharp Knives* highlights the use of negotiation by Karen women village chiefs. The report presented numerous cases of negotiation including a woman who appealed to monks who helped her talk to local soldiers and a village chief who agreed to some of the demands of the SPDC to ensure peace in her community. The personal courage these women displayed is, however, not appreciated by all, as the report notes that members of the armed resistance groups in the area criticized and threatened the women for making concessions with the enemy (KWO, 2010).

Numerous community leaders, as well as less influential community members, used their existing influence and resources as leverage during negotiations with local officials. These individuals gave something to gain something. Often times, individuals who yielded significant power with a community, such as an elder, or the member of a head family or a popular community member, could use their influence in the community as collateral. As a young man in Yangon who was a leader in his church explained: “The officials want to be respected and they know that an easy way to get support is through getting approval from the most active people in the community.” For example, one young man in Saigaing Division wanted to start up a number of projects including a local school, a garden project, and an income-generation project. He explained to the local authorities that if they would allow him to start these projects, he would give them credit for any achievements of the projects. He had already made a deal with a foreign investor who he befriended in Mandalay. A year after the projects were completed the local authorities hosted a number of ranking officials to show them their successes. Though this was an unjust arrangement, by positioning the activities as a win-win opportunity the community was able to change the human rights climate.

Relationship building: Individuals from all walks of life posited that the key to brokering for rights in Burma/Myanmar was the ability to redefine the relationship between the citizen and the State official. A taxi driver in Mon State noted: “Everything comes down to personal relationships. The rules really mean nothing here, if you have the right friends. I know many officials in Mon State and Karen State, so we can do whatever you want.” One young man in Bago concisely explained that the right relationships could be significantly useful: “It’s good if they don’t bother you or come after you. It’s good if you don’t have to ask them for permission. But, you can do even better. You can get them to work for you.”

In some communities the relationship between the citizens and the authorities could have been described as a friendship, though many of these friendships were forged. However, in other cases, the citizens and the authorities simply agreed to work with one another, to benefit from one another, and that was the extent of their bond. A villager in rural Karen State stated: “We hate everything they [the local authorities] represent, and they definitely don’t like Karen people. But, we are both hurting, we [both parties] don’t like the way things are right now. We know that we need to work together, even if we don’t want to.” This man promoted cooperation, in part, because he secured what he described as a good income by trading black market goods from Thailand. Such activities required collaboration with local officials.

Bribery: Bribery takes all involved parties into precarious moral territory. Many informants knew that bribery was not accepted internationally, but, at the same time, they explained that bribery in Burma/Myanmar was both prevalent and powerful. This is not to say that everyone in Burma/Myanmar engaged in bribery, nor is this to suggest that the use of bribery in the struggle for human rights is unique to Burma/Myanmar. A young man in Mandalay, who had worked in the UAE, summarized his view on bribery: “The world talks

about feeding the regime, but the military leaders are terrified of bribery. They know that if the young soldiers are offered a bribe for a favour, they will do it.” Many informants pointed out that most State officials had fragile allegiances to the generals in Naypidaw, producing a situation where opportunities and officials were up for sale.

While some informants appeared hesitant when they talked about engaging in bribery, others were unapologetic. These informants posited that bribery could be used to transform power relations in Burma/Myanmar. A village head in rural Shan State stated: “Bribery can get anything done. It can keep the government away and it can get you anything you want.” At a table full of taxi drivers in a Yangon pub an older man at the table declared: “Sure, I pay bribes, you would too. It’s pretty damn simple, if you want to get something done you have to make the payment. If you don’t bribe you can’t get anything done... then what good are you doing.” A business owner in Mandalay provided a strategic perspective on bribery: “You have to bribe them at first, but then you have a partnership. They stand to make money from you and they will work for you instead of working for the government.” However, a range of questions remain unresolved: If human rights are realized through the exchange of goods and resources, are these human rights dependent on bribery? If a human right is bought, does it lose its essence as a human right?

The above techniques were used by individuals to gain opportunities, space and commitments from State officials, all of which took informants close to the realization of human rights. Using these brokering techniques, community organizers gained permission to start local livelihood and education projects. Hindu, Muslim and Christian communities negotiated improvements in religious freedoms and civil rights. And, communities throughout the country were able to exercise their rights to: assemble, hold community trainings, start businesses, trade black market resources, teach in their ethnic languages, openly read and listen to forbidden media sources, travel freely, and live more free secure lives.

5. Foreseeable Scepticism

People on the outside cringe at the idea of working with the government, most people on the inside don't so much as question it, because that is how you get things done. It isn't held in a negative light.

-Mael Raynaud , Yangon Based Foreign Political Analyst

Some may cringe when hearing that people are brokering for their human rights. The response from human rights activists and practitioners could range from interest to outrage. This section considers why there may be resistance to the notion of brokering for human rights. Brokering is a radical step away from both rights claims and the legal positivist rationale of human rights, leading to both practical and ethical uncertainty.

Unfamiliarity underlies many foreseeable critiques of brokerage. It is difficult to find literature relating to the notion of people brokering for their human rights. This is, in part, because the dominant human rights discourse focuses on claims and a formalized legal and political infrastructure. Accordingly, brokering for rights may be seen as an illegitimate practice because "...a certain understanding of science, modernity, and development has so successfully structured the dominant discourse that all other kinds of knowledge are regarded as backward, static traditions, as old wives' tales and superstitions" (Scott, 1998: 331).

Brokering for rights exists in the realm of 'everyday politics,' which is often overlooked. Henry states that everyday politics: "is present everywhere, in every society, but is resistant to many traditional research methods that are geared more towards tracing and explaining the changing dynamics of formal politics and towards understanding the strategies, motivations, and effective influence of elite actors" (2011, p.142).⁸ Those who research everyday politics in Burma/Myanmar have spoken out against the tendency to ignore this political realm, despite the fact that most people in Burma/Myanmar live in it. Malseed argues that by overlooking everyday politics viewers were missing peoples' efforts to "evade and undermine state control over their lives, showing that the military regime's brutal tactics represent not control, but a lack of control" (2009, p.365). Similarly, South, et al. concludes that "greater attention should be paid to local 'behind-the-scenes' advocacy activities undertaken by community leaders" (2010, p.3).

Even after stakeholders become familiar with the practice of brokerage for rights scepticism may remain. From an ethical perspective, concerns may be raised about the brokering process itself. Considering that brokering involves deception, often supplemented with bribery, and some type of compliance with oppressive authority, the ethics of brokerage could be brought into question. Informants from Burma/Myanmar offered both ethical concerns and ethical justifications.

An elderly man from Rakhine State noted: "These people who do what the government tells them and pay money to officials, these people are as much the problem as Naypidaw. They know that what they are doing is wrong and they do it anyway. There is no excuse." This position is understandable if bribery is seen as feeding a dictatorial system and compliance is seen as legitimating it. However, this position does not appear to consider

8 Kerkvliet provides the following summation of everyday politics in Vietnam: "Sometimes such politics shade into the formal, state sanctioned forms of participation, and sometimes they tilt the other way into unauthorized, illegal activities. Everyday politics includes trying to live within, bend, or modify the prevailing contours as well as engaging in subtle, non-confrontational everyday resistance to slip under or to undermine them. In such everyday politics in Vietnam, villagers may have no expectations, perhaps even no intentions of affecting national policies, though they might well be trying to modify, even subvert policy implementation in their locality. But cumulative such actions, even though not organized and coordinated, can have an impact on state agencies when done in large enough numbers, in generally the same direction, and 'read' or understood by higher officials to mean that it is in their interest of the interest of the state to change" (2005, p.67).

the pragmatic side of bribery and compliance. A Yangon based individual who helped with many interviews for this research concluded: “I think all of it comes down to the end goal. Everybody bribes here. Everybody does what they have to do to make it. All that matters is that you’re fighting for something good. Bribery is an uncomfortable topic, but it is a part of survival, and if you do it correctly, you can do a lot of good things.”

There is no clear way to reckon with the ethical dilemmas associated with the pursuit of human rights in the face of systematic oppression. Fink notes that “people [in Burma/Myanmar] have to face choices that are hardly imaginable in a free society. Should you take the high road and be honest or engage in corruption so your family can make ends meet?” (2001, p.7). Those who adopt a deontological view of ethics, which looks at ethics through a lens of prescribed rules and judges the ethics of an action based on its adherence to those rules, will surely argue that brokering is unethical. However, consequentialism posits that the ethics of an action is judged not through the action itself, but through the consequences of the action. A consequential measure of brokering for human rights may equate that the end justifies the means. The question of ethics has no clear answer. As an exile practitioner who started a cross-border education and development organization in Thailand explained: “I support efforts on the inside. And, I understand why people do things a certain way. But, I think there is a fine line between working around the government and using the government, and working for the government, either directly or indirectly. The challenge is to not mistake one for the other.”

From a practical perspective, there may be concerns about the substance of human rights that are realized through brokering. Rights claims have a certain force behind them, and it is unclear if brokering can produce imitate this. Rights claims delegitimize perpetrators and unjust systems, brokering does not involve public delegitimation. Rights claims reinforce the rights holder-duty bearer relationship, brokering does not work through this arrangement. Rights claims can be traced to root causes and systemic problems, brokering could be seen as dealing with symptoms but not diseases. Rights claims feed directly into the international human rights system of advocacy, standards and organization, brokering does not appear to feed into this system in any way.

An 88 generation student activist in Mae Sot noted, “. . .if you don’t talk about human rights then how do you know who is at fault? How can you really talk about what is wrong and how to fix it?” The practical concerns about brokering for human rights are well founded. However, these critiques are based on the assumption that human rights depend heavily on formal relationships and systems. Informality allows for flexibility and innovation. As the section above illustrates, some of the most marginalized communities in Burma/Myanmar found ways to game the system of oppression. These individuals managed to transform the status quo in their communities. They restructured local relations between the people and State officials. They constructed a situation where State officials were serving the interests of the people. And, ultimately, they created the space and opportunities necessary for people to realize their human rights, in spite of the oppressive State. All of this was

accomplished by following an organic formula to change. Hannum observes that “[h]uman rights advocates are often adversarial” and seek to protect rights ‘the old fashioned way’, through courts, adverse publicity, and public pressure” (2006, p.592). The people of Burma/Myanmar who brokered for their human rights showed that the old fashioned way is not the only way to rights.

In considering whether or not brokering should be treated as a legitimate pathway to human rights and tapped into as a means of mobilizing human rights to those who lack old fashioned channels, it is useful to remember the human rights based approach’s emphasis on local ownership. Hughes et al. (2003) conclude that the human rights based approach is powerful, in part, because it allows stakeholders to rewrite the rules of the game in order to strategically exploit entry points. Rights holders throughout Burma/Myanmar who chose to pursue their human rights through brokerage found entry points in a calloused system and exploited them. These individuals hold invaluable insight about how human rights can be realized in the face of even the worst oppression. Brokerage for human rights should be investigated, rather than criticized. There is no better illustration of why this is so than the one provided by Scott:

When a larger freighter or passenger liner approaches a major port, the captain typically turns the control of his vessel over to a local pilot, who brings it into the harbour and to its berth...This sensible procedure, designed to avoid accidents, reflects the fact that navigation on the open sea (a more ‘abstract’ space) is the more general skill, while piloting a ship through traffic in a particular port is a highly contextual skill...The pilot’s experiences is *locally superior* to the general rules of navigation (1998, p.316-317).

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