

SAFERWORLD
PREVENTING VIOLENT CONFLICT. BUILDING SAFER LIVES

Justice provision in south east Myanmar

**Experiences from conflict-affected areas
with multiple governing authorities**



February 2019

Justice provision in south east Myanmar

**Experiences from conflict-affected areas
with multiple governing authorities**

Acknowledgements

The authors would like to thank everyone who contributed to this study – in particular, the residents and the leaders interviewed for the four case studies used in this research. These studies draw on extensive research conducted by the EverJust project from 2016 to 2017. The EverJust project (Everyday Justice and Security in the Myanmar Transition) is coordinated by Helene Maria Kyed with the Danish Institute for International Studies (DIIS) and is implemented in partnership with Yangon University's Anthropology Department, Enlightened Myanmar Research Foundation (EMReF), and Aarhus University. The authors wish to acknowledge the researchers, including Lue Htar, Thang Sorn Poine, Myat Thet Thitsar, Myat The Thitsar, Saw Hay Htoo, Annika Pohl Harrison, Than Pale, Lwin Lwin Mon, Mya Mya Khin and Mikael Gravers. The EverJust project is financed by the Danish Ministry of Foreign Affairs.

The report was written by Helene Maria Kyed, with substantive inputs and edits from Kim Jolliffe, Dr Theo Hollander (Saferworld) and Charlotte Watson (Saferworld). It was reviewed and edited by Dr Tamara Duffey-Janser (Saferworld) and John Bainbridge (Saferworld), copyedited by Jatinder Padma and Ilya Jones, and designed by Jane Stevenson.



Saferworld, Conciliation Resources and International Alert are collaborating on a three-year research programme, the Peace Research Partnership, which generates evidence and lessons for policymakers and practitioners on how to support peaceful, inclusive change in conflict-affected areas. Funded by UK aid from the UK government, the research focuses on economic development, peace processes, institutions and gender drivers of conflict. Note, in its first year, the programme was known as Global Security Rapid Analysis – GSRA.

© Saferworld, February 2019. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means electronic, mechanical, photocopying, recording or otherwise, without full attribution. Saferworld welcomes and encourages the utilisation and dissemination of the material included in this publication.

Contents

Executive Summary	i
1. Introduction	1
The context and rationale for justice interventions in conflict-affected areas	2
The scope of research and methodology	2
2. The government and KNU justice systems	5
2.1 The GoM justice system	5
2.2 The KNU justice system	6
3. The case studies	8
3.1 Concepts and terms	8
3.2 An urban government-controlled ward in Hpa An (area 1)	9
An overview of justice provision in Hpa An ward	10
The semi-formal justice system	10
Justice provision in practice	11
Links to the formal justice system	11
Informal justice facilitators	12
Legitimacy and effectiveness of justice providers	13
3.3 A rural KNU-controlled village (area 2)	14
An overview of justice provision in the village	14
Justice provision in practice	15
Links to the formal GoM justice system	17
Informal justice facilitators	18
Legitimacy and effectiveness of justice providers	18
3.4 A rural GoM-controlled village (area 3)	20
An overview of justice provision in the village	20
Justice provision in practice	21
Informal justice practitioners	22
Links to the formal justice system	23
Informal justice facilitators	23
Legitimacy and effectiveness of justice providers	24

3.5 A mixed KNU- and GoM-controlled rural village (area 4)	25
An overview of justice provision	26
Justice provision in practice	27
Links to the formal justice system	28
Informal justice facilitators	29
Legitimacy and effectiveness of justice providers	29
4. 'So what?' key takeaways for policymakers	31
5. Recommendations for the international community	37
Annex 1: methodology	40
References	43

Acronyms

CBO	Community-based organisation
CSO	Civil society organisation
DIIS	Danish Institute for International Studies
DKBA	Democratic Karen Benevolent Army
EAO	Ethnic armed organisation
EMReF	Enlightened Myanmar Research Foundation
GAD	General Administration Department
GoM	Government of Myanmar
HH	Household
IRC	International Rescue Committee
KAP	Knowledge, attitudes and practices
KED	Karen Education Department
KHRG	Karen Human Rights Group
KLAC	Karen Legal Affairs Committee
KNLA	Karen National Liberation Army
KNPF	Karen National Police Force
KNU	Karen National Union
KPSN	Karen Peace Support Network
KWO	Karen Women's Organisation
MPF	Myanmar Police Force
NCA	Nationwide Ceasefire Agreement
NGO	Non-governmental organisation
NLD	National League for Democracy
SPDC	State Peace and Development Council
UNDP	United Nations Development Programme
W/VTA	Ward/village tract administrator
VA	Village administrator
VTA	Village tract administrator
WA	Ward administrator

Executive Summary

SOUTH EAST MYANMAR is characterised by a complex landscape of different governance arrangements, which have developed over the course of more than six decades of conflict between the Tatmadaw (the Myanmar Armed Forces), the Karen National Union (KNU) and various KNU splinter groups. Numerous ceasefires were signed between 2011 and 2015, yet have failed to establish clearly demarcated territories.

This report explores how justice is provided and accessed in four locations under differing governance arrangements, and highlights how this varies from location to location. The locations include: an urban ward that is fully administered by the Government of Myanmar (GoM); a village that is fully administered by the KNU; a village that is officially administered by the GoM, yet which is influenced by the Democratic Karen Benevolent Army (DKBA), the KNU, and a militia group; and a village under mixed KNU and GoM administration.

Key findings include:

- People in the Karen¹ ceasefire areas are reluctant to report justice issues at all, to any third party, and often prefer to negotiate a solution privately without outside interference.
- When people do report justice issues, they prefer to handle them at the lowest administrative level possible, in part due to negative perceptions of higher-level authorities, as well as shame attached to ‘escalating’ justice cases.
- When justice is pursued, communities and local officials prefer restorative justice practices over punitive practices. When punishment is seen as appropriate – either through fines or communal work – it is often used to provide compensation to wronged parties or to derive communal benefit.
- Overall, the KNU’s justice system was seen as more legitimate and more effective than the GoM system, due to political issues and practical strengths of the KNU institutions.
- The quality of justice delivery at the local level is highest in the KNU-controlled village and GoM-controlled ward, and appears to depend mostly on local politics and institutions but also on the specific procedures in place. These procedures include the use of justice committees rather than individual leaders or judges; the use of written documents such as case records and signed agreements from parties; and codified laws and written rules, including both community-developed rules and formal laws of the

¹ The official name for the state is Kayin State, representing the Myanmar language term for the ethnic group known as Karen in English. As Karen is the term most commonly used in the English language by Karen people themselves, including many of those who contributed to the report, this report will use ‘Karen’ when referring to the people, Karen areas in the south east the seven district areas of the KNU, which includes parts of Mon State and Bago and Thaninthary region but it will use ‘Kayin State’ when referring to the government administrative boundaries of that state.

GoM or KNU. Strong links between community level actors and higher authorities also plays a part.

- Marginalised groups – including Muslims, internal migrants and ethnic minorities (such as Bamar people in KNU-controlled areas) – face more difficulties in accessing justice.
- Local-level justice providers are often reluctant to deal with issues over which they feel powerless to influence, such as the trade of illegal drugs.
- Justice provision is generally perceived as more legitimate when cases were handled by a justice committee rather than by an individual.

In the GoM-controlled location:

- Ward/village tract administrators (W/VTAs) and the less formal leaders delegated to each bloc of 100 household units (known as ‘100 household heads’) are primarily responsible for dispute resolution, but their effectiveness has been undermined by their lack of a clear legal mandate in GoM law.
- The effectiveness of dispute resolution depends mainly on the quality of individual leaders, indicating a lack of institutionalised training, support and guidance.
- The higher-level GoM justice system, which exists at township, district, state/region and union levels, is seen as corrupt, expensive, slow and unfair, including by W/VTAs and 100 household heads. Therefore, the GoM justice system does not constitute a viable referral pathway and is used as a way to threaten community members to comply with local decisions.

In the KNU-controlled location:

- The KNU justice system enjoys a high degree of legitimacy in this village, in part because officials share the same language and ethnicity as residents, but also because it is seen as inexpensive, and it allows for negotiated settlement and institutionalised links between the village and higher administrative levels. This means that village-level justice committees have a clear mandate to provide justice and have the option to refer cases upward, which improves enforcement of decisions.
- The codification of ‘village rules’, dispute resolution procedures, and a three-step warning system helps the transparency and enforcement of local-level justice.
- The involvement of women (often members of the Karen Women’s Organisation) in village justice committees improves gender equality and women’s access to justice.
- The higher levels of the KNU justice system are hampered by human resource constraints, so it is not always possible to convene the judges and the committee members required for a case hearing.

In the mixed-control locations:

- A lack of clarity over which local-level leaders and armed or governance actors have authority in the village has led to diminished legitimacy and less effective dispute resolution, as well as a reduced ability to access the higher-level justice authorities of either the GoM or the KNU.
- To resolve disputes informally, residents tend to use alternatives including armed and non-armed actors (such as religious leaders) – or they sometimes give up on seeking justice altogether.
- When seeking justice from higher level authorities, the majority of Karen residents prefer to use the KNU justice system over that of the GoM, yet face difficulties in accessing it.

Recommendations for international policy and programming:

1. Improve linkages between the peacebuilding and justice sectors.
2. Base justice programmes on the most trusted and best understood existing practices and institutions.
3. Improve existing justice delivery mechanisms at the community level, recognising that this is where most cases are handled.
4. Support women's and youth groups, community-based organisations and other informal justice facilitators to be inclusive and provide checks and balances to formal authorities.
5. Address the widespread reluctance to report justice issues by raising awareness and conducting community-level dialogues, and work to dispel the perception that seeking justice is a form of conflict escalation.
6. Support GoM institutions to address the major barriers that conflict-affected communities face in accessing justice.
7. Strengthen formal justice systems of the GoM and KNU in areas where they have full control, while focusing on community-level actors in mixed-control areas.

1

Introduction

CONFLICT BETWEEN THE GOVERNMENT OF MYANMAR (GOM) and ethnic armed organisations (EAOs) has lasted for over 60 years, often involving competition for territorial control and disputed authority over local populations. In south east Myanmar, the Karen National Union (KNU) and its main armed wing, the Karen National Liberation Army (KNLA) have been fighting for greater autonomy and a federal system of government since 1949. Contestation has played out not only through violent conflict but also through governance and service delivery. An environment has evolved in which the *de facto* jurisdictions of multiple EAOs, bodies of the state, and government-backed militia are not explicitly defined. In this context, there are multiple actors who enforce law and order and provide justice.

As has been the case traditionally, the majority of crimes, disputes, and security issues are dealt with at the village, ward or village tract levels, according to local – often customary and traditional – methods. The GoM and EAOs, therefore, tend only to become involved in more serious cases and are generally seen by village residents and leaders as ‘higher-level’ authorities. The KNU, which was founded by lawyers and politicians in the 1940s, administers a relatively advanced justice system, including codified laws, nominally independent judiciaries, detailed procedural guidelines, and specific rules to govern referrals from the village or village tract levels up the chain to the appropriate ‘mobile courts.’² Other armed actors in the region, which mostly splintered from the KNU over the years, have no formal systems, but have in some cases inherited practices from the KNU.

This report uses anthropological data to inform international programmes that address access to justice in areas affected by armed conflict in south east Myanmar. It draws on empirical observations of more than 104 specific justice cases, over 200 qualitative interviews and a quantitative survey of 120 participants across three of the four research sites across GoM-controlled, KNU-controlled and mixed-control areas (although a quantitative survey wasn’t possible in the mixed-control areas due to armed clashes). Such research provides the international community and aid agencies with an unusually detailed account of how people perceive and experience justice in their communities and how justice systems and processes function in practice. It goes deeper than the standard surveys, needs assessments and focus group discussions that typically make up the evidence base which informs assistance and programming.

While this detail is of great use to those who need to understand the intricacies of this complex and under-researched context – particularly for those designing, developing and delivering justice and security-related programmes – it is less useful for policy-makers, who may only need a broad understanding of the issues. Therefore, this report

² The research demonstrates that while justice committee hearings are supposed to be conducted at township or district headquarters, the KNU often uses mobile courts to hear cases in convenient locations.

is structured so that readers who are interested in a more general overview of the findings and what they mean for policy and practice can find key takeaways without necessarily examining the four anthropological empirical case studies. A short overview of the GoM and KNU justice systems is offered in chapter 2. The four anthropological case studies are contained in chapter 3. Important policy implications are then outlined in chapter 4 and the recommendations are provided in chapter 5.

The context and rationale for justice interventions in conflict-affected areas

In 2012, the GoM and the KNU agreed a ceasefire, which has led to a reduction in armed violence in Karen areas of the country. In 2015, the KNU along with two splinter groups, the Democratic Karen Benevolent Army (DKBA) and the Karen Peace Council, signed a Nationwide Ceasefire Agreement (NCA). The NCA enabled these groups to engage in political dialogue with the GoM – a step towards a governance system based on the principles of democracy and federalism. The ceasefire agreements have yet to establish territorial boundaries, despite these being part of the formal mandate of a Joint Monitoring Committee, which is part of the peace process architecture under the NCA. Therefore, the governance arrangements among the various groups remain informal.³

Political dialogue is ongoing, but it is uncertain if and when a federal agreement will be reached and how it would impact local governance and justice. In the meantime, the NCA recognises that for ‘the interim period’ prior to a settlement, signatory EAOs “have been responsible for development and security in their respective areas” and commits all sides to cooperate on “matters regarding peace and stability, and the maintenance of rule of law”.⁴ However, uncertainty remains as to what this means for the future of the KNU’s governance and justice system.

During this interim period, international support can improve access to justice for some of the country’s most vulnerable groups living in conflict-affected areas, while contributing to ceasefire implementation and helping to build the foundations for peace. From the perspective of communities in ceasefire areas, justice and peace are closely linked, with individual and community safety and security regularly said to be priority needs. Improved access to effective and equitable justice means that people will have more avenues for addressing grievances and injustices.

To improve access to justice, programmes should work with existing justice mechanisms that are seen as legitimate by communities. This would mean working with non-state and EAO justice providers. Working with EAOs on justice is also in line with the NCA, which calls for programmes to strengthen governance in a range of sectors in the short-term. In the long-term, justice reform will be crucial to developing a security sector and other state institutions that are diverse, appropriate for a federal system of government and representative of all ethnic and religious groups. Where EAO justice systems are seen as legitimate they could provide the building blocks of reformed systems at the state level or lower.

The scope of research and methodology

Twelve weeks of research were conducted over a one-year period in four locations by international and Myanmar national researchers from the EverJust research project, with researchers staying in the research locations for one week per trip. The qualitative research included participant observation of 104 specific justice cases over 220 qualitative interviews, mostly with people who had experienced a dispute or crime, as well as

³ Control of territory in south east Myanmar is currently shared between the GoM, KNU, and multiple smaller Karen armed factions, including the DKBA and Karen Peace Council, as well as 23 government-backed Border Guard Forces, formed by former KNU and DKBA members. The KNU operates a parallel administrative system that separates the region into seven districts with corresponding military brigades. It maintains *de facto* administrative control across some areas of its seven districts/brigades, while the DKBA and the Border Guard Forces also dominate some areas. This system operates alongside areas that are fully governed by the GoM and various areas in between that are characterised by mixed governance.

⁴ *The Nationwide Ceasefire Agreement Between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organisations*, Chapter Six, Article 25a, p 11.

with village leaders and elders.⁵ These qualitative findings were triangulated with data from a quantitative survey that covered 40 respondents in each site (apart from mixed-control areas). Purposive sampling was used for the survey to ensure gender balance and to exclude village leaders and elders to get the views of non-privileged residents. The research was conducted between February 2016 and January 2017. A detailed methodology is provided in the annex.

The four case study locations, the names of which remain protected for the security of local communities, were:

1. an urban ward that is fully administered by the GoM
2. a village that is governed by the KNU
3. a village that is officially administered by the GoM, yet which is influenced by the DKBA, the KNU and a government-backed militia; and
4. a 'mixed-control' village, under both KNU and GoM governance, with a village leader who reports to both sides.

Chapter four of this report also draws on supporting data from a knowledge, attitudes and practices (KAP) survey on security, justice and governance⁶ conducted by Saferworld and the Karen Peace Support Network (KPSN) in 2017 and 2018. Covering 2,020 households across 72 villages randomly selected in Karen ceasefire areas in south east Myanmar, the survey data points to broad themes and trends across the entire region. The anthropological data provided in the case studies is complementary and together they provide an in-depth look into the reasons that certain customs and perceptions exist. This comprehensive understanding of the underlying dynamics is crucial for improving access to justice and the quality of justice provision.

⁵ Snowball sampling was used to select interviewees. Snowball sampling is a technique for gathering research informants or interviewees through the identification of an initial informant who is used to provide the names of others. These interviewees may then open further possibilities for expanding the number of informants. See annex 1 for more details.

⁶ Saferworld and KPSN (forthcoming 2018).

Figure 1. Map of research areas in south east Myanmar



2

The government and KNU justice systems

THIS SECTION PROVIDES AN OVERVIEW of the GoM and KNU justice systems, which have operated in parallel for most of Myanmar's history. The information here is based on a combination of existing Saferworld research, insights from Saferworld's programmes and data collected as part of the EverJust project.

2.1 The GoM justice system

Since 2008, township courts have officially constituted the lowest level of the judiciary in Myanmar. Before, under the 1973 constitution, people's courts were established down to the ward and village tract levels, but these are no longer an integrated part of the justice system. Instead, they come under the General Administration Department (GAD) under the Ministry of Home Affairs, which is one of the ministries still under Tatmadaw⁷ control and which is administered by the Ward and Village Tract Administration Law of 2012. Appeal systems are confined to the four levels of the official judiciary, with township and district courts usually acting as first point of contact for formal justice. According to the laws, only official courts can decide criminal and civil cases. One exception is land disputes, which according to the 2012 Land Law should be resolved by land management committees from the ward and village tract levels and upwards in the administrative system. The W/VTAs chair the lowest level land management committee.

The principal sources of law that are used in the GoM courts are English common law (adopted during colonial rule), Union legislation and previous judicial rulings. Although justice is still based on English common law, many laws have been amended since independence in 1948, including the civil and criminal procedure codes. In addition, courts may enforce 'customary law' dealing with personal and family law issues such as marriage, divorce, inheritance, succession, childcare, and religious adherence or institutions. These customary laws follow the main religious denominations in Myanmar (Buddhist, Christian, Hindu and Muslim). The religion-based customary laws do not necessarily adhere to the customary laws applied by the variety of ethnic groups. The latter have not been codified in a way in which they are applied in the Myanmar judicial courts.

⁷ Tatmadaw is the Myanmar language word for 'armed forces', and is used in the report as the formal name for the national armed forces.

The GoM legal system is an adversarial system, where practices and procedures have been influenced by the English colonial system. Cases are heard before a judge or bench of judges and are argued by advocates or pleaders. For civil litigation, the Civil Code Procedure provides the main source of procedural rules for civil litigation, but advocates and pleaders also refer to the 1960 Courts Manual and the 1872 Evidence Act. The appropriate place to try a civil case is determined by the value of the claim, the location of the parties involved, the place of business, or where the act in question was committed. While the supreme court and the high courts of the state or region have jurisdiction to try all civil suits, the township courts can only try cases with a maximum value of 10 million Myanmar kyat (MMK) and the district courts only up to a maximum of MMK 500 million. In criminal cases, judges should comply with the Criminal Procedure Code and the Law of Evidence, and the courts should adhere to established procedure for admitting documentary and material evidence, and should accordingly examine witnesses, complainants, and the accused. Criminal offences should be tried within the boundaries of the jurisdiction where the offence occurs. With respect to criminal cases, the township courts have limited jurisdiction as they can only give sentences up to a maximum of seven years. The district and high courts can pass any sentence except the death sentence, which must be confirmed by the supreme court. The types of sentences applied in criminal cases include fines, prison, hard labour and the death penalty.⁸

The judiciary has an extensive appeal and review system, including procedures ensuring that higher level courts can scrutinise whether lower level courts have made sound legal judgements and assessments of cases. In theory, this supports the general rule of law principles underlying the Union Judiciary Law of 2010, which emphasises the independent administration of justice, openness, and the rights of litigants to defence and appeal. However, in practice the rule of law and the independence of the judiciary is still very limited. In addition, human rights violations continue to be committed with impunity, especially in conflict-affected areas of the country.⁹

2.2 The KNU justice system

The KNU justice system includes three main bodies: the Department of Justice, the judiciary, and the Karen National Police Force (KNPF). The justice department and the judiciary are officially separate entities, with the former in charge of writing and revising law and procedure and the latter remaining independent from executive political structures. The KNPF, under the Department of Interior and Religious Affairs, currently has around 700 officers and, like the judiciary, is organised at central, district and township levels.

The KNU judiciary¹⁰ comprises a system of justice committees at village, village tract, township, district and central (or supreme court) levels.¹¹ None of those involved in the judiciary are legal professionals. All judges receive training on the KNU laws from the KNU justice department in collaboration with the Karen Legal Assistance Centre. District and township level judges are elected for a period of two years, often from among the KNU's standing committee members at each administrative level. Central-level judges serve for four years. Despite this link to the civilian leadership, unlike heads of KNU departments (akin to ministries), the judges are then nominally independent from the incumbent administration. They select justice committee members from

⁸ In 2014, President Thein Sein commuted all the court's death penalties to life imprisonment. The last death penalty was carried out in 1988. See: Cornell Center on the Death Penalty Worldwide, Myanmar (<https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Myanmar>).

⁹ International Commission of Jurist (2018), *Achieving Justice for Gross Human Rights Violations in Myanmar*, (Yangon).

¹⁰ For more details on the KNU justice system, see McCartan B, K Jolliffe (2016), 'Ethnic armed actors and justice provision in Myanmar', The Asia Foundation, October; Jolliffe K (2016), 'Ceasefires, Governance and Development: the Karen National Union in Times of Change', The Asia Foundation, March; and Kyed HM (2017), 'Justice provision in Myanmar. Reforms need to consider local dispute resolution', DIIS Policy Brief, Danish Institute for International Studies, Copenhagen, March.

¹¹ Many of those interviewed did not associate the higher-level KNU authorities with the village-level systems, seeing the village-level systems as local, even though in practice they are part of the same overarching KNU system.

KNU departments. The judges make the final judgements, but these must be based on advice from at least two committee members.

The judges are expected to apply the KNU's written legal framework, which includes a legal procedure code and three law books: civil, criminal¹² and magic.¹³ The legal procedure code lays out jurisdictions and police procedures, and specifies how trials should be conducted and the roles and responsibilities of police and judges. It also outlines the roles and responsibilities of those involved in resolving village-level disputes. The KNU's legal framework grants a high level of autonomy and authority to the village chairpersons to resolve disputes and minor crimes, such as fist fights and petty theft. Within certain parameters, the KNU also allows village and village tract authorities to use their own customary rules, which are not pre-defined or codified by the KNU but are decided by the villagers themselves. Therefore they vary from place to place. Village authorities can also use their own written by-laws, which the KNU often formally approves. This marks an important difference from the GoM justice system, which does not include institutions below the township court.

At the village level, justice committees are formed of the village leader and two additional committee members, one of whom must be a woman. At the village tract and township levels, there are three-person committees, including a judge who cannot simultaneously represent the village tract and township leadership. At the district level, justice committees are made up of five people, including the district judge, and must include at least two women. This system provides an institutionalised referral system that links the village to each other level, all the way to the KNU central level. As with other areas in the country, the majority of cases are settled at the village level.

Since 1991, the KNU has had a police force, the KNPF, which has officers positioned at the central, district and township levels, and who mostly focus on criminal cases. In such cases, the KNPF can make arrests, detain suspects, investigate, collect evidence and interview witnesses, victims and suspects. The KNPF is not stationed at the village or village tract levels due to human resource limitations. Instead, these levels have security committees, often composed of three members. These committees are supposed to have regular meetings with the township-level KNPF units. In response to criminal cases, the security committees can carry out arrests and hold suspects in detention before the KNPF can arrive to investigate. KNPF investigation reports and any evidence collected is handed over to the relevant courts, who use it to adjudicate the case. In addition, the KNU has prisons at the district level and detention centres at the township level.

Due to the long-running armed conflict, the KNU justice system has been in constant flux, not least as central, district and township headquarters have frequently moved locations. Today, the justice department and the supreme court judges are in 'exile' in Thailand, and there is no prison at the central level. Nevertheless, since the 2012 bilateral ceasefire, the KNU has tried to strengthen and reform its systems, including improving linkages to, and the enforcement of laws at the village and village tract levels.¹⁴

¹² The civil and criminal law books mention the types of cases, punishments and fines as well as the jurisdictions of each committee level. For example, village justice committees can handle cases that include theft or fraud of up to a value of MMK 100,000; at the village tract level it is anything between MMK 100,000 to MMK 1,000,000; the township level, anything between MMK 1,000,000 and MMK 5,000,000. Cases in which there is theft, fraud or disputes of amounts exceeding MMK 5,000,000 need to be referred to the district level. Serious cases, such as murder, grievous assault, child abuse and rape are also handled at the district level, although the district sometimes provides township courts the jurisdiction over such cases. Higher levels also function as institutions of appeal, based on written requests by the victims or defendants. They are also used for referrals of repeat offenders.

¹³ The law book of 'magic' law is concerned with cases involving the perceived damage from spells that individuals have cast themselves or have requested a shaman to cast on their behalf. Such crimes are considered very real to many Karen, who have a strong belief in 'otherworldly' interventions and concern for the damage that can be caused.

¹⁴ This enforcement also includes new elements like training in rule of law and human rights, including women's rights by, for instance, the KWO and assisted by the Karen Human Rights Group (KHRG). Some international NGOs have also provided legal training to KNU justice actors in Thailand, including the International Rescue Committee (IRC) to the refugee camps (Interview, KNU Justice Department, March 2016). Recently, the KNU has also formed the Karen Legal Affairs Committee (KLAC), which is in charge of upgrading the system and providing training in legal affairs to various actors in the system. See: McCartan B, K Jolliffe (2016), 'Ethnic armed actors and justice provision in Myanmar', The Asia Foundation, October.

3

The case studies

THIS CHAPTER PRESENTS FOUR ANTHROPOLOGICAL CASE STUDIES conducted as part of the EverJust project. Collectively, they contain rich accounts of the practices and perspectives of ordinary people across GoM-controlled, KNU-controlled and mixed-control locations. Before delving into the case studies, this chapter first provides an overview of the key concepts and terms used throughout.

3.1 Concepts and terms

Disputes and crimes: This report explores disputes and crimes, but does not approach these according to state or legal definitions of civil and criminal cases. As such, distinctions vary according to context and local practices. For instance, while alcohol sale is treated as a public crime in KNU-controlled areas, it is not a crime in Myanmar law. In addition, this research found that many village and ward residents do not distinguish clearly between civil and criminal cases, as in state law, but use a common term for problem or case (in Burmese: *a hmu kate sa*) or speak about ‘smaller’ and ‘bigger’ problems. To address these challenges of defining terms, the report approaches disputes and crimes in the following ways:

- **Justice provision:** This is an umbrella term used for the resolution of disputes and crimes, to the extent that such a resolution involves efforts to either provide a remedy or reparation, a punishment, or an end to a conflict between two or more parties.
- **Dispute:** This is a case or problem where two or more parties disagree on a matter, which may or may not involve criminal acts (according to the law) and which may or may not be reported to or resolved by a third party. In the areas studied, these include: disputes over debt, marriage (including domestic violence), inheritance and land ownership.
- **Crime:** This is an act regarded by any given law or set of rules as an offence that requires the punishment of an identified perpetrator, which may and may not have a victim and which may have the state or a given authority as the infringed party. In the areas studied, these include: rape, theft, public nuisance, physical fights or injury, murder, alcohol sale (in KNU-controlled areas), driving a motorbike on Sunday (in KNU-controlled areas), adultery and drug trafficking.
- **Dispute resolution:** This refers specifically to the practice of resolving differences between two or more parties, which is mediated by a third party (a justice practitioner). Resolutions may draw on legal principles (i.e. codified law or rules), oral norms and rules (customary, religious, etc.) or a combination of the two. Third-party resolutions of disputes commonly involve a complainant who raises a grievance with a third party, followed by the identification of the accused party. Complainants can either be direct

or indirect victims (e.g. victim's family members) of crimes, who seek a remedy or punishment of a perpetrator, or parties to civil disputes who seek a resolution to a given conflict. This can be contrasted with public crimes, which involve infringements that do not require complaints by a victim, but where it is the state or a given local authority that charges a perpetrator for breaking the law or rules.

Justice practitioners: This report goes beyond state or legal definitions of justice practitioners and includes all actors who, in practice, resolve or deal with disputes and crimes in the research areas. In order to capture this variety, the report includes the following four categories of justice actors:

- **Formal justice practitioners:** These are actors whose role in justice provision is officially recognised by a codified law, which in the GoM system are the judges and the police, but not any of the leaders at village, village tract or ward levels. In KNU law, the village leaders are also granted an official dispute resolution role, and can therefore be regarded as formal practitioners although this is not reflected in GoM law. Conversely, the KNU judges are regarded as formal practitioners within the KNU's areas of administration as they are recognised in the KNU's written law and official system, but in GoM law they are not.
- **Semi-formal justice practitioners:** These are explicitly recognised as justice practitioners in a locality, but who are not recognised in any codified law. This includes the village leaders and village tract or ward administrators in GoM areas, who are recognised by the state, but only as administrators and not as justice practitioners.
- **Informal justice practitioners:** Resolving disputes and addressing crime from time to time, informal justice practitioners are not explicitly recognised as justice practitioners, either locally or in any law. Monks and spirit mediums fall into this category.
- **Informal justice facilitators:** These are actors who facilitate a resolution process by giving advice and different forms of support to the opposing parties, but who do not act as final arbitrators and who do not see themselves as justice practitioners. In the research locations, facilitators included religious leaders, spirit mediums, politicians, educated or well-connected persons, women's groups, civil society organisations (CSOs), and members of armed groups – often local commanders.

These categories often overlap, and it depends on the audience and the context to what extent a justice practitioner is semi-formal or informal. However, the categories help to give an overall idea of how different actors are seen by residents and how they relate to various legal frameworks.

3.2 An urban government-controlled ward in Hpa An¹⁵ (area 1)

The urban ward studied in Hpa An has 700 registered households (HHs).¹⁶ The majority of the population (60 per cent) are Buddhist Karen, 30 per cent are Bamar, including a growing population of Burmese migrants from the Delta and Bago regions, who reside informally on the ward's outskirts and who work as daily-wage labourers. The remaining 10 per cent are people of different ethnicities, categorised by the WA as follows: 20 Hindu HHs, 25 Mon HHs, 25 Pa'O HHs, and a few each of Rakhine, Shan, and Muslim HHs. Until the late 1980s, the ward was farmland, but the military government transformed it into a residential area where residents from downtown Hpa An were resettled, including a large number of GoM officials. The original Karen farmland owners had their land confiscated with little or no compensation. This has resulted in recurring land disputes and claims.

¹⁵ Hpa An is the capital city of Kayin State.

¹⁶ This figure is according to the WA in 2016.

According to the WA and other interviewees, the most common types of disputes are around marriage (including divorce and domestic violence), debt and land. While these are treated as civil cases between disputing parties, they can also involve criminal elements such as domestic violence (marriage disputes), fraud (debt cases), and trespassing of land (land disputes). Less common cases involve thefts, fights, public nuisance linked to drinking, quarrels between neighbours, inheritance disputes and gambling.¹⁷

An overview of justice provision in Hpa An ward

There is a pervasive mistrust of the formal legal system, expressed by both the ward leaders (including WAs, elders, religious leaders, and the 10 and 100 HH heads) and residents who were involved in the research. All the interviewed residents associated the formal system with high costs, time-consuming processes, shame, intimidation, complicated formal procedures and language barriers. Generally, interviewees thought that justice in the formal system is predominantly for people who have the financial means to bribe formal judges and court staff. As a result, the most significant justice practitioner in the Hpa An ward is the WA, who is assisted by 10 and 100 HH heads, as well as elders and respected persons (*ya mi ya pha*), who form a hierarchy below the WA¹⁸ but who simultaneously respond to directives from the township-level administration. The 100 HH heads represent different sections of the ward; while they are legally recognised as the WA's assistants, they have no official administrative authority.

The semi-formal justice system

The WAs have a responsibility to maintain security, peace, law and order, but in accordance with the 2008 constitution and the 2010 Union Judiciary Law, they are not officially part of the judiciary. In other words, they are recognised as justice providers, yet the law does not mention the types of cases the WAs can deal with or instruct them to use any specific procedures.¹⁹ In practice, however, the WA deals with the vast majority of disputes and crimes that occur in the ward and is generally categorised as a semi-formal justice provider.²⁰ Serious crimes, such as murder, high-value robberies and drug trafficking are the exception, with the WA referring these cases to the police. These types of cases rarely occur in the ward and, when they do, the WA is involved in gathering information and consulting the involved parties.²¹ Even when cases end with the police and the courts, they tend to begin with the WA. Interviews and the survey highlighted that there is a shared understanding in the ward, not a written rule, that people should always first approach the WA before consulting higher levels of the system.

When reporting cases, residents tend to first report to their 100 HH leader, although some residents also choose to go directly to the WA. The norm is that if a 100 HH leader can try to resolve a dispute or minor crime first, he will (in the ward, all HH leaders are men). But if the parties do not reach an agreement within a short time, he forwards the case to the WA.²²

At the WA's office, cases are resolved by the Committee for the Resolution of Disputes, which was informally created by the WA. It has five members: three 100 HH leaders and two elders. The committee can resolve cases on its own or with the WA, but the WA

¹⁷ Although the WA keeps a record of cases, there are no available and reliable statistics on cases in the ward, as the WA does not register those that are dealt with by HH leaders. This information is therefore based on interviews alone.

¹⁸ The WA is the lowest tier of the state administration in urban areas. This is according to a GoM law from 2012. This law introduced elections of WAs, who previously were appointed officials. WAs are elected by 10 HH heads, who are elected by one member of each HH. See: Kyed H M, A P Harrison, G McCarthy (2016), 'Local democracy in Myanmar: Reflections on the ward and village tract elections in 2016', Danish Institute for International Studies. The same system applies to VTAs in rural GoM areas.

¹⁹ Ward and Village Tract Administrator Law 2012, Article 13.m.

²⁰ This is similar in other urban GoM wards. See: Denney L, Bennett W, Khin Thet San (2016), 'Making big cases small and small cases disappear. Experiences of local justice in Myanmar', MyJustice, November; Kyed H M (2017), 'Justice provision in Myanmar. Reforms need to consider local dispute resolution', *DIIS Policy Brief*, Danish Institute for International Studies, Copenhagen, March; and studies by MyJustice and the UNDP.

²¹ In 2016, drug trafficking and abuse were on the rise and were dealt with through collaboration between the WA and the police.

²² In 2016, all 100 HH heads were men. However, there were three female 10 HH heads.

must approve decisions and keep records. There is no requirement to include female members and during the research period all members were men over the age of 45.

Twenty per cent of survey respondents said the 100 HH leaders resolved most cases in the ward, with 80 per cent saying it was the WA. Only ten per cent believed that some cases were best resolved in the official courts, while the remaining respondents said that a combination of the formal system and ward actors is best.²³

Justice provision in practice

WAs do not have codified ward rules that outline offences that can be punished inside the ward, and are unable to issue punishments (like fines, communal labour or confinement) because this is prohibited by law. Partly, as a consequence, ward leaders only respond when complaints are made to them, at which point the case is registered and the parties are summoned to appear at the WA office. Ward leaders use mediation and reconciliation as primary dispute resolution methods, even when a case is a crime according to state law. A core focus is reaching a consensus-based agreement between the disputing parties, who give their testimony to the Committee for the Resolution of Disputes. In cases of property loss and injury (including domestic violence and fights), reconciliation is combined with compensation. In such cases, the ward leader's main role is to help negotiate the amount of compensation payable to the victim or victims. Normally, the committee considers the financial situation of the wrongdoer and his or her ability to pay. Payments are made at the WA office, with the WA as witness. Threats to send offenders to the formal system were used during hearings at the ward office as a method to get the accused to admit guilt or to agree on a resolution – for instance, to pay compensation.

Issuing a *kahn wan*, a type of promise letter where the wrongdoer admits the offence and promises not to repeat it, is an alternative option available to ward leaders. If there is an injured party, the *kahn wan* is combined with the payment of compensation, but it can also stand alone; for instance, there were cases where someone who had trespassed on a neighbour's HH plot, made a public nuisance, or 'beat his wife', was made to sign a *kahn wan* but was not asked to pay compensation. If the wrongdoer breaks the *kahn wan* – for example by repeating the offence – there should be repercussions, but enforcement is limited because the WA does not have the authority to issue punishments. This leaves the ward committee with two options: issue another *kahn wan* in the hope that the wrongdoer will be too ashamed to repeat the offence again – a method which relies on social pressure and the authority of the ward leaders; or threaten the wrongdoer, stating that he or she will be transferred to the police or the formal justice system.

Links to the formal justice system

The formal justice system is used either as a threat to facilitate ward-level resolution or seen as a last resort when ward-level resolutions fail. Courts and judges were generally not seen as legitimate justice practitioners by the ward residents and ward leaders who were interviewed. The suspicion with which the formal justice system is held and the negative experiences of those who have used it means that it is not considered to be a viable option for handling disputes, even though it is available and geographically close.²⁴ The ward leaders therefore have an ambiguous relationship with the formal system upon which they rely for authoritative backing, in the form of threats and warnings, but this backing is not institutionalised nor is it seen as credible.

Views of the police were more mixed. Interviewees consistently said that they feared to go to a police station outside the ward, but appeared to trust the police officer assigned

²³ This finding reflects a country-wide survey conducted by the MyJustice project in rural and urban GoM-controlled areas: 84 percent responded that they thought cases were best resolved in their communities, with only six percent preferring the courts (the rest did not know or were neutral). See: MyJustice (2018), 'Searching for justice in the law', Policy Brief, March (http://myjusticemyanmar.org/sites/default/files/Policy%20Brief%20Final_English_0.pdf).

²⁴ Of the four respondents that had gone through a court process, three of them said that they would not pursue cases again through the court and would rather give up on the case if the WA could not help.

to them to deal with matters inside the ward more than they trusted ward leaders. This may be because the police officer supports ward-level resolutions and frequently assists the WA with resolving thefts, fights and public disturbances. Although the ward police officer is part of the formal system, he or she mainly supports informal resolutions by ward leaders.

Informal justice facilitators

Informal justice facilitators include local monks, astrologers, spirit mediums, the Hpa An branch of Ma Ba Hta,²⁵ and to a lesser degree women's groups and politicians. Some ward residents make use of informal justice facilitators to help resolve disputes with third parties, or they turn to a facilitator when ward leader resolutions fail and they do not want to pursue a court case. Some interviewees also said during discussions of case scenarios that they would, in some types of cases (especially minor thefts, domestic violence, and quarrels with neighbours) not report a case to a third party, but instead either 'make peace' with the problem themselves or use religious and spiritual facilitators. The latter involves a form of spiritual guidance from monks, spirit mediums, or astrologers, which helps the aggrieved party seek spiritual rehabilitation through prayer and spiritual offerings, to make peace with conflict or an injury such as theft. However, this does not involve settling the dispute directly with the other party.

The monks we interviewed claimed they were not involved in secular case resolutions and do not consider themselves justice practitioners. However, in practice there were two land dispute cases where local monks helped write complaint letters to government authorities and facilitated the resolution process. In contrast to the local monks, the Ma Ba Hta organisation of Buddhist monks plays a more explicitly recognised informal justice facilitator role. According to interviews with two of the Ma Ba Hta monks, they not only assist complainants with complaint letters to authorities – like the land record department and politicians – but also accompany parties to the official courts, as well as conduct their own hearings at the monastery. They believe that this makes government officials take victims more seriously. However, the two land dispute cases that were reported to the Ma Ba Hta monks in 2016 – after the WA failed to resolve them – have yet to be resolved despite the complainants and monks writing letters to politicians and government offices.

In the ward, there is a women's affairs group that is connected to the government, but it does not resolve disputes and is not involved in hearings at the WA office. However, there is a new community-based organisation which is supported by an international non-governmental organisation (NGO) working to create awareness of how to deal with injustices and abuses faced by women and children. It also takes complaints directly and helps victims report to the formal courts and police. But according to interviews, it is not well known by ward residents. In 2016, only one case (concerning domestic violence) was reported to the group by a resident from the ward.

Hindu and Muslim HHs, as well as Burmese migrants, are forced to use informal justice facilitators because the WA claims that he cannot resolve cases that involve them. However, he does threaten them with threats of eviction and prohibits them from constructing religious buildings. While Hindu and Muslim residents can consult their own religious leaders when they have internal disputes, they tend to refrain from reporting cases that involve Karen or Bamar residents, according to interviews. The Burmese migrants do not have their own HH leader to report to, because they are not officially registered in the ward. They feel they have no one to defend them and complained that the WA and the HH heads always favour the registered residents (who are predominantly Karen) when there are complaints about migrants, such as

²⁵ Ma Ba Tha is often translated into English as the 'association for the protection of race and religion'. It is a Buddhist nationalist movement playing an active role in religious affairs, also associated with hate speech against religious minority groups, especially Muslims. In May 2017, the state Sangha, the highest body of Theravada Buddhism in Myanmar, ordered the disbanding of the group, although it is still believed to be active, operating under a different name. This report is based on fieldwork that was carried out before the ban.

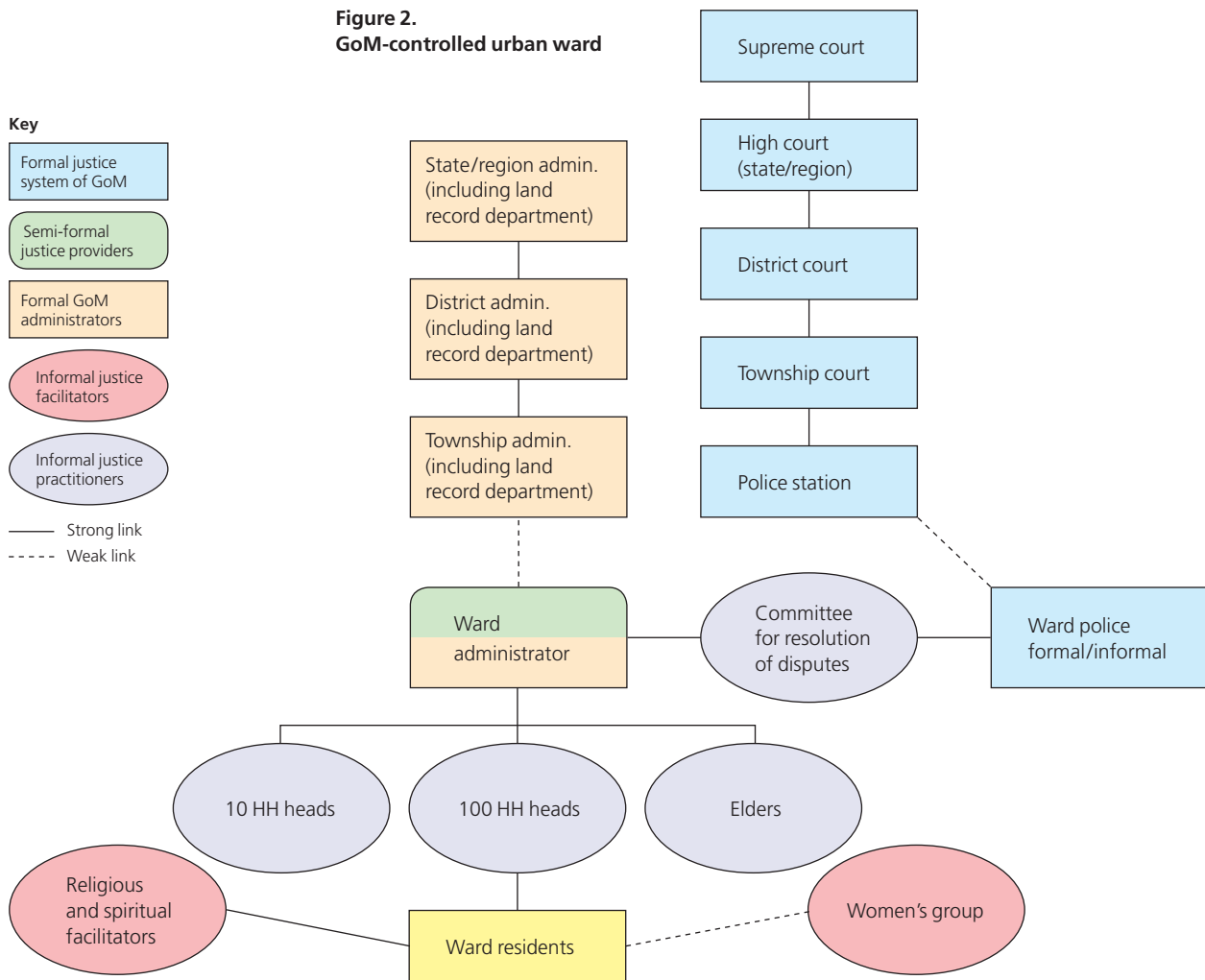
thefts, fights, and public nuisance (usually related to alcohol consumption). The same is true with regard to land or HH plot cases.

Ethnic armed actors and the Tatmadaw were not used as informal justice facilitators in the ward, even though one of the Karen EAOs has a physical presence in the ward. As discussed later, this differs considerably from the rural GoM-controlled area.

Legitimacy and effectiveness of justice providers

The ward residents much prefer to resolve disputes and crimes locally, with the WA and the ward leaders as third parties, seeking remedies and ending conflicts within the ward. Their legitimacy is closely linked to the procedures that they apply, namely reconciliation and compensational justice rather than imprisonment. Another factor that contributes to their legitimacy is that the ward practitioners provide quick resolutions that have low or no costs, which residents contrast to the slow pace, high fees and bribes in the formal GoM system. In 2016, the WA did not take any fixed fees for case resolutions but allowed residents to make voluntary donations after a case was settled, which went into a community development fund. However, the WA before him was known to enforce fixed fees. According to interviewees, the previous WA was less liked and was removed from the position due to illegal land sales and bribery. Thus, the lack of costs is important to the legitimacy of justice practitioners.

Figure 2.
GoM-controlled urban ward



Ward-level resolutions are only effective when the parties are willing to reach agreement, based on social pressure and use of the *kahn wan*. In the vast majority of cases followed, the accused did not break the *kahn wan* and the parties were able to reach an agreement about compensation. However, when this fails, cases are most commonly left unresolved (i.e. the victim gives up pursuing the case further, except for seeking

spiritual guidance and rehabilitation), rather than being transferred to the official system. An exception was a violent fight leading to severe injuries, where the six men involved were referred to the police.

A key challenge to WAs' effectiveness is their lack of legal authority to issue punishments (even though social pressure tends to work in most cases). Another challenge is that the formal GoM system is not seen as an effective and sustainable alternative when the WAs cannot resolve a dispute or keep the perpetrators from repeating offences. This lack of trust in the formal system is, in addition to the costs incurred and time taken, related to the preference among WAs and residents alike to keep problems and conflicts inside the ward, which is less shameful and burdensome than pursuing justice through the police or formal courts.

3.3 A rural KNU-controlled village (area 2)

The KNU-controlled village included in this report (the district was kept anonymous for the protection of participants in the research) has 201 HHs, mostly Paku Karen Christians from the Baptist and Anglican denominations. Since 2013, the village has *de facto* been under the civilian governance of the KNU, which is the result of its consolidation of Karen areas since the 2012 ceasefire.

During the armed conflict, the village was a combat zone and partly under Tatmadaw control. Several times since the 1990s, the village residents were forcibly relocated to GoM areas, but the majority returned during more stable periods. The village always had secret connections with the KNU, including a system of rotating village leaders who worked with the KNU, providing support, food, and recruits. The leaders rotated because of the risk of violent punishments by the Tatmadaw. According to interviews with village elders, it was almost impossible to resolve disputes and enforce village rules during the conflict years.

There is a Tatmadaw base which is a ten-minute walk from the village, but the soldiers no longer intervene in village affairs. The KNU district and township headquarters are one and two day's walk into the hills to the east, respectively. This is further away from towns that are directly administered by the GoM. Since 2015, the KNU administration has come physically closer to the village, as the KNU district chairperson now resides at a new Karen Education Department (KED) school, just a kilometre outside the village.

The most common cases in the village are marriage disputes (including domestic violence and adultery), inheritance (including division of property and land), and breaches of the village rules (especially related to alcohol sale and consumption). Petty thefts and land disputes are rare.

An overview of justice provision in the village

The resolution of disputes and minor crimes in the village is strongly institutionalised around the village leadership committee, which was formed by an elected KNU village chairman and officially recognised by the KNU in 2013 to deal with development matters. It has seven members selected by the chairman, including one woman²⁶ from the Karen Women's Organisation (KWO) and a security representative.²⁷ The village leadership committee is distinct from the village justice committee.²⁸

²⁶ According to the KNU constitution, there should be two women on the committee. Yet in practice, this varies from place to place.

²⁷ On these village leadership committees, officially called KNU Basic Organisations, see: Jolliffe K (2016), 'Ceasefires, Governance and Development: the Karen National Union in Times of Change', The Asia Foundation, March. In 2016 the member who was charged to oversee security issues was not very active and was away working in the hills during the time the fieldwork was conducted. The village chairman said that his role was to apprehend people if there was a case that should go to the KNU and to patrol the village. However, no cases were found where the member performed this task.

²⁸ The distinction between village leadership committees and village justice committees is not uniform across all KNU-controlled areas. In some villages, village leadership committees perform justice functions, while in others it is the village justice committees that do this.

The village leadership committee also has a second village leader elected by the community to manage affairs related to the GoM. He communicates and collaborates with the GoM VTA, based in a nearby village, but said he pledges allegiance to the KNU and views the village as under KNU control. The two village leaders collaborate on a daily basis, and when there are disputes or crimes to be settled, they can stand in for each other if one is absent. Male elders in the village are also involved in dispute resolution and play a strong role in advising the two village leaders.

The KWO is also an important justice actor. There are two active KWO women members in the village, in accordance with the KNU constitution. Since 2013, the central-level KWO has been training women in the village on women's rights and on how to resolve disputes and provided related guidelines and books. Since the training, the KWO keeps records of cases and deals with marriage disputes, as well as reports and receives cases related to adultery and rape. The authority of the KWO and the empowerment of women means that a woman is always present during the village committee's dispute resolutions and actively participates in the hearings, even when a dispute or crime does not have a female complainant. The village KWO leader also collaborates with KWO representatives from other villages in the village tract to resolve matters involving women. According to the KWO leader in the village, since 2013 women have gradually become more eager to report domestic violence disputes, while men have become "more fearful" of mistreating their wives.²⁹

As with the GoM areas, there is a strong preference for cases to be resolved at the village level. Ninety per cent of the respondents answered that cases are best settled inside the village. When asked who had the highest responsibility for case resolutions and who resolved the most disputes, respondents did not mention the GoM. Instead, the KNU (10 per cent) and village leaders (90 per cent) were recognised.

According to KNU law, village leaders and the village leadership committee are considered formal justice practitioners. However, when measured against GoM law they are seen as informal justice practitioners. This illustrates the difficulty in classifying different actors.

Justice provision in practice

Officially, complainants should report directly to the KNU village chairman, but in some cases the elders, the GoM-affiliated village leader or the KWO receive the complaints and hold informal pre-hearings. However, these actors must forward cases to the village leadership committee, which calls in the disputing parties and makes the final decisions based on the consensus of the committee, which acts like a jury. The committee predominantly uses mediation and reconciliation, but they can also enforce compensation (for example in cases of adultery and theft) as well as issue three types of punishment: fines, communal labour and ritual offerings. The latter is informed by customary norms, which view some types of cases as public offences – meaning that the accused was thought to offend the community as a whole, for example by alcohol use, drinking in groups, driving a motorbike on church days, touching unmarried women, and causing noise and public disturbance. This is most common for adultery or pre-marital sex cases, which are seen to 'dirty' the community. To 'clean' the community, a pig must be offered and the relevant parties must make a public apology.³⁰

Village rules were written down in 2013 after the KNU encouraged the village leaders, the KWO and the elders to develop and codify their own rules and procedures for dispute resolution. They were developed inside the village but approved by the KNU. They centre on regulating behaviour considered morally inappropriate, especially relating to alcohol abuse, which is seen as a major cause of marriage disputes, minor

²⁹ Interview, KWO village leader, September 2016. Her opinion was echoed by the most powerful elder in the village, also interviewed in September 2016.

³⁰ The village elders and residents did not consider themselves animists, but purely Christian. But practices like these public apologies suggest that elements of animist rituals prevail to a certain degree.

crimes and public nuisance in the village. The rules are posted on publicly visible noticeboards in the village and at the churches. A core difference from the GoM-controlled ward in Hpa An is that village dispute resolution in this KNU-controlled village is punitive and applies written village rules. Breaches can lead to fines of up to MMK 50,000 or the equivalent in communal labour, such as road repairs. For instance, if a person under the influence of alcohol is noisy in public spaces, he or she can choose between a fine of MMK 10,000 or do 24 hours of communal labour. Fines are collected and given to the KNU's special fund for community development. Another difference is that in the KNU system, the village leadership committee can actively charge wrongdoers for public offences – for example, they can prosecute a case and enforce some form of fine and compensation without a complainant being present. One case involved a woman who became pregnant by a man who later married another woman. She was then awarded compensation (to be paid by the baby's father) after a village elder reported her case to the village leadership committee. In marital disputes that do not involve domestic violence or adultery, the committee tries to reconcile the couple as divorce is prohibited by the two churches.³¹

Central to village dispute resolution is the use of a two-step warning system, which is directly linked to the KNU justice system as a backup. First, the village leadership committee warns the perpetrator and makes her or him sign a form³² promising not to repeat the offence. This is similar to the *kahn wan* used in the urban ward. Then, if the perpetrator repeats the offence, he or she gets a village punishment, which can be a fine or communal labour, like road repair inside or near the village. If the perpetrator commits the offence a third time, the case is transferred to the higher level courts of the KNU. This procedure is also codified.³³ The written documents, including the promise letters and case records, are kept by the KWO representatives, who take notes during the hearings. This is also a new procedure since the 2013 KNU intervention. However, the case records are not systematically forwarded to the KNU, but can be used as information by the KNU judges if the cases are transferred to the KNU. The village leader will often act as a type of witness during the KNU hearing. As such there is a close link between the KNU justice system and village dispute resolution in this village.

Apart from the village rules, the village leaders and the KWO members also said that they use KNU law. However, similar to the ward leaders in the Hpa An ward, the use of law should not be understood in the literal sense of directly using written articles. In fact, the village chairman claimed that he lost the KNU law book. Instead, KNU law is used as an oral reference and a threat during village leadership committee hearings in order to get the parties to agree on a settlement. Threats of transferring cases to the KNU authorities at township and district levels relate not only to crimes, such as theft, adultery and domestic violence, but also to repeated violations of the village rules. Serious crimes like murder, larger thefts and rape cases are supposed to be directly transferred to the higher tiers of the KNU justice system. However, only one such case was referred in recent years (a motorbike theft case), which was directly forwarded to the KNU. In practice, the majority of other cases traced³⁴ (23 out of 27) were resolved by the village leadership committee. In those cases, the higher tiers of the KNU justice system were referred to by the committee as a possible option (in the form of a threat) if offences were repeated or compensation or fines were not paid.³⁵ The capacity of the village committee to enforce decisions is seen as strongly reliant on the KNU as an institutionalised backup, even in the breach of village rules and non-criminal cases.

³¹ In the village law book, it directly states that the village leadership committee cannot divorce people because it is against Christianity (the village law and case book was translated from Sgaw Karen to English by the EverJust research project).

³² There was no special Paku Karen word for *kahn wan*, but some use the Sgaw Karen expression: *lee heet har*.

³³ This process was codified at the same time as the codification of the village rules in 2013.

³⁴ Case tracing is a data collection method that involves following how real-life cases (crimes and disputes) unfold from the beginning to end, including which actors are involved and what practices and rules are applied. See the methodology overview in annex 1 for more details.

³⁵ The four recent cases that ended up in higher tiers of the KNU justice system included two related to the sale of alcohol (where the perpetrator continued to sell alcohol after two warnings), a land dispute that involved violent threats and an adultery case.

In practice, the KNU justice system in the area around the village operates in flexible ways, which do not always correspond with the written legal procedures. While justice committee hearings are supposed to be conducted at township or district headquarters (depending on the severity of the case), most cases are heard and decided in a kind of ‘mobile court’, according to the district and township judges who were interviewed. ‘Court sessions’ are temporarily set up in locations that are most convenient for the involved parties, and which are closer to the lowland villages. In a land dispute case, for instance, the court session was conducted at a KNLA outpost at the foot of the hills not far from the village. Other cases were heard at the KNU forestry department camp and at a recently constructed KED school.³⁶ A key reason for this mobility is that it takes time for the village residents to reach the KNU township headquarters; another is that the township justice committee members are dispersed across the outposts and other localities, while the judges are based at the headquarters.

The KNU justice system is also tested by human resource constraints. Justice committee members and judges at all levels are unpaid and often have other jobs or responsibilities, and so it is not always possible to summon them for a case hearing. Sometimes the judges decide a case with assistance only from a KNLA soldier or another person at the outpost.³⁷ In a recent land dispute and violent threat case, for instance, it was initially a KNLA soldier who heard and decided the case because the township judge was not available. Only two months later, when the perpetrator had served a two-month prison sentence, was the case subject to a full KNU justice committee hearing at the township level.

The reporting and transfer of cases also happens in often flexible and *ad hoc* ways, despite the existence of official procedures between the village level and the higher-level KNU systems. Cases from the village that ended with the KNU transferred through different people (KNLA soldiers, forestry department heads and KNU civilian contacts) before they reached a judge.

According to interviews with township and district judges, they use KNU law, but they also allow for flexibility and use reconciliation and mediation akin to village dispute resolution. The judges also consider the economic and family situation of the perpetrators when they decide punishments. For instance, in an adultery case from the village the compensation required from the woman was lowered and she did not have to go to prison because her parents are old and need care. This consideration was based on advice from village elders and leaders.

The flexibility and mobility of the KNU justice system leads to legal compromises with KNU law, but it also reflects adaptability to the situation in the lowland area, where headquarters are far away and the KNU lacks justice personnel. At the same time, when KNU judges allow for dispute negotiation, they are also adapting to village residents’ preferences for reconciliation rather than punitive justice.

Links to the formal GoM justice system

According to village leaders, it is unthinkable for them to refer cases to the GoM courts and for village residents to make complaints there, despite the the nearest GoM township court being only ten kilometres away – closer than the KNU township and district headquarters. No cases were found where village residents reported to the GoM-recognised VTA, operating in a village six kilometres away.

The only case reported to the GoM was a land confiscation case in 2016. The land was confiscated by the Tatmadaw during the conflict and was sold to people living in the GoM-controlled township, who now have legal papers for the land. The village leader, who deals with GoM affairs for the village, told the original owners of the land to submit the case to the GoM administration and the police based on initial advice

³⁶ Interview, township judge, January 2017.

³⁷ Interview, district chairman, May 2016.

from the KNU district chairman. However, the case remained unresolved, as the GoM township administration said that the land could not be legally reclaimed because of the lack of ownership documents.

Past experiences of GoM institutions being violent and oppressive has led to strong distrust in the GoM justice system among village residents. In addition, the village leaders do not have any personal connections to GoM officials. There is a strong perception that the KNU justice system exists as a viable alternative option when village-level resolutions fail, and thus that there is no need to engage the GoM system. This is even the case when disputes or crimes involve non-Karen people. While the village leaders do not want to deal with cases that involve non-Karen, they said that if they had to deal with such cases, they would not refer them to the GoM system but would refer them to the KNU officials instead.³⁸

Informal justice facilitators

This research turned up no cases where complainants used an informal justice facilitator. However, interviewees did indicate that sometimes the KWO or other informal justice facilitators received reports before the village chairman. The fact that the village leadership committee is strongly institutionalised in the village and is officially supported by the higher tiers of the KNU as a viable backup when resolutions at the village level fail, helps explain why informal justice facilitators were not significant in this KNU-controlled village.

The Anglican and Baptist pastors do not play any explicit dispute resolution role except for marriage disputes, and said clearly that “justice in general is a secular affair”. According to the Baptist pastor, if people commit adultery or marry outside the church, they are expelled from the church until they make a public apology, which leads to strong feelings of shame and social ostracism. In addition, the churches do not permit divorce. Because of this, village leaders said that they feel shame and fear losing face if they allow a couple to divorce, even if the husband has repeatedly committed domestic violence.

There are no spirit mediums or astrologers in the village, and no cases were found where such actors were consulted. The village leaders and the KNU district judge explained that in lowland Christian villages, belief in witchcraft and spirits is not strong (which they contrasted with the more animist villages in the hills).

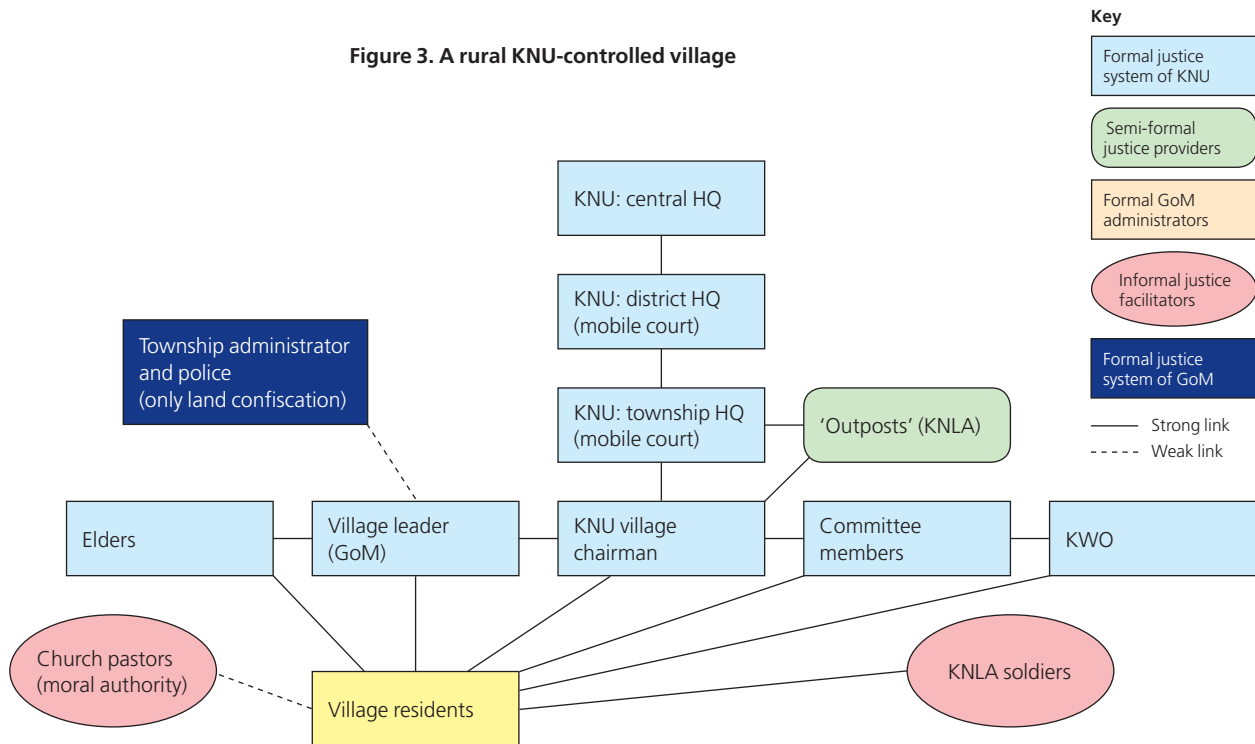
While KNLA soldiers do not have any formal role in adjudication or policing, in practice they are involved in resolving crimes and disputes in various informal ways. In some cases they act as the first point of contact when reporting to the KNU, where they conduct pre-hearings or decide cases temporarily (as in the land dispute and violent threat case). In the absence of the KNPF, they sometimes also escort suspects to the township or district headquarters. However, this involvement does not seem to happen without some form of contact with the village leaders and the KNU judge or committee members. In addition, there are no cases suggesting that village residents combine the use of different justice actors, such as in the cases in the Hpa An ward, where monks and astrologers were consulted alongside the semi-formal ward leaders.

Legitimacy and effectiveness of justice providers

The survey and qualitative interviews suggest that the village leaders and the KNU justice system enjoy a high level of legitimacy among village residents. Ninety three per cent of survey respondents found that the village leaders resolve cases fairly and treat people with respect (one respondent answered negatively, and two said that they did not know). For the higher tiers in the KNU justice system, 95 per cent answered positively to the same questions (one respondent answered negatively, and one that

³⁸ Four cases were traced where the KNU prosecuted non-Karen residents (one for murder and three for drug trafficking). However, these cases occurred in other areas of the district, not in the researched village.

Figure 3. A rural KNU-controlled village



she did not know). By comparison, 75 per cent responded that they did not find the GoM courts and police fair and respectful (15 per cent said that they did not know, and 10 per cent said that they were neither fair nor unfair).

As with the other research areas, the villagers prefer cases to be resolved at the village level. But there is a shared understanding that if cases cannot be handled in the village, the KNU justice system is a preferable and viable option. All interviewees said that the next step, in case of village-level resolutions not working, are the higher tiers in the KNU justice system. The village justice practitioners also show trust and belief in the higher tiers of the KNU justice system, which differs significantly from the low trust that the ward leaders in Hpa An have in the GoM formal system. The legitimacy of the KNU system is also influenced by shared language and ethnicity: village residents said that they feel more comfortable with the KNU system because the judges are Karen, as they are, and speak their language. Interviewees also said they feel that the KNU justice system is responsive to their justice preferences, because although it does enforce punishments, it also allows for negotiation and reconciliation both at the village level and in the village justice committees. Finally, the legitimacy of the village leadership committee and the KNU justice system is influenced by the low cost of dispute resolution and justice provision when compared with the GoM formal system. Neither the village leaders nor the KNU take fees for case resolutions, and there were no complaints about the need for bribes.

The effectiveness of village dispute resolution has clearly been strengthened after the ceasefire because it has allowed the KNU to operate more openly and directly. This has established the KNU as an effective backup to village-level decisions, which has also given the village leaders a stronger position to enforce rulings. Village rules and dispute resolution procedures have also been codified and become more transparent due to the KNU intervention, which contributes to the effectiveness of village dispute resolution. These are crucial differences from GoM-controlled areas. Also, as village dispute resolution is officially recognised by the KNU, this implies a stronger institutional link between the villages and the higher tiers of the KNU justice system. In addition, the village leaders have more trust in the effectiveness of the KNU justice system, which means that threats of KNU intervention – and the possibility to transfer cases to the KNU – are seen as enforceable and effective.

The survey also reveals a strong belief in the effectiveness of the KNU system, with 77.5 per cent answering that the KNU was quick at finding solutions and 88 per cent saying that the higher tiers of the KNU justice system had strong enforcing power (22.5 per cent said that they were not sure or did not know). This data suggests that the effectiveness of the whole system is informed by a belief in the higher levels of the KNU as a strong backup to village-level decisions. By comparison, 60 per cent of respondents said that the GoM courts and police were slow, while 40 per cent said they did not know. Slightly fewer believed that the formal GoM actors had strong enforcing power, but again there was a high number of respondents (42 per cent) who said they did not know. This reflects a general lack of knowledge of the GoM system or a reluctance to speak about it without having had personal experience with it.

The tendency not to use informal justice facilitators in the village may also be an indication that the KNU justice and village dispute resolution systems are effective. At the same time, it is likely reinforced because there are no other EAOs present in the area, which means that authority is more clearly consolidated around the KNU.

3.4 A rural GoM-controlled village (area 3)

The third research location was a small village in a Hpa An township, approximately 20 miles from Hpa An town, consisting of 80 HHs. The majority of the population are Pwo Karen Buddhists, with a few Sgaw Karen Christians and Pa'O households. Some residents also believe in a traditional Karen spirit (*tuu wai*). The residents are mainly rice farmers, but the majority of households also rely on migrant work in Thailand, especially by the younger generation. The village was affected by the armed conflict until the 1990s as both the Tatmadaw and the KNU raided the area, extracting labour, food and taxes. Villagers were also subject to military atrocities and forced conscription.

Village residents and the village leader spoke about the village as always having been a GoM-controlled village, with the village leader exclusively recognised under the GoM VTA (residing in a neighbouring village), and not under the KNU.³⁹ Nevertheless, the village is still influenced in different ways by the KNU and especially by three KNU splinter groups – the DKBA, the Karen Peace Council, and the P'Doh Aung San Group⁴⁰ – which all signed ceasefires with the GoM in the 1990s and 2000s. The ceasefire also led to the confiscation of land from some of the village residents – land that was given by the Tatmadaw to the smallest of the three splinter groups. While village residents have personal connections to these three groups, the village is not governed by them. Sometimes the KNU levies irregular taxes, known as 'donations', but does not get involved in village leadership and dispute resolution.

In addition, the village is influenced by a ten-person *pyi thu sit* (Burmese for a people's militia), which has its base in the tract's main village, yet has two members who are from the case study village. This armed militia was formed by the Tatmadaw to provide local security and assistance to the military – for instance, by providing information about ethnic armed groups.

Marriage disputes (including divorce, quarrels and adultery), debt and disputes over land inheritance are the most common types of cases in the village. However, over the past few years drug abuse and drug trafficking have become the most severe problems in the village according to some of the elders and the village administrator (VA).

³⁹ It should be noted here that the village leader or administrator (VA) was not, during the period of fieldwork, officially recognised in the Myanmar administrative system, as per the W/VTA law from 2012. The position was only regarded as a 100 household leader assisting the VTA. However, with the December 2016 amendment of this law, the VA was again recognised as part of the administrative system and elections were held in early 2018, according to EverJust follow-up fieldwork.

⁴⁰ The P'Doh Aung San Group is a very small splinter group, under the leadership of a former KNU official.

An overview of justice provision in the village

The VA is considered by village residents as the main person responsible for resolving minor disputes in the village. He sees himself as the assistant to the VTA, to whom he can refer more difficult cases. According to our findings, the VA resolves minor disputes such as marriage disputes (including adultery) as well as problems related to alcohol abuse or minor quarrels over land plots. Apart from the VA, there are also three *ya mi ye pah* (Burmese for ‘elders’) in the village, and seven 10 HH heads, including one woman, who are supposed to assist the VA in resolving disputes – but this rarely happens. Only one of the HH heads said that he had recently helped reconcile a married couple after the wife complained that the husband was aggressive towards her. The two village members of the *pyi thu sit* also help deal with wrongdoers, such as when people are caught stealing, fighting, or disturbing the peace due to alcohol or drug use. One of the members said that he also deals with marriage disputes, but only referenced one case. He claimed that the VA had given him this authority because he ‘carries a gun’ as part of his duty, and could therefore put pressure on wrongdoers.

According to the survey, 82 per cent of respondents believed that the VA resolved most cases, while 15 per cent believed the VTA did (the remaining respondents replied ‘other’). Eighty two per cent of respondents said they would prefer to resolve problems inside the village, while almost eight per cent chose the formal justice system, and ten per cent went with a combination of the village leader and the formal system (depending on the type of case).

Despite this level of recognition of the VA’s role in dispute resolution, the VA was in practice far less active when compared with the WA in the urban ward. This less active role can partly be explained by the fact that there are far fewer cases in the village than the ward (according to the case tracing, there were 14 cases in the village compared to 52 in the ward), because the village is substantially smaller. In addition, the position of the VA is equivalent to the position of a 100 HH head in the urban ward, who has less authority than the W/VTA. However, while keeping these differences of scale in mind, the inactivity of the VA was highlighted by village elders and several village residents in qualitative interviews. They compared him with the previous VA, who had resolved more cases, and they complained that the current VA is disinterested in village affairs and takes high fees, which he does not donate to the community development fund.

In comparison with the urban ward, village residents also make use of a higher number of alternative, informal justice actors, predominantly from outside the village. A third of cases (5 out of 14 cases traced) used informal justice facilitators. This may be an indication of the lower capacity and willingness of the VA to resolve cases than his equivalent in the urban ward and the KNU village.

Justice provision in practice

When the VA resolves disputes he does not rely on a committee but works alone. His methods are largely informal, without referencing law or written records. The VA does not actively target wrongdoers in the village – for example, drug abusers who cause problems for their families or neighbours. He only responds if people actively bring a case to him. He mediates between the disputing parties, works towards a peaceful reconciliation, and uses *kahn wan* promise letters, including for the payment of compensation. However, he does not enforce any punishments or fines and has no warning system, as the village leadership committee has in the KNU-controlled village. If reconciliation fails or if compensation is not paid, the parties to the dispute must find their own way of further pursuing the case. The VA said that he will recommend that the parties go to the VTA, but he does not use transfer letters or accompany them there. The VA himself said that he has no real authority to resolve cases since the Ward and Village Tract Administration Law of 2012 removed this authority along with the use of official stamps that could serve to support case resolutions.⁴¹

⁴¹ Further research needs to be conducted to assess what effect the re-introduction of VAs in the amended 2012 law has had on the capacity of the VAs to resolve disputes.

The *pyi thu sit* provides an alternative option for village-level dispute resolution. Because it is able to issue punishments it can act as a substitute to the VA. *Pyi thu sit* members are officially subordinate to the Tatmadaw and hold monthly meetings at the nearest Tatmadaw battalion. However, they do not involve the Tatmadaw in resolving cases in the village or refer cases to the Tatmadaw.⁴² Like the VA, they also operate according to *ad hoc* and informal procedures with no institutionalised links to others outside the village. Village residents can report to them when they see strangers or suspicious people near or inside the village. The *pyi thu sit* members have the authority to question such people and can confine them to their houses for a day if they find that they have the intention to disturb village security. In the past, one of the paramilitary members used an ankle restraint to punish wrongdoers, but after it broke he never got it fixed.⁴³ The *pyi thu sit* members work separately from the VA, but one member claimed that he always informs the VA when he is dealing with a case. He can also forward cases to the VTA through the VA, but so far this has not happened.

Village-level dispute resolution is therefore highly informal and does not have any institutionalised links to any system outside the village, although the norm is that the cases that cannot be resolved by the VA should go to the GoM VTA. However, the latter option is largely decided by complainants. According to the cases that were traced, there is a tendency to involve different informal justice practitioners, sometimes combined with the use of the VTA and other actors, when cases cannot be resolved inside the village. In fact, there is a tendency to pursue multiple avenues through mainly informal channels, which include different justice actors even within the resolution of a single case.

The village has been significantly affected by an increasing drug problem. However, such cases are not reported to the VA. During his interview, the VA said that he did not dare to actively engage in prosecuting drug cases, because he believes that powerful armed actors are involved in drug trafficking. Neither the KNU nor the GoM have intervened in the village to tackle the drug problem.

Informal justice practitioners

When looking at cases resolved outside the village, the individual members of the Karen splinter groups were by far the most significant informal justice practitioners. They are defined as such because the armed actors involved hold no officially recognised position as justice providers and act informally outside any established system or law. Complainants addressed them not as organisations but as individual armed group members who they knew about from relatives or friends. This level of informality is likely because the splinter groups do not have justice systems, but rather address disputes in an *ad hoc* manner. The role of these armed actors in providing justice seems linked to their capacity for coercive force. The sister of a man accused of adultery explained, “People go to the DKBA because they [DKBA] are fast and issue regular threats, because they have guns and sometimes beat the accused. So the accused pay compensation quickly”.⁴⁴ In this adultery case, ten per cent of the compensation was paid to the DKBA for resolving the case. In addition, village residents said that the DKBA is known to charge up to MMK 50,000 as a fee for dispute resolution.

The Tatmadaw is not regarded as a justice practitioner by village residents, and was only consulted by village residents in one of the traced cases that involved a resolution process outside the village. The case concerned the confiscation of village farmland by the Tatmadaw in the 1990s, which was given to the P’Doh Aung San Group as part of the ceasefire deal, and involved a range of different formal and informal justice providers (see box 1).

⁴² This information is based on in-depth interviews with two paramilitary members in March 2016.

⁴³ The *pyi thu sit* members do not get paid by the government or the Tatmadaw. Until 2012, the villagers donated one basket of rice a year to the group. These donations stopped after the security situation improved.

⁴⁴ EverJust interview, sister of perpetrator, March 2016.

Box 1: dispute resolution: using multiple justice providers in a land dispute case

In 1998, a piece of farmland in the village was given to the P'Doh Aung San Group as a result of the group's ceasefire agreement with the government. However, the land was being used by several villagers, who have been trying to get it back ever since. In 2012, after the ceasefire with the KNU was signed, the villagers decided to claim their land and went to different institutions and actors with their demand. The farmers initially convinced an 'educated man' in the village to help them with the case (essentially as an informal justice facilitator). He initially tried to negotiate directly with the P'Doh Aung San group, but they refused to return the land and instead reported the case to the township court. The man then contacted a Karen lawyer based in Hpa An to help. However, officials from the township court refused to try the case because they saw it as too political, involving both the Tatmadaw and the armed group. The farmers' representatives then sent a complaint letter to the president's office but received no response. The informal justice facilitator then contacted the local Tatmadaw battalion commander and convinced him to look at the case. The commander summoned all the involved parties, including the VA, to the confiscated land and held an informal, open court session. It was decided that the P'Doh Aung San Group should return some of the land to the farmers. But they never did.

The informal justice facilitator again complained to the Tatmadaw commander and sent a complaint letter to the National League for Democracy (NLD) party, shortly before the 2015 elections. The NLD responded that it could only assist with the case if it won the elections. When this happened in April 2016, the farmers' representatives sent letters to the new NLD Karen State Minister, the KNU and the DKBA. Although the farmers tried to mobilise support from the different groups, by the end of 2016 their land had still not been returned.

This case clearly reflects the villagers' distrust in the formal legal system, and shows they would rather put their effort into trying various alternative avenues, bringing in both formal and informal actors to resolve their case. It also highlights the limited mandate of village-level institutions in resolving complicated cases that involve powerful armed actors and decisions made at the national level – and possibly a lack of understanding about the level at which different institutions are able to operate.

Links to the formal justice system

Compared with the GoM-controlled urban ward, the courts and the police are both further away and not regarded by village residents as an option for case resolutions (ten per cent in the ward and just over seven per cent in the village). No recent cases were encountered that had gone to the official court.⁴⁵ The police were only involved in one recent adultery case from the village, but this did not lead to a formal court process. Instead, the police officer was consulted by the victim to help put pressure on the accused to agree to an informal resolution at the VTA's office. The VA did not forward any cases to the police. Of those surveyed, 61 per cent responded that they did not trust the police would serve the justice needs of their community and 54 percent said the same about the GoM judges.

Informal justice facilitators

The most prominent informal justice facilitator in the village is the 'educated man' who helped the farmers in the land confiscation case. He is not regarded as a justice practitioner, but he helps villagers write complaint letters and approaches armed actors and government officials including the VTA and the land record department at township level.

To a lesser degree, the local monk and spiritual actors are consulted, but only as part of resolutions by the VA or by the armed actors – to provide advice, support or good fortune through spiritual means, to help win a case. For example, this is evident through the involvement of a monk for spiritual guidance in one of the adultery cases that was resolved by the DKBA. The local monk also helped address a case in the village where the head of the school was accused of fraud.

⁴⁵ This could be different at the village tract level, where the VTA is said to engage the police and use similar threats of sending cases to the formal system as in the urban ward. But this information is obtained from the VA in the researched village and would require research in the VTA village.

The village does not have any kind of women's organisation of its own, but in one case village residents consulted a GoM-linked women's affairs group located in another village. It was an adultery case in which the wife, who was from a neighbouring village, requested a divorce and compensation for the adultery. Her husband is a resident of the case study village. Initially, the case was settled jointly by the VA from the case study village and the VA from the wife's village. The two VAs decided that the husband should pay MMK 1,000,000 compensation. However, the husband's family refused to pay compensation. They argued that they would not pay because the wife had decided to abort her pregnancy, which is illegal. While the wife complained to her VA about the lack of compensation, the husband's family reported the case to the GoM-linked women's affairs group. The group summoned both VAs and the two parties. It decided that the compensation should not be paid, because the wife had an illegal abortion. The women's affairs group threatened the wife, saying that she could be sued in court for the abortion offence. The wife's family withdrew the request for compensation and the case was closed. The women's affairs group received MMK 100,000 from the husband's family for managing the case.

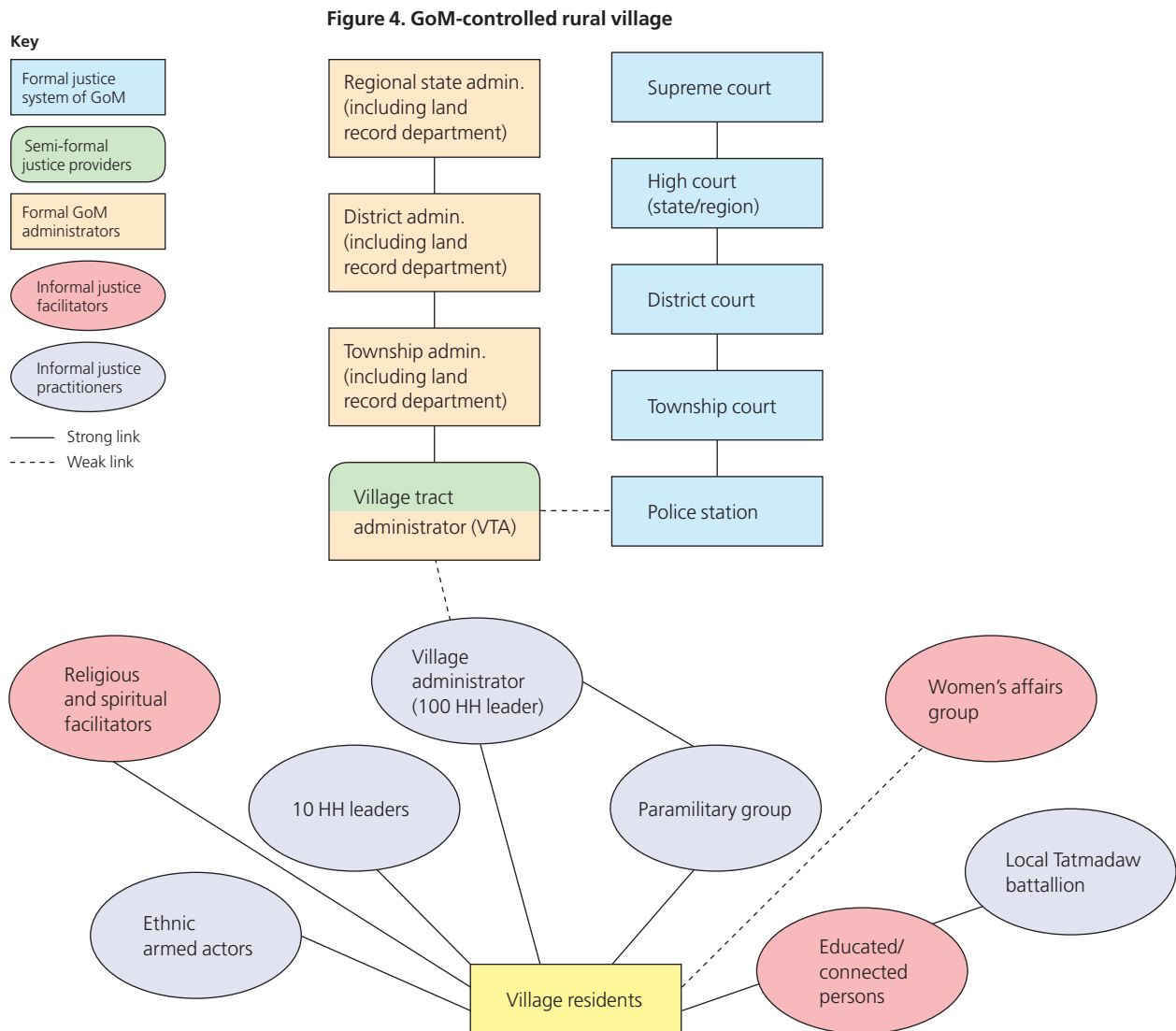
This case clearly illustrates how the involvement of informal facilitators is used as an additional layer of dispute resolution on top of the roles played by the village leader. It is also used strategically to get a more favourable outcome.

Legitimacy and effectiveness of justice providers

In the village, the VA lacks enforcing power not only to resolve more difficult cases, such as drug sales and land confiscations, but also marriage disputes (especially adultery) and conflicts over land plots. The village residents expressed low levels of trust in the VA's capacity to resolve disputes fairly and effectively. His enforcement power is seen as low, especially because he cannot enforce compensation. In the survey, 12 out of 39 respondents did not believe that the VA would produce a fair outcome (compared to 20 per cent in the urban ward and 8.1 per cent in the KNU village). In terms of effective resolutions, 26.8 per cent of the respondents in the village did not believe that the village leader could make quick resolutions (compared to 17.3 per cent in the urban ward and 7.5 per cent in the KNU-controlled village).

These sentiments about the VA are confirmed in the qualitative interviews, where many interviewees complained about the inactivity of the current VA. They found his fixed fee of MMK 10,000 for each party in a case to be too high, and complained that he takes the money for himself rather than for community development. Many villagers believe the VA is not legitimate or effective, but this perspective is attached to the VA as an individual and not as an institution. The majority of respondents said that they prefer to resolve disputes inside the village and that they will always first report to the VA. Two elders also said that they wished for a new VA who is active in dispute resolution, and that they had made an official complaint to the VTA who had appointed the VA. They wanted the village residents to vote for their own VA.

The use of informal justice practitioners and the tendency to involve multiple actors are strong indicators of the weak enforcement authority of the VA. This is reinforced by the fact that the VA has no legal backing, nor does he have any trusted and effective place for transferring cases – neither to the formal GoM system nor to any EAO system. In addition, the prevalence of informal case resolutions outside the village is partly a result of the many powerful armed actors in the village's surrounding areas. In short, the VA's lack of legitimacy and effectiveness are linked both to the individual behaviour of the current VA and to the wider political and institutional context.



3.5 A mixed KNU- and GoM-controlled rural village (area 4)

This village in central Kayin State is located near a recently constructed section of the Asia Highway, a road that connects Hpa An with the Thailand border. According to the village leader, the village has 120 HHs with a majority of Sgaw Karen Buddhists. Two HHs are Pwo Karen, three HHs are Christian Sgaw Karen, and around 10 HHs are Karen animists. Since 2014, the village has had an additional 40 HHs of Bamar labour migrants from Bago Region who work at a new logging business. They live in a separate part of the village.

The village leader and elders explicitly said that the village is under the mixed control of the GoM and the KNU. It has a village leader who was elected as chairman under the KNU system in 2015, but he is also recognised by the GoM township administration and was involved in the GoM VTA election in 2016. The GoM township administration is three kilometres from the village. The KNU civilian township headquarters is several hours from the village by foot, but at the entrance to the village there is a KNLA base that was built in 2015.

The mixed-control situation has existed since the 2012 ceasefire. Prior to and during the armed conflict there were various forms of engagement from both sides. In the 1980s, there was a KNU village committee, which was dismantled by the village elders in the 1990s due to increased Tatmadaw attacks against KNU supporters.⁴⁶ The GoM-

⁴⁶ This change marks the shift between the Ne Win socialist period and the start of the State Peace and Development Council (SPDC) – the official name of the military government which launched a fiercer campaign against the EAOs and their supporters. See: Smith M (1999), *Burma: Insurgency and the politics of ethnicity*, (London: Zed Books).

recognised village leader maintained secret connections with the KNU, and a village leader rotation system was introduced to minimise the risk of brutal Tatmadaw attacks.⁴⁷ According to former village leaders, it was very difficult at the time to resolve disputes because of the continuous fighting.⁴⁸

The village is influenced by the presence of several armed actors who have bases in the area close to the village. These include the Tatmadaw, a Border Guard Force, and the so-called 'Buddhist' splinter faction of DKBA, which have violently clashed since the 2012 KNU-GoM ceasefire. However, in contrast to the GoM-controlled village, the village residents do not use them as justice practitioners, but rather turn to the KNU justice system if cases cannot be resolved within the village.

An overview of justice provision

The village leader is recognised by the KNU as the formal justice practitioner in the village, and after he was elected he received one month of general administrative training at the KNU township headquarters, which included information about the KNU justice system. He also assists the KNU-elected village tract chairperson (who lives in a neighbouring village) with cases that occur in the surrounding mixed-control villages.⁴⁹ The village leader recognises the KNU justice system rather than the GoM system as a fall-back when village-level resolutions fail. However, in contrast to the KNU-controlled village, the village leader does not work with a committee but resolves cases on his own without referring to the written village rules. This suggests that the KNU village dispute resolution system is much less institutionalised in this mixed-control village when compared with the KNU-controlled village. The link between the village leader and the higher levels of the KNU is relatively weak when it comes to communication and contact. This is due to the mixed-control situation and because the KNU, apart from the village and village tract leaders, does not have any civilian presence close by. KNU district and township leaders rarely come to the village. In addition, while the village leader said that he sees himself as a KNU village leader, he also admitted that he is compelled to follow orders from the GoM; he said that he effectively serves two governance bodies.

The village leader is insecure about his position and said that he feels that few village residents follow his instructions. He stated that he is reluctant to actively charge wrongdoers and keeps a low profile in dispute resolution. Since he was elected in 2015, he has only resolved two marriage disputes in the village (one involving domestic violence) and dealt with one arson case, which he failed to resolve (as the compensation was deemed too high for the perpetrator) and the perpetrator appealed to the KNU township judge (see box 2). The other cases (8 out of 11) were dealt with by others in the village. The majority of interviewees said that most problems were not reported at all but dealt with internally by the village residents themselves.

The insecure position of the village leader, and the low reporting of cases to him, is further influenced by an ongoing leadership dispute in the village between the current village leader and the previous one. The two leaders are supported by different village elders, who tend to influence where village residents decide to report disputes and concerns. Some of the elders do not follow the decisions of the current village leader. This power dispute means that some people still report marriage and other disputes to the previous village leader. In other situations, the elders themselves resolve the disputes without involving the village leader. One elder, who is referred to by village residents as a 'strong elder', even took a debt case directly to the KNU at township level without first consulting the village leader. Conversely, the supporters of the current village leader are against the previous village leader, who they said takes bribes from

⁴⁷ Former village leaders said to the researchers that the Tatmadaw had beaten village leaders and used them as porters.

⁴⁸ During the fieldwork, many HHs still had trenches under their houses where they hid during attacks until 2012. The village had clearly been a fierce combat zone with many people fleeing to Thailand.

⁴⁹ In contrast to the KNU-controlled village (area 2), in this mixed-control area there is a KNU village tract chairperson, who is above the level of the village leader or chairman. The village leader said he collaborates closely with this village tract chairperson.

people when he deals with problems. This was highlighted as one reason why he was not re-elected under the KNU system. Others argued that he was removed because he was more connected to the GoM than to the KNU.

The leadership dispute can therefore be seen as a consequence of the mixed-control situation, and the fact that the KNU-elected village leader is not securely established under any formal governance system (neither the KNU nor the GoM). Despite KWO members being in the village, they were inactive in dispute resolution and were not consulted by the village leader. This marks a strong contrast with the KNU-controlled village.

Justice provision in practice

Dispute resolution in the village is largely informal, with little reference to written documents, no recorded punishments and without codified procedures or village laws. There were no tracked cases where the village leader or elders actively targeted wrongdoers (for instance for gambling or alcohol sale) as in the KNU-controlled village. The village leader said that he uses whatever law he deems most relevant to the case, whether it comes from the GoM or the KNU. However, no evidence was found of any literal use of laws, and the village leader said that he had never received a law book from the KNU.⁵⁰

In a marriage dispute involving domestic violence, the village leader combined reconciliation with a warning to the perpetrator (the husband), stating that if he repeated the offence, the village leader would report him to the KNU and he would be arrested and taken to the KNU, likely at township level.⁵¹ The village leader said that he views the threat of transferring people to the KNU's higher authorities as an effective method to enforce village decisions, as people respect the authority of the KNU judge and are afraid of the group because they have an armed wing.

Box 2: referral to higher KNU authorities

A man in the village was accused of burning down his neighbour's rubber plantation. The plantation owner took the case to the village leader, who tried to negotiate the amount of compensation. But the amount that the plantation owner wanted (MMK 2,000,000) was too high for the accused to accept. The accused wanted to go to the KNU judge to appeal the case, so the village leader sent a transfer letter to a KNU judge and accompanied the parties to the judge. After the village leader presented the case, the KNU judge listened to the parties, including the plantation owner who also had a witness. The judge determined that the accused was guilty and proposed MMK 5,000,000 paid in compensation (MMK 3,000,000 higher than the village leader's decision). But the accused said it was too high and they negotiated it back down to MMK 3,000,000. The judge allowed for negotiation, and the defendant was not given any further punishment after he paid the amount.

This case shows how a defendant can also appeal to the higher levels of the KNU – although the appeal failed as the KNU backed the decision of the village leader.

The village leader claimed that he can resolve disputes involving the Bamar migrant labourers in the village, but only if complaints are raised directly to him – which so far has not happened. He also claimed that Bamar defendants can be charged by the KNU. However, this perception was challenged by the village elders and previous village leaders who were interviewed; they said that if a perpetrator, e.g., a thief, is Bamar, he should be sent to the GoM or the Tatmadaw, whereas Karen accused should be sent to the KNU. Based on experiences from the conflict years, they fear that if a Bamar person

⁵⁰ Interviews with previous village leaders suggested that there was a more consolidated village dispute resolution system in the 1980s, which was linked to the KNU. For instance, a former village leader showed the researchers a KNU law book that he used in the late 1980s when he was leader. The law book listed dispute resolution procedures and the kind of offences that the village committee could charge people with (for instance, public disturbances, production of alcohol, gambling, food and water poisoning, animal torture, suicide, harm to others and rape). He also worked with a committee and took advice from elders, and forwarded cases to the KNU.

⁵¹ When we asked the village leader where the KNU that he referred to was located, he did not want to answer, likely because he is in a mixed-control area where such information can be particularly sensitive. However, in the arson case, he did say that it was the township-level KNU.

is charged or prosecuted by the KNU or a KNU village leader, they will have problems with the Tatmadaw and the GoM. These different opinions reflect the uncertainty of the systems, despite the shared understanding that the KNU higher authorities constitute the most significant alternative option when cases among the Karen villagers cannot be resolved inside the village. In principle, the higher tiers of the KNU justice system are available to the village leader and village residents, as in the KNU-controlled village; yet in this village, the KNU does not set up 'mobile courts' near the village, which means that people must travel long distances to resolve cases with a KNU judge. The village leader must first send a letter to the KNU township judge, who then calls the parties to a hearing. Because there is no nearby civilian presence of the KNU or any members of the KNPF, the village leader must pass the letter to someone travelling to the village where the judge lives. There is no evidence to suggest that the KNLA captain, presiding over the base at the village entrance, is used as a middleman or transmitter of cases to the KNU justice system. While the KNU is seen as the most significant referral body outside the village level, the KNU's justice system is viewed as more distant than the KNU-controlled village (where judges and committee members come close to the village to conduct hearings). It is likely that this difference owes to the fact that the village is in a much less secure KNU area. This was confirmed by the nearest KNU township judge, who explained that the KNU judges do not directly intervene in mixed-control villages, and only resolve cases that are transferred to them by the KNU-elected village leaders.⁵²

Box 3: practices of the KNU township judge

The nearest KNU township judge, who was interviewed by the researchers, does not work from within a KNU township headquarters, but conducts hearings inside the compound of the KNU's forestry department. Convicts are also kept there as there is no prison in the township.⁵³ The district court was only re-established in 2016, which meant that even serious cases, like a rape case in 2015, should have been tried at district level according to protocol, but were instead tried at the township level. At the township level, the judge decides cases together with two or four other committee members, operating like a jury. The committee also draws on advice from village leaders and elders who act as witnesses to cases that come from their village.⁵⁴ Complaints are usually referred to the KNU-recognised village leader but village residents can also report cases directly to the township judge. There was also one case where a village resident, who had given up on a resolution, reported a divorce case to the KNU through a village elder, bypassing the village leader. The township judge said that he used the KNU laws, but he mainly uses reconciliatory methods and negotiates with the parties over things like compensation, rather than using a stringent application of law.⁵⁵

Links to the formal justice system

The nearest GoM township court and police station are located only three kilometres from the village, but none of the village residents said that they had reported a case to these institutions, which was confirmed by the village leader. The village residents recognised the GoM justice system as an option for them, but they said that they will not go there because of the high costs that it involves and because they feel unfamiliar with it and fear the police. An exception is traffic accidents, which the village leader said he would report to the police if they occurred, but that he had not done this before.

In comparison with the KNU-controlled village, there is a sense that village residents engage with some GoM departments on various issues. For example, they have applied for land forms and certificates and received ID cards, and in two village land dispute cases the complainants had consulted the GoM township land record department to verify documents. In a motorbike theft case, the victim also consulted the GoM motor vehicle license office at the township level, with assistance from the village leader, to

⁵² This interview was conducted in Hpa An, as the KNLA captain in the village did not permit the researchers to travel to the village where the judge was staying.

⁵³ In this KNU-controlled district of central Karen state, there are also towns that are fully controlled by the GoM as well as mixed-control areas and areas claimed by other Karen EAOs like the Karen Peace Council and the DKBA.

⁵⁴ Interview, KNU township judge, May 2016.

⁵⁵ Interview, village leader, March 2016.

prove her ownership. However, the victim did not want to report the theft to the police, because she feared them and thought it would be too costly. Instead, the victim tried to get help from the KNLA captain to regain the bike. This suggests that, despite some situations where the GoM justice system is used, there remains a stronger orientation towards the KNU justice system.

Informal justice facilitators

Village residents use spiritual justice facilitators, including monks, astrologers and spirit mediums, yet none of these act as third-party justice practitioners according to interviewees. The local monks also said that they do not engage in dispute resolution, which they regard as a secular affair outside their mandate. Rather, they are consulted as a substitute for third-party or secular resolution when people do not want to report a case. Prayers, spiritual advice and protection are used to personally deal with the problems people face. This is significant because of the tendency to refrain from reporting cases in the village. Informed by Buddhist and animist spiritual beliefs, the villagers speak with monks, make offerings and pray to spirits to get lost goods back. There were, for instance, two cases where the victims went to astrologers to get advice on how to get their stolen goods back and to ask who the thief was, but the victims did not report the cases to anyone.

There are no astrologers in the village, but residents speak to ones who live in nearby villages and towns, notably in the GoM-controlled areas. The village leader himself said that he uses astrologers for advice and support in personal cases (such as when his daughter disappeared with a man) and for guidance on his village leadership. He also gets spiritual protection from spirit mediums to try to make the village safe.

Although there is a strong presence of armed actors other than the KNLA, including the Tatmadaw and Karen splinter group members, no cases were traced where village residents reported cases to them or used them as informal justice facilitators (although many HHs do interact with them in other ways). This differs considerably from the GoM-controlled village, and is likely a result of the KNU's backing of the village leader. It seems that the KNLA captain of the base at the entrance to the village has slowly become seen as an informal justice facilitator who village residents seek out. Several interviewees said they believe the captain provided security for the village by keeping out thieves and strangers. In the motorbike theft case referenced earlier, the victim also believed that the captain could help facilitate a resolution to her loss of the bike. Nevertheless, despite efforts by the KNLA soldiers to find the perpetrator and the bike, the case remained unresolved. The captain did not report the case to the village leader nor to the KNU judge or a KNPf member. It seems that the KNLA captain did not see his position as linked to the KNU justice system, but instead acted as an informal justice facilitator. However, the scope of this role is unclear given that only one traced case had reached him.

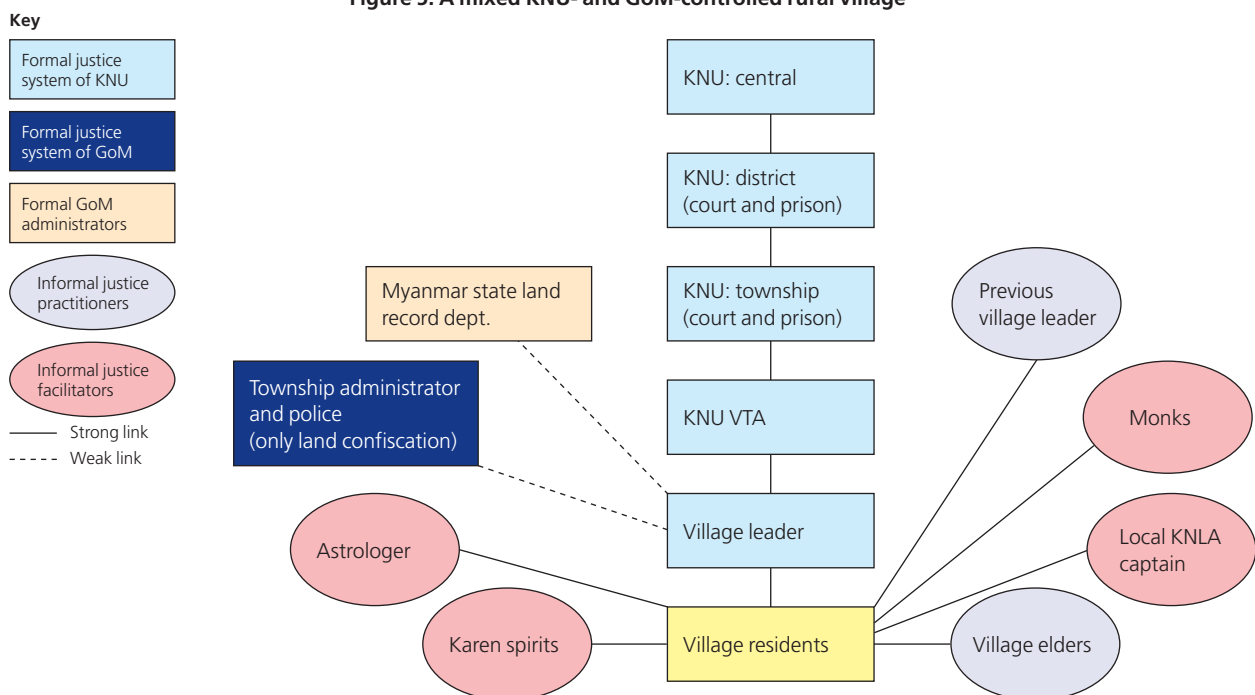
Legitimacy and effectiveness of justice providers

The current village leader is not explicitly regarded as illegitimate, as no residents complained that he resolved disputes unfairly or had taken bribes or disregarded village interests. Rather, it is the uncertainty of the village leadership position that explains why the village leader had dealt with few cases (three in one year). Although he is supported by the KNU, it does not have full influence control in the area and has been unable to institutionalise a committee structure that can support the authority and effectiveness of the village leader in resolving disputes. In addition, the village leader is less effective in deciding cases and does not proactively enforce rules according to KNU procedures because he feels that he must also follow GoM directives (from which he gets no institutional backing). Instead, the mixed-control status and the presence of multiple armed groups in and around the village have given way to divided and disputed village leadership. This leads village residents to report to elders or previous leaders and, more recently, to the KNLA captain.

The uncertain situation also helps explain why the village residents in general expressed a higher preference for resolving matters among themselves – rather than report to any third party – than in the other three case study areas. Some fear that if they report a case to an elder or leader, they will demonstrate allegiance to one side of the leadership dispute, which can cause difficulties for them. At the same time, the lack of reporting reflects a deeper fear of being transferred to institutions outside of the village if the village actors cannot resolve the case. This fear is nurtured by decades of armed conflict. Although interviewees in general gave the impression that the KNU is less feared than the GoM and the Tatmadaw, there is an overall feeling in the village that no outside actors and institutions can be trusted. It is better to keep matters private rather than make them public.

Although villagers said the security situation had improved since the ceasefire, there was still a strong fear that armed conflict would return and that the Tatmadaw would intervene again in village affairs. In addition, the village residents have ambiguous views of the Karen armed actors, including the KNLA, because they also engage in various activities that are not beneficial to the village. For example, while the KNLA captain is now seen as a protector of the village, some village residents also complained that he is involved in the logging business that employs Bamar migrants, which has reduced residents' access to timber and increased movement of trucks and strangers on the main village road. Neither the GoM nor the KNU's civilian administration seem to have control over the business. Some villagers also think that some of the elders and the village leader are indirectly benefitting from the business. These suspicions further contribute to undermining the trust in and legitimacy of governance actors and justice practitioners.

Figure 5. A mixed KNU- and GoM-controlled rural village



4

'So what?'

key takeaways for policymakers

THIS SECTION OUTLINES THE KEY FINDINGS FROM THE FOUR CASE STUDIES.

It also draws on supporting data from a knowledge, attitudes and practices (KAP) survey on security, justice and governance⁵⁶ conducted by Saferworld and the Karen Peace Support Network (KPSN) in 2017 and 2018. Covering 2,020 households across 72 villages randomly selected in Karen ceasefire areas in south east Myanmar, the survey data points to broad themes and trends across the entire region. The anthropological data provided in the case studies is complementary and together they provide an in-depth look into the reasons that certain customs and perceptions exist. This comprehensive understanding of the underlying dynamics is crucial for improving access to justice and the quality of justice provision.

People in the Karen ceasefire areas are reluctant to report justice issues to any third party and often prefer to negotiate a solution among those affected without outside interference.

All four case studies demonstrate that many cases simply go unreported. This finding is reflected in the KAP survey, in which only half of respondents said that in their community it was common or very common to report a justice case considered to be 'big', while only 37 per cent said the same for a case considered to be 'small'. Of the 2,020 respondents, only 147 said they had reported a case to an authority at some point in their lives.

The case studies show that if disputes occur within the family or among neighbours, there is a strong preference for resolving such disputes among the parties themselves and to keep matters private.⁵⁷ This is tied closely with a common preference for reconciliation and, in some cases, negotiated settlements that involve compensation (discussed more below). Even in the case of crimes like theft, domestic violence or rape, people may decide to forget about the problem or seek personal spiritual guidance to help reconcile themselves with the problem. The tendency to not report cases is

⁵⁶ Saferworld and KPSN (forthcoming 2018).

⁵⁷ These insights from Karen state also correspond with the result of a large survey conducted by MyJustice across GoM-controlled areas in all 14 states and regions of Myanmar. Approximately 80 per cent believed that disputes are best resolved within the community, and 95 per cent held that matters within the family should not be brought into the public domain (presented by MyJustice during a regular Rule of Law meeting, Yangon, March 2018).

present in all localities, but considerably higher in places with disputed village leadership like the mixed-control village (area 4), or where leaders are seen as corrupt or ineffective, like the GoM-controlled village (area 3).

In addition to a wider mistrust of formal legal systems discussed below, this approach largely stems from a culturally-informed understanding of justice as the capacity to “make the big cases smaller and make the small cases disappear”, which is seemingly shared across ethnic and religious communities in Myanmar.⁵⁸ When a case is reported to a third party, this can be seen as a form of conflict escalation, which is associated with feelings of shame and loss of dignity. Such feelings then risk worsening if the case cannot be resolved within the village or ward through a consensual agreement and if it is referred to the higher authorities of the GoM or KNU.

There is also a notion that bringing a dispute into the public realm can cause further shame and loss of dignity, leading some informants in the Hpa An ward, for example, to try and hide that they had reported an issue. This underscores a preference for “making cases disappear”. The tendency to not report is also sometimes influenced by religious beliefs, both Buddhist and Christian.⁵⁹ According to Theravada Buddhist beliefs, injustices, problems and victimhood are often understood to be the results of misfortune and past life actions. They can only be resolved within oneself by coming to terms through detachment.⁶⁰ Among the Christian Karen in the KNU-controlled area (area 2), there was a strong belief that problems are associated with a person’s fate, but not linked to actions in a past life.⁶¹

When people do report justice issues, they prefer to handle them at the lowest administrative level possible due to distrust in higher-level authorities and a preference for reconciliation rather than punitive action.

Across all the governance contexts covered in the four studies, the majority of cases that were reported went first to the lowest available level. In the GoM-controlled urban ward (area 1), most justice cases were first reported to 10 and 100 HH heads, while in rural areas they were reported first to the village leaders with VTAs playing a marginal role or being brought in at later stages. In the KAP survey, respondents were asked to list where people in their community usually go first to seek justice. For ‘small cases’, 98 per cent said a village leader, with 96 per cent giving this as their only answer. For ‘big cases’, 98 per cent said a village leader, of whom 76 per cent gave village leader as their only answer.

According to the case study findings, this is due firstly to the common desire to “make big cases small” and deal with them as discreetly and efficiently as possible rather than escalate them further. It also relates to a common preference for reconciliation and mediation, as practiced by village- and ward-level justice actors across all four localities, rather than punitive actions associated with higher-level authorities, especially in the GoM’s justice system. People also tend to be averse to highly formalised or legalistic justice practices. Local-level approaches often provide a more informal option, with hearings often conducted in a relaxed atmosphere and with affected parties communicating directly with each other, providing space for negotiation. However, as indicated earlier, this level of informality may also compromise effectiveness, as was particularly evident in the GoM-controlled village (area 3).

Trust in the specific individuals in charge is also a major factor. As such, personal familiarity with the village or ward leader was often given as a reason people feel more comfortable resolving their disputes and crimes locally. Similarly, people tend to

⁵⁸ This is a common saying in the Myanmar language. Close equivalents also exist in the Sgaw Karen and Pwo Karen languages.

⁵⁹ This research did not look into Hindu and Muslim beliefs. More research is needed on the various religious interpretations of justice and their influences on justice systems in Myanmar.

⁶⁰ Schober J (2011), ‘Modern Buddhist conjunctures in Myanmar: cultural narratives, colonial legacies, and civil society’ (<https://asu.pure.elsevier.com/en/publications/modern-buddhist-conjunctures-in-myanmar-cultural-narratives-colon>).

⁶¹ One female villager, for instance, said that if she or her daughter was raped, she would not report the case because she would see it as fate.

report cases to the local leader with whom they have the closest relationship, which sometimes means that they prefer to go to a HH head or, in the case of the mixed-control village, to a secondary village leader. Language and shared ethnicity also play a role, with residents more likely to report the case to someone who shares these characteristics. However, this shared identity does not guarantee that people will feel secure in reporting their cases to their local leaders, as discussed below.

Furthermore, in GoM-controlled areas, local-level resolutions are favoured because – even when informal justice practitioners in the ward and village take fees for dispute resolutions – the costs are still very low when compared to the formal GoM system and are less often seen as bribes. Ward and village dispute resolution also allows for negotiation of compensation based on consideration of the economic situation of the wrongdoer. This means that people with low incomes may be allowed to pay a lower amount.

Nonetheless, the effectiveness of justice delivery at these local levels is heavily impacted by the policies and practices of higher level authorities, as discussed below.

Overall, the KNU's justice system was seen as more legitimate and more effective than the GoM's system.

The case studies show that the higher authorities of the KNU were more trusted as justice providers in the KNU-controlled village than were the GoM higher authorities in the GoM-controlled areas. Additionally, people were far more likely to rely on the KNU higher authorities in the mixed-control village than GoM higher authorities. Even in the ward studied in Hpa An, which is the state capital and thus a hub for the police and the site of the state-level court, the GoM authorities were not strongly considered to be an option for solving justice problems.

Similarly, in the KAP survey, when asked which of the higher authorities they would prefer to deal with justice issues, the highest proportion of respondents (39 per cent) said the KNU, 23 per cent said the GoM, 26 per cent said 'I don't know', and 9.4 per cent said 'none'. The GoM and KNU were each the most widely preferred authority in the areas they control. This was overwhelming in the case of the KNU, where 87 per cent said they would prefer the KNU, while in GoM-controlled areas only 51 per cent said the GoM and 32 per cent said they didn't know. The KNU was more popular overall in mixed-control areas, with 32 per cent expressing a preference for them, compared to the GoM's 21 per cent – while a notable 12 per cent said 'none'.

The case studies identified many reasons for this apparent disparity of opinion between the GoM and KNU justice systems. Some issues with the government system have been found across the country. Fear of government authorities can be related to the long history of top-down military rule in Myanmar, which has also meant that official justice is associated with law and order and punishment of criminals, rather than the protection of rights and consideration of victims' concerns.⁶² For Karen residents, especially, this view of the GoM is often contrasted with that of the KNU, which shares their language and identity and so is more relatable and trusted.

Additionally, the GoM justice system is seen as time consuming and expensive, with unreliable outcomes. The case studies highlight that highly formalised and legalistic processes also deter people from using the GoM justice system, as crimes were immediately punishable by law and fines or compensation was seen as high and non-negotiable. In contrast, the KNU tends to mediate between parties, negotiating appropriate compensation or other punishments based on the specific case. The KNU also uses mobile courts to hear cases in convenient locations and are often seen as a means to efficiently resolve cases that have dragged on too long at the local level;

⁶² Cheesman N (2015), *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order*, (Cambridge: Cambridge University Press).

meanwhile the GoM system is heavily associated with long and repeated court hearings that keep people from their work, and also incur high costs or even bribery.

In the KNU-controlled village, efforts by the KNU and KWO to raise awareness about the justice system among local people, in particular among women, appear to have resulted in much greater public knowledge about the options available for reporting cases. Indeed, the KAP survey found that women were far more likely to be unsure of which authority they would prefer to deal with justice issues in GoM-controlled areas (38 per cent) or mixed-control areas (36 per cent), when compared to KNU-controlled areas (10 per cent). Overall, respondents in KNU-controlled areas were far more likely to list alternatives to the village leader for reporting 'big' justice cases (including the KNPF, VTAs or other KNU officials) than were respondents in GoM-controlled or mixed-control areas.

Across the four locations, cases were also more likely to be referred to the KNU by village or ward leaders than they were to the GoM. The KAP survey also found that cases were much more likely to be referred to higher tiers within the KNU justice system or relevant KNU departments, including KNPF, in KNU-controlled areas (65 per cent) than then they were in GoM-controlled areas (28 per cent) or mixed-control areas (25 per cent). Out of 27 referred cases in mixed-control areas, 12 were referred to the KNU (five to the KNPF and seven to another KNU body), while only two were referred to GoM authorities (one to the police and one to another GoM body). Remarkably, none of the cases in GoM-controlled areas were referred to higher authorities.⁶³ This is primarily because the KNU provides a formalised mandate and rules to the village leaders, unlike the government which places responsibility on the VTAs but provides little concrete guidance or legislation. Village leaders operating under the KNU system are able to issue certain punishments and have official mechanisms for referring cases. Strong links between village-level and higher-level authorities in the KNU system mean that local leaders see the KNU as an effective backup option for cases that they are unable to solve.

Nonetheless, there are a number of significant weaknesses of the KNU system. These include human resource constraints and limitations on its operations in some areas, largely due to not being officially recognised by the GoM.

The quality of justice delivery at the local level was highest in the KNU-controlled village and GoM-controlled ward and appears to depend mostly on local politics and institutions, but also on the specific procedures in place.

Overall, satisfaction with justice delivery was found to be highest in the KNU-controlled village (area 2) and the GoM-controlled ward (area 1), indicating that the legitimacy and effectiveness of local justice providers is largely influenced by the particular political-institutional context and local political dynamics. By contrast, the enforcing power of local justice practitioners was weakest in the mixed-control village where tensions between higher authorities and a lack of delineated responsibilities has led to internal disputes between village leaders and elders. As a result, some residents still report marriage and other disputes to the previous official village leader. In other situations, the elders themselves resolve the disputes or report them to the KNU higher authorities without involving the village leader.

Beyond the political environment, however, more practical lessons can be gleaned from a comparison of the main features of justice delivery observed across the four study locations (see table 1). First, the effectiveness of dispute resolution was stronger when justice practitioners worked as a committee or collective group with the involvement of elders and HH leaders, as was the case in the GoM-controlled ward

⁶³ They were dealt with by unofficial local 'judges' (two cases), an elder (one case), directly by a lawyer (one case) or by a village tract official (one case). In both of the cases handled by an unofficial judge, the referral had been made by the Myanmar Police Force (MPF).

(area 1) and in the KNU-controlled village (area 2). This increased social pressure to facilitate negotiated settlements and enforce decisions than when practitioners worked individually. The tendency to work individually was most evident where local leadership was disputed and uncertain – for example, in the mixed-control village (area 4) and the contested GoM-controlled village (area 3).

Second, the inclusion of women in justice committees and active efforts by women's organisations to raise awareness of options for reporting cases can greatly increase women's access to justice. In the KNU-controlled village, women members are required to sit on the justice committee and the KWO has a mandate to keep case records and assist women seeking justice. This has reportedly made women more active in reporting domestic violence disputes, while men have become more fearful of mistreating their wives.⁶⁴

Additionally, justice procedures were made more effective where written documents were used, such as case records, signed agreements, or *kahn wan* (promise letters where the wrongdoer admits the offence and promises not to repeat it). Codified laws – including official laws issued by higher authorities as well as 'village rules' – also notably improve the quality of justice provision, as does the ability of local leaders to issue prescribed punishments with the backing of higher authorities. Indeed, local level leaders tend to rely on the ability to threaten offenders with referrals to higher authorities, which in turn requires strong connections between local- and higher-level procedures and institutions.

While the KNU's laws extend to judicial procedures at the village level, local-level leaders in GoM-controlled areas are vested with few formal powers and rely on less formal citations of GoM laws based on their individual knowledge. In 2013, in the KNU-controlled village (area 2), the KNU encouraged the village leaders, the KWO and the elders to develop and codify their own rules and procedures for dispute resolution, which cover a range of public offences not detailed in KNU law, as well as procedures for their resolution. Fines are collected from offenders that then go into a community development fund, which is managed by the KWO. These rules and procedures are then recognised by the KNU, meaning higher authorities can also provide the authority to enforce them when needed.

There was an overall trend that justice actors at the village level found it difficult to address justice issues that involved powerful actors – for example, in land confiscation cases or with issues which they felt little control over such as drug trafficking. This meant that large-scale and sensitive justice issues often remain unresolved and there is a level of impunity for powerful actors. This is worse in areas where there are fewer options to refer cases to higher-level authorities.

⁶⁴ Interview, KWO village leader, September 2016. Her opinion was echoed by the most powerful elder in the village, also interviewed in September 2016.

Table 1: summary of dispute resolution across the research areas

Topic	AREA 1 (GoM, urban)	AREA 2 (KNU, rural)	AREA 3 (GoM, rural)	AREA 4 (mixed, rural)
Organisation				
Leadership or justice committee	Yes (informal)	Yes (KNU formal)	No	No
Fixed female participation	No	Yes	No	No
Individual 'judge' resolves	No	No	Yes	Yes
Resolves as jury	Yes	Yes	No	No
Norms/laws/rules				
Written village rules	No	Yes	No	No
Refer to GoM law	Yes	No	No	Yes
Refer to KNU law	No	Yes	No	Yes
Copies of written GoM/KNU law	Yes (some)	Yes (some)	No	No
Enforce customary law	No	Yes	No	No
Procedures				
Written complaints	Yes	Yes	No	No
Consensus-based	Yes	Yes	Yes	Yes
Mediation	Yes	Yes	Yes	Yes
Arbitration	No	Yes (village rules)	No	No
Threats to send to higher level	Yes (GoM)	Yes (KNU)	No	Yes (KNU)
Fixed warning system	No	Yes	No	No
Written records	Yes	Yes	No	No
Written records to upper levels	No	No	No	No
Punishments				
<i>Kahn wan</i> promise letter	Yes	Yes	Yes	No
Village labour punishment	No	Yes	No	No
Fines	No	Yes	No	No
Compensation to victim	Yes	Yes	Limited	Yes
Fees to the justice provider				
Fixed fee	No/Yes	No	Yes	No
Voluntary donations	Yes	No	No	No
Institutional links to a state				
Appeal to Myanmar courts	No	No	No	No
Appeal to EAO courts	No	Yes	No	Yes
Myanmar administration	Yes	No	Yes (VTA)	Rare
Informal justice facilitators				
Religious leaders	Medium	Very Low	Medium	Medium
Armed actors	Very low	Medium	High	Medium
Women's groups	Medium	High	Low	Absent
Spiritual (Buddhist, Animist) actors	High	Absent	Medium	High

5

Recommendations for the international community

THE FOLLOWING RECOMMENDATIONS are aimed at all local and international donors and implementing organisations working in Myanmar.

- 1. Improve linkages between the peacebuilding and justice sectors.** These two sectors remain siloed within most aid agencies operating in Myanmar and coordination between the two has been limited. Improving these linkages will ensure that conflict-affected populations are not left behind when improving justice systems, and it can strengthen the stability of ceasefires while contributing to the long-term institutional development necessary for building peace.
 - a. Establish more formal coordination between these two sectors, both within specific donor and implementing agencies and across organisations.
 - b. Support justice and rule of law programmes specifically designed for conflict-affected and ceasefire areas, including through partnerships with CSOs and community-based organisations (CBOs), particularly with women's organisations, and – where they are seen as legitimate – with EAOs.

- 2. Base justice programmes around the existing practices and institutions that are most trusted and best understood by communities.** Failure to fully appreciate justice-related perceptions and practices will decrease conflict and gender sensitivity as well as effectiveness of interventions, and is likely to have negative consequences. Local dynamics can vary greatly from village to village and from valley to valley, especially in conflict areas.
 - a. Place dispute resolution and reconciliation at the heart of justice programmes, as this has been found to underpin approaches across all communities – but it remains near-absent from the formal GoM justice system, which is based largely on rigid rules and punitive action.
 - b. Include actors with local knowledge and experience, including women and men in programme locations, in all phases of programme development, implementation and evaluation.

- c. Conduct in-depth preliminary assessments in programme locations to identify men's and women's justice priorities, learn from 'success stories' and map out existing practices and institutions currently used, as well as identify gaps in addressing specific justice needs.
- d. Develop programme objectives and indicators through reflexive and participatory dialogues with local justice practitioners, facilitators and male and female residents, rather than relying on a standard set of externally-defined principles and models.
- e. Develop programmes that support and strengthen EAO justice systems in places where these exist and where they are seen as legitimate, in line with community priorities and international norms. This can include updating laws and procedural guidelines, training of key staff, case monitoring and improving case management systems.
- f. Support and contribute to the growing evidence base on justice practices in Myanmar, including in conflict-affected areas, through publicly available research.

3. Improve existing justice delivery mechanisms at the community level, recognising that this is where the large majority of cases are handled.

- a. Focus on functioning dispute resolution practices that are seen as legitimate in the community and then identify areas for improvement. New institutions (such as community courts or alternative dispute resolution forums) can create conflicts and undermine existing mechanisms, and are less likely to be sustained once projects end.
- b. Support the development of transparent, community-owned written procedures, guidelines and rules for the handling of justice issues. Where possible, gain buy-in from higher authorities for these to be officiated, yet recognise this should not be a pre-requisite to the community organising its internal practices. Recognise that if these are too formalised and legalistic they might not be understood or trusted by the wider community.
- c. Support justice committees, rather than individuals, as these were reliably found to be more effective and legitimate. Encourage community leaders to establish inclusive justice committees where they do not already exist – including by ensuring the meaningful participation of women – and develop projects for strengthening their skills, organisation and access to legal resources and information.
- d. Establish local complaint mechanisms and safeguards against corruption and unfair treatment, in line with the aforementioned 'written rules'. Increased transparency and public agreement on fees (often known as 'thank you donations') would be an important starting point. Complaint mechanisms should contain measures for oversight from various constituencies within the community and be tied to agreed community-level punishments or fines.

4. Support women's and youth organisations, CSOs, CBOs and other informal justice facilitators to support inclusivity and to provide checks and balances to formal authorities.

- a. Support women's and youth organisations to mobilise community awareness on and involvement in justice-related issues, provide women and youth with reliable referrals to justice actors and lobby higher authorities for greater inclusion of women and youth in justice provision at all administrative levels and ensure laws and legal procedures are more responsive to the needs of women and youth.
- b. Where informal justice facilitators (such as religious figures, elders, teachers or armed actors) are used by local communities, engage them in local-level programming to strengthen referral chains, ensure that they are supportive of programme objectives and ensure they are responsive to the specific justice needs of women and youth.

- c. Support CSOs and CBOs, including women's and youth organisations, to monitor and apply pressure on village, ward and village tract justice actors to ensure fairness, inclusivity and accountability and to tackle corruption.

5. Address the widespread reluctance to report justice issues through awareness-raising and community-level dialogues, while avoiding the reinforcement of perceptions that seeking justice is a form of conflict escalation.

In this context, 'access to justice' approaches that strongly encourage victims of crime or disputing parties to report to a third party can be counter-productive and actually do harm. A focus on rights to justice must therefore be carefully balanced with measures to ensure affected parties do not suffer from feelings of shame and loss of dignity.

- a. Organise community-level dialogues and forums about justice that raise awareness of options for reporting cases, develop participants' confidence to use available mechanisms, and generate an understanding that seeking justice can support the whole community and is not necessarily an individualist pursuit. These dialogues must include culturally and religiously informed perspectives of justice and ensure women's meaningful participation.
- b. Ensure all activities are informed by an awareness that certain problems are particularly associated with shame and loss of dignity, including domestic violence and rape.
- c. Where appropriate, make justice mechanisms more confidential, through training and the establishment of appropriate rules and regulations, and ensure that those reporting cases can do so in privacy. This is especially appropriate for cases where there are women and child protection concerns – for example, in domestic and sexual violence cases.
- d. Training and awareness-raising on legal rights and procedures should be framed around the learning of practical skills and ordinary tasks as much as possible. For instance, training in how to obtain a land registration document or inheritance documents, or how to make a loan contract may have greater resonance than information on statutory legal principles.

6. Support GoM institutions to address the major barriers conflict-affected communities face in accessing justice.

- a. Tackle corruption, lack of transparency, ethnic and linguistic uniformity, inflexibility and militarised and paternalistic attitudes within the GoM justice system to encourage greater public trust as a justice provider.
- b. Support the GoM to establish a formal and legally-mandated justice role for village tract and ward administrators, 100 household heads and 10 household heads. This should be based on thorough consultations and observations of everyday justice practices at the community level.
- c. Establish formal referral mechanisms and complaint and appeal mechanisms to connect local-level and higher-level justice practices in areas where the GoM has authority.

7. Strengthen formal justice systems of the GoM and KNU in areas where they have full control, while focusing on community-level actors in mixed-control areas.

Local-level justice delivery appears to be most effective and seen as most legitimate in areas under the full control of either the GoM or the KNU. This means that mixed-control areas are often the places with the greatest needs and vulnerabilities, but are also the areas where it is most difficult to work on higher-level systems reform.

ANNEX 1: Methodology

The empirical findings presented in this report are based primarily on qualitative research and are supported by a quantitative survey. The fieldwork took place over 12 weeks, from February 2016 to January 2017. The four locations were visited two to four times each, with week-long stays. Due to the security situation, the mixed-control village was only visited twice, whereas the larger urban ward was visited four times, and the two remaining sites were visited three times.

The qualitative research covered informal conversations, semi-structured interviews (using a common interview guide), and participant observation of daily life and of dispute resolution sessions conducted by village or ward leaders, monks and spiritual figures. The latter involved observing how the parties and the justice practitioners interacted with each other, how they were seated and what attitudes they displayed in relation to the case. It also included written records of speeches, decisions and deliberations, giving in-depth insights into how individual cases were actually heard and resolved. Semi-structured interviews were conducted with justice practitioners, local influential actors, and ward or village residents (including women and men, young and old, ethnic majority and minorities across different sub-sections of the village or ward). To gain insights into actual case resolutions, the interviewees included mainly people who had experienced a dispute or crime, based on the *snowballing* method⁶⁵ and on information obtained from ward or village justice practitioners. A total of 228 qualitative interviews were conducted, which lasted between one and two hours. These were distributed as follows between the four fieldwork locations:⁶⁶

- Urban GoM-controlled ward (102 interviews): ward leaders (5), local leaders (elders and 100 HH leaders) (17), women's groups (2), fire brigade (1), attorneys (2), teacher (1), ethnic minority migrants (4), Karen ethnic armed actors (8), religious leaders (5), astrologers (3), religious minorities Hindu (1), ward residents (53 – 30 women and 23 men, 5 of whom were students)
- KNU-controlled village (46 interviews): KNU administrative persons and judges (7), village leaders and elders (14), religious leaders (2), women's group members from the KWO (3), village residents (20 – 14 women and 6 men)
- Rural GoM-controlled village (50 interviews): village leaders – current and former (4), local elders (3), paramilitary (2), Karen ethnic armed actors (2), teacher (1), village residents (38 – 21 women and 17 men)
- Mixed-control village (30 interviews): KNLA commander (1); KNU township judge (1); village leaders and elders (8); monk (1), village residents (19 – 11 women and 8 men).

A core part of the approach was to understand how cases are resolved in practice, rather than just rely on descriptions of how cases or disputes ought to be dealt with according to rules and norms. This approach is based on the experience that in conflict-affected and transitional contexts, in particular, there is often a considerable gap between rules and actual practices. This is because those formal institutions that should deal with cases often are not the preferred option, or they are ineffective or absent. To gain insights into actual practices, *case tracing* was used as a core data collection method. This method involves following how real-life cases (crimes and disputes) unfold from beginning to end, including which actors are involved and what practices and rules are applied. The tracing gives insights into how individual cases are reported, heard, and resolved – or in some cases, passed on to other practitioners or

⁶⁵ Snowball sampling is a technique for gathering research informants or interviewees through the identification of an initial informant who is used to provide the names of others. These people may themselves open possibilities for expanding the number of informants.

⁶⁶ The fieldwork locations were not systematically selected by the research project and depended on access and permissions from the relevant local authorities, and – in the case of the KNU-governed areas – from the district-level KNU and their liaison offices. This has implications for the findings, which cannot be assumed to be representative of all similar localities in Kayah State.

left unresolved. Case tracing was done by combining participant observation of case hearings with interviewing people who had been involved in cases, either as complainants, the accused or justice practitioners.

A total of 104 cases were traced across the four localities. Some included in-depth information where the researchers followed the case over a longer period and spoke with all the involved parties. For other cases it was only possible to get information from one or two involved people. Some case resolutions were also observed at the village or the ward leader's offices. The cases were not systematically selected, but based on information obtained during qualitative interviews with disputing parties or justice practitioners. There are no clear case registers in each site. The sample of cases is therefore not representative of actually occurring cases, but those cases that the researchers encountered and that people chose to speak about. In addition, the cases occurred prior to and during the research period, focusing mainly on cases that occurred between 2011 and 2016. The distribution of types of cases across the four localities are as follows:

- Urban GoM-controlled ward (52 cases): illegal land occupations (4), theft of vehicles and motorbikes (8), illegal trade (1), gun threat (1), smaller thefts (2), house break-ins/robberies (4), domestic violence (4), drug cases (3), children misbehaving, resolved by third party (2), debts (2), divorces (5), land disputes (5), elopement (1), adultery (2), black magic/bad spirits (2), land confiscations (1), illegal religious building (1), lack of ID (1), lost children (2), gambling (1)
- KNU-controlled village (27 cases): adultery (4), inheritance (1), attempted rape (1), alcohol sale (breaking village rule) (2), violent threats and land dispute (1), land dispute among villagers (1), land confiscation case by Tatmadaw (1), physical fights under the influence of alcohol (5), pre-marital sex (1), drinking during Sundays (3), family quarrels (due to men drinking) (4), public nuisance due to alcohol (3)
- Rural GoM-controlled village (14 cases): divorces (3), adultery (4), land inheritance dispute (1), land confiscation (1), corruption by school headmaster (1), debts (2), marriage dispute (1), drug case (1)
- Mixed-control village (11 cases): divorce (1), marriage disputes (2), adultery (1), arson (1), motorbike theft (1), theft of cow (1), lost child (1), fight between drunk people (1), land dispute (1), land confiscation (1)

To understand people's perceptions of justice and justice provision, the research also used justice scenarios and asked people to explain what they believed was adequate justice. Scenarios are hypothetical examples of cases – such as debt, theft or rape – that are applied to generate data on people's preferences for justice practitioners and types of resolutions.

The qualitative findings are triangulated with data from a survey that covered 40 respondents in three of the Karen localities, which focused on village or ward residents' preferences for justice practitioners, types of resolutions and their general understanding of justice and their security situations. Unfortunately, the return of armed conflict in the area around the mixed-control village meant that the survey could not be conducted there. In the other three localities, the respondents included approximately 50 per cent women and 50 per cent men (GoM ward: 20 men and 20 women; KNU village: 19 men and 21 women; GoM village: 19 men and 21 women), and it also included two respondents from the primary ethnic or religious minorities (corresponding to their representation in the total population). The survey was not intended to provide statistical data, but to test the insights from the qualitative research and to help provide some more quantifiable data.

The survey was conducted with individual respondents at their homes, to ensure that answers were not influenced by others. It was conducted in the local language by researchers, and when necessary with local translators as a structured interview with

the interviewers reading through the survey and filling out the survey form. Answers were indexed in Excel and SPSS for data analysis.

Purposive sampling was used, with a focus on gender and location in the ward or village (ensuring that the different sections were covered), with transit walks through the areas to select households. Village leaders and elders were deliberately not surveyed, as the aim was to get the views of non-privileged residents. Emphasis was on voluntary participation. If a HH declined to participate, we proceeded to the next door. It is clear that purposive sampling is biased according to statistics principles, but it is suited to this type of qualitative study where there is a small number of respondents and the need for an equal representation of gender and location.

In both the survey and the qualitative data collection, care was taken to ensure a gender and age balance. Interviews were also conducted with ethnic and religious minorities.

References

- Cheesman N (2015), *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order*, (Cambridge: Cambridge University Press)
- Denney L, Bennett W, Khin Thet San (2016), 'Making big cases small and small cases disappear. Experiences of local justice in Myanmar', MyJustice, November
- Gravers M (2014), 'Ethno-nationalism and violence in Burma/Myanmar. The long Karen struggle for autonomy', in M Gravers, F Ytzen (eds.), *Burma/Myanmar – Where Now?* (Copenhagen: NIAS Press), pp 173–198
- Griffiths J (1986), 'What is legal pluralism?', *Journal of Legal Pluralism and Unofficial Law*, 24: 1–50
- Harriden J (2002), 'Making a name for themselves. Karen identity and the politicization of ethnicity in Burma', *Journal of Burma Studies*, 7 (1): 84–144
- Jolliffe K (2014), 'Ethnic conflict and social services in Myanmar's contested regions', The Asia Foundation, June
- Jolliffe K (2015), 'Ethnic armed conflict and territorial administration in Myanmar', The Asia Foundation, July
- Jolliffe K (2016), 'Ceasefires, Governance and Development: the Karen National Union in Times of Change', The Asia Foundation, March
- Karen National Union (2015), 'KNU land policy', December (https://www.tni.org/files/article-downloads/knu_land_policy_eng.pdf)
- Karen National Union (1976), 'KNU law on witchcraft', translated by EverJust. English version unpublished.
- Kempel S and Aung Tun (2016), 'Myanmar ward and village tract elections in 2016: An overview of the role, the laws and the procedures', Norwegian People's Aid, January
- Kyed H M (2011), 'Legal pluralism and international development interventions', *Journal of Legal Pluralism and Unofficial Law*, no. 63
- Kyed H M, M Gravers (2014), 'Non-state armed groups in the Myanmar peace process: What are the future options?' *DIIS Working Paper*, no. 07, Danish Institute for International Studies
- Kyed H M, A P Harrisson, G McCarthy (2016), 'Local democracy in Myanmar: Reflections on the ward and village tract elections in 2016', Danish Institute for International Studies
- Kyed H M (2017), 'Justice provision in Myanmar. Reforms need to consider local dispute resolution', *DIIS Policy Brief*, Danish Institute for International Studies, Copenhagen, March
- Lue Htar (2017), 'Everyday justice and plural authorities: Insights from Karen State about land disputes', Paper presented at the Australian National University, Myanmar Update Conference, Canberra 17–18 February 2017.
- McCartan B, K Jolliffe (2016), 'Ethnic armed actors and justice provision in Myanmar', The Asia Foundation, October
- Merry S E (1988), 'Legal pluralism', *Law and Society Review* 22 (5): 869–96
- Moore S F (1978), *Law as Process. An Anthropological Approach*, (Hamburg: Lit Verlag; Oxford: James Currey)
- MyJustice (2018), 'Searching for justice in the law', *Policy Brief*, March (http://myjusticemyanmar.org/sites/default/files/Policy%20Brief%20Final_English_o.pdf)
- The Republic of the Union of Myanmar (2012), 'The ward or village tract administration law', Ministry of Home Affairs
- Saferworld, Karen Peace Support Network (forthcoming 2018), *Security, justice and governance in south-east Myanmar: a knowledge, attitudes and practices survey in Karen ceasefire areas*
- Schober J (2011), 'Modern Buddhist conjunctures in Myanmar: cultural narratives, colonial legacies, and civil society' (<https://asu.pure.elsevier.com/en/publications/modern-buddhist-conjunctures-in-myanmar-cultural-narratives-colon>)
- Smith M (1999), *Burma: Insurgency and the politics of ethnicity*, (London: Zed Books)
- von Benda-Beckman F (1997), 'Citizens, strangers and indigenous peoples: Conceptual politics and legal pluralism', *Law and Anthropology* 9: pp 1–42

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. We work with people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people – we believe in a world where everyone can lead peaceful, fulfilling lives, free from fear and insecurity.

We are a not-for-profit organisation with programmes in nearly 20 countries and territories across Africa, Asia and the Middle East.

COVER PHOTO: Sunset over Hpa An, the capital of Kayin state, Myanmar.

© REMKO TANIS/FLICKR

SAFERWORLD

UK OFFICE

The Grayston Centre
28 Charles Square
London N1 6HT, UK
Phone: +44 (0)20 7324 4646
Fax: +44 (0)20 7324 4647
Email: general@saferworld.org.uk
Web: www.saferworld.org.uk

MYANMAR OFFICE

Room (3A/B), No. (275/C) Pyay Road
Myaynigone, Sanchaung Township
Yangon, Myanmar
Phone: +95 (0)9 264802051
Email: saferworldmyanmar@saferworld.org.uk

Registered charity no. 1043843
A company limited by guarantee no. 3015948

ISBN 978-1-912901-03-6