Community-Based Dispute Resolution

Exploring everyday justice provision in Southeast Myanmar

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01-01-2018
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Executive Summary

Justice provision in Myanmar is characterised by legal pluralism. There is a wide range of justice providers, different co-existing legal systems, and varied justice perceptions. Despite this pluralism, a common pattern is that most citizens predominantly seek solutions to disputes and crimes within their own village or neighbourhood. Official courts are feared, distrusted, and associated with high costs. They are places that most people try to avoid. When people decide to report a dispute or crime, community-based dispute resolution (CBDR) with its focus on negotiating a mutual agreement is the preferred justice option. While this empirical reality is increasingly acknowledged, very little international support has so far targeted this level of justice provision in Myanmar. Formal justice sector reform and improving the rule of law are crucial in the current Myanmar transition, but these are long-term processes. This calls for the need simultaneously to engage with existing community level mechanisms that already work and are seen as legitimate by ordinary citizens. To do so requires a deep understanding of actual practices in each particular setting, rather than pre-conceived normative ideas about what CBDR means.

This research-based report provides in-depth empirical knowledge of how disputes and crimes are resolved in practice at the lowest, most utilized level, in selected areas of Southeast Myanmar. The aim is to inform the International Rescue Committee’s (IRC) support to access to justice through CBDR. It identifies the various justice providers, and those informal justice facilitators who people approach to help resolve cases. By drawing on a range of case examples and direct observations, it explores people’s justice seeking practices and details the varied resolution procedures, remedies, complaint mechanisms, and rules/norms that are applied in CBDR. Examples are given of how some cases travel between different justice forums, including to the formal legal systems.

Geographically the report covers areas administered by the Government of Myanmar (GoM) and by the main Ethnic Armed Organisations (EAOs) in Karen, Mon and to a lesser extent Kayah States. All three states have experienced decades of armed conflict, but since the ceasefires in 2012, they have been relatively stable. Parallel state systems *de facto* prevail, including different legal systems. To set out the wider context for CBDR, a chapter is devoted to an outline of the GoM as well as the EAO’s legal systems, including how they tend to operate in practice. The report discusses the similarities and differences between CBDR in GoM and EAO areas, including their official mandates and practices. As a basis for identifying entrance points for IRC support, the report outlines the strengths and limitations of CBDR.
The main insights of the report draw on data from the EverJust research project, coordinated by this report’s author\(^1\). Everjust conducted interviews and participant observation of everyday justice provision in 12 research sites over a one-year period (February 2016 to January 2017) in Mon and Karen states. Longer-term research and direct observations of dispute resolution provide unique insights into everyday practices and ordinary people’s perceptions of problems and justice, which hitherto has been lacking in Myanmar where interview and survey-based research has dominated. In this report, Everjust research insights are supplemented with other recent studies of access to justice\(^2\), and IRC’s own work.

Overall, the report recommends that international support engages from the outset with already existing CBDR forums, rather than trying to establish alternative or parallel institutions. Support should be firmly grounded in how disputes and crimes are already dealt with and understood in the target communities. A good starting point is to focus on what already works – on success stories - and then identify areas for improvement, based on participatory dialogues with local justice providers and ordinary citizens. Reliance on a standard set of externally defined concepts and intervention models should be avoided. Although legal awareness is needed, it is important to be realistic about what formal justice options can entail for ordinary citizens. Programming must be sensitive to the socio-cultural and religious beliefs that inform people’s justice preferences towards either not reporting cases at all or seeking localised solutions. There is a need to gradually increase the inclusion of vulnerable groups in CBDR forums, including women and minorities.

**The formal legal systems**

After decades of military rule and a highly politicised judiciary, the GoM judicial system was reformed in 2010 with the goal of promoting adherence to the core rule of law principles of independence, openness and the rights of defence and appeal. Another significant change is that the township courts now constitute the lowest level of the judicial system, which previously included people’s courts at ward and village tract levels. Today the latter have the mandate to maintain law and order and community peace, but they are detached from the court system and instead administered by the General Administration Department (GAD). Consequently, there is no referral and appeal system between the township courts and the lower levels, which apply CBDR. In practice, the judicial courts suffer from a legitimacy crisis due to different logics and practices that have been inherited from past colonial as well as post-colonial military regimes. Despite reform efforts, courts are associated with corruption, high costs, inefficiency, and injustices. Ordinary citizens experience the legal system as intimidating due to formality, language and fear of official

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\(^1\) For more information see: https://www.diis.dk/en/everjust

\(^2\) See Denney, L., W. Bennett and Khin Thet San (2016); MLAW (Myanmar Legal Aid Network) and EMR (Enlightened Myanmar Research) (2014); McCartan, B. and K. Jolliffe (2016); Kyed 2018.
authorities. Even legal professionals like lawyers have little trust in the court system and often contribute to diverting cases away from a formal legal process. Ward and village level dispute resolvers do much the same by recommending parties not to go to court in order to avoid wasting time and money. Simultaneously, references to ‘the law’ and to upper-levels of the state system by ward/village dispute resolvers constitute an important ‘back-up’ for enforcing agreements and decisions outside of the courts.

Legally the GoM judicial system is the only official court system in Myanmar, but de facto the main Ethnic Armed Organisations (EAOs) also have their own justice systems, laws and prisons. This report looks at the EAO justice systems of the Karen National Union (KNU), the New Mon State Party (NMSP) and to a lesser degree the Karrenni National Progressive Party (KNPP). They are organised around three levels of ‘justice committees’ or courts with varying levels of independence from the administrative and armed wings and can bring to trial any criminal and civil cases. Unlike the GoM system, they have an institutionalised system of referrals and appeals from the village level to the Supreme Courts. The EAOs grant a wide jurisdiction to the village level, which can make by-laws and apply customary rules. The stability established with the ceasefires since 2012 has strengthened the EAO justice systems, including their links to the village level and the use of more formalised procedures. The EAO’s constitute an important back-up for village leaders to successfully resolve disputes and enforce village rules. There is a general impression that the EAO systems enjoy more legitimacy among the ethnic populations than the GoM courts, albeit villagers in EAO areas also prefer village level resolutions as a first option. EAO courts are not associated with high costs and they use procedures and languages that ethnic people can identify with. A core weakness of the EAO systems is human resource constraints and institutional instability, which creates large variety in how cases are tried and reported. There is inconsistent use of law and legal procedures, which can work positively to support flexibility and negotiated settlements, but which also implies unpredictability. In some areas, courts are mobile or convened without the required judge and committee members. Because the systems are not officially recognised by the GoM and territorial boundaries are unclear, there are also many jurisdictional challenges, especially in mixed-administered areas. Cases involving parties from two ethnic groups are complicated to handle.

Community-Based Dispute Resolution by Ward and Village leaders

A core characteristic of CBDR in Southeast Myanmar is the large variety of actual practices. Different factors account for this complexity, including the type of dispute/crime; the socio-economic position of parties in a case and their justice preferences and beliefs; the skills and personality of the dispute resolver, and; the available justice forum options and mandates of local justice providers. This makes it impossible to draw up a generic model and fixed typologies of CBDR. Not only are there significant differences between GoM and
EAO administered areas but also between rural and urban areas. Even within each of these types of area there is variety. This calls for a kind of programming that is context-sensitive and adjustable to the empirical reality.

This report captures the complexities of CBDR practices, but also traces some trends and patterns across GoM, KNU, NMSP, KNPP, and mixed-administered areas.

- **Local justice providers:** In GoM areas the elected and legally recognised ward and village tract administrators (WA/VTA) constitute the principle local justice providers. Commonly, however, the village leaders (rural), 100 HH leaders (urban) and strong elders (rural/urban) are actually the first instance for third party resolutions, and if unsuccessful, the case is forwarded to the WA/VTA. Few disputes proceed further than this level. In EAO areas the locally elected village headmen or chairmen are the principle local justice providers, supported by the EAO’s laws. The NMSP also has ‘village tract justice committees’, but these cannot issue punishments. In fewer cases, actors who are not considered justice providers, like women’s groups, monks, paramilitaries, and individual armed actors (EAO and Tatmadaw) act as third party mediators.

- **Organisation:** It is rare that village/ward leaders resolve disputes alone without the advice of elders or household leaders but the degree of institutionalisation varies. In some GoM areas there are both examples of village/ward leaders who resolve disputes as individuals and examples where the leader has decided to form a special committee or to invite people close to him on a case-by-case basis. This variety reflects that GoM law does not stipulate the formation of local justice committees. By contrast, the NMSP and the KNU have established village committees, which include 5-7 members that are selected by the village leader who acts as the chairperson. Village leaders are not permitted to resolve cases without the participation of a minimum number of committee members in these areas. In mixed-administered areas, there is often a situation of dual-leadership. Where the two leaders have a good relationship, they resolve disputes together with a committee, but there are also situations of disputed leadership, which tends to result in the lack of a committee.

- **Women’s participation:** village/ward leadership and membership of committees for resolving disputes tend to be exclusively male. In rare cases, village/ward leaders do ask a woman to join a hearing to give advice in disputes involving women. The only exception is in KNU administered areas, where the Karen Women’s Organisation (KWO) has been empowered since 2012 to receive complaints directly from women and to mediate disputes as a member of the village committee.

- **Official mandates of local justice providers:** Apart from stipulating that WA/VTAs should maintain community peace, security, law and order, and discipline, GoM law does not define their specific mandates for dispute resolution, including what disputes they can resolve and how. By contrast, NMSP and KNU laws, stipulate what types of crimes and degrees of penalties the village level can deal with. They can decide all civil cases, however not involving suits above a stipulated value. Village justice providers have the mandate to make by-laws, approved by the EAO, and to issue punishments. Despite this level of legislation, there is high flexibility in practice, and not all village leaders have written copies of the laws and criminal procedures.
• **Links to a state system:** There is no referral and appeal system between WA/VTA level and the GoM courts. The law only stipulates that leaders at these levels should collaborate with the police in information gathering and arrests. In practice, WA/VTAs sometimes send and accompany parties to the judicial system, but their recordings of pre-hearings and prior decisions are not included in court processes in any institutionalised way. This contrasts with the NMSP and KNU system, where the village committees are an integrated part of the justice system in the sense of referrals and appeals. There are procedures in place for sharing records and forwarding cases to higher levels, but in practice human resource constraints and the mobility of court locations means that there is often a variety of ways that cases reach the higher courts. In mixed-controlled areas, some village leaders fear forwarding cases to higher levels due to the situation of dual-subordination.

• **Types of disputes and crimes:** The most common disputes resolved through CBDR across all areas are marriage disputes (including divorce, quarrels, adultery and domestic violence), land disputes between villagers or kin (related to inheritance, divorce, and disputed land/household plots), and debt disputes (related to informal moneylending). Debt cases are most prevalent in urban GoM areas. Other cases resolved inside the village or ward, but that are less common include: thefts, physical fights, public nuisance, and arson. Murder, land confiscations by external actors and drug trafficking are as a rule not resolved at village or ward levels, even though the latter two are increasing. Rape is a more blurred category. Some village/ward leaders try to resolve rape cases through compensational justice if the victims’ families prefer this, while others insist on forwarding rape cases to police or an upper-level court. A specific trait of NMSP and KNU villages, are offences related to a set of written village rules. These largely relate to morally inappropriate behaviour, like prohibitions on alcohol sale and abuse, gambling, speaking disrespectfully, driving irresponsibly and/or at specified times, roaming of animals, and touching unmarried women. These offences are treated as public crimes and are punished, not mediated. The EAOS back these village rules.

• **Dispute resolution procedures and methods:**
  - Mediation and reconciliation, with an emphasis on reaching a consensus-based agreement between the parties and avoiding conflict escalation, are used across all areas. However, to varying degrees this is combined with arbitration. Where a perpetrator is identified and asked to admit guilt, such as in theft and debt cases, mediation takes the form of negotiating the value of a compensation. In NMSP and KNU areas, arbitration is more frequent because village justice providers can issue punishments.
  - Each party is heard one by one in front of the other, and commonly relatives on each side act as witnesses. One exception is the NMSP at VTA level, where parties are commonly heard separately.
  - Evidence is rarely used, but where documents exist, these are scrutinised in debt, marriage and land disputes. This is much less the case in rural villages because of lesser existence of documents. Village elders may be consulted as a kind of evidence-building.
  - The atmosphere is informal and there is a large space for participation in the negotiation of a final settlement but the justice providers do also intervene to set the appropriate tone and suggest settlements.
  - Threats of sending a case to a higher-level court or the police is an integrated part of trying to make the parties agree to a settlement and/or for an offender to agree to pay
compensation. In GoM areas these threats carry less weight because in reality few cases are transferred. More often the WA/VTAs simultaneously threaten and encourage victims not to go to the formal system. In EAO areas, where there are more institutionalised links to the EAO justice system, such threats are seen as more effective.

- The use of written records, complaints and other bureaucratic documents is more frequent in GoM areas at Ward and Village Tract levels, but in all areas, it is only the case type and the final decision that is recorded, not the actual proceedings of the dispute resolution process.

- Parties to a dispute are asked to sign that they agree with the final settlement, but it is only in GoM Ward and Village Tract levels that forms with official stamps are used for this purpose.

**Norms, rules and laws:** In GoM areas the WA/VTA say that they use a combination of GoM law and customary law, but there was no evidence found of any literal application of written law. Common sense, experience, advice from elders, and scattered and varied knowledge about certain law articles are the primary sources of norms and rules applied. Reference to GoM law is used as a threat to get parties to agree to a negotiated settlement, rather than as a legal instrument to decide cases. This is especially the case in urban wards where there is a higher level of formality and use of documents. In NMSP and KNU areas, there are written village rules, which are publicly displayed and literally applied. Reference to EAO laws are done in much the same was as with GoM law in GoM areas, and although some village leaders do have copies of the law, they do not use them literally. Unwritten customary and religious norms also influence decisions, such as avoiding divorce, using spiritual oaths and ritual community offerings. In none of the areas under research were any written guidelines and rules of conduct for dispute resolution procedures identified.

**Remedies and punishments:** Apart from compensation, the GoM village and ward leaders as a rule do not issue punishments, although this did occur in the past (like the use of foot lock and temporary detention). This differs significantly from KNU and NMSP villages, where fines, communal labour and, for NMSP villages, foot locks are used, sometimes in combination with and sometimes as a substitute for compensation. A warning system where justice providers get the parties to sign a promise letter, Kahn Wan, to avoid repeat offences and/or to ensure that compensation is paid exists in all areas, but how it is applied varies. In GoM areas if a perpetrator breaks the Kahn Wan, the only option is to forward the case to the police or administration, and this is often ineffective. In NMSP and KNU areas, the village justice providers can issue a community punishment, which tends to make the warning system more efficient. In NMSP villages, property is also used as collateral in the Kahn Wan. There was no evidence of physical punishments. In all areas, it is common for dispute resolvers to consider the economic situation of the losing party when deciding on compensation and payment method.

**Service fees:** The majority of local justice providers in GoM areas charge fixed fees for resolving a dispute when parties make a complaint, although this is not official. This is not the case in EAO villages, but ‘thank you’ contributions may be given to the justice providers after a case is concluded. Payments are as a rule only considered bribery if done secretly and/or during a dispute resolution process.
Complaints and reporting of cases: In GoM areas, a dispute resolution process depends on a complaint being reported to the WA/VTA, but in KNU and NMSP villages, the justice committee can directly charge a person who for instance has committed adultery (KNU) or broken the village rules (KNU/NMSP), independently of a victim, where this applies. Complaints can be made directly to the village or ward leader, but it is very common that a party to a dispute first shares his/her case with an informal ‘justice facilitator’, who they trust and/or think have the capacity to help them to bring the case towards a resolution. These may be family members, neighbours, elders, women’s groups, religious leaders, household leaders, educated persons, paramilitaries, and in rarer cases community-based organisations. In some situations, these facilitators help a party to report the case to the village or ward leader and may accompany them there to make them feel more comfortable and safe. When a complaint is made, there is typically a pre-hearing of the complainant, but to what extent this is recorded varies and depends on literacy levels. In urban GoM areas, complaints are more formal and summon letters are written and have official stamps. Different actors are engaged to summon the parties, ranging from the use of household leaders, elders, and paramilitaries where these exist.

Justice facilitators and informal justice providers

While ward and village leaders constitute the primary justice providers, many victims and disputing parties also make use of ‘justice facilitators’ who may also act as informal justice providers. They give advice, confidence and support before a case is reported to a justice provider. They help make connections, write complaint letters, gather information, give spiritual guidance and protection, and/or help to put pressure on the relevant persons to enforce a decision made by a justice provider. The use of justice facilitators is most prevalent in GoM and mixed-administered areas, when cases are complicated and/or when parties to a dispute fear to report a case to a third party or distrust their village or ward leader. Such facilitators include: religious leaders, especially monks; astrologers or fortune-tellers; women’s organisations (GoM or ethnic-based); CBO actors; political party members; elders; 10 and 100 household leaders; paramilitaries; educated and well-connected persons, and; armed actors. Some individuals combine the use of different justice facilitators and providers, giving way to a kind of ‘forum shopping’. The use of justice facilitators constitutes a complex and very significant layer of access to justice in Southeast Myanmar, which can both substitute for and facilitate a third party resolution.

Justice perceptions and preferences

A focus on how CBDR works in practice, should not distract from the empirical reality that many people prefer not to report disputes and crimes at all, not even to village and ward justice providers. Many prefer to internalise the problem and make peace with it, which some combine with seeking spiritual remedies to ease the suffering, for instance through prayer or by addressing a religious or spiritual actor. Cultural and religiously informed perceptions of problems and injustices as the result of fate, misfortune and, for Buddhists, past life deeds, inform the tendency not to seek remedies. There is also a shared cultural notion
that the purpose of justice is to ‘make big cases small and small cases disappear’. This supports a preference for social harmony and reconciliation. Bringing ones dispute into the public realm, by reporting to a third party, is associated in the first instance with conflict-escalation, which causes feelings of shame and loss of dignity. Such feelings are stronger, if parties fail to resolve a dispute within their own village or neighbourhood, through a consensus-based agreement. Going to a higher authority, like the police or court, equals escalation of conflict and more shame. These cultural and religious norms are widespread among female and male villagers in Mon and Karen State, Christian as well as Buddhist, but tend to influence the practices of vulnerable groups like poor minority migrants and women more strongly. A plausible reason for this is that the cultural and religiously informed perceptions of problems and justice, often are reinforced by other factors, such as fear of authority and formality, disbeliefs in just outcomes, and consideration of financial costs and time, which affect vulnerable groups more. Combined, these factors support the use of CBDR within the local community as the preferred justice option, but they also highlight the need for international support to CBDR to be sensitive towards people’s reluctance to seek third party mediation.

**Strengths of CBDR**

The most important strength of CBDR in Southeast Myanmar is the fact that it is the preferred justice option for the vast majority of urban and rural citizens if and when they seek a third party resolution. Even if the formal justice system worked in accordance with international rule of law standards, multiple factors suggest that CBDR would still be relevant:

- Culturally informed feelings of shame and loss of dignity associated with making a case public are lower when disputes and crimes are resolved inside a person’s own village or neighbourhood.
- Religious and culturally informed preferences for reconciliation and consensus-based agreements, including compensational justice, rather than seeking punitive justice, supports CBDR mechanisms.
- Fear of higher-level authorities and formality creates a preference for CBDR, which is conducted in largely informal ways and in a relaxed, familiar environment, where the parties often know their local justice provider.
- CBDR is less costly and/or less time-consuming than going to the formal system outside the community.
- Although the sustainability of resolutions in CBDR forums vary, there is a general sense that negotiated settlements are more effective for reaching a final decision. CBDR providers support quick solutions.
- CBDR can prevent the escalation of local conflicts.

**Limitations of CBDR**
The most significant weakness of current CBDR forums in Southeast Myanmar is the lack of transparent guidelines and rules of conduct for how disputes are resolved. Many people are not fully aware of what they can expect from a CBDR process, and there are no clear mechanisms for holding justice providers accountable. One reason for this is the volatility of the wider political context, which positions local justice providers in a precarious position with no clear mandates and backing from higher-level authorities and the official law. This is most prevalent in mixed-administered areas where there is dual-subordination, but it is also the case in many GoM areas, because of the unclear legal framework.

Other limitations include:

- Weak enforcing power for outcomes and agreements, especially in GoM areas where there is no option for community punishments and the formal system does not work as an effective back-up. In mixed-administered areas, local leaders often fear to enforce decisions because of dual subordination.
- Fairness of dispute resolution depends on the attitude and personality of the individual leader and/or his committee, rather than on any institutionalised accountability mechanisms. Elections of leaders are insufficient to avoid bribery and discrimination.
- Village and ward justice providers cannot deal with big cases that involve powerful external actors, including land grabbing and drug-trafficking, which is creating frustration among many community members who see these problems as the most severe. Inaction by local justice providers creates suspicion that they are involved in the big cases.
- Village leaders in EAO areas find it difficult to handle cases involving persons that are not from their own ethnic group, often leaving these cases unresolved.
- Varied knowledge of and insecurity about the official mandates of local justice providers, especially in GoM and mixed-administered areas.
- Low or no participation of women in CBDR, with the exception of some KNU villages.

Recommendations

Despite the identified weaknesses, CBDR practices in Southeast Myanmar provide a solid basis for supporting access to justice. The IRC should work with the grain, rather than implement new parallel institutions and train in abstract legal concepts. Working with the grain implies an inclusive and participatory approach, which takes its point of departure in facilitating reflective dialogues about existing CBDR practices that already work, using case scenarios and role-plays. A good place to begin is with success stories, before moving on to identify areas for improvement. It is important to conduct activities inside the
selected villages and wards. The circle of participants should be gradually broadened, from identified justice providers and their advisors to a broader representation of citizens, including vulnerable groups. A thorough understanding of the local political landscape is crucial for ensuring that informal powerbrokers and justice facilitators, who in explicit and implicit ways influence access to justice, are also targeted.

Specific entrance points for support may include the following:

- Help develop transparent and easily understandable CBDR guidelines and rules of conduct that are publicly available and communicated during CBDR processes. These should also include safeguards against corruption and complaint mechanisms to improve local accountability.
- Legal rights awareness that focuses on enhancing people’s awareness of their right to seek justice should be sensitive to cultural and religiously informed understandings of problems and conflict. Rather than lecturing in abstract, legalistic definitions of justice and rights, support should broker conversations about what justice means to people and what realistic options they have available.
- Trust and confidence building in seeking third party resolutions, like insuring confidentiality in CBDR processes and providing information about available options, is a more sustainable approach than trying to push people to report cases, which may cause feelings of shame and loss of dignity.
- Encourage an incremental approach to the inclusion of women and minorities in dispute resolution forums. Rather than immediately installing women as decision-makers or using quotas, women could begin by taking advisory roles after participating in training and dialogues.
- Support women’s protection by brokering open debates about gender-based violence and discrimination in non-confrontational ways: rather than begin with defining domestic violence as a crime punishable by law, begin a debate about problems associated with marriage disputes.
- Help create community awareness of the fact that village/ward providers cannot resolve big issues like drug trafficking and land confiscation, and assist local providers in identifying and linking up with NGOs and other relevant organisations that can help address these politically sensitive issues.
- Support awareness of official laws and linkages to the formal legal system, in ways that do not lead to unrealistic expectations of justice outcomes in the formal system. Enhance the knowledge of local justice providers to provide informed alternative options to the parties, rather than using references to the law and the official system as threats. Convene dialogue meetings at village/ward level with formal justice system actors to discuss transfer options and to build trust. Including existing, informal justice facilitators in these activities is crucial.
- Integrate ongoing learning and research into programme activities to ensure that activities are based on actual practices and experiences and adjusted to the continuously changing environment. While
surveys can be useful to establish base-lines, these should be combined with more in-depth qualitative dialogues and exercises where villagers/ward residents talk about actual cases and their justice perceptions. More research should be done on the gendered-aspects of CBDR, on villages in Kayah state, and on the justice seeking practices and perceptions of Hindu and Muslim minorities.

Risks and risk mitigation

The transitional context of Myanmar presents good opportunities for influencing positive changes, but also poses risks. The future roles and official mandates of current CBDR actors in GoM and EAO areas are unclear, and may change during the course of new reforms and peace negotiations. This should be factored into programme objectives. There is also a risk that GoM actors could see current support to CBDR in EAO areas as political support to the EAO state systems. It is therefore important to liaise with state-level governments to ensure that they understand the benefits of programme activities for ordinary citizens and for avoiding escalation of local conflicts.

Sustainable support to CBDR requires strong investments in obtaining context-specific knowledge, trust-building and broad-based participation, which are time-consuming. There is a therefore a risk of spreading out support activities across too many villages and wards. This calls for the selection of a few targeted areas, and gradual scaling-up within a realistic time-line. A legalistic approach to access to justice that pushes people to seek third party resolutions and short-time frames that do not adequately build up trust in available CBDR options, risk doing harm and excluding people from obtaining desirable outcomes.
Chapter 1: Introduction

In Myanmar, the vast majority of disputes and crimes are either not reported at all or resolved inside people’s villages and wards through some form of community-based dispute resolution (CBDR). Village and ward leaders and elders are the main dispute resolvers, but in some areas this circle of actors is expanding. Few cases reach the official Myanmar courts, and if they do, this is usually not the preferred option for the parties, but a result of a disrupted or unsuccessful CBDR process. Official courts are feared, distrusted, and associated with injustice, high costs and time consumption. They are places that most people try to avoid whenever possible. Lack of seeking official justice and the preference for CBDR are caused by a combination of political historical and socio-cultural factors (Denney et al. 2016: 11). Decades of military rule, conflict and corruption have caused a distrust in and fear of formal state institutions, including the courts and the police. Many people also feel uncomfortable and shameful in seeking third party solutions, especially outside their village or neighbourhood. They associate this with the escalation of conflict and social disruption, rather than with the achievement of justice. There is a preference for local-level resolutions through mediation and negotiations towards a mutual agreement between parties, rather than punitive justice. Socio-cultural and religious understandings of problems as personal fate or the result of past life deeds also encourage people not to report problems or to seek very localised mediation. Recent research into these matters clearly suggest that even if the formal justice system worked in accordance with international standards, there would likely still be a large preference for CBDR. This particularly regards civil disputes and minor crimes that local dispute resolvers have the capacity to deal with. More problematic are severe crimes and injustices, such as murder, rape, land confiscations and drug trafficking, which local justice providers fear to resolve or fail to handle.

In Myanmar, there is a large scope and need for reforming the formal justice system, but this is a long-term process. This calls for the need to try to simultaneously strengthen and improve existing mechanisms that already work and are seen as legitimate ‘on the ground’ (Albrecht and Kyed 2010; Albrecht et. al 2011; Kyed 2011). Many international donors and NGOs are already engaged in formal justice sector reform, but few engage directly at the community level. When engaging at the community level the predominant focus is on legal awareness on law and rights and on training legal aid providers. These activities are concerned with how people can access the formal justice system, but in a context where this system does not always produce the desired justice outcomes for the litigants it can be risky to only rely on justice in the formal system. Few programmes, with IRC as one exception, try to work with existing CBDR forums and actors in Myanmar. This kind of local support is very important, given that the local level of access to justice is by far the most utilized in Myanmar. Not only are community dispute resolvers the primary justice providers, they
also provide the most significant link to the formal justice system. In addition, they are not only alternative options to the formal system, but also resolve disputes and crimes in ways that are often more preferred by ordinary citizens than a formal justice process. Improving access to justice in Myanmar should therefore include this level of justice provision. This should not be based on a romanticised understanding of ‘the local’ or existing dispute resolution mechanism, but take a point of departure in what already works while also identifying areas for improvements towards more equal, transparent, and inclusive justice provision at the community level. The IRC has already identified a stated need among local dispute resolvers for capacity and skills development, and this is a good starting point. The task is to find ways for programmes to blend existing mechanisms and forums with new approaches (Valter 2016: 10).

A core challenge so far in Myanmar is that there is very little accumulated knowledge of how CBDR is actually practiced, in diverse ways, across different village and wards. International interventions in transitional and post-conflict contexts are often premised on the assumption that there are no adequate dispute resolution forums and that conflicts create a ‘vacuum of justice’. This informs either a focus on the formal systems or on setting up new alternative arrangements yet negates the fact that CBDR the world over takes place exactly against the backdrop of wider socio-political histories and often is strengthened during times of conflict and transition (Valters 2016: 10; Kyed 2011). How such CBDR works in practice cannot, however, be generalised, but must be understood within each particular context. This calls for programming to be based on in-depth empirical research that is context-sensitive, and not driven by pre-conceived normative ideas about what CBDR and justice mean.

This research-based report serves as a background for IRC’s support to access to justice through CBDR in Southeast Myanmar within the wider transitional context. The aim is to inform programming based on in-depth empirical research on how disputes and crimes are actually resolved in practice at the lowest, and most utilized, levels in Mon, Karen and Kayah states. Concrete examples of how different types of disputes are resolved are provided, and the practical procedures, norms/rules and types of remedies applied are outlined. The report also covers insights about people’s justice seeking preferences and practices, by tracing how individual cases are reported, heard, resolved, and maybe passed on to other providers or left unresolved. Great variety and complexity in how disputes are resolved is evident in this report. The report outlines the differences and similarities between selected research areas, and discusses the relative strengths and weaknesses of the different CBDR forums. The latter serve as an important background for recommending possible areas of support by the IRC.

The three states covered by this report have experienced six decades of armed conflict between Ethnic Armed Organisations (EAOs) and the Myanmar military, but since the signing of ceasefires in 2012, they
have achieved a relatively high level of stability. Despite this important change, there is no generalizable state system in place across these states: some areas are administered by the Government of Myanmar (GoM), others are administered by the EAOs, and yet others lie on the blurred boundary line of GoM and EAO areas and thus have de facto mixed-administration. This report draws on research in these three types of areas, with a particular focus on those EAO areas that are administered by the largest EAOs, the Karen National Union (KNU), the New Mon State Party (NMSP) and the Karreni National Progressive Party (KNPP).

Each of these EAOs have their own state-like justice systems, including laws and judges or justice committees, which are not recognised by, but which co-exist with the GoM formal legal system. In the current transitional context, peace negotiations are still ongoing, and the political dialogues about a future federal system has still not addressed the justice sector. The future of the EAO justice systems is therefore unknown, but from an empirical perspective they continue to operate in EAO administered territories.

In order to understand how CBDR works it is necessary to have insights about the different formal legal systems, GoM and EAOs, under who’s proclaimed jurisdictions the villages and wards fall. Community dispute resolvers relate in various ways to the formal legal systems, which can serve as an important ‘back-up’ in enforcing decisions at the community level and as institutions of appeal. The report outlines the formal set up of the legal systems, including how they define their relationship to the village/ward dispute resolution forums in terms of mandates and jurisdictions. However, because of the complex and volatile context, it is necessary to also understand how the formal legal systems work in practice. The report does this by drawing on examples from selected villages and wards, and from observations in KNU and NMSP administered areas.

To understand how disputes are resolved at the community level, and to identify areas for support, it is also necessary to have empirical knowledge of people’s justice preferences and perceptions of problems, which are embedded in socio-cultural, religious and political historical matters. Such perceptions inform people’s choices of dispute resolvers and preferred resolution options, and can also tell us something about why some disputes and crimes remain unreported. This report covers such perceptions based on in-depth interviews with villagers and ward residents.

1.1. Method

This report is a desk-study that builds on research that has already been conducted, including published as well as unpublished documents. The main empirical findings presented in this report is based on qualitative, ethnographic research done by the Everjust project (titled: ‘Everday Justice and Security in the Myanmar Transition’ (2015-2018)) during 2016 in selected areas of Mon and Karen state, including in GoM areas as well as areas governed by the KNU and the NMSP. Interviews with various citizens and dispute
resolvers as well as participant observation of CBDR processes were conducted in 12 research sites over a yearlong period (February to December 2016) with several follow-ups and revisits to each site. The EverJust project is financed by the Danish Ministry of Foreign Affairs and is coordinated by the Danish Institute for International Studies (DIIS), in partnership with Yangon University’s Anthropology Department, Enlightened Myanmar Research Foundation (EMReF), and Aarhus University. The author of this report is the main coordinator of EverJust.3

Findings from EverJust are supplemented by insights from IRC reports and research, as well as by other recent commissioned studies on access to justice by different international organisations working in Myanmar (MyJustice funded by the EU, under the British Council; The Asia Foundation; MercyCorps, and; Pyio Pinn). What is unique about EverJust research findings is that they are not only based on interviews and surveys, but also on participant observation of dispute resolution processes, as well as on the longer-term tracing of how various types of cases are resolved over time. This gives in-depth insights about the details of and variety among dispute resolution practices and understandings of these, which can more adequately inform the identification of entrance points for support. EverJust is also the first research project to explore the everyday operations of justice systems in EAO administered areas in Mon and Karen State.

Very little research exists on CBDR in Kayah state, and thus this report mainly provides insights on Mon and Karen states. While EverJust research is attentive to the specific challenges facing women in CBDR, it has not used a particular gender-lens. Further research in this area is needed. In addition, information about possible abuses and violations by EAO soldiers, and how these are dealt with by villagers and potentially affect the EAO justice systems, are omitted from this report, due to inadequate empirical data.4

1.2. Context

Any international support to access to justice in Myanmar must consider the complex transitional context, which began after the 2010 elections that brought a semi-civilian government into power. This government, under the leadership of the former general, U Thein Sein, launched a comprehensive reform program towards democratisation and an opening up to foreign investments and aid. Myanmar has since been undergoing a triple transition: from military rule to elected government; from a centrally planned economy to a market-based one; and from seven decades of civil war to a commitment to national

3 The report wishes to acknowledge the researchers involved in the EverJust project data collection and publications, 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.

4 For general insights about how the EAO’s themselves deal with offences committed by EAO personnel by their justice systems, see McCartan and Jolliffe (2016).
reconciliation (Andersen 2016). Remarkable progress has been achieved, but the transitions remain in their early stages, which makes the context of intervention volatile and in need of flexibility and adjustability.

In November 2015, the national elections resulted in the first orderly hand-over of power to an elected government in six-decades. It was won by the National League for Democracy (NLD) party under the leadership of Daw Aung San Suu Kyi, which have promised a strong commitment to democritisation, peace building and the rule of law. Democritisation, however, remains fragile. With the 2008 Constitution, the military retains significant political power, including 25 percent of the seats in parliament and control over the key security and administrative related ministries. The latter cover the Ministries of Defence, Border Affairs and Home Affairs. Under the Home Affairs falls not only the police, but also the General Administration Department (GAD), which is responsible for law and order, land management, tax collection and is the primary authority at district, township and ward/village tract levels (Kyi Pyar Chit Saw and Arnold 2014: 13-15). District and township level governments are still unelected, and ward and village tract administrators are elected only through limited suffrage, and continue to fall under the control of the military (Kyed et. al 2016).

Reform of the justice sector is ongoing, but still in its early stages. This takes place against the backdrop of a long-history – from before colonialism to military-rule – where governance was not premised on equality and fairness before the law (MLAW and EMR 2014: 5). The justice system was largely used as a tool to enforce law and order, rather than to address the justice needs of the population and enhancing rule of law (Cheesman 2015). For long periods, the judiciary was not independent from the military and the executive, and was focused on prosecuting political opposition. Officially, this has changed now, but the judiciary continues to be affected by corruption and mistrust. The transition has also seen a process towards amendments of outdated laws from the colonial and military periods and for the passing of new laws that are more in tune with democratic reform, including a legal aid law and the setting up of Human Rights and Anti-Corruption Commissions. However, many past laws still remain in force, and some new laws are still pending, such as the one on preventing gender-based violence. This creates important unclear areas for current support to access to justice. In addition, it remains unclear how a reformed formal judiciary will relate to the ward and village levels of dispute resolution in the future. Currently there is no formal link (see Chapter 2 and 3 in this report).

A very important contextual matter to facture into the support to access to justice in Southeast Myanmar is also the ongoing, but protracted peace process. Most Ethnic Armed Organisations (EAOs) who have fought against the military for six decades to gain increased self-determination for the ethnic minorities, have signed bilateral ceasefires since 2012. Eight of the 21 EAOs have also signed a National Ceasefire
Agreement (NCA) in October 2015 with the previous government. In February 2018, two more EAOs, the New Mon State Party (NMSP) and the Lahu Democratic Union (LDU) also signed the NCA. The signatories to the NCA are now engaging in a political dialogue and peace negotiations with the NLD government and the Military, but many challenges remain unresolved. A critical part of the political dialogue is to discuss the distribution of power, resources, security and administrative control between central Myanmar and the ethnic states. There is currently a joint commitment to establish a federal system, but what this system will exactly entail is still debated. It is unclear what the future role of the EAO’s own state systems will be, including their justice systems.

Simultaneously, peace is fragile, and fighting continues in especially Shan and Kachin states of Northern Myanmar on the border to China. This also affects other EAOs’ trust in the military’s commitment to peace and the NLD government’s capacity to facilitate sustainable peace. In Karen state fighting has also erupted between smaller groups.

This transitional, yet volatile context of Myanmar calls for longer-term engagement, but intervention needs to be flexible and be able to adjust to changes in local governance arrangements, including in GoM and EAO areas. It is unclear when a political settlement with the EAOs will be reached and what this will imply for existing formal as well as informal justice providers across wards and villages of Southeast Myanmar. Programme objectives and strategies should factor in how changes in the wider context may affect the success of IRC support to CBDR.

1.3. Definitions

This report uses a basic definition of community dispute resolution (CBDR) as a forum and mechanism for facilitating a negotiated resolution to a dispute or conflict by a third party in a given local context. The third party may be an individual, but can also be a group or committee who collectively act as facilitator or mediator. Mediation is commonly associated with CBDR: the mediator, who acts as a supposedly neutral third party, assists the parties to a dispute to reach a mutually agreeable settlement. However, in CBDR, mediation may also be combined with aspects of arbitration, including enforcing penalties and using witnesses. The word ‘community’ signals that dispute resolution takes place within a relatively small geographical area and involves parties who live within that area. Such an area may be defined by administrative and/or customary boundaries, like village and ward. CBDR mechanisms may however also be

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5 The research findings presented in this report are however before the NMSP signed the NCA. It is unclear to what extent the signing of the NCA has changed the justice provision practices of the NMSP.

6 Since the research was conducted, Rakhine state in western Myanmar has also been strongly affected by conflict, leading to over 700,000 Rohingya minority people to flee to Bangladesh. Smaller clashes have also taken place in KNU areas of Southeast Myanmar, not however, including the KNU areas covered by the EverJust research.
used, fully or partly, by extra-local forums, like the courts, a police station and a religious leader. The concept of community carries certain connotations of uniformity and consensus, which may overlook the reality of heterogeneity, inequalities and power dynamics within villages and neighbourhoods. Using community as part of the CBDR definition should therefore be done cautiously, and may in certain situations be substituted by ‘local’ or ‘village’ or ‘neighbourhood’ instead, to signal that emphasis is on a certain geographic area, rather than a homogenous community.

In this report, CBDR is not equated with Alternative Dispute Resolution (ADR), which is a mechanism and approach defined by international donors. Even though ADR principles may draw on many similarities with how CBDR is practiced in different contexts, it seldom captures the complex reality of CBDR.

The concept of justice is used in the broad sense of people’s various perceptions of just, adequate and sufficient outcomes and procedures. To be considered justice, a resolution outcome and procedure does not have to be in accordance with state-legal norms or international human rights. It may also follow local, customary, religious and other perceptions and beliefs.

1.4. Structure

The report is divided into five main chapters. Following this introduction, Chapter 2 provides an overview of the formal legal systems within which jurisdictions the villages and wards in Mon, Kayah and Karen States fall. These include not only the GoM judicial system, but also those of the main EAOs, namely the KNU, the NMSP and the KNPP. Because these systems operate in ways that to varying degrees differ from official procedures and laws, the chapter also provides insights on the practices of each of these systems as experienced by citizens and as observed through research. Chapter 3 is the core of the report as it explores CBDR arrangements and practices, based on in-depth empirical research. It treats GoM, KNU, NMSP and Kayah areas separately, but concludes by analysing the main similarities and differences between them. There is a focus both on how CBDR in general operates as well as on drawing out concrete examples to illustrate the complexity and variety in actual practices. Under GoM areas special attention is paid to ‘justice facilitators’ and ‘forum shopping’, which are prevalent here, and important for understanding how CBDR works and how people try to seek justice in various ways. Chapter 4 outlines the strengths and limitations of CBDR in general and across the research areas, which provides a basis for identifying significant entrance points for IRC support. The final Chapter 5 proposes some future areas of support, with an emphasis on focusing on what already exists on the ground in terms of CBDR. It highlights the risks of supporting CBDR and how to mitigate these, and finally recommends some areas for future research.
Chapter 2: The Legal systems

This chapter covers the legal systems of the GoM and the three EAOs (KNU, NMSP and KNPP) in order to provide an important contextual framing for CBDR at village and ward levels in the different areas. Firstly, the chapters show how the legal systems are officially and legally supposed to operate. This is followed, by a discussion of how they are working in practice in selected research study areas of Southeast Myanmar, especially Mon and Karen states. There is a clear difference between practice and the legal framework, which is very significant to consider when understanding also ordinary citizens’ justice seeking preferences and practices.

2.1. The Myanmar Government’s judicial system since 2010

The current court system in Myanmar is organized into four levels: the Supreme Court, State and Regional/Divisional courts (14), District and Self-Administered Area Courts (67), and Township Courts (342). This system was established with the 2008 Constitution and the 2010 Union Judiciary Law. There are also other special courts established by law, such as the Juvenile Courts and Courts to try Traffic Offences. A significant change from the past is that today the Township Courts constitute the lowest level, whereas during the socialist period (1973-2008), the 1973 Constitution also established People’s Courts down to the Ward and Village tract level. This latter level is not an integrated part of the judicial system today, but falls under the General Administration Department (GAD) under the Ministry of Home Affairs, and is administered by the Ward and Village Tract Administration Law of 2012. The latter law provides that locally elected Ward and Village Tract administrators have the duty to maintain security, peace and law and order in their respective villages and wards, but there is no prescribed system or procedures for how these administrators should relate to the judiciary in civil and criminal cases (Kempel and Aung Tun 2016: 9; see more details on the roles of ward and village tract administrators in Chapter 3.1. in this report). Systems of appeal are confined to the four levels of the judiciary with the Township and District courts, usually being the first instances of formal justice (Kham 2014: 7). However, the township level administration, which falls under the GAD, rather than the justice system, can also resolve disputes and minor crimes that are forwarded to them by the ward and village tract administrators (Diokno 2015: 43; MerciCorps 2015: 12). This applies for instance to land, as discussed below.

The principle sources of law that are used in the Myanmar government courts are English common law (adopted during colonial rule), legislation and judicial decisions. Whereas the basis of law still follows English common law, several laws have been amended since Independence in 1948, including among others, the civil and criminal procedure codes (Kham 2014: 4). In addition, courts may enforce ‘customary law’ dealing with personal and family law issues, such as marriage, divorce, inheritance, succession, child
maintenance and religious usage or institutions (Kham 2014: 3; Crouch 2016: 92). The Burma Law Act of 1898 says that when it comes to these mentioned cases, decisions by the courts must follow the religion of the parties involved. These include the different major religions, existing in Myanmar, including Buddhism, Christianity, Islam and Hinduism (Crouch 2016: 69).7 Courts should follow the Myanmar Buddhist Women and Special Marriage and Succession Act, Islamic Law, the Christian Marriage Act and the Hindu Customary Law (Diokno 2015: 3). This implies quite different standards in deciding for instance divorce: i.e. Hindu women are not allowed to divorce their husbands, whereas Christians and Buddhists can. Also 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 for application the official judicial courts (Diokno 2015: 18).

The legal system of the Myanmar government 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 argued by advocates or pleaders. For civil litigation, the Civil Code Procedure provides the main source of procedural rules regarding civil litigation, but advocates and pleaders also refer to the 1960 Courts Manual and the 1872 Evidence Act. Kham (2014: 12) argues that Myanmar courts currently does not have a developed dispute resolution mechanism, although courts do conduct arbitration. 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 the business, or where the act in question was committed. Whereas the Supreme Court and the High Courts of the State or Region have jurisdiction to try all civil suits, the district courts can only try cases of a maximum value of 500 Million Kyat and the Township Courts of a maximum value of 10 million Kyat (Kham 2014: 12).

In criminal cases, judges should comply with the Criminal Procedure Code and the Law of Evidence, and the courts should adhere to the established procedure for admitting documentary and material evidence, and examine witnesses, complainants and the accused. Criminal offences should be tried within the boundaries of the jurisdiction where the offence or its consequences occur (McCartan and Jolliffe 2016: 12). With respect to criminal cases, the Township courts have limited jurisdiction as they can only give sentences of a maximum of seven years. The District and High Courts can pass any sentence except death sentence, which must be confirmed by the Supreme Court (Kham 2014: 16). The kinds of sentences applied in criminal cases include fines, prison, labour prison and death penalty (ibid: 18).

The judiciary has an extensive appeal and review system, including procedures ensuring that higher level courts can scrutinize whether lower level courts have made legal judgements and assessments of cases (see Kham 2014: 18-21). This supports the general rule of law principles underlying the Union Judiciary Law from

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7 As Crouch (2016) notes with regards to Islamic Personal law, it seems that there are few cases tried in court using the different religiously defined personal laws today.
2010, which emphasises the independent administration of justice, openness and the right of litigants to defence and appeal (Ibid: 7).

It is important to note that since 2012 a specific system has been in place for the resolution of land disputes, which is separated from the courts. The 2012 Farmland law establishes land management committees at central, state/region, district, township and ward as well as village tract levels for resolving land disputes that involve civil suits, but not criminal offences like trespassing. These committees should decide cases according to the 2012 Farmland law, and they can enforce fines, expel persons wrongfully occupying farmlands and remove buildings constructed without permission on the farmland (The Republic of the Union of Myanmar, Farmland Law 2012: Chapter VII, article 19). The lowest level of these committees are the wards and village tracts. The ward or village tract level administrators must be chairmen of these committees and a township level land record department staff (TLRD) must be a secretary. Two elder people, two farmer representatives and one or two businessmen must also be involved in the land committee. Therefore, the farmland law has granted considerable authority to village tract and ward administrators to resolve land disputes: they can, in collaboration with other committee members, examine, hear and decide disputes in respect to the right to use farmland (ibid.: Chapter VIII, article 22). Persons dissatisfied with resolutions at that level can appeal to the township administrative body for farmland, and further appeals can be made to the district level body, and the state/region level body, which makes the final decision. Only in cases where the person does not comply with the decision passed by the land management committee within the stipulated date, can the land management committee make a complaint to a judicial court (ibid.: chapter VII, article 20). Otherwise, this system means that the majority of land disputes will be resolved outside the judicial courts, with a high level of authority granted to the ward and village tract level. This is considerably different from other criminal and civil cases, where the township courts constitute the lowest level in the administration of justice in Myanmar, and where there are no institutionalised links between the ward and village tract levels.

For an overview of the official justice and administrative system, see Appendix A.

2.1.1. The official legal system in practice

Despite some reforms since 2010, ordinary citizens of Myanmar still today associate the judicial courts with corruption, inefficiency, exploitation, and injustice. There is a general perception that those who have enough economic means to pay the highest bribes to police and court officials, including judges, will win the case. Litigants with good connections to the levers of power are also perceived as more advantageous. Taking a case to court is something to be avoided as much as possible. It is time-consuming, costly, and for many ordinary citizens it is also experienced as intimidating, due to formality, language, and fear of official
authorities. Mistrust in the system is high. This perception is shared across urban and rural areas as well as across government and EAO controlled areas, although it is found that more cases end in Myanmar government courts from urban GoM administered areas. Recent research confirms that few changes are noticeable in practice, despite the political transformation (Prasse-Freeman 2015; Cheeseman 2015; MLAW and EMR 2014; Denney et al. 2016). The historical legacy of military rule means that it will likely take a long time to bring the official justice system in line with international rule of law standards as well as ordinary citizens’ justice demands. Many practices and logics from the past persist. During the four decades of military rule, the legal system was continually de-professionalized and politicised (Myint Zan 2000). The importance of actual legal knowledge was forestalled in the pursuit of political imperatives, which according to Cheeseman (2015) dictated the courts to maintain a perception of order, rather than actually enforcing law and providing justice. This compelled judges and lawyers to conspire against defendants, not only by severely punishing political activist but also by making high conviction rates in non-political cases to signal a commitment to ‘law and order’. Because the justice system was driven by political, rather than legal imperatives, the actors in the justice system were also able to insert a market logic into the system whereby convictions and sentencing became dependent on the available extractive resources. This laid the grounds for bribes and favours, which continue to animate the legal system today (Prasse-Freeman 2015: 92).

Prasse-Freeman’s (2015) research shows that lawyers very rarely win any cases for their clients. They rather play a role as brokers or mediators between the defendant and the judges in trying to negotiate a reduction of sentences. Judges tend to perceive most defendants as already guilty by the time they reach court. The lawyers’ job is primarily to advise the clients about and negotiate the payment of bribes to significant figures dealing with the court case. Sometimes the lawyers are the ones handing over the bribes. The important thing for lawyers to know are the levers of power and key figures in the legal system, how to address them and bribe them to get the best outcome for the clients. Knowledge of substantial law, and it’s details, are largely irrelevant. What is important is a host of tactics for acting around the law (Prasse-Freeman 2015: 93-4). However, Prasse-Freeman also makes the important point that the legal process is not alone driven by market logics: justice does not simply go to the highest bidder. Despite successful negotiations and bribes, the accused is usually convicted so as for the judges to uphold an image of enforcing law and order (see also Cheeseman 2015: 175). Negotiations and bribes therefore serve mainly to reduce sentences.

Interviews in 2016 by EverJust researchers with lawyers and citizens who had gone to court in urban areas of Southeast Myanmar, also point to the extensive monetary costs, including bribery, associated with a
formal legal process. One Karen lawyer in Hpa-An stated: “When people go to court the judge will look at his pocket. If the person has money the judge will help. If you do not have money the judge will not help [...] The courts here have never been about justice. It is all about money and not about evidence” (EverJust interview, 13.03.16). The emphasis on ‘help’ here has to do with the judge’s willingness to reduce a sentence rather to acquit the accused. In a murder case in the Hpa-An area for instance, supporters of the perpetrators paid large sums of money to the judge, but the perpetrator still got ten years prison. A general impression is that when evidence is clear and cases are big, like murder and drugs, the accused cannot escape conviction, but can reduce his/her sentence through bribes. However, in smaller cases with unclear evidence bribes can lead to the release of the accused, or to the disappearance of evidence. Payments in the legal process are multiple, and to various actors, including police, court officials, judges, and lawyers (MLAW and EMR 2014: 13). People have to pay for filing a case, for witness statements, typewriter fees, transportation and so forth (Denney 2016: 42). How much a person has to pay depends on whether the person is right or wrong, rich or poor, and it depends on the severity of the case (MLAW and EMR 2014: 14). Because court cases often drag on over long periods of time with multiple appointments, this also induces additional costs for the litigants (Denney et al. 2016: 42).

There is a general sense that judges use the law as “a tool of public authority” rather than as a legal instrument to decide cases and determine procedures (MLAW and EMR 2014: 7). The same lawyer, quoted above, emphasised that many innocent Karen people who are accused of crimes go to prison with high sentences, because “they do not know the actual court procedures and how to talk [negotiate] well” (EverJust interview, 13.03.2016). This underscores how the courts operate as spaces of negotiation, but in asymmetrical ways where the judges assume a decisive position over lawyers and litigants in terms of how law and procedures are used.

As a lawyer who principally represents ethnic Karen in the Hpa-An area, he sees his task as one of trying to convince his clients not to go to court at all. This also regards severe criminal cases. He said: “I always recommend my client to negotiate with the other party so that he does not have to go to court because it is expensive. I ask my client what outcome he is hoping for, and then I make the calculations and tell him not to go to court. Sometimes people insist to go to court, but then when I stand outside the court [building] with both parties then I advise them, and they turn back and go to another place [outside court] to settle the case. I help to mediate the settlement” (EverJust Interview, 13.03.2016). He highlighted that apart from the costs and insecurities associated with court decisions, many Karen people are also afraid of the courts, which are associated with public authority. This fear of public authority will be addressed later as one of the significant explanations for why many ordinary citizens, especially ethnic minorities, do not report cases to
higher levels. For now, it is important to notice that even legal professionals, like lawyers have little trust in the legal system and take part inadverting cases away from the courts, even when litigants have reached a stage where they have decided to go to the courts. As one lawyer, quoted by MLAW and EMR (2014: 8) said: “in general no one wants to go to court. The legal process is resorted to only when there is no other choice”. Recent research on justice provision in Myanmar, confirms unilaterally that few cases actually end up in the formal legal system. Instead, cases are settled outside the courts. However, no exact figures are available given the undocumented nature of informal settlements (Denney et al. 2016; Prasse-Freeman 2015). Exceptions to this rule in urban GoM administered areas of Mon and Karen State are severe crimes like murder, rape and drug trafficking, which as a rule are transferred directly through the police to the courts. It should be noted, in this respect, that it is not just the courts that are potentially unjust and corrupt in the legal system. The police also often play an exploitative role, which is especially pertinent in criminal cases where people first have to go through, and often pay, the police in order to access the courts (Prasse-Freeman 2015: 110). EverJust research in Hpa-An, however shows that the police do not necessarily automatically turn an issue that has been reported to them into a court case. There were several examples where the police, akin to the lawyers, ‘prevented’ cases from going to court by mediating and negotiating between the parties.

In order to understand the operations of the formal system it is important to know what goes on prior to cases reaching the courts. As discussed in more detail in Chapters 3 and 4 of this report, multiple “quasi-formal” gatekeepers act in ways that either prevent or facilitate access to the courts, and much ‘legal’ work often goes into dealing with a case long before it reaches court (Prasse-Freeman 2015: 94). Police and lawyers have already been mentioned as ‘gatekeepers’ and as actors who deal with cases outside courts or prior to cases reaching the courts. This role as gatekeeper is also sometimes performed by ward and village tract administrators as well as by some influential monks, according to EverJust research in Karen and Mon states. On the one hand, these actors are themselves alternative justice providers in the sense of resolving various disputes and minor crimes outside the courts or prior to issues being sent to court. Because people tend to turn to their local leaders with cases as a first option, much ‘legal’ work is invested at this level before any case reaches the court. The effect of this on the court decisions, according to Prasse-Freeman’s (2015: 94) research into these prior processes, means that the accused tends to have already “been deemed eminently condemnable” by the time he or she reaches court. On the other hand, these local providers act as ‘gatekeepers’ in the sense of preventing, often actively, the litigants from going to court. EverJust researchers found that ward and village tract administrators often warn parties who desire to go to court from doing so. In making these warnings, the administrators cite the costs and time that the litigants would endure if they went to court. In a land dispute for instance in a ward in Karen state, the
victim, an old lady whose land had been confiscated, wanted to use the formal legal procedure, because in her view, the ward administrator and the land record department had failed to satisfy her claims. The ward administrator told her: “Grandma, if you want to go to the formal procedure, yes, you can do but you should know we are doing the best for you. If you go to the legal procedure, you will get back nothing and it would take a long time.” In one respect, this kind of warning works to protect the litigant from the costs and potential injustices of the courts, including the kinds of shame associated with bringing a case further up into the system (see chapter 4). Conversely, it also works to reproduce conceptions of the formal legal system as inefficient and unjust. In addition, it is worth noting that by actively preventing litigants from going to court, the ‘gatekeepers’ are able to exert authority over the direction of dispute resolution as well as raise fees for themselves. In the case of the old lady’s land dispute, for instance, the local authorities, also wanted to avoid the case from being scrutinised in the court, as evidence of not following formal procedures in settling land cases could be held up against the local authorities’ decisions, which were based on negotiated settlements.

Gatekeepers in government-controlled areas work both with and against the formal legal system. They work against it by preventing issues from becoming court cases, but simultaneously the formal legal system is used as the most important ‘back-up’. The EverJust research found that during dispute resolutions especially in urban wards, the local administrators consistently threatened litigants that if they did not agree to a settlement or abide by a decision, the case would be forwarded to the police or the court. This does not reflect trust in and acceptance of the formal legal system as an effective or just option, but rather portrays the formal legal system as a powerful resource and ‘back-up’ in enforcing dispute resolution at the ward or village tract level. Thus despite the apparent deficiencies of the formal legal system in practice, the system conveys a layer of authority linked to the ‘upper levels’ of the state that are important in CBDR. As addressed in Chapter 3, the ‘law’ is used in much the same sense, namely as a powerful resource or point of reference, rather than as a code that determines decisions and procedures. This also reflects in some ways how the judicial courts operate.

2.2. The legal system of the Karen National Union (KNU)

The KNU justice system comprises a justice department at central level, a judiciary of judges, justice committees at the three administrative levels (central, district and township), and the Karen National Police Force (KNPF) (McCartan and Jolliffe 2016: 19). This system has existed since the 1970s-80s, with the exception of the KNPF, which was formed in 1991. Prior to 1991, it was the Karen National Defence Organisation (KNDO) that was in charge of police-like functions (ibid.: 21). The KNPF, which has been
strengthened since 2012 with training and new recruits, deals with criminal investigations and arrests, as well as do pre-trial hearings. It is supposed to have a presence in all townships and districts as well as collaborate with village security persons. The KNDO and the armed wing of the KNU, the KNLA is not supposed to do police work, except to arrest in specific situations where no KNPF officer is available or provide security at larger meetings and festivals (McCartan and Jolliffe 2016: 21).

The KNU’s three-tiered judiciary (Supreme Court, and district and township courts) uses a ‘justice committee’ system, rather than actual judicial courts, as in the Myanmar government system. No lawyers or professionally trained judges are used, but committee members are expected to follow the written KNU laws, which address all kinds of crimes and civil disputes. The Supreme Court has three Supreme Court Judges who are selected by the Central Standing Committee of the KNU at the quadrennial KNU Congress. At district and township levels, the justice committees comprise four members and a full-time judge, who is not a legal professional, but elected from among the KNU Standing Committees at district and township congresses every two years. The judges are therefore embedded in the civilian governance structure of the KNU. However, the judges are expected to make independent decisions. When doing so they seek advice from the other justice committee members, who are selected by the judge. These other members are selected from other KNU departments like the forestry and agricultural departments. Committee members can also come from the Karen Women’s Organisation (KWO), especially when cases involve women and children. At least two of the committee members must assist the judge in the court hearings.

According to the legal procedure code, the first step in resolving a case is to call upon the KNPF to do investigation, including collecting evidence and interviewing witnesses. Suspects can be held in custody at the township level prison, until trial. The police then report to the judge at the appropriate level (depending on the level of penalty of the case). The KNPF is supposed to act as prosecutor during the trial (presenting the details of the crime and the evidence). Defendants are asked to plead guilty or not guilty, and the KNPF officers, the plaintiff and the defendant are all permitted to call witnesses, present evidence, and testify, as

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8 The ceasefire gave a space for reforming the KPF, which also comprise some retired KNLA soldiers (EverJust interview, KNU Justice Department, March 2016). Today the KNPF has an estimated force of 600 officers, and in 2016, 200 new officers graduated from training (McCartan and Jolliffe 2016: 21).
9 Standing committees are the civilian governments of the KNU, and the members are elected at congresses every two years upwardly from the village tract level. It resembles a one-party state system (Jolliffe 2015: 46-7).
10 The KWO is not a department of the KNU but a community-based organization given special rights by the KNU Constitution, including to have representatives in all of the KNU’s main administrative and legislative organs (McCartan and Jolliffe 2016: 21).
there are no lawyers. The judges make the final judgement, based on advice from the committee members that have been called in to participate (McCartan and Jolliffe 2016: 26).

The judiciary is separate from the justice department, which is situated at Central level and has the responsibility to make, review and disseminate laws, including creating legal awareness and advising decisions made by the judges (McCartan and Jolliffe 2016: 20). Also, central level KNU leaders are prohibited from being involved in trials, although village, district and township leaders can be consulted during trials (ibid: 26).

The judges are expected to apply the legal books of the KNU, which covers a legal procedure code and three laws: civil, criminal and witchcraft or ‘magic’. Although KNU laws have existed since 1948, the current laws were only properly codified in the 1970s by members of the KNU who had been trained in law inside Myanmar.\(^\text{11}\) The legal procedure code specifies the role of the judges, how trials should be conducted, jurisdictions, roles and responsibilities of the police, and police procedure (McCartan and Jolliffe 2016: 23). There is also a chapter on the role and responsibilities in village level dispute resolution.\(^\text{12}\) The law on deciding cases of bewitching covers instances where people are accused of causing other persons to become ill, mad or die, using certain materials, which are listed in the law or by getting the help of spiritual actors. It can also punish persons who take the law into their own hands against persons accused of bewitching. The law itself explicitly states that it was passed because witchcraft accusations were rife and sometimes led to acts of self-justice. Thus, the law gives the KNU authorities the mandate to deal with such cases legally. Punishments may be prison and even death sentence, which must be decided only at district level (KNU law on bewitching 1976: Article 3).

In the civil and criminal law books, the types of cases, punishments and fines are listed. The civil code covers disputes between private individuals like physical assault, land disputes, and compensation for injury. The laws also outline the jurisdictions of each court-level. These follow the degree of the offence and penalties: for instance, the township level can maximum issue a three-year imprisonment, which includes the majority of civil cases, and a fine not exceeding 50,000 Kyat. The township level needs permission from the district level to issue prison sentence of three years. Crimes like murder, rape, torture

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\(^{11}\) EverJust interview, KNU justice department member, March 2016.  
\(^{12}\) EverJust interview, District level judge, September 2016. However, as addressed later, the EverJust research team only once saw anyone holding a copy of this chapter at village level, and it was unclear whether there was a special KNU guideline book for village level dispute resolution. Some EverJust interviewees said there was, but no access was granted and others said that they had lost it.
and theft of property valued at more than 5 Million kyat must be referred directly to district level. Districts can issue sentences of between three and seven years of prison. However, murder sentences at district level must be approved by the central level. Higher levels also function as institutions of appeal, based on written requests by the victims or defendants (McCartan and Jolliffe 2016: 24). Penalties in the KNU system include, prison, fines, compensation and labour. There are supposed to be prisons at both township, district and central levels, but they do not exist in all areas as physical prisons.

The laws of the KNU are formalistic legal instruments, drawing on Western jurisprudence, akin to officially recognised states. Even the law on bewitching makes the requirement for material evidence in order for cases to be decided (KNU law on bewitching 1976: Article 3). The KNU in addition to the above-mentioned laws also has special decrees that for instance restrict logging, killing of wild animals and alcohol sale. There are ongoing revisions of laws, like in terms of the amount of fines and level of penalties. For instance, with regards to adultery, which is considered a severe crime also by the KNU (akin to the Myanmar government law), penalties were reduced after 1995 from longer-term prison to monetary fines (McCartan and Jolliffe 2016: 23).

In 2016, the KNU also disseminated an anti-drugs law, as a response to the increasing problem of drugs in Karen state and other KNU areas. It covers penalties for buyers, users, cultivators, traders and producers of drugs. The Anti-Drug law includes penalties such as fines and imprisonment. In 2015, the KNU also passed a revised land policy, which has a chapter on how to resolve land disputes between villagers, villages and between villagers and commercial projects or large businesses. When disputes arise between villagers, it should as a first option be resolved according to the particular village’s customs by a customary authority. If this fails a temporary Land Conflict Resolution Committee should be set up comprising the village chairman, a customary authority, and a female and youth representative who should resolve the case based on consultation with a KNU official at the next administrative level. If the case cannot be resolved at that level, it should move up to the township administrative level where the case will be submitted to the court, which will hear the case with the advice of other relevant KNU departments and based on consultation with the Central Land Committee and the Karen Agricultural Worker Union (KAWU). When cases occur between villages they should also as a first instance be resolved through customary law by seeking consensus and a fair balance of competing claims. Here there must be a local land dispute committee comprising village representatives and representatives from KAWU. If not resolved at this level the case can be forwarded to a

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13 EverJust interview, head of KNU Justice Department, March 2016. Due to lack of access to this law, which was still not approved in March 2016, it is unclear at the time of writing what levels of the court system has the jurisdiction to enforce this law. However, the EverJust team found that in August 2016, the district judge in a KNU area did apply it against traders with assistance from a Supreme Court Judge.
court at township level and/or to the Central Land Committee. If a dispute involves a large business or a commercial project the resolution should go directly to the district level court and then the Supreme court (KNU Land Policy 2015: 62-3).

The land policy reflects more broadly how the KNU justice system grants a relatively large jurisdiction to the village level as well as allows for the use of customary law. The KNU has not codified any customary laws, so when customs are referred to, they are the rules and norms applied by the respective villages, which may vary considerably. The village and village tract levels of dispute resolution constitute the base of KNU’s justice system, but are not an integrated part of the justice committee systems. They have no KNU members, but persons elected by the villagers. The village is the first instance for resolving minor crimes and disputes between villagers, and this authority is granted to the village chairmen or heads by the KNU law. Minor crimes also include fist fights, domestic violence and petty theft.

In fact, a high level of jurisdiction is granted to the village level and according to EverJust interviews with KNU justice actors, the KNU prefers that cases are resolved at as low a level as possible.¹⁴ Exceptions are murder, rape and drugs, which should go directly a KNU justice committee at township level and above. The KNU permits village leaders to make by-laws and use specific village rules, but these should be approved by the KNU. Minor cases can be transferred to the KNU courts in the form of appeals or when the village or village tract actors are unable to resolve a case or enforce a verdict. The legal procedure code stipulates when and how village chairmen should forward cases to higher levels, but otherwise there is large flexibility. In contrast to the Myanmar government system, it is however noticeable that there is an institutionalised link between the KNU courts and the village and village tract levels in the sense of appeals and transfers. However, the KNU law does not have any requirement for formal investigation and trial processes at the village and village tract levels. As addressed in Chapter 3 this may also help explain why village level dispute resolution, including types of punishments, varies considerably between villages in KNU areas, namely because these are not decided or regulated by KNU law.

Due to the volatility and contours of the decades of armed conflict, the KNU justice system has been in a constant process of re-making and un-making, not least as KNU headquarters were forced to move and shift locations. Today the justice department and the three Supreme Court judges are still in ‘exile’ in Thailand. This has been the case since the headquarters at Manerplaw was lost in 1995 due to Myanmar military attacks. Nevertheless, since the 2012 bilateral ceasefire, and even more so since the 2015 National

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¹⁴ EverJust interviews with, head of the KNU justice department, 28 February 2016; KNU district chairman, 11 May 2016; KNU district judge, 29 September 2016. The same was found among the NMSP members: MNLA district commander 29 March 2016; NMSP Township chairman 17 May 2016, NMSP Village Justice Committee member 18 May 2016, former NMSP village head man 2 June 2016.
Ceasefire Agreement (NCA), efforts are being made to strengthen and reform the system, including the links to and enforcement of laws at the village level. This reinforcement 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.\textsuperscript{15} Recently the KNU has also formed the Karen Legal Affairs Committee, which is in charge of upgrading the system and providing training in legal affairs to various actors, including judges, police and village leaders. The committee is made up of members of the justice department, central level judges, heads of the Interior and Religious Department, under which the KNPF falls (McCartan and Jolliffe 2016: 20).

See Appendix B for an overview of the KNU justice system.

\textbf{2.2.1 KNU justice in practice}

The operations of the KNU justice system in practice cannot be generalized across all seven KNU districts (divided into 28 townships), which covers all of Karen state, and parts of Mon State, Bago (East) region and Tanintharyi Region (Jolliffe 2015: 46). There is large variety depending on the human resources, the degree of \textit{de facto} control held by the KNU, and the relationship with other EAOs and the GoM authorities. The perceptions and skills of the KNU administrative staff and judges also have a bearing on how justice is provided. Finally, the contours of the conflict and the locations of district and township headquarters create important differences. This section draws on qualitative research by EverJust in two villages in two different KNU districts (north and central Karen State).\textsuperscript{16} The empirical insights from this research is combined with information from other sources, which have done more overall assessments of the KNU justice system in practice (The Border Consortium 2014; McCartan and Jolliffe 2016). Due to issues of access, the experiences with KNU justice are drawn mainly from areas that are located close to GoM areas, rather than those on the border with Thailand or in the vicinity of KNU headquarters. However, interviews with KNU judges also bring information on how the system operates in other areas than those where EverJust has conducted research.

\textit{General insights:}

\footnotesize\textsuperscript{15} EverJust interview, KNU Justice Department, March 2016.
\footnotesize\textsuperscript{16} All place and person names have been kept anonymous in this report.
• Village leaders in villages under KNU control and even in mixed-governed (KNU and GoM) areas tend to prefer to forward cases that cannot be settled at the village level to the KNU. Although villagers also fear the KNU courts, they mention the KNU justice system as a second option if cases cannot be settled at village level. People do not mention the Myanmar courts as an option they would choose. There tends to, however be a higher reluctance among villagers in mixed controlled areas of going to the KNU courts. This owes to the fact that historically high risks have been associated with engaging with the KNU, because the Tatmadaw would target persons doing so.

• Lack of human resources means that judges often have several overlapping positions in the KNU/KNLA, and it sometimes means that the justice committee cannot be summoned in all case resolutions.

• Courts are not always stable physical buildings, fixed in a place, but often mobile or take place wherever it is convenient for the involved parties, which can be at a smaller KNU or KNLA outpost. The positive aspect of this mobility is that the KNU is able to service villagers in localities closer to their homes. However, it also makes the working conditions difficult for the KNU judges. In addition, it means that there is not always a specific place to go with complaints.

• It is not always judges who perform the trials in practice, but instead township administrators and KNLA brigade or battalion commanders. This is often due to the fact that the judge is not nearby or able to be present at the time (McCartan and Jolliffe 2016: 20). On other occasions, it is because villagers go directly to a KNLA person or the administrator because of personal connections.

• Not every township has a KNU police officer to conduct investigations, and sometimes police officers are not available for investigations so these are provided by township administrators and the KNLA. The KNPF are still in need of additional training to adequately perform investigations according to KNU legal requirements (McCartan and Jolliffe 2016: 22).

• Under difficult circumstances, especially in mixed controlled areas where the KNU has a lower presence, the township level may refer cases that according to KNU procedure should have been resolved by a township judge, back to the village tract or village level (McCartan and Jolliffe 2016: 26). There are also situations where township judges are given the authority by the district to resolve cases that according to KNU law should have been handled at district level. This usually happens when judges are not able to be present for a hearing.

2.2.1.1 KNU Area A

The KNU justice system in area A (located in the lowlands about a day’s walk from the headquarters) operates mainly as ‘mobile courts’. Most hearings by township and district judges are not conducted at the headquarters, but temporarily set up in locations found most convenient for the involved parties. When a
case is reported from the village, the KNPF investigates the case, and if it has substance, the judge is contacted, and then sets a time and place. To mark out that a court hearing is taking place the judge puts up a Karen flag on a wall, sets up chairs in an ordered manner and then conducts the hearing. The cases that the EverJust researchers encountered were heard in different locations, including at KNU forestry department outpost, a new Karen Education Department (KED) school, a KNLA camp and inside villages where the case occurred.\(^{17}\) A main reason for this mobility is that while numerous villages falling under KNU control are situated in the lowlands, the KNU township and district headquarters are located in the hills, which can take up to two days to reach by foot.\(^{18}\) The judges are based at headquarters, but there are no physical court buildings and the justice committee members live dispersed in the outposts and some at headquarters. Consequently, it is not always possible for the judges to summon the committee members, so sometimes they judge with assistance from a KNLA soldier or another person at the outposts. They therefore substitute the permanent committee members with whoever is available in the village or outpost where the case is being heard. This has to be someone from the KNU or the KNLA, and cannot be a village leader as this could undermine the fairness of the hearing, according to a township judge.\(^{19}\)

In general, there is a lack of KNU staff and there is no salary or compensation. The fines that are issued by the courts cover only transportation expenses. Therefore, actors involved in justice provision have overlapping positions, as well as engage in farming or trade to provide for their families. For instance, the district judge in Area A has three other posts in the KNU administrative system, and one of the committee members is simultaneously a KNLA soldier and head of the forestry department. The personnel problems mean that sometimes the district judge grants authority to the township judge to handle a case that otherwise would fall under the district jurisdiction. Flexibility is necessary under the current conditions, which also at times means compromises with legal procedures.

Currently, in Area A, the district justice committee has five members, two of whom are women: one who is district KWO chairperson and one who is also a township secretary. There is no requirement that a female member must be present at all court decisions, according to the district judge. The township committees also have five members each, who equally take up other positions in the KNU: there is a judge, a vice-judge, a clerk and two committee members. However, in one of the two townships one of the members are inactive. They must be an uneven number when they decide a case, so this human resource constraint presents a problem to the judge.\(^{20}\)

\(^{17}\) EverJust interview, Township judge, January 2017.
\(^{18}\) EverJust interview, district chairman, 11 May 2016.
\(^{19}\) EverJust interview, district chairman, 11 May 2016.
\(^{20}\) EverJust interview, district chairman, 11 May 2016.
The judges keep the KNU law books, and uses the civil and criminal codes. The district judge claims that he does not use customary laws (like compensation in rape cases), but he has judged using the law on bewitching once during the past two years. One township level judge claimed that he does not have a copy of the law books, but only has oral knowledge hereof. During hearings, they follow set procedures for hearing the testimonies from both sides, using witnesses, drawing on police investigation reports, recording all proceedings, and using the law to set fines and prison sentences. Official stamps and documents are issued and parties to a case must swear to speak the truth holding either the bible, if Christian, or a Buddhist scripture or the Koran if the person is Buddhist or Muslim. All testimonies and decisions are recorded in a book, and every six months the Central level needs a report of the cases that have been resolved in the district. Besides these bureaucratic and juridical aspects, there is considerable space for negotiation by the parties and judges consider the economic and family situation of perpetrators when they decide punishments. Such considerations are based on advice from village leaders: for instance in one case the sentence for adultery was reduced for a woman, whose parents needed her care. We also found that even when a severe crime reached the district level, like in one case where a father beat his wife and children, the judge issued a warning rather than a prison sentence, thereby giving the perpetrator an extra chance. This resembles village dispute resolution more than official judicial procedures. Whereas these legal compromises reflect that the KNU is a kind of ‘state-in-formation’, they reflect an understanding by the KNU of village preferences for non-punitive forms of justice, which is addressed in chapter 3.

The KNU in area A also use Kahn Wan – a kind of promise letter, which (see Chapter 3) is also used by Myanmar government village and ward leaders, and by the NMSP (see Section 2.2.). District and township level judges issue Kahn Wan for murder and drug trafficking cases as well as in situations where the prisoner is released earlier than the set sentence due to good behaviour. The Kahn Wan is an official letter with a KNU stamp and letterhead, and the perpetrator has to sign it. It reads that if the person commits the same act again, he/she will be charged under KNU Law. Kahn Wan are rarely used in minor cases, but it has happened, such as domestic violence.21

In practice the transfer of cases reflects the continued volatility of the system. The cases encountered travelled different routes before a KNU hearing was set up. The village leaders do not report to any specific person or office, but use a network of KNU or KNLA contact persons, who constitute a kind of underground network that used to operate secretly during the open conflict, connecting the KNU with the villagers that supported the KNU.22 This network-like reporting system reflects that the people are still careful and

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21 EverJust interview district judge, September 2016.
22 EverJust interview with district judge, September 2016; EverJust interview with village chairman, September 2016.
cautious when operating the KNU system. EverJust researchers encountered cases where these ‘contact persons’ acted as judges on the spot, and where villagers had turned directly to them rather than passing through village leaders. In Area A, there are ‘area leaders’ above the village chairman, but these do not act as judges. Village chairmen may however use them as a go-between when reporting cases to the KNU courts. There are no village tract leaders in the KNU system here. Those who bear that title are those who work for the Myanmar government.

It was also found that sometimes it was the KNLA soldiers rather than the KNPF that performed investigations and arrests. District level justice committee members highlighted the difficulty of investigating cases openly, especially in the areas that are under mixed controlled or where the territorial boundaries between the KNU and the Myanmar government are unclear. Sometimes they have to do so secretly and the KNPF have to dress in civilian clothes. The KNPF is not situated in any fixed place in the lowlands, but in different sites and sometimes with the KNLA. The following case illustrates how a case may travel and how difficult circumstances mean that the judges have to adjust procedures to realities on the ground:

### Adultery and domestic violence case

In the summer of 2016, a man was accused of beating his wife and sleeping with another woman. The KNU village chairman tried to resolve the case, but had to give up, so he went to the KNU forest department office nearby the village, which sometimes serves as a court and the township administrative office. However, the township level does not have the official authority to resolve this degree of case because it can give up to seven years in prison, so the judge contacted the district level. The latter said that the police should arrest the accused. A township level forestry police went to the village to make the arrest and brought the accused to the township level headquarters in the hills.

The wife, the village chairman and the woman who had slept with the man were called to the township headquarters which is a far travel from the village and which is also far from the district headquarters. The township judge knew that he could not resolve the case because the sentence would be higher than three years. The wife of the perpetrator was pregnant and she had left the other children at home in the village, so she did not want to travel to the district headquarter and it was not possible at the time for the district judge to come. So the district gave the township judge the authority to decide the case on that same day, on the spot. Three village elders, the village chairman, the township judge and the parties were there. The village persons acted as witnesses and explained how the case had been dealt with at the village level.

The township judge decided that the accused man was guilty and gave him seven years prison. The woman who had slept with him got three years prison according to the article on ‘stealing husband and wife’. She got a lower sentence than described in the law, because the village elders explained to the judge that she had a difficult family situation and could not be away for a long time. Because her sentence was lower she was sent to the township level compound in the lowlands, whereas the male perpetrator was put in prison at the district headquarters in the hills.

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23 EverJust interview, Justice committee member, September 2016.
Punishments by the KNU in area A include prison, fines, compensation to victims, and labour in connection with or as a substitute for prison sentences. EverJust researchers only heard about fines in drug trafficking cases, and these were combined with prison sentences. Labour punishment without prison was encountered in one case where the perpetrator had beaten his wife and children: he got one month of road repair labour and had to sign a Kahn Wan, promising that he would not repeat the offence. If he repeated the offence, he would get a proper prison sentence. Perpetrators with prison sentences are as a general procedure sent to the township or district KNLA headquarters. There are no brick-walled prison buildings, but cells that can keep ten to twenty convicts. Less dangerous prisoners are kept outside the cells in the KNLA compound and do different kinds of labour. In September 2016 there were thirteen prisoners at district headquarter, three of which were inside the cells for murder, drug trafficking and physical assault. Since the ceasefires, cells have also been expanded to the outposts to keep some convicts.

The most common cases that were dealt with by the KNU in Area A between 2012 and 2016, according to the interviewed judges, were land disputes between villagers and relatives, drug trafficking, disputes over moneylending, adultery, divorce, domestic violence, physical assault and fewer witchcraft cases. 116 criminal cases and 18 civil ones were heard by the KNU judges during this period, which reflects that most civil disputes, which are the majority of cases occurring, are resolved at village level, whereas crimes tend to more commonly go to the KNU. Witchcraft cases, according to the district judge, who used to be township secretary in the past, have markedly reduced over the past 20 years. One case that was reported in 2016, however, illustrates that when they occur they involve high punishments, yet require material evidence for the judges to charge the accused according to KNU Law. In this case the perpetrator, a P’a O Christian, was accused by the villagers as a group of having bewitched several villagers, and they reported it to the KNU police. The police told the villagers to find material evidence and they did. At a pre-hearing by the police, the accused’s sister in law also said that the accused had raped her. The case is regarded as so severe, equal to death sentence in the KNU law book, that it should be resolved at central level. However,

24 According to the district chairman, the KNU does not sentence juveniles (under 18 years old), but consult and pray for them, sometimes with the assistance of religious leaders. They sit down with the parents and the village leaders and speak with the misbehaving children. However, there have been situations where children, who have repeatedly trespassed the village or KNU rules, like taking drugs, drinking, or making public nuisance, have been sent by village leaders to the KNU camp for a week, where after they were consulted before they could return home (EverJust interview district chairman, March 2016).

25 According to the district judge, fines issued by the court follow the same system as KNU taxation: fourteen percent are sent to central level, twenty-one to the district and sixty-five to the KNLA brigade. Some of the twenty one percent to the district is used for transportation for the judge.

26 EverJust interview district judge, September 2016.
the Supreme court judges were too busy, so they authorised the district court to handle it. He was given a lifetime prison sentence and was sent to an ‘outpost’ prison. In the past, he would have been killed immediately, because at that time they had no stable prisons due to the conflict, according to a district justice committee member.27

The forestry department, which also has its own police persons, also enforce restrictions of the use of wood, which requires permission letters from the KNU. If the forestry police catch a person stealing wood, he/she is given environmental awareness and have to sign a Kahn Wan not to repeat the offence. If he/she breaks the Kahn Wan, the sentence is one-month time in the forestry department cell.28

The only type of case that the KNU justice system cannot handle in area A, according to the judges, are the land grabbing cases, which involve land confiscations by the military (Tatmadaw) in the past. These are regarded as difficult political matters that must be resolved at the highest leadership level between the KNU and the Myanmar government.29 Conversely, the KNU has charged non-Karen persons who have committed crimes inside its claimed territory, using KNU law, and imprisoned them in the headquarters in the hills. A more recent development is the policing and charging of drug-trafficlers who are mainly non-Karen. Not only is the drug problem increasing, the new KNU anti-drugs law also makes it possible to judge these persons at district and township levels. The first sentences were handed down in mid-2016. Non-Karen perpetrators are charged with fines and prison, and are kept at the outpost prisons, rather than in headquarters for security reasons.30

An interesting insight from the EverJust research in Area A is that the transfer of cases from the village level to the KNU system regards not only crimes and civil cases that are covered by the KNU laws, but also repeated violations of village rules. For instance, in one case the KNU sentenced a man with three months of labour prison, after the village leaders had given him two warnings for selling alcohol. Prohibition on selling alcohol is not written into KNU laws, but covered in a set of village rules that have been drawn up by villagers under guidance from the KNU. The 2012 ceasefire made it possible for the KNU to disseminate laws and guidelines, as well as form KNU ‘Village Development and Dispute resolution Committees’ in the lowland villages, which previously were under Tatmadaw control and subject to combat. The central level Karen Women Organization (KWO) has also actively empowered the village level KWO women leaders to

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27 EverJust interview, Justice committee member, September 2016.
28 EverJust interview, Forestry Department officer, September 2016.
29 EverJust interview, Justice Committee member, September 2016; District Chairman, May 2016. One case was encountered where the victims of land confiscation, of farmland situated in a Myanmar government controlled area, made a complaint to the KNU at district level, but the KNU referred them to the police and township authorities in the government controlled area. The case was not resolved (EverJust interview, Village leader, September 2016).
30 EverJust interview with KNU judge and committee member, September 2016.
create awareness of women’s rights and to resolve disputes and crimes against women. According to a KWO village leader, the KNU/KNLA was able to begin to communicate its laws in 2013 inside the low-land villages. At village meetings, the KNU/KNLA explained that minor cases should be dealt with inside the village, whereas larger ones should be forwarded to the KNU. Villagers were also encouraged to codify their own village rules and dispute resolution procedures. The KNU did not decide these rules, but gave overriding guidelines, and approved them. As addressed in more detail in Chapter 3, the KNU plays an important role in empowering village leaders and the KWO to resolve disputes at the village level, just as the KNU system heavily relies on these village level dispute resolution actors in deciding and receiving cases (Harrison and Kyed 2017).

2.2.1.4 KNU Area B

Although there are no particular physical court buildings at township level, the courts do not work in the same mobile fashion as in KNU area A, but from the offices or compounds of KNU officials in the KNU controlled areas of the district. For instance in one township the judge operated from the KNU forestry department building. There is no physical prison, so convicts are kept inside the compound of the forestry department. The district court was only re-established in 2016, which meant that even serious cases, like a rape case from 2015, were dealt with at township level. At that time the district judge was living in Mae Sot, but the ceasefire has meant that now he has been able to operate as a court at district level inside Myanmar, near the Thai Border. At township level, the judges resolve with two or four other committee members. It has to be an uneven total number, including the judge, so that a majority vote determines the verdict. The judge says that he does not make independent resolutions and that he also draws on advice from village leaders and elders when deciding cases.

Complaints usually start with the KNU village chairmen, but complainants are allowed to go directly to the township judge if they wish to do so, according to a township judge. When a village leader cannot resolve the case, it is him who has to pass the case on to the township judge. A village leader explained that he would send a letter to the township level judge when he wanted to forward a case to the KNU, and then the judge would set a date for the hearing. In principle, the village leaders must send case reports to the KNU judges, explaining prior hearings, but some are illiterate and therefore instead give oral accounts during the KNU court hearings. Village leaders and elders do not take part in making the judgements at the

32 In this Area B there are also towns that are fully controlled by the Myanmar government, mixed controlled areas, as well as areas claimed by other Karen EAOs, like the KNU/KNLA Peace Council, and the DKBA.
KNU hearings, but act as witnesses and provide testimonies. Simultaneously, villagers can appeal village leader decisions to the KNU. This happened in an arson case where the perpetrator refused to pay the compensation to the victim that was decided by the village leader. The perpetrator appealed to the KNU township judge. The judge, however, agreed with the village leader’s decision to enforce compensation, and in fact raised the amount. The perpetrator paid. Had he not paid, he would have gone to ‘prison’, according to the township judge. This shows that negotiated settlements, even in crimes like arson, are applied by the township level. Even though the KNU law is used, dispute resolution using reconciliatory methods and negotiations with the parties over for instance the amount of compensation is predominant, rather than a stringent application of law.

There is no permanent KNPF officer at the township level. The police rotate from place to place, and this means that they are not always engaged in the investigations. Rather the impression is that the township judge investigates the case with advice and information from the village elders and leaders from the respective village where the case originally occurred. Witnesses, which also includes village elder testimonies, are the main sources of evidence.

The most common cases at township level are land disputes related to inheritance, divorce, and disputes related to moneylending. There are very few thefts and some adultery cases, but most of these are resolved by village leaders. Rape also occurs, but rarely. Land disputes related to inheritance are easy to resolve, according to a township judge. He uses the inheritance law of the KNU and check the land ownership with the village leaders. As a judge in these cases, it is simply a matter of calling the elders and the witnesses to have the right evidence to decide the case, and the KNU law is clear about the equal share of property to siblings. In civil cases, a township judge told us that the procedure he uses is as follows: the complainant is asked to make two letters describing the complaint – one for the judge and one for the accused. The accused is then asked to produce a letter with his/her testimony to the judge. The judge’s job is then to examine the disagreements between the statements of the two sides, call in village leaders and witnesses, to discuss the weak points or the areas of disagreement, and then make a decision together with the committee members.

The punishments issued by township judges, apart from prison sentences, are compensation to the victim and labour. Sometimes these are combined. The following case is illustrative of this combination:

33everJust interview village leader, March 2016.
34everJust interview, Township judge, May 2016.
**Elopement and rape case**

Under the influence of alcohol, a man persuaded a young woman to go with him and they had sexual intercourse, without the consent of the woman. The parents first reported the case to their village leader who did not want to resolve the case and transferred it to the township judge. The judge, committee members as well as the villager leader analysed the case and made a decision together. The perpetrator got one year imprisonment and also had to pay the girl’s family 30 lakh in compensation. The perpetrator agreed with the decision and did not appeal, although he was given a 40 day period to do so. Although the township judge realised that the case was like a rape case he did not forward it to the district because at that time, in late 2015, the district judge was still living in Mae Sot. The perpetrator was not locked up, but kept inside the KNU forestry department officer’s compound where the judge also operates, and although he cannot leave the compound he is allowed to have visits from his family. He does house work, like cutting wood, cooking and cleaning.

This case illustrates how village leaders are drawn upon when KNU judges make decisions and that compensation to victims is applied not according to KNU law, but local customs. In addition it shows how the lack of a permanent district court can mean that lower levels make decisions in cases outside their official jurisdiction.

Since the political transition and the ceasefire, villagers have also begun to raise complaints regarding land grabbing by EAOs and the government. In Area B, the DKBA and the BGF also have a strong presence, and one township judge has received some complaints about land grabbing by the DKBA. However, the judge cannot resolve these cases, because he does not dare to, as the DKBA is also an armed group. Also the district level cannot resolve these cases. The township judge said that he directly advices people to either go to the GoM with such cases or to give up on pursuing them altogether. Because Karen people are too afraid to go to the Myanmar courts, so such cases are at the moment left unresolved. This same judge did, however, say that in one case the land grabbing complaint had ended in the KNU central court, after having first passed through the township level. However, the case remained unresolved.35

2.2.1.3. Jurisdictional challenges – KNU and GoM mixed controlled areas

A core challenge for the operations of the KNU justice system is the lack of clear territorial boundaries between the KNU and the GoM areas, as such boundaries are not laid out in the 2012 and 2015 ceasefires. This becomes especially difficult in mixed-controlled areas, as well as in villages that see themselves as under KNU control, but which are on the borderline with GoM administered areas. KNU judges and chairmen unilaterally state that when cases involve Karen villagers in KNU controlled areas they have no problems with deciding and hearing cases. However, there is no authority to call citizens from GoM administered areas to the KNU justice committees, even if crimes are committed within what the KNU

35 EverJust interview, KNU Township judge, May 2016.
regards as its territory. If non-Karen commit crimes in KNU areas, the KNU has to operate in delicate and hidden ways, and the same applies if Karen persons living in GoM administered areas report a case to the KNU. This was for instance the case in Area A, where a man was accused of sleeping with two women and making one of them pregnant. The KNPF had to secretly investigate the case in a GoM controlled town, and because of these circumstances, the perpetrator was sentenced very rapidly within a single day. He was placed in the KNU prison.

Cases that involve a Karen and a non-Karen are also complicated, and may end in the lack of justice. For instance in one case a Karen had borrowed money to a non-Karen residing in a Myanmar government controlled town, but the borrower failed to pay back. The lender reported to the KNU township judge, who asked various KNU contact persons (not the police) to search for the borrower, but because the borrower hid in the government-controlled area he could not be summoned. The case was left unresolved.

The difficulty of land grabbing cases have already been mentioned, but in addition to these, there are also smaller land disputes that remain unresolved due to a lack of collaboration between the KNU and the Myanmar government system. This happens in mixed controlled areas where there are unclear ownership relations. In addition, there are different understandings of landownership. For instance, the KNU’s land policy (2015) supports customary land ownership, including ancestral and inherited land, whereas the Myanmar farmland law (2012) grants ownership to persons who have used the land for up to four years, irrespective of customary rules (Lue Htar 2018). In these cases, involving different claims to ownership, it is difficult, if not impossible for the KNU to resolve the case.

In mixed controlled areas, research also shows that villagers are particularly reluctant to report or appeal a case to any institution outside of the village. This is because of insecurity and fear of getting into trouble with either the GoM or the KNU, as official authority is unclear (see also IRC 2016, Law and Justice in Karen Settlement Areas).

2.3. The legal system of the New Mon State Party (NMSP)

The NMSP like the KNU also has a three-tiered system of justice committees (Central, District and Township), but these do not have independent judges, and they fall directly under the Administrative Department of the organisation. At central level, also referred to as Supreme Court in the NMSP legal code, the justice committee has seven members and is chaired by the NMSP joint secretary. The committees at district and township levels have five fixed members from the NMSP administration and the armed wing, the Mon National Liberation Army (MNLA). At district level there is a special person in charge of justice who is member of the committee. The administrative chairpersons are automatically the chairpersons of the
justice committees, and an MNLA representative is the vice-chair. The judiciary therefore overlaps with the administration and the armed wing. Formation of justice committees take place every four years.  

Currently, the township committees are not permitted to make judicial decisions, but can only engage in pre-trials and investigations for the district level (McCartan and Jolliffe 2016: 30). It is unclear when this decision was made and why, because according to the NMSP law from 1970s (re-printed in 1998), the township courts do have authority to decide criminal and civil cases.  
The NMSP has no police force, so police functions are done by the township committee, jointly with the MNLA soldiers, who have the authority to make arrests. Prisons exist at district headquarters and at central level and are supposed to be administered by civilians from the administrative department, not the armed wing (McCartan and Jolliffe 2016: 32).

The NMSP justice system operates as a jury rather than with a single judge making the decisions. As in the KNU system there are no lawyers. The case resolution procedures, jurisdictions, penalties, and types of cases are stipulated in NMSP’s “Law for Making Decisions in Cases”, which is the only legal code that the NMSP has. It covers both civil cases and crimes, and it includes the ‘village court’ level as part of the NMSP system, followed by township, district and central/Supreme Court. Civil cases cover inheritance, debt and lending, marriage/divorce, and adoption, but not land disputes (NMSP Law 1998: Chapter 3, article 1). Criminal cases cover a long list of offences akin to Myanmar criminal law, based on the colonial Burma code (McCartan and Jolliffe 2016: 30). Among listed crimes are also oral abuse of village authorities, spying, forced labour, public/community disturbance like quarrelling, insulting other’s dignity, prostitution, and disturbing other’s culture and religion. There are also criminal offences pertaining to corruption with authorities and unlawful detentions (NMSP Law 1998: Chapter 8).

As in the KNU system, the jurisdictions of each level follow the degree of the offence and penalties. Village courts are permitted to charge three months of prison and issue penalties worth of up to 5,000 Kyat in criminal cases, and up to 50,000 kyat in civil cases (depending on case). Looking at the list of crimes, this means that the village level has authority to decide minor thefts, arson, community disturbance, but not for instance abuse against village authority, corruption, domestic violence, physical assault with weapons, and other larger cases like rape, murder, suicide and use of arms. However, the village level can decide all civil cases with a value below 50,000 Kyat in fines. According to the law, the township level can decide cases

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36 EverJust interview, NMSP Central Committee member, February 2016.
37 According to an EverJust interviewed township chairman, the decision was made about ten years ago (2006), because the township level was overburdened with work (EverJust interview, May 2016).
38 EverJust interview, NMSP Central Committee member, February 2016.
39 The law was translated to Mon language and printed in 1998, but is supposedly from 1973, although the exact date is unclear.
with sentences up to one year in prison, but they are no longer allowed to do this. The district court is permitted to decide cases of up to three years prison or 100,000 kyats fine, and fines in civil cases can be up to 300,000 Kyat. Only the central level can decide death penalty. The NMSP law also allows for appeals higher up in the court system, as well as for the transfer of cases if lower levels do not manage to resolve the case or if the case they are handling turns out to involve a higher level of punishment than they are permitted to resolve (NMSP Law 1998: Chapter 3). This should be done by forwarding case records from village level to township level and so forth within a set amount of days (i.e. 15 days from village to township level, and 30 days to the other two levels) (ibid.: Chapter 4). For victims and defendants the appeal time is 50 days. The higher-level courts have the authority to re-sentence and re-rule the cases from lower levels. The village courts are also stipulated to submit records of cases that have been ruled at that level to the NMSP township court for record keeping.

Penalties in the law include prison, compensation to victims, fines (which must be handed over to the financial department of the NMSP), and death sentence. However, according to interviews in 2016, the NMSP no longer issues the death sentences (see also McCartan and Jolliffe 2016: 32), which according to the NMSP law could be given for those seen as severe public crimes like spying, attempted murder of village authority, kidnapping, murder, rape, and armed rebellion (NMSP Law 1998: Chapter 8). Court decision procedures as laid out in the NMSP law, does not explain how investigations and pre-trial hearings should be done, but briefly mentions that: the questioning of witnesses must be done in front of the accused; that judges must remind parties and witnesses to speak the truth, and; that there must be space for the accused to defend him/herself. It also requires that all statements and the sentence is written down, and that this must be available to the parties (ibid.: Chapter 5).

As in the KNU system the NMSP courts are closely linked to the village level, and above this the village tract level. The NMSP has a specified structure for these two levels: at village level the village chairman and five committee members from his village administrative group must form a justice committee. At tract level there is a specific justice committee with elected representatives from each village in the tract, and unlike all the other levels, these are independent from the administrative personnel. This level is not covered by the NMSP law, and the tract committees cannot hand down punishments. They function as appeal institutions for the village level and can help to negotiate between the parties, when resolutions at village level fail. They can also deal with cases involving persons from different villages in the tract (comprising sometimes 5-8 villages).40 Serious crimes, like rape and murder, must be forwarded directly from the village

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40 MNLA district commander 29 March 2016; NMSP Township chairman; 17 May 2016; NMSP Village Justice Committee member; 18 May 2016, former NMSP village leader, 2 June 2016.
where they occur to the township level, where the judicial committee must investigate the case before the case is heard at the district level, where the accused is detained as there are no prisons at township level. Civil cases and crimes require an investigation and determination from the township level committee before is sent to the district for a final decision. When cases go to the central judicial committee both sides are investigated again and required to give statements. Another commission is then formed to review the case and the verdict, and it is this commission that decides the final verdict, based on a unanimous decision (McCartan and Jolliffe 2016: 31).

According to interviews with NMSP members in 2016, the NMSP law has been amended periodically, especially with regards to the monetary amounts of fines and compensation. This has been done with advice from outside experts. Outside lawyers have also in the past provided training to the judicial committees on legal awareness (McCartan and Jolliffe 2016: 30). However, there is no available information on international support to the NMSP justice system or human rights training, which may owe to the fact that the NMSP has a less strong representation in Thailand and that it only became a signatory to the National Ceasefire Agreement (NCA) in February 2018, in contrast to the KNU. Conversely, because the NMSP signed ceasefires in the government already in 1995 (as opposed to the KNU only in 2012), it has had a longer time frame of more stable territorial control and termination of armed conflict. The 1990s ceasefires, unlike the ones from 2012, came with clearer territorial boundaries between the areas of the EAOs who signed and the GoM areas.

See Appendix C for an overview of the NMSP justice system.

2.3.1 NMSP justice in practice

Even fewer studies are available on the NMSP justice system in practice, so also this section mainly relies on the EverJust research insights from one NMSP Area. Interviews with judges and NMSP higher-ranking officials, however also give some insights from other NMSP areas.

**General Insights:**

- Mon villagers living inside the NMSP controlled Area C, provided by the 1995 ceasefire, use the NMSP justice system when cases cannot be resolved at the local level, but it is more complicated when they are in a dispute with a non-Mon or with someone living outside NMSP territory.
- Few justice committee members apply the law directly, and thus references to law and the use of prison punishments are combined with high levels of negotiation and reconciliation methods at township as well as at district level.
• There is a lack of human resources to deal with the caseloads, especially at township level, because many NMSP officials have overlapping roles.
• Drug trafficking and use is a major issue that is affecting the whole system and overloading the prisons and the justice committees. It is also creating jurisdictional challenges with the GoM and the KNU.

2.3.1. NMSP Area C

The NMSP justice system in Area C has a fixed physical establishment at one township headquarter and the district headquarters, and the committee compositions adhere closely to the NMSP policies. In two out of the three townships in the district, the main towns are under GoM control, or seen as mixed controlled areas, but Mon persons from these areas may come with cases to the NMSP headquarters.

The township justice committee has four members, two from the administration and two from MNLA. However, only three and sometimes two members take part in handling cases. The members said that they struggled to find time for dispute resolution, because they, MNLA and NMSP actors respectively, had many overlapping functions. Although they cannot issue prison sentences, but only make prison recommendations to the district level, they resolve many minor criminal cases, inheritance cases, disputes related to moneylending and land, using mediation and negotiation. They use a mixture of common sense, experience, Mon customary ways, like marriage rules, and NMSP law, but they do not actually keep a copy of this law at township level. For instance, in disputes over moneylending, the township committee uses the NMSP law to make decisions on what interest rate is permissible. They have learnt this from training about the law. In land dispute cases, they negotiate cases that have failed to find solution at the village level, and they do this by scrutinising the land certificates provided by the village leaders as well as using village elders as witnesses. Apart from negotiating cases, a core part of their job is to do investigations, which includes pre-hearings of the parties, in criminal cases before these are decided at the district level. They hear the parties, call witnesses and consult village leaders, then make a report and send it to the district.41

An MNLA township commander expressed awareness of the shortcomings of their capacities as justice providers: “We have no lawyers, no degrees and higher education. Only learning by doing. But people still come to the NMSP [justice system] because they trust them more than the government [of Myanmar] and because they cannot speak Burmese”.42 He added that villagers forward cases to the township level, when cases cannot be resolved there, because villagers have a higher level of trust to make decisions at the

41 EverJust interview, NMSP Township Justice Committee member, May 2016.
42 EverJust interview, NMSP Township commander, May 2016.
higher levels in the governance system. Having a case resolved with the township level, even when it does not imply punishments, adds an extra layer of authority to the negotiated settlements.

The district level justice committee is more institutionalised. It operates from the headquarter, which is a large compound, guarded by MNLA soldiers. Inside is an NMSP administrative building, an MNLA office, two prison buildings (one for women and one for men) enclosed by a fence, and other buildings for meetings, cooking, staff housing, arms, and health care. There is also a women’s hostel, where female prisoners overnight if they are not considered at risk of escaping. There is no specific court building, but a large meeting hall is used for the purpose of court hearings, and there is a building for the investigation of cases.

The seven-member justice committee is as required by NMSP law chaired by the District Chairman, with the MNLA commander as the vice-chair. Since 2016, it has also had one female member, who heads the district educational department of the NMSP. The committee convenes mainly to deal with cases that the township level cannot resolve, but cases of rape, murder and drug trafficking go directly to the district level. There are two main steps in the process: investigation and court decision-making. Because there is no police, the township level performs pre-investigations for the district, oftentimes in close consultation with village leaders and elders. Reports from village and township levels are then scrutinised and analysed by a district investigation committee, which must comprise at least three members of the justice committee, and which must have both an NMSP and an MNLA representative. During the investigation period, the committee can also call in the accused and the victim, or the contending parties in a civil dispute. Usually two to four cases are accumulated before the involved parties are called for hearings. Whether the contending parties are heard together seems to depend on the case. EverJust researchers experienced both hearings where both parties were present at the same time and hearings where they called them in at separate times. Because several people have to be present and available at the same time, cases often are not investigated and decided straight away. In civil cases, the parties are asked to go back home after the investigation meeting and await the verdict by the district justice committee. However, observations also suggest that lighter cases may be decided on the same day of the investigation meeting (see the debt case below): one investigation meeting takes place in the morning with a hearing, and in the afternoon the decision is made. People accused of severe crimes are held at the district prison before and during the investigation process. Depending on the character of the accused person, arrests are performed either by the village security group, sometimes with help from the township officials, who bring the arrestee either
to the township or directly to the district, or the arrests are done by the MNLA. The latter usually happens in severe cases like murder. The following case illustrates the process of arrest and investigation:

**Murder case**

In early 2016 a Mon man shot a Burmese migrant living in the NMSP area, allegedly as revenge, because the migrant had burnt down the rubber plantation of the Mon man. The victim was sent to hospital, and died there after a few days. The village leader group reported the case to the township level, and they sat down together to make a list of possible suspects. Three suspects were called in seven days later. One person confessed, but the township officials were not sure, because sometimes people confess because they are afraid. The perpetrator who confessed was, however, arrested by the township officials, who was put into the district prison. The township officials found out that the perpetrator had shot the other man because he was angry about the arson case. His wife also confirmed that her husband had told her that he shot a man. The township level also called in the family of the victim to consult them and ask them what they wanted in compensation and how many hospital expenses there had been.

The township officials sent the case file to the district, where the case need to be investigated again, including hearing the victim side’s requests. The case was still pending in May 2016, but the expected penalty will be compensation to the victim and a lower prison sentence, like three years, because 1) the victim did not die immediately; 2) the victim caused the perpetrator to be angry, because the victim had burnt down his plantation, and; 3) the perpetrator was under the influence of alcohol. If the person is convicted more that 3 years of prison the case has to go to the central level. When the district committee decides the case they will use the NMSP law as well as listen to the wishes of the victims. When the verdict is given, the time that the perpetrator has spent in prison is subtracted from the total prison sentence.

As evident in the above case, the decision-making process is based on a mixture of precedence, common sense and NMSP law, and to some extent on the victims wishes. However, the NMSP law book was not used as a working document during the justice committee proceedings that EverJust researchers observed. In fact, some members did not have the law book. The district chairman felt that the law was outdated in terms of punishments (monetary in particular) and that it lacked consideration of whether a crime is intentional or not. When cases are decided this is based on a joint decision, not by vote, but by reaching a consensus. There must be five justice committee members present, which means that sometimes cases are delayed, because it is not always possible to summon all five members. All members must sign the verdict, which is read up aloud to the parties in the case, and copies are sent to the central and township levels. If parties do not agree with the decision they have 45 days to appeal.

The district uses four different kinds of punishments: imprisonment, fines, compensation to the aggrieved party, and labour. According to the law death penalty can also be given in rape, murder and abuse cases,

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43 EverJust interview, NMSP District Chairman, March 2016.
44 The account of this story is based on EverJust interviews with: NMSP district chairman, March 2016; NMSP township chairman, May 2016.
45 EverJust interview, NMSP District Chairman, March 2016
but this is rarely issued now. Before the 1995 ceasefire it was more common for the central level to allow
the district to issue death penalty, because during the conflict years the NMSP could not keep perpetrators
in prison for very long.\textsuperscript{46} A combination of compensation to the victim and prison is for instance used in
murder cases, even though the NMSP law book, does not include compensation. Similarly, in blood crimes,
the perpetrator’s side is asked to pay the victim to cover the hospital costs. Compensation can be seen as
an adjustment of NMSP judicial practices to customary justice preferences among the Mon. A prison
sentence can also be given in civil cases where the losing party fails to adhere to a verdict. For instance in
debt cases, if the borrower cannot repay the debt or fails to do so on the agreed date, s/he can be given a
lighter prison sentence, where s/he can move freely around in the compound. Usually a borrower is given
45 days to pay. However, failure to pay at all can be substituted by a light prison sentence. Penalties
involving labour is given for small thefts and harassment of an administrative officer or members of the
community. Poorer persons can also do community development work, like road construction, instead of
paying a fine, which they are not able to afford. Exceptions to these forms of flexibility regards drug
traffickers and serious criminals like murderers, who are imprisoned and kept inside the prison building.
These kinds of prisoners may after serving for a period be allowed outside the prison during the day, but
are chained, and have to sign a \textit{kahn wan} (promise letter) that sets a guarantee if they run away.\textsuperscript{47} The final
category of prisoners are those with small sentences, like unpaid debt. They can freely walk around and
sleep in other houses of the compound, cook food for the others or do other kinds of labour at the
compound. The same regards younger drug users who are harmless. Female prisoners who have been
convicted, usually stay in the women’s hostel, outside the prison.\textsuperscript{48}

There are numerous types of cases handled by the NMSP at district level, including land, debt, divorce,
murder, and rape, but by far the most common type of case is drug trafficking and drug abuse (\textit{Yaba} pills, a
kind of amphetamine), which have markedly increased since the ceasefires in 2012, according to various
interviewees. These offenders make up the largest proportion of the prisoners. The female justice
committee member asserted that all young Mon persons between 15-20 years old in the area are users.\textsuperscript{49}

While drug users are not convicted as criminals, unless they carry a set amount of pills, they are brought in
by family members for rehabilitation. The NMSP does not have an anti-drugs law, because drugs were not

\textsuperscript{46} EverJust interview, NMSP District Chairman, March 2016
\textsuperscript{47} A \textit{kahn wan} can for instance involve that a family member to the prisoner sets a guarantee that if the prisoner runs
away the family member goes to prison or pays a fine. Another can be property guarantees whereby the prisoner for
instance has to hand over his land or other property if s/he runs away.
\textsuperscript{48} EverJust interview, Women hostel housekeeper, March 2016.
\textsuperscript{49} EverJust interview, Female Justice Committee member, March 2016.
an issue in the past, but according to the District chairman in Area C, the NMSP has added an article to the NMSP law book on drug crimes.\textsuperscript{50}

Witchcraft accusation cases do occur, but rarely when compared with fifty years ago, according to NMSP township committee members. The NMSP law does not cover this area, and when complainants come to the NMSP with such cases, the committee members consult them and try to convince them that such matters are not real and have no material evidence.\textsuperscript{51}

Domestic violence cases are also brought to the district level, usually as part of drug or alcohol abuse by husbands. The most common procedure is to council the couple and try to reconcile them, so they do not divorce, and thus without enforcing a penalty. However, if the perpetrator has beaten the wife severely, the NMSP can keep the perpetrator in prison or make him work until the wife comes to collect him again. The same may happen if mothers bring in sons who are drug abusers.\textsuperscript{52} If there is a request to divorce in these severe cases than the NMSP’s job is to decide on the division of property, which according to NMSP law and Mon customs follow the model of one third for husband, for wife and for the children.

2.3.2. Jurisdictional Challenges

The NMSP in Area C shares some territorial areas with the KNU, which raises some jurisdictional questions about which EAO has the mandate to resolve cases and from what villages. According to interviews in 2016 by the EverJust researchers, the NMSP and the KNU have made an agreement about jurisdictional matters. The KNU can deal with cases occurring in Karen villages and cases that involve Karen persons (who for instance live in NMSP villages), whereas the NMSP can resolve cases from Mon villages and with Mon persons (who live in KNU villages). If a case involves a Karen and a Mon in a KNU village, the NMSP is supposed to be invited to oversee the hearing by the KNU. The same goes for the KNU if a mixed-case happens in an NMSP village (see also McCartan and Jolliffe 2016: 32; Harrison and Kyed 2017). According to NMSP officials in Area C, there is however a sense of having to tiptoe around these agreements. The district justice committee members said that they can only arrest drug traffickers caught inside the NMSP control area, but that it is complicated when these are non-Mon, like from one of the Karen villages.

Most challenges arise when the NMSP are addressed, with complaints from mixed or GoM controlled areas. In one GoM controlled village, researched by EverJust, it was found that the village tract administrator

\textsuperscript{50} EverJust interview, NMSP district chairman, March 2016.
\textsuperscript{51} EverJust interview, NMSP Township justice committee member, May 2016.
\textsuperscript{52} EverJust interview, Female Justice Committee member, March 2016.
(VTA) gives the parties the option to either be transferred to the government township administration or the NMSP headquarters, if they are not satisfied with the VTA’s decision or if the VTA gives up on resolving a case. Even though the NMSP has been granted some territorial control with the ceasefire, there is no formal coordination between the GoM and the NMSP in terms of judicial proceedings (McCartan and Jolliffe 2016: 31). In principle, the NMSP will only trial cases from outside NMSP areas if the local authorities, like a ward administrator, in the GoM administered areas agree. According to Area C justice committee members, Mon persons, whether in NMSP or GoM areas, can freely choose where they want to have their case heard, and it is common for the committee members to get their consent before they try the case in the NMSP system. Once the case is dealt with by the NMSP it must, however remain within that system, until the central level. The most difficult cases are when one of the parties is from the NMSP area and the other is from the GoM area, like in moneylending disputes, where the borrower who has failed to repay the debt is living in GoM areas. In such situations the NMSP cannot do anything. It is easier if the money borrower is from one of the KNU controlled villages nearby: in those situations the village leaders from both villages get together to resolve the case. However, it gets more complicated if the case cannot be resolved there, because then a decision has to be made of whether the case should go to the KNU or the NMSP.

It is unknown how many Mon in GoM areas choose to go to the NMSP area, but the general impression among NMSP members were that more are now choosing the GoM system, whereas those living in NMSP controlled areas, would never choose that option. Drug cases are the most common cases to come to the NMSP from the GoM side, which NMSP related to the fact that the GoM are not handling this issue thoroughly, and because drug users are fed in the NMSP prison, whereas in the GoM prison the family members have to pay.

2.4. The legal system of the Karreni National Progressive Party (KNPP)

Little available knowledge exists of the KNPP justice system, when compared with the KNU and the NMSP. Any information provided here is therefore less detailed, and much more research must be done in order to capture how the system works in practice. It is also unclear in how many districts and townships the

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53 EverJust interview, former VTA, December 2016.
54 EverJust interview, NMSP Female Justice Committee member, March 2016.
55 EverJust interview, NMSP District Chairman, March 2016.
56 EverJust interview, NMSP District Chairman, March 2016.
57 EverJust interview, NMPS village tract justice committee, March 2016.
58 EverJust interview, NMSP Female Justice Committee member, March 2016.
KNPP justice system is applied.\textsuperscript{59} The Asia Foundation provides the only available research on the KNPP justice system, based only interviews with KNPP Justice Department officials (McCartan and Jolliffe 2016).

The KNPP judicial system consists of a justice department, which is active at central, district and township levels, however it is unknown how many townships and districts the KNPP is active in. A judicial committee of the justice department is supposed to appoint three judges for township and district levels respectively. These judges work full time and are independent from the justice and administrative departments. Judges at central level may, however be from the justice department. The justice department also has a body called the Karenni Legal and Human Rights committee, which trains KNPP personnel and communities in human rights, rule of law and constitutional matters. The KNPP has no police force, but a special branch of soldiers under the KNPP’s Interior Department, who have the power of arrest in criminal cases.

The KNPP has its own criminal law book, which was written by the Justice Department together with KNPP leaders who have legal experience. The justice department is responsible for periodically reviewing the law. It lays out the different types of civil disputes and crimes as well as prescribes the different punishments. Drug offences, rape and murder are considered serious crimes that should only be dealt with by the KNPP judges. Customary laws form the basis for handling minor crimes and disputes between villagers, and these predate the KNPP, but they are not codified. They are administered by village leaders, who the KNPP has authorised to handle minor crimes and civil disputes.

All three judges at township and district level are supposed to be present during hearings and sentencing, but for logistical reasons two may be considered enough to hear the case. Punishments include compensation and imprisonment. Death penalty is no longer used. Prior to the 2012 ceasefire between the KNPP and the government there was only a prison at central level near the Thai border, but the ceasefire has provided sufficient stability to now have prisons at township and district levels too. There is also a plan to build a new central prison in the interior of Kayah state.

As in the other two EAO systems, the jurisdictions of each level follow the degree of the offence and penalties, with villages not permitted to handle serious crimes. Township judges can issue penalties of up to 500,000 Kyat and up to five years of prison. District level can impose penalties of up to 1 Million Kyat and prison sentences of up to 10 years. Like in the NMSP system, the township level is the first instance in investigating a case and arresting the accused. A core difference is that for investigations a temporary committee must be set up on a case-by-case basis. Apart from the KNPP judges, these may include village leaders.

\textsuperscript{59} A study by MercyCorps (2015) claims that the KNPP has administrative representation in townships of three districts.
heads and elders, as well as administrative staff. The judges use the assistance of these committee members to investigate the case in question. If cases are transferred to the district level, a similar committee is formed (McCartan and Jolliffe 2016: 32-34).

The KNPP justice department claims that it tries to follow international standards for process and structure, but it would like to get more international advice on how to improve its system, as it is not always possible in practice to adhere to international law due to the situation in Kayah state (McCartan and Jolliffe 2016: 35).

According to Jolliffe’s (2015) research, the KNPP has some form of agreement with the Myanmar government since the 2012 ceasefire on areas that the KNPP can administer (ibid.: 58). However, it should be noted that Kayah state is very complex in terms of EAO actors. Although the KNPP is the most well-organized armed group with its own justice system there are also other armed actors who hold territorial control over areas of Kayah state, such as the Border Guard Force, formed out of the Karenni Nationalities People’s Liberation Army, which is the dominant authority in parts of three townships. There is also the Kayan National Liberation Party (KNLP), the People’s Militia and the Kayan National Guard (ibid.: 58).

MercyCorps’ study highlights that it varies a lot across the areas of Kayah state which EAO villagers go to with cases, when these cannot be resolved at the village level. It also highlights that sometimes the EAOs are themselves the cause of disputes, related for instance to taxation of villagers (MercyCorps 2015: 12).

There are no available information on what kinds of cases mainly occur in KNPP administered areas, but for Kayah state as a whole studies have highlighted drug trafficking and disputes related to development projects and business investments, including land grabbing as the most severe cases (The Border Consortium 2014: 17). Other cases include disputes over the demands by EAO’s for taxation among villagers, land disputes due to unclear boundaries and ownership, gang conflict and gender-based violence (MercyCorps 2015: 8).

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60 The study was conducted in 2015, but there is no publication date on the report.
Chapter 3: Community-Based Dispute Resolution

This chapter explores how disputes and crimes are resolved at the ward (urban) and village (rural) levels. It takes an outset in the official mandates of village, village tract and ward level justice providers, and then goes into more depth with how they in practice resolve disputes. This includes details about resolution procedures, complaint mechanisms, remedies/punishment, fees, and the rules/laws/norms they articulate and draw on. The chapter is divided into sections covering GoM, KNU, and NMSP administered areas. Due to the lack of available in-depth research only a short section is provided on Kayah State. The section on GoM areas also includes a discussion of justice facilitators and the role of informal actors who people seek assistance from to handle, interpret and resolve a dispute, but who are not recognised as justice providers. Under each section, actual case examples are given to get a deeper understanding of actual practices. However, it is important to note that there is great variety in practice and seldom is there a fixed system of how disputes are resolved. It is therefore important to keep in mind that this report is based on research in a few selected villages and wards. The chapter’s last section displays a matrix over the main differences and similarities between the GoM, NMSP, KNU administered areas that were researched, and some few insights on Kayah state.

General insights:

- Resolution of a dispute at the lowest level possible is the preferred option for urban and rural residents. There is a clear preference for trying to first resolve cases inside the family or between the contenders without the involvement of a third party, but if this fails, the preference is to end the resolution of the case at village (rural) and ward (urban) level (Denney et. al 2016; Kyed and Thitsar 2018; IRC 2015: 24). An IRC (2015: 30-31) survey in Karen state reveals that whereas only 18 percent of the respondents would seek no assistance at all, the number was much higher in the second (55 percent) and third instance (88 percent). This supports a general finding that very few persons would be willing to go higher than the ward or village level, whether in GoM, mixed or EAO areas.

- The personal skills, experiences and attitudes towards the population of village and ward leaders vary and impact how disputes are resolved, including whether fees are required.

- The relative enforcing power and legitimacy of village or ward leaders have impact the extent to which people bring cases to the leaders and the extent to which these leaders are able to successfully resolve disputes. There is a tendency for lower reporting in cases where 1) ward and village leaders are known to take illegitimate fees (corruption/bribes) for resolving disputes; 2) there are leadership disputes.
Informal justice facilitators and advisers, including astrologers, fortune-tellers, relatives, educated persons, monks, armed actors (individuals) and to a lesser extent political parties and CBOs, are sometimes used by parties to disputes for advice and support before and during a CBDR process by a village or ward leader. These facilitators can be important in reporting cases to the village/ward leaders, but cases may also end with such facilitators.

Forum shopping (von Benda-Beckmann 1981) and the involvement of multiple facilitators are more prevalent in GoM administered areas, and occur mostly in cases that are complicated and that cannot be successfully resolved by village leaders or by the official courts.

Mediation and reconciliation are the most commonly used CBDR mechanisms by village and ward level actors, but in some areas these are combined with compensational justice and/or punishments (fines, labour, foot lock). Punishments are most widespread in EAO controlled villages, and seem to be waning in GoM areas. Warnings are also used in all areas, including the use of promise letters (Kahn Wan) regarding repeat offences. However, the application of these warnings varies.

References to codified laws (GoM or EAO) and to higher-level authorities are commonly used during CBDR hearings, seldom as a way to enforce legal articles or procedure, but as a significant resource and ‘back-up’ to make contenders agree to CBRD settlements. These references are used alongside social pressure and sanctions.

Written village rules are only found and applied in KNU and NMSP controlled areas. When village rules are enforced there is a tendency for a mixture of arbitration and mediation. Village rules treat offences as public offences, or as offences that harm the whole community. This means that the village committee/leaders can punish those who violate the rules without there being a complainant. By contrast, the WA/VTAs in the researched GoM administered areas do not actively charge wrongdoers, but only respond when complaints are made to them.

Justice committee structures are only institutionalised in KNU and NMSP areas. In GoM areas, there is no consistency in whether special justice and dispute resolution committees are formed. Whether this is done depends on the initiative of the individual ward or village leaders.

In mixed GoM and EAO controlled areas there is a tendency for more cases to be left unresolved, despite the availability of CBDR mechanisms, because of the insecurities surrounding dual village leadership. Unclear or disputed local authority and jurisdictions means that many ordinary citizens fear to report a case (Kyed and Thitsar 2018; IRC 2015: 25).

Female participation in dispute resolution is higher in KNU controlled areas where the Karen Women’s Organisation (KWO) has worked actively with female villagers on women’s rights and
inclusion in village governance (Kyed and Thitsar 2017, forthcoming; IRC/USAID 2016: 23). Such participation is low in GoM and mixed controlled areas, as well as in NMSP areas.

- Payment of fees for case resolutions are common in GoM areas, but not in EAO-controlled villages.
- Ward and village level dispute resolvers cannot deal with drug-related cases and have strong difficulties with dealing with land confiscation complaints.

3.1. Ward and village dispute resolution in GoM areas

Among lower-income urban and rural dwellers in GoM areas of Southeast Myanmar, there is a widespread tendency not to report disputes and crimes, but to either keep issues to themselves or deal with them among themselves, sometimes with the assistance of family members, close by neighbours or informal ‘justice facilitators’ (see Section 3.1.2). There are several socio-cultural and historical reasons for this, which are discussed in Chapter 5.1. They include: shame associated with bringing issues out in the public; cultural and religious perceptions of problems as the result of misfortune and past life deeds; fear of authorities, and; disbelief in obtaining justice with third parties, including the financial costs that this involves (see also Denney et al. 2016: 30; MLAW and EMR 2014; Kyed 2018). Underreporting is widespread, but highest among vulnerable groups like migrants, women and religious minorities (Denney 2016 et. al: 31).

“When people do report, the preference is almost universally for resolving disputes at the lowest level possible and avoiding escalation” (Denney et al. 2016: 30). When people do seek a third party resolution with an established authority, the ward (urban), village leaders (rural), and village tract administrators (VTAs) (rural) are the main mediators of minor crimes and civil disputes (Kyed et al. 2016: 2; Denney 2016: 34). Empirical research shows that very few cases go beyond this level of dispute resolution, even when cases that are dealt with there remain only partly resolved or unresolved. GoM law supports the predominant role of the ward and village tract administrators. However, given that there are no clearly defined procedures and remedies outlined in the law for how these authorities should resolve disputes, there is considerably variety in practice. Before turning to this variety, the following sections look at the official mandates and general practices of Ward (WA) and Village Tract administrators (VTA). This is followed by a section on informal justice facilitators, which are found in the researched GoM areas.

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61 There is a general sense among poorer citizens that more economically well-off citizens are more confident in using the formal system and reporting the cases to local third parties, because they have better connections, more economic means and more knowledge of formal as well as informal procedures and rules.
3.1.1. Official dispute resolvers – Law

The WA/VTAs have the official duty to carry out a range of security and law and order functions according to the 2012 law that regulates these local authorities. Out of 32 functions, 10 functions relate to security, discipline, order and community peace. The focus on law and order is a clear continuity of the past military regime’s mode of regulation through local leaders. However, the 2012 law simultaneously uses a rights language, emphasising for instance that ward and village tract leaders should safeguard “the right of persons who live in the ward or the village tract” (WA/VTA Law 2012, chapter VII, article 13.c). Words like dispute resolution or justice provision is not used in the law and there is no specification of what kinds of cases the ward and village tract administrators may deal with, hear or resolve, with the exception of thieves, gamblers and people who fail to report overnighting guests. Rather the law states that the administrators must in more general terms ensure “security, prevalence of law and order, community peace and tranquillity” (ibid.: article 13a). It also says that the administrators should deal with problems of discipline among the people, however without specifying what disciplinary problems may cover. They also have the duty to inform and assist higher-level government departments when crimes occur, including arresting “lawless persons and thieves” (ibid; 13.m). A specified area is to report and take action against gambling: the administrators have the authority to search gambling houses and arrest gamblers. Finally, they must prohibit activities that disturb, endanger or injure the public, including quarrelling and the use of illegal weapons. They can arrest or inform relevant authorities to arrest these persons. Under ‘miscellaneous’ the law stipulates that the local administrators should be assisted by the relevant police station to ensure security, community peace and law and order, including help to arrest, discipline and do village and ward security provision (ibid.: chapter XV, article 35). There is no mention of any links to the judicial courts, for instance in terms of reporting civil disputes or crimes.

In short, the law is unspecific about the dispute resolution functions of the ward and village tract administrators and does not provide for any institutionalised link to the legal system, apart from the police in terms of security and arrests. This reflects a very loosely defined mandate of the ward and village tract administrators in terms of the cases they actually deal with in practice. In addition, the law does not lay out any procedures for hearing and deciding such cases.

Importantly, whereas the village leaders and the 100 household leaders were removed with the 2012 law, these actors are found to still play vital functions in local governance and dispute resolution in many areas. In later 2016, the 2012 Ward and Village Tract administration law was revised with approval from both houses of parliament. One of the revisions included the re-introduction of village leaders (former 100 HH leaders) for rural areas. This is based on the realisation that many villages are in need of their own leaders,
as village tract leaders are often far away and sometimes tend to be less responsive to the needs of citizens outside their own village (Kyed et. al. 2016; Kempel and Aung Tun 2016). However, in urban areas, the 100 household leaders have not been reintroduced, although it is well-known that ward administrators often appoint these leaders to assist with various tasks, including dispute resolution.

3.1.2. Official dispute resolvers – procedures, rules/norms and remedies in practice

WA/VTAs may make the final judgements, but as a general rule, they do not hear and deliberate cases on their own, but use elders and/or 100 household leaders as advisers and councillors when they discuss a given problem (Denney et al. 2016: 34). In some wards and village tracts the WA/VTA referred to these persons as ‘committee members’, because they were members of one of the village or ward development and/or land management committees, which are required by the law. Some WAs have the rule that 2-3 committee members must be present during the hearing of cases. In Ward A in Hpa-An town, there was a specific ‘Committee for the Resolution of Disputes’, which comprises selected members from among the informally appointed 100 household leaders, and which has a chairman that was not the WA. The committee can in certain situations resolve disputes without the final decision of the WA, who however has to approve the decision and keep the record (Kyed 2018). There is no requirement of female members of the committee. Elders and household leaders may also be called in to witness in certain cases, for instance regarding disputed land boundaries, where they have to verify land ownership.

Resolution of cases by the WA/VTAs as a rule depends on a complainant – i.e. on a complaint being brought before the administrator directly or by a ‘facilitator’ (see section 3.1.2.). In other words, there is no evidence of ward and village leaders actively charging trespassers (which differs from KNU and NMSP villages, see Section 3.2. and 3.3.). Even in gambling cases, the administrators only intervene if someone makes a complaint.

**Laws and rules/norms:** WA/VTAs say that they use a combination of Union law/GoM Law and customary or village laws (Denney et al. 2016: 34), but EverJust researchers found no evidence of written village/customary laws in GoM areas (see how this differs from NMSP and KNU villages in Sections 3.2 and 3.3). Whereas WA/VTAs on occasions refer to a specific article number in GoM law, this is not done by reading aloud from the law books, but by referencing verbally those aspects of the law that the WA/VTAs have, varied, knowledge of, for instance from having attended trainings and meetings at township level. Such knowledge varies between individual WA/VTAs. Common sense, experience and advice from elders or household leaders are therefore the primary sources of rules and norms applied when resolving disputes. Written laws are therefore not used in any literal sense. This reflects the predominance of mediation and reconciliation. References to GoM law was most commonly used as a kind of warning: the WA/VTA warn
the parties that if they are not able to agree on a resolution at the WA/VTA office, the case will be sent to the police or the court. Law in this sense is used to get the parties to agree to local resolutions, whereby the law works as an authoritative back-up, vested in the official state. The law is not used as a legal instrument to provide justice. EverJust researchers also observed situations where the WA/VTAs explained to the parties that if the case went to the official court, then X would be the likely sentence, whereas if they managed to agree at the WA/VTA office the resolution would be Y. For instance, in one case of divorce, a WA told the wife, who had negotiated a bigger share of the house, because it was partly owned by her aunt, that if the case went to court her husband would ‘according to the land law’ get an equal amount because he had lived in the house for 15 years. In a case of domestic violence, a 100 household leader knew the article and said that if the wife wanted to sue her husband he could be charged with prison under article 47. However, he warned her that if she decided to submit the case to court, she could not change her mind (withdraw the case). The WA/VTAs therefore indirectly give the parties an option to go the formal legal (punitive) or the informal (negotiated) way.

**Dispute resolution methods:** The most common local word used for how the WA/VTA resolve disputes is ‘negotiation’ (in Myanmar language: *Hnyi Hnaing Chin*), which is similar to mediation. However, ‘negotiation’ also accentuates that a core part of what the WA/VTAs do is to negotiate the settlement of an amount (money or property) to be shared or paid. The case resolution procedure commonly begins with a complaint, which the WA/VTA registers in a book or on a piece of paper. Hereafter the WA/VTA calls in the two parties (complainant and accused) to meet at a certain time at the WA/VTA office. How parties are summoned varies from place to place, but the most common practice is that the WA/VTA uses one of the active household leaders (10 or 100) to pass on letters to the parties. In two rural villages (one in Mon state and one in Karen state), EverJust researchers found that ‘paramilitary members’ or ‘people’s militias’ (*Pyi Thu Sit* in Myanmar language) were tasked with this job (see section 3.1.2.). When both of the parties are present at the WA/VTA office, the WA/VTA (and committee members where these exist) listen to both sides together, encourage reconciliation, ideally by trying to find a compromise, and then make a decision. During and between the hearings the WA/VTA may ask the advice of ‘committee members’ (where they exist) or elders/household leaders, and this is repeated when a final decision is made. It is common that the two parties are accompanied by relatives or other persons with a close relationship to them. These persons also sometimes give their opinion about the case, as a kind of witnessing. After the first hearing of testimonies, it is common that there is a space for each of the parties to give some inputs and take part in negotiating a resolution. Discussions are sometimes loud and heated, until the WA/VTA or one of the elders or committee members tell the parties to calm down. Attempting to find a swift resolution is central to the procedure, but if an agreement seems impossible, the WA/VTA may ask the parties to come back again,
and seek more witnesses. Investigation before and between hearings occur in some cases. EverJust researchers found this in land disputes, where the WA/VTA visited the land plot that was disputed. Where there is a committee for resolution of disputes, as in a ward in Karen state, the WA takes a less central position, allowing the committee members to hear the case, and only intervenes intermittently and during the final decision. In places where there is no committee the WA/VTA takes a central position during the whole resolution process, as was the case in a larger rural village in Mon state. When a final decision is made the common procedure observed is that the parties are required to sign a piece of paper or a page in a case record book, which signals that the parties have mutually agreed on the decision. Emphasis is on highlighting that there is a consensus about the settlement. The WA/VTA also signs. If the settlement involves the payment of compensation, the parties and the WA/VTA must also sign when an amount has been paid at the WA/VTA office. Whereas the procedure is relatively informal, there is a reasonably high level of bureaucratization involved in the sense of keeping written agreements and records. Records are not, however, forwarded to or scrutinised by higher-level authorities (like GAD or courts at the township level).

See Appendix D for a visualization of a generic dispute resolution process at Ward/VTA levels.

**Punishments and remedies:** apart from reconciliation, there are some types of punishments and remedies, but these vary across villages and wards. Compensation to victims and the use of *Kahn Wan* promise letters are the most common, and are sometimes combined, depending on the case. Compensation is for instance used in divorce cases that involve adultery and domestic violence and in theft cases. The amount is negotiated between the parties. The WA/VTA (and the committee members/elders/household leaders where these participate) act as mediators and may suggest what amount is reasonable, but commonly this is based on the initial suggestion of the complainant. The amount is also commonly based on an assessment of the economic situation of the losing side/perpetrator. Payment can be done in instalments, if the losing side/perpetrator says that he/she is unable to pay the same day that the case is settled. Dates for instalments and final payments are negotiated with the WA/VTA as mediators, and here the economic situation of the losing side is also considered. There is an emphasis on reaching a mutual agreement, but EverJust Researchers also observed WA/VTAs reprimanding the losing side in an authoritative voice to make sure they pay the compensation on the set date. If they do not repay, they are told, the case could be transferred to an institution outside the village or ward, like township police, courts or administration. Payments are done at the VTA/WA office and the WA/VTA acts as witness to the repayment. Records of the payments are kept at the office.
*Kahn Wan* promise letters are widely used in civil as well as criminal cases. The guilty party signs a letter of admission stating s/he will not commit the offence again. Essentially, *kahn wan* serves as a kind of warning, as repeated offences can have repercussions, which can involve threats of the case being transferred to a higher level institution. In theft cases and fighting cases involving injuries, *Kahn Wan* is typically combined with the perpetrator paying compensation to the victim. This was not found to be the case with domestic violence and attempted rape, however. *Kahn wan* is also used in illegal trespassing on other people’s land, in neighbourhood quarrels, public disturbance cases, alcohol abuse leading to fights or destruction of property, and gambling. The *kahn wan* is signed by the VTA/WA as decision-maker. However, as regards the other practices of dispute resolution there is no fixed model for how this is done across the different wards and villages.

Denney et. al (2016: 35) also found that some WA/VTAs used community labour and temporary detention at the administrative office as punishments, but this was not found in the GoM areas that were covered by the EverJust research (although some interviewees said that foot locks and communal labour had been used in the past). Another rarer kind of punishment encountered in Mon state was to expel non-natives from the village. This was found in one attempted rape case and in a dispute around illegal land occupation. In both these cases the non-natives were poor Bamar labour migrants. Neither pieces of research found that fines (paid to the administration) were imposed as punishments (see section 3.2. on how this differs from a KNU village).

*Payment of fees:* This varies widely between villages and wards and seems to depend on the individual approach and attitude of the WA/VTA. For instance, in a Mon village there is a fixed fee of 5,000 Kyat for each of the parties in a case. This fee is not spoken about as bribery, but as a service fee to cover the expenses of the village tract administration. 50,000 kyat for each side are charged if the VTA has to make divorce papers. In one Buddhist Karen village, there is also a fee of 5,000 Kyat for smaller disputes at the VA and VTA office, and crimes including violence cost 50,000 to resolve. In a ward in Karen state, by contrast, the WA in 2015/6 did not have a fixed service charge, but allowed people to make voluntary donations after a case was resolved. These donations were recorded in the books of the administration and were used for community development projects, like road repairs. Financial records of these incomes and expenditures were kept at the ward office. The WA who took office later in 2016, however introduced fixed fees for case resolutions.

In some cases WA/VTAs receive ‘thank you’ money for having successfully resolved a case, especially if the resolution is compensation. The person who receives the compensation can decide, voluntarily, to give an amount to the WA. Village/ward residents do not speak about these ‘thank you’ money as corruption or
bribes, but see them as legitimate service fees. By contrast, when WA/VTAs force people to pay money to them to win a case or to avoid the case being sent to the police, or when one of the parties try to pay the WA/VTAs to get a better outcome, it is seen as corruption.

**Discrimination:** Denney et al. (2016: 40) conclude that, especially religious minorities such as Muslims and Hindus feel that they have nowhere to go when they face a dispute, except to consult their own religious leaders. EverJust researchers, found that whereas one WA said that he could not resolve disputes that involve Muslims, a VTA said that he did.\(^{62}\) In a mixed Buddhist-Muslim ward in Mon state, Muslims do not report cases to the WA and said that they do not expect to get a fair dispute settlement if they face a case with the Buddhist (see Harrisson 2018). Thang Sorn Poine (2018) highlights the forms of gendered discrimination that exists in village dispute resolution in Mon state, where women are much more reluctant to report cases to the VTA and the household leaders than men are and where many cases that involve women as victims are not adequately addressed (like rape and domestic violence).

### 3.1.3 Examples of how different types of cases are resolved.

The **types of cases** that VTA/WAs were seen to resolve include: theft, attempted rape, domestic violence (usually defined as divorce requests), divorce, fighting, public nuisance, neighbour quarrels about household plot boundaries, garbage, noise, land and household disputes, inheritance disputes, debt disputes, gambling and arson. The most common are related to marriage disputes, land and debt. There are three types of cases that VTA/WAs as a rule do not get involved in, although complaints may be raised to them: drugs trafficking, large land grabs/confiscations, and murder. Rape is a blurry category, as some VTA/WAs deny that they can resolve them at all (passing them on to the police), whereas others handle them (sometimes only later forwarding them to the police). However, it was found that if the perpetrator is a non-native, the case will immediately be reported to the police. The inability of the WA/VTAs to deal with land grabs and drug-related cases is a major issue, as both types of cases are becoming more and more common in the villages and wards of Mon and Karen state, and it is very rare that higher level authorities of the GoM address them. According to interviewed VTA/WAs this is due both to corruption and to political interests. In drug related cases, some VTA/WAs get involved by collaborating with the police in investigating users and dealers, but the big traffickers are not investigated. EverJust researchers found a few examples where VTAs resolved cases where drug abusers had used violence or stolen, but they do not actively intervene in drug matters. Cases related to bad spirits or witchcraft are also not settled by the VTA/WAs. Below is a general description of how the most common cases are resolved:

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In divorce cases the most common practice is to try to convince the parties to stay together, especially if they have children. The couple is asked to go home and reconsider the divorce, and only return if either of the parties still wants to divorce. In most cases, they do not return (Denney et al. 2016: 35). EverJust observations, show that when the WA/VTAs mediate between the husband and wife, they tell them to think about their children, their shared property and that they would lose their family dignity if they divorce. 100 HH leaders also deal with divorce in this way. If a divorce request turns out to be based on verbal abuse, physical violence and/or adultery, the WA/VTAs often still try to convince the couple to stay together in the first instance, but require the party who has committed the offence to sign a Kahn Wan. If the offence is repeated, and the victim party still wants to divorce, the WA/VTA will accept a divorce request and help negotiate how the property should be shared. Officially the WA/VTAs cannot grant divorce papers (this should be done at township level), if the couple has an official marriage certificate. However, EverJust researchers did find examples where the WA/VTA still made decisions in divorce cases. In a Mon village, the VTA also issued divorce papers. Overall, however, it is very difficult for female victims of domestic violence (physical and verbal) to get a divorce accepted/approved by WA/VTAs, if the husband disagrees (Denney et al. 2016: 35), and virtually no domestic violence cases end in official court with a punishment of the perpetrator.

For debt disputes, the WA/VTAs mainly settle those where there is some form of written contract, even if it is not official, and in fact illegal. They reluctantly deal with those where there is no signed contract between the lender and the borrower, but sometimes they agree to help negotiate the repayment of the loan in order to avoid a dispute from further escalating. Lenders tend to report the case to the VTA/WA only after several failed attempts to get the money back, including the interest rate. The task of the VTA/WA is essentially to act as mediators in a negotiation over how much and when the loan can be repaid. Also, here it is common that the administrators take into consideration the economic situation of the borrower, which sometimes means that the lender will recover only some of the costs, while the lender will face less financial hardship in repaying (Denney et. al 2016: 36). It is common that the interest rate is removed from the repayment. As an example: in one debt case in a Mon village, a debt case was negotiated four times by the VTA, because the borrower could not repay the debt. It was finally settled that the borrower should pay 2 of the 4 lakh, she had borrowed, and pay in four instalments.

Farmland and household plot disputes are another very common type of dispute across GoM areas, rural and urban, but how they are resolved varies greatly, especially between rural and urban areas. A commonality is that the land management committees provided by the 2012 farmland law is rarely used, and sometimes exists only in name (see Lue Htar 2018). Most land disputes are therefore resolved in
informal ways by village leaders (rural) or by ward administrators (urban), often with advice from household leaders and/or elders. In rural villages, people seldom have official land certificates, but rather own land based on inheritance, oral land buying/selling contracts or tax receipts. When disputes happen between villagers and relatives they are relatively easy for the village leaders to resolve, because elders and neighbours can serve as witnesses as people know each other. The cases that are more complicated are those where relatives have shared ownership or where for instance one relative has sold out part of a land plot to someone else, using no official contract and agreement with other relatives. This creates complications, especially due to the current rise in land prices.

In urban areas, there is a higher use of official documentation and reference to the land law than in the rural villages. However, many cases are still resolved informally. Land disputes are also more frequent and more complicated. Disputes are related to inheritance, division of property in divorce cases, and disputed household plot ownership. The latter is caused by a number of factors, including the high mobility of residents, with many having long migrant labour stays in Thailand. Sometimes when they return from Thailand, relatives have sold parts of the property or are unwilling to give the property up to the persons who hold the household certificate. Lack of official documentation is a major issue: when people buy and sell land they often only have informal contracts, which can be difficult to verify, and sometimes the previous owners are still registered as owners with the WA or the township administration. In these cases the WA, often assisted by the 100 and 10 HH leaders, first try to scrutinize whatever household certificates and documentation the parties have. They then try to negotiate between the parties to reach a compromise that they can agree on. This can involve compensation to those who have occupied the household plot for a certain period, even if they are not according to the documents, the official owners.

For the WA this mechanism is to ensure that conflicts do not escalate between relatives, and that both parties feel as satisfied as possible with the outcome. In one case from a ward in Karen state, for instance, an uncle had stayed in a house for 20 years, and when his niece came back from Thailand to reclaim the house, he refused to move without a compensation. He wanted 20 Lakh for having paid tax all those years, but the niece did not agree. At the WA’s office they negotiated the amount and agreed on 15 Lakhs to be paid over 10 months. In a case like this one, it is also common that the WA warns the parties that the case could be forwarded to the township level, if they cannot agree, and that if this happens, it will be costly and time-consuming for the parties to do so.

Another cause of land disputes are previous confiscations. For instance, an urban ward in Karen state, was a previous farmland area that during the military era was converted into urban residential land. The farmland owners were deprived of some of their land and were scarcely compensated. Today most plots
are occupied by new owners, and some previous owners are now trying to reclaim their farmland or trying to get compensation. These cases are very complicated to resolve for the WA, because the new occupiers have household plot registers, and original owners seldom have enough documentation to prove previous land ownership. The WA and the 100 household leaders know that original owners have a meagre chance to win their case in the formal system above the ward level. So, if the complainant agrees, the WA and the household leaders try their best to resolve the cases through negotiation. However, because it is beyond their authority and capacity to return all the confiscated land back to the original owners, the cases oftentimes remain partly unresolved or create frustration among both the new and the original owners. What the WA can try to do is to negotiate with the new owners to give some compensation to the original owners, or if there is a vacant piece of land, they can give this land as compensation to the original owners.

In addition, some land disputes arise from the informal settling of labour migrants on land that has been left vacant by previous owners or that is public land or rented out informally by natives. The WA/VTAs here face a dilemma, because while they fear what can happen if the original owners come to reclaim their plots, they usually have few alternative places to allow the migrants to stay. When VTA/WAs try to remove the informal settlers, they also fear that they will be seen as unkind and repressive, according to interviews. The migrants depend on the willingness of natives and household leaders to defend them. In a ward in Karen state, EverJust researchers observed the handling of such cases by the WA. Together with the 100 household leaders they go to the plots and investigate the land, comparing it to the land record books they have been given by the township level. They consult the migrants and if it turns out that the plot has an owner they give the migrants a set amount of days to move. Threats of reporting the case to the township administration and the land record department are articulated, to put pressure on the migrants to move. The migrants know that such threats can lead to forceful evictions. In two cases, the negotiation did not take place between the migrants and the WA, but between the WA and a native resident, who took on the role of defending the migrants. She was able to extend the eviction date, and later she convinced the WA to let the migrants remain. So, whereas the WA uses the land record registers there can also be space for negotiation and flexibility. The WA is in a difficult position between having to follow official registers and avoiding conflicts with and critique from ward residents.

In theft cases the WA/VTA or household leaders try to negotiate the settlement of compensation to the victim (if the stolen property has already been sold). The first step is to get the accused to admit guilt. In this process each of the parties are heard and witnesses are also included to give additional information. A common practice is to threaten the accused with the police, as part of getting him/her to admit guilt and later to agree to compensate the victim. The dispute resolver will remind the accused how much it will cost,
if the case is reported to the police. In one case, for instance a 100 household leader in a ward in Karen state said to the accused who initially said that he was not the thief: “please tell me the truth. If you argue I send you to the police. Have you ever been to the police? Have you ever been to court? If the phone [that he stole] is worth 1,5 lahk, then you will use that amount for the transportation to the police again and again. So please tell me the right thing”. The thief admitted guilt, and the victim agreed to get compensation (the phone had already been sold). After this, they negotiated the repayment of the phone. Because the thief was poor, the household leader and the victim agreed that he could pay back 20,000 Kyat per month.

3.1.4. Observed examples of dispute resolution sessions and hearings
This section serves to illustrate the details of how a case may be handled by WA/VTAs, based on direct observations by EverJust researchers in a ward in Karen state and a village tract village in Mon state during 2016. It should be noted that the dispute resolution process does not always follow exactly the generic model (see Appendix D), but some commonalities can be traced. The illustrations give insights into the style of communication, the way that the cases are mediate and negotiated and how the different actors interact.

The first case from a ward in Karen state concerns the failure to return a rented motorbike to the owners. The motorbike was apprehended by the police in a drug raid, but at the ward office it is not the drug case that is resolved. The complaint from the motorbike owner is concerned with getting compensation for the lost motorbike. The following insights emerge from the dispute resolution process:

- The hearing style is calm and relaxed, and a lot of space is left open for the parties to suggest solutions to the dispute. There is high participation of the opposing parties, and the dispute resolvers perform the role of giving advice and mediating towards reaching a consensual agreement.
- The dispute resolvers ask if the parties agree to the final decision, before the final decision is confirmed by the WA.
- The WA does not take charge of the resolution process. This is done by two 100 HH leaders, but the WA acts as a final judge, who needs to approve the settlement that has been agreed upon.
- The resolution process is very quick, as is the payment of compensation (at least the first instalment).
- The economic situation of the perpetrator is taken into consideration by the dispute resolvers and the victim when deciding on the compensation and payment method.
Along with mediation, the dispute resolvers use threats of transferring the perpetrator to the GoM state, in this case the police. This is where they take on a more authoritative position. The intention is not really to transfer the case to the police, but to make it clear to the perpetrator that he should take the case serious. It works to put pressure on the perpetrator side to agree to a negotiated settlement, in this case compensation.

Threats of transferring a case to the police may in fact be done simultaneously with efforts by the dispute resolvers to discourage that the victims side go to the police. This is both to protect them from facing a lot of questioning by the police, which induces fear and shame, and to protect the victim and perpetrator from potentially getting a prison sentence.

The dispute resolvers do not directly punish the perpetrator, nor ask the victims if they wish that the perpetrator is punished. There is no immediate desire for a punitive action (fine, confinement, community labour). Only the Kahn Wan, which serves as a warning against repeated offence is applied.

The overall emphasis of the dispute resolvers is to satisfy the victim in a way that does not put a financial burden on the perpetrator’s side, and to end the case at the WA office in order to avoid further escalation of the case (like being sent to the police).

When the decision is made, the dispute resolvers have a more informal conversation about the bad behaviour of the perpetrator.

Failure to return motorbike to owner – payment of compensation and Kahn Wan

A man, Kyaw rents out a bike to a young man, Be Oo, for 1,500 Kyat per day, because he trusts Be Oo as Kyaw has known his family for a long time. They are neighbours. Be Oo is from a poor family. Kyaw and his wife Naw Paw, discover one day that Be Oo is without the motorbike, and they ask where it is, and Be Oo says that it is at the police station. Later it turns out that the bike was apprehended by the police, when the police did a drug raid a bit outside of town. Be Oo was in the group but escaped. The police were waiting for Be Oo to pick up the bike, and then he would be arrested. Kyaw and his wife went to the police station to pick up the bike, but they did not have the key, so they had no proof of ownership. They waited 10 days to see if Be Oo could get the motorbike back, but when this failed, Kyaw reported the case to the WA’s office. He wanted to get compensation for the motorbike. The complaint was recorded by the WA clerk, and the two sides were immediately called to the WA office for a hearing the next day.

The persons conducting the hearing are two 100 household leaders who are members of the ‘Committee for the Resolution of Disputes’ in the ward. The clerk also assists, and the WA takes part in the final decision. The case is heard in two sessions on the same day. During the first session Naw Paw, the wife of the couple who owns the bike, is there with Be Oo, his mother and his aunt. The two parties sit on two separate sides, and the 100 household leaders sit casually on a bench in front of them.

Hearing 1:
The clerk reads aloud the complaint brought by Kyaw yesterday from the WA case-book, while standing up. He states the name of the accused, Be OO, and says: “you rented a motorbike for taxi driving and you have not returned the bike. The owner has asked the WA office to resolve the problem. Is this true?”

Be Oo admits his guilt immediately.

The clerk and one of the 100 HH leaders question Be Oo in very strong tones, asking for more details. The clerk says: “we will try to resolve this case here but if you do not agree then we will report it to the police. Why did you not return the bike?”

Be Oo: “my friend borrowed the bike but then the police took it.”

Clerk: “this case is serious. We should report it to the police. Why did you not take the bike back?”

Be Oo: “I could not”.

Clerk: “how will you get the bike back?”

Be Oo: “I do not know.”

Clerk: “what will you do to satisfy the owner?”

Be Oo: “I have my own motorbike so I can give that to the owner or try to get the money (as compensation).”

The 100 household leaders discuss the value of the bike, and ask Naw Paw about the buying price, which is 650.000. The household leaders agree that this should be the compensation, and they ask what Paw Naw thinks.

Paw Naw: “I am not sure that I can agree to that. I also need my husband to decide [he is not there]. He was the one who decided to rent out the bike.”

The HH leaders discuss this and decide: “we need your husband to come her so that we can make a final decision. So you should come back at 1 PM.”

This all takes ten minutes. The atmosphere is very relaxed and informal. The communication style is very horizontal and takes the form more of a conversation than a questioning. During the hearing, the WA comes to the office and he shouts to the Naw Paw that she has to get her husband. During this part of the hearing, they do not discuss about the option to get the bike back from the police station. The 100 household leaders know about the drug case, because the motorbike owner told them about it when he made the complaint the day before. One of the 100 household leaders explains to the EverJust researchers that, they do not want to get involved in trying to get the bike back from the police, because the case is about drugs, so instead they will resolve it with compensation and let Be Oo sign a Kahn Wan not to repeat the offence. If he does the same offence again, he will be sent to the police. The 100 household leaders do not want to advice the motorbike owner to go to the police to try to get the bike back, because then they could be accused of stealing or be subject to a lot of questioning, which would be very uncomfortable for them.

2. Hearing

At 1 PM the mother and aunt of Be Oo has arrive and the man who owns the motorbike, Kyaw (his wife did not come this time) is also there. They wait for a while but Be Oo does not turn up, and they begin the hearing without his presence. The 100 household leaders take charge of the resolution process, but the WA sits a bit apart behind his desk and gives comments now and then. He shares betel nut with the men. A bit before the actual hearing, Kyaw tells the 100 household leaders at what police station he thinks the bike is. The first thing that happens during the hearing is that one of the 100 household leaders calls a police officer
he knows and asks about the motorbike. The phone is on loudspeaker so everyone can hear what the officer says.

The officer says: “it is hard to get the bike back, because now it is at the main police station. If the owner comes to get it then the owner might be asked many questions, because it is related to a drug case. The owner [meaning Be Oo] might get one year in prison.

The 100 household leader repeats what the officer has said, and asks Be Oo’s mother: “So what should we do? Is it ok that you pay the motorbike price?”

Be Oo’s mother: “Yes, but what about the owner?” She now speaks very informally with Kyaw, the motorbike owner, and he says that he agrees to accept compensation and asks how she can pay. The 100 Household leaders now discuss quietly with the WA, who gives his opinion about the compensation. They then ask Be Oo’s mother how she can pay.

Be Oo’s mother: “Can I pay over 2 times to the owner?”

Kyaw: “how much can you pay now?”

Be Oo’s mother: “3 lakh”

Kyaw: “the rest?”

Be Oo’s mother: “can you wait 4 months?”

Owner: “yes because I know your situation (that she is poor. They already know each other well).”

Now they debate for a while the payment of compensation, and the WA repeats the month that has been suggested for the second installment. The WA says to Be Oo’s mother: “you have to pay on the set date and you must pay the exact date, not after that date.”

They all agree, and Kyaw adds: “Let us make it 4,5 months.”

WA: “ok so we can agree that the pay date is 15 October 2016.” Everyone agrees, very calmly and in a relaxed manner.

The WA in this way has a kind of final say, although he is not really the one who resolves the case or suggests the payment amount and method.

After the agreement is made, there is a longer conversation about Be Oo and his behavior. The 100 household leaders complain that he is disrespectful to the authorities because he does not show up for the second hearing. They also pity the mother who has to take responsibility for her son’s bad behavior. Be Oo’s behavior is compared with other young people in the ward who are bad and disrespect the elders and their parents. One 100 household leader says that such children like Be Oo should be taught a lesson, but he does not mention how. Only later does he say that Be Oo will be called in to sign a Kahn Wan. He has not before committed an offence so they want to give him a chance, before they consider sending him to the police.

Be Oo’s mother now leaves the office for about 30 minutes and comes back with the first instalment. She later tells the EverJust researchers that she borrowed the money from a moneylender. The bundle of money is given to the WA, who hands it over to Kyaw. Both the parties sign a paper, and one of the 100 HH leaders sign as a witness. The WA says: “I am happy that the case was resolved at my office. We make the problems small by resolving them here.”

Later the EverJust researchers ask the motorbike owner’s wife, Naw Paw, if she is satisfied with the resolution. She is happy that it ended at the WA office, but she wanted a higher amount of compensation,
because the bike now has a license. However, because they know the perpetrator, and that they are poor, her husband did not want to ask for more money and even agreed to receive the second installment at a later date.

The second case concerns divorce, which is related to a conflict between the husband and wife’s families. It is resolved by the VTA in a Mon village. The following insights emerge from the case:

- There is a relatively high level of bureaucracy used in settling the dispute, even though the settlement is done in an informal and unofficial way: the VTA issues divorce papers (although he has no official authority to do so), which are signed also by witnesses, and takes a set fee for this.
- There is high participation of the parties, and the resolution process is very public (with other people who have arrived with another problem also being present during the hearing).
- The VTA listens patiently to the parties, but when they speak loudly and in an upset tone, he calms them down and asks them to speak nicely.
- A strong emphasis is placed on arriving at a consensus and on trying to avoid the escalation of conflict: in this case the request for divorce is due to the husband’s mother, who has initiated a rumour about the daughter in law not wanting to have sex with her husband. This has resulted in the wife feeling ashamed and it has caused a dispute between the two families. In reality, the husband’s mother does not want her son to go with the wife to work in Thailand, because she needs his support, and perhaps this is why she started the rumour. The VTA considers these circumstances and agrees to the divorce, but first he ensures that both wife and husband agree and gives them the usual option to reconsider.
- The VTA avoids dealing with a request to take part in negotiating the division of property, because he fears that this could lead to conflict escalation.
- The case illustrates how going to the VTA office, thereby making a case public, is associated with shame and escalation of a conflict.
- The VTA considers the situation of the wife’s side and reduces the divorce fee because he feels pity for them.

Divorce case – consensus and avoiding conflict escalation

A young married couple and their parents are at the VTA office, waiting to hear the case. The wife’s family has filed the complaint, wanting to divorce. Now the families have been summoned by the paramilitary member to come to the office.

First, the VTA says to the wife: “daughter, could you come in front where I am sitting.” There is a table (wood) in front where the VTA sits and in front of it is a long bench, which fits three people at the same time. The wife sits on this bench.
The wife starts by telling her name and that she is 21 years old. She married her husband, whose name is Kyaw Moe, three years ago. He is also 21 years old.

The VTA now calls Kyaw Moe and the couple sit next to each other. The VTA asks why the woman wants to divorce.

The woman says: “I don’t want to be with him anymore”.

The VTA asks her to give some reasons, and she answers very quietly, something about being accused of not serving her husband. She says that they already divorced verbally but she wants to get it officially before she goes to Thailand (to work). She is shy to talk about it.

Suddenly, the husband’s mother says loudly: “what kind of wife is she, who gets married and doesn’t sleep with her husband. If you marry, you have to sleep (have sex) with your husband.”

The wife’s mother says: “I also have to say something that after they got married, I have never watched if they have sex or not, this is very shameful to talk about and my daughter also feels ashamed to tell about that.”

The VTA tells them not to speak these bad words, adding: “we can’t know how many times they sleep together at night after they marry and Kyaw Soe [husband] also doesn’t tell us he can sleep with his wife so there is no meaning to say it and complain whether she [the wife] sleeps with him or not.”

The VTA now says: “I don’t want you two to get divorced because you are too young and you have thought a lot before you married. It took time to consider, and when you get angry you cannot make the right decision.

The VTA says to the husband: “you are a man, so I understand you as I am also a man. You should not listen to every word of your guardians [parents]. You should decide yourself if you love her or if you want to divorce.”

The VTA asks the young wife: “do you want to divorce or take time to consider and do you have time to wait from his reconsideration?”

The young woman says: “I need to go to Thailand and for work but I can wait two days.”

The husband says: “I already decided to divorce, because she brought me to the office [of the VTA], which means the public can know about our case. Now she has already destroyed my life so we need to divide our property.”

The VTA tells the husband: “she is not destroying your life because she didn’t marry you by force and without your desire so it doesn’t mean destroying your life. I have seen many couples come to divorce because of their anger or violence or because parents from both sides are not in a good relationship. I only make a divorce contract for some of them if it is necessary. Most of them take some time to reconsider if they can get back together again or not. However, I already got smell [information] about this couple and think it is better to divorce them so both of them can make their own decision in their future life”.

The VTA then asks a people’s militia member (Pyi Thu Sit) to go and get divorce contract papers at his home.

The VTA said that, if they want to divorce, they have to pay 50,000 kyats per side, and he asks them if they have that amount of money. Both say they do. They now go to the back of the room and sit with their
mothers until the divorce contract paper arrives. The VTA starts writing for about 30 minutes with a nice handwriting. During that time, everyone is silent. When the VTA is done, he confirms the names of the parents and their ages from both sides. He reads the contract in Burmese (the rest of the hearing is done in Mon language) for confirmation and explains the meaning in Mon language. Then he asks if they agree. They say yes and then they have to sign the paper. They are illiterate so they all use fingerprints. The mothers also sign, as witnesses. After they sign, the husband’s side leave to fetch money for the divorce fee.

There are many other people in the office during the resolution of the case.

The VTA continues the conversation with the young wife’s family. He says: “I already know that Daw Win [the husband’s foster-mother] wants this couple to divorce because if Kyaw Moe goes with his wife to Thailand, he can’t work for Daw Win and he couldn’t pay money to her. That’s why she created this story [about the wife not wanting to sleep with the husband].”

The VTA only takes 40,000 kyats from the young woman’s side, because he feels pity for her after her mother explains that they had to spend all their money on the wedding. The young woman’s family thought the man was innocent and honest, so they spent about 40 lakh for their wedding.

The young woman said to the VTA and the parents: “I have said to divide the property and he also said that, but the VTA doesn’t take any action or say anything about that, so the decision was done only about getting the divorce.”

The VTA wants to avoid settling any division of property and says to the wife’s family: “don’t think about any compensation, you are lucky to divorce him, because even if you get back each other, your life will not go smoothly, as there have been problems between you [your families] since the beginning”. The case resolution ends and the wife’s family leaves the office. Later the husband’s family comes to pay the fee.

3.1.5. Justice facilitators and informal dispute resolvers

Even though the WA/VTAs are by far the most significant justice providers, who mediate disputes as third parties, it is very significant to note that many victims and disputing parties also make use of so-called ‘justice facilitators’, who also at times operate as ‘informal dispute resolvers’ (Denney et al. 2016; EverJust PPP 2016). Such facilitators include inter alia: religious leaders, especially monks; astrologers or fortune-tellers; women’s organisations (GoM or ethnic-based); CBO actors; political party members; elders; 10 and 100 household leaders or their wives; educated and well-connected persons in the village/ward, and; armed actors (EAO and to a lesser extent Tatmadaw). The prevalence and role of each of these actors depend on the village and ward, as well as on the individuals involved in the dispute, their personal connections to the facilitators, their trust in them, their religious beliefs, and historical habits. Everjust researchers found that facilitators where mostly used in situations where:

a) The local village leader was less trusted and/or weak in enforcing decisions, so people hesitated to go directly to him or disbelieved that he would resolve a case properly, and;
b) The case is complicated and difficult for local leaders to resolve to the satisfaction of the party or parties, such as land confiscation cases or larger thefts. In such cases more than one facilitator may get involved, giving way to a kind of ‘forum shopping’ (see Section 3.1.6.)

c) The victims or one of the disputing parties feel insecure about seeking a third party directly, because of fear of authority and/or because they have never tried it before. Gender can also play a role.

Justice facilitators play different roles:

- The first line of reporting for people who seek third party resolutions, but who fear or are insecure about reporting directly to the third party him/herself. This may include help to write complaint letters or gather relevant information.
- Accompany and support one party to a case at the VA/VTA office (or court/police if the case ends there).
- Advice and counsel a party to a case on how to understand and deal with the case, which may or may not lead to the two parties meeting each other for a negotiation.
- Hear and mediate a case between two parties
- Put pressure on the accused party to agree to a settlement or pay a compensation – or put pressure on a justice provider to enforce the agreement.
- Spiritual guidance and divination (like expelling bad spirits and witches).

Before people reach the WA/VTA/VA dispute resolvers, they may first have reported to and consulted with a ‘justice facilitator’. The elders or the 10/100 household leaders can for example play this role, but examples also exist where women for instance go to the women’s affairs group in the village or ward, where these are active.

Facilitators can also act as connectors to justice providers by encouraging complaints or referring matters to the ward or village tract administrator, and in fewer situations to the police, courts or armed groups (Denney et al. 2016: 33). CBO, women’s groups, elders or household leaders may also accompany parties to the Ward or Village Tract Office to report the case. This gives confidence and reduces the fear of contenders to go to an official office. Denney et al. (2016: 33-34) account for cases where CBOs have accompanied women to the VTA/WA office to report domestic violence cases, because they were too afraid to report themselves.

Facilitators’ advice sometimes lead contenders or a single party in a case to not report the case to any third party (akin to the ward administrators acting as ‘gate keepers’ to the formal justice system, see Section 2.1.1.). In those situations, facilitators listen to the grievances of the people who come to them and advice
them on how to end the case or deal with it personally. Monks, astrologers, spirit mediums and fortune-tellers may for instance, simply be asked to tell the victim of a theft or a mother of a person who has been trafficked, whether they will get back what they have lost or not. Some kind of spiritual offering is required to help recover the loss, but the case is not reported to an official justice provider. In one case from a Mon village, a woman lost gold and cash worth 10 Lakh. She did not know the thief. She asked a monk, who has special powers, to tell her who the thief was. The monk told her not to worry and told her the exact day that she would get her things back. She had to light a blessed candle on that day. The thief (without being seen) returned the goods to the place where they had been stolen on the day predicted by the monk. The victim never reported the case anywhere else and did not seek to find the thief or get him/her prosecuted.63

In other cases, people combine the use of spiritual facilitators with reporting to a justice provider, like the ward or village tract administrator, and sometimes to the police. For instance, in a large theft case of gold and cash in a ward in Karen state, the female victim re-acted firstly by going to the next door spirit medium who was able to use her spiritual power to identify the suspect (on a photograph, presented to the astrologer by the victim). Hereafter the victim reported the case to the WA and she also consulted a retired police officer on how to deal with the case, because she had no knowledge of the official procedures. The case was transferred by the WA to the police, because it was a big amount and because there was no identified perpetrator. The police investigated the case, and based on the victim’s testimony arrested the suspect identified by the spirit medium. The suspect was kept in a police cell for five days, but was released due to lack of adequate evidence (the police could not use the spirit medium’s words as evidence).

Hereafter the victim consulted another six astrologers/spirit mediums and three monks, who all confirmed the same suspect, but the police took no further action. After two months, the victim consulted a monk famous for seeing into the future, who told her that she should forget about the case, because she would never get the things back. She should pray for the thief and eat only vegetarian food so that she could ease her inner suffering and anger.64 She decided not to take any further action, even though she struggled to find inner peace and to forgive the thief.

In a Mon village, there were also examples where contenders in a case went to astrologers or fortune-tellers to do Ye Dar Yar (a form of spiritual protection to get fortune) as a means to try to win the case at

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63 EverJust interview, female victim, August 2016.
64 EverJust interview, female victim, February, March and May 2016; EverJust interview Ward Administrator, February 2016.
the VTA’s office. They pay a fee for this, depending on the kinds of things they need to do (like offer flowers, light candles and so forth).

Monks in general say that they do not get involved in secular affairs, like helping to resolve disputes or say that their assistance is confined to praying for victims and parties to a dispute. There are some exceptions to this general rule. First, as cited in the examples above, some monks have special abilities to see into the future, and based on this they can give guidance to victims and contenders, but they will not act as a mediator between two parties.

Secondly, there are examples where complainants report cases to monks, who then agree to attend meetings with the opposing parties together with the VA/VTA. They do not, however, make any decisions. One example is from a Buddhist Karen village where the headmistress of the local school was accused of cheating with public funds. The case was firstly reported to the village leader (equivalent to the level of 100 household leader), but he did not succeed in resolving the case. A school committee member then reported the case to the village head monk, who agreed to attend a new dispute resolution meeting. When this also failed, the monk helped the school committee member to report the case to the township education office. In an urban ward in Karen state, a head monk was asked to oversee the hearing of a land dispute, and the WA requested that this took place at the monastery. The contenders were very upset with each other, and the WA thought that by conducting the hearing at the monastery in front of a respected monk, the parties would be calmer and be more inclined to accept the decision (which in this case was the payment of compensation to the original landowner in a land confiscation case). The monk sat on a chair, higher above, the contenders and the dispute resolvers (the WA and the two 100 household leaders) who all sat on the floor. The participants first paid respect to the monk, and then the case resolution process began. The monk just listened. It was the WA and the household leaders who questioned the parties, and who made the final decision.

Thirdly, but much more rarely, monks take an active part in case resolutions and in helping people to make complaints to other authorities. The Ma Ba Tha monk organization play this role in some researched areas of Mon and Karen state. In the main town in Karen state it has been involved in resolving a lot of land disputes and cases involving women since 2014. The Ma Ba Tha monks especially help with larger land

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65 Ma Ba Tha is an organization of monks that also has lay members. It is 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
confiscation cases. They say that when they as monks get involved, the local dispute resolvers as well as the judges and lawyers in the formal system will take the complainants more seriously, because they respect the monks. Monks are also well-educated and have knowledge of the laws. As one monk said: “for ordinary people it is very difficult for them to meet with the officials and the upper people, so I introduce them to each other, and I tell the officials to serve the people’s case”. In land confiscation cases, they help to link complainants to lawyers, judges and politicians, including the State Minister, write complaint letters and pay fees and other costs for those who cannot afford it. Sometimes pre-hearings are done at the monastery with the involved parties, and invited authorities and lawyers, before the case is sent to court. In some of the cases, the Ma Ba Tha take care of cases where the opposing party is a Muslim, and they defend the non-Muslim. This is especially prevalent in cases involving female victims, where Muslim men are accused of elopement and rape. In one elopement case in a rural Karen area, the family of the girl made a complaint to the police, but they did not open the case (they thought that the other party had bribed the police). They then went to report the case to a Ma Ba Hta monk, who went to the police and the case was now opened. When the case was heard in court, a number of Ma Ba Hta monks stood by the side of the victim’s family. The case was concluded with seven years’ imprisonment. However, it should be noted, that Ma Ba Tha also deals with many cases where Muslims are not involved.

In fewer cases, facilitators were also found to help resolve land cases informally, outside the justice system and without decision-making by the WA/VTA or a village leader. In one example from a Buddhist Karen village, the most highly educated villager was contacted by a group of villagers who had lost farmland when this was confiscated by the government and given to a KNU splinter group as part of a ceasefire agreement in the 1990s. With the political transition, they had gained courage to raise the land complaint, but not through formal channels. The educated facilitator tried first to resolve the case directly with the leader of the splinter group, but when this failed he turned to the local Tatmadaw battalion leader, who then staged an ‘informal court’ in the confiscated land where it was decided that the splinter group should return the land. The land was still not returned, so the facilitator wrote letters to the NLD and the new chief minister, and as of October 2016, he was still waiting for a response (see details about this case in Lue Htar 2018).

This case also exemplifies that particularly well-educated and connected persons in a village or ward may be addressed to help victims or parties to a dispute to seek a solution. These are people who have

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66 EverJust interview, Ma Ba Hta monk, February 2016.
67 EverJust interview, Ma Ba Hta monk, April 2016.
68 EverJust interview, Ma Ba Hta monk, February 2016; EverJust interview, Ma Ba Hta monk in charge of land cases, March 2016.
particular courage, have knowledge of law and legal procedures, and who are literate (so they can understand documents and help write complaint letters).

**Women affairs groups** (GoM aligned) are sometimes, but not frequently involved in resolving disputes. In one case from a Buddhist Karen village the women affairs group of a neighbouring village overruled the VA’s decision in a divorce case. The woman was pregnant, and when the divorce was negotiated at the VA’s office, they made an agreement that the man should pay a fine of 15 Lakh to the woman, beginning with a 5 Lakh instalment. Before the rest of the money was paid, the woman had an abortion made. The man’s mother now refused to pay the money, and complained to the women’s affairs group, which supported her case. The VA and the parties were called to the women affairs’ office and the case was re-heard and decided there. The man had to pay no compensation, and the woman was threatened with the law, because it is illegal to have abortion. However, no court case was opened.

The role of **NGOs**, with international support, is also increasingly engaged as facilitators, especially with regards to women and child protection issues. However, hardly any villagers and ward residents mentioned these to EverJust researchers. One example, however, is the Yangon Karen Baptist Woman Association (YKBWA), which is supported by UNICEF and Save the Children, and which partners with the Myanmar Red Cross and the *Lu Mu Wan Htan* government NGO, which has township level offices. YKBWA has an office in the a ward researched by Everjust in Karen state, and covers assistance to 50 villages. I can also receive complaints from ward residents. It investigates cases of domestic violence and child abuse, and resolves them if they are not too severe. When they resolve they mediate between the parties and give awareness about women and child rights, for instance to fathers who beat their children. They have also consulted and given awareness to children who were caught stealing. The main role is, however, to facilitate connections and linkages to relevant justice providers, to accompany victims to court or to the police and WA, and to help cover transportation costs when victims need for instance to travel to court. There are also cases where the YKBWA resolves cases with the WA and the police, without the case going to court. One example was a domestic violence case, that also involved child abuse by the father: the victim wife’s mother reported the case to the YKBWA, which informed the police, the WA and the Red Cross. The police interrogated the husband, and together the YKBWA, the police and the WA decided that a court case should not be opened against the husband, but that he had not right over the children. The grandparents were given the right over the children, yet with no official court decision.  

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**Armed group facilitators** may also be used to put pressure on the accused party to abide by a resolution. This was found in two adultery cases and a land dispute in a rural Buddhist Karen village in Karen State, which has always been GoM controlled, but was in the past on the frontline between the KNU and the Tatmadaw. Today it is located relatively close to the DKBA and two other smaller KNU splinter groups. In the land dispute, the previous owner reclaimed a piece of land that had been sold by her son, who passed away. The new owner had a local land contract, which would not hold in court. They negotiated it amongst themselves, but the previous owner did not agree to compensate the new owner with the current market price. So the new owner went to the leader of a KNU splinter group to ask for help. This leader contacted the VTA and told him how to resolve the case. The VTA called in both parties and told the previous owner to pay compensation. They negotiated the amount down from four to two lakh, which was paid and the case ended. In this case, the armed actor did not resolve the case, but put pressure on the VTA to do so. In the two adultery cases, the armed splinter group, acted more as an informal justice provider, after the village leader’s decision had not materialised. In both cases the decision was that the husbands who had committed adultery had to pay compensation to the wives’ sides. At the village leader’s house a *Kahn Wan* was signed about the agreed amount, which the victim used when the case was presented to the armed splinter group. The armed group was used to enforce the decision already made by the village leader, by calling in the parties for a kind of re-hearing. In the one case, the victim’s side explained that they went to the armed group, because they had a relative who was a soldier there. They also said that they had tried to get the VTA (above the level of the village leader) to enforce the compensation, but he failed. After the armed group intervened, the compensation was paid and the divorce was issued by the village leader. The perpetrator’s sister explained that people go to the armed groups because they are fast and threaten a lot, so they pay compensation quickly.

There are few cases where a ‘facilitator’ directly helps to bring the case to the formal justice system. When facilitators are used, the cases are most commonly resolved informally. A few exceptions were when internationally supported NGOs or CBOs acted as facilitators. On example was a child rape case in rural Karen state, which initially was resolved by the settlement of compensation to the victim’s family. When this was discovered by the Red Cross, which was doing a community consultation meeting in the village, the Red Cross reported the case to a Christian Women’s NGO. The latter convinced the victim’s family to report the case to the police and open a court case. The NGO advised the victim not to receive compensation, but as the court case was pending, the perpetrator ran away to Thailand and the case was never resolved.

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70 EverJust interview, victim’s aunt, March 2016.
71 EverJust interview, sister of perpetrator, March 2016.
**Paramilitary groups**, or people’s militias (*Pyi Thu sit*), which were introduced under the Tatmadaw in the past were also found in two rural villages, one in Karen state and one in Mon state. Albeit still holding arms provided by the Tatmadaw, and in principle serving under Tatmadaw battalions, their daily activities seem today to be more integrated with the work of the village leaders and VTAs. Their main task is security provision, like patrols, but EverJust researchers also found that they can perform justice facilitator roles, including investigations. In the Buddhist Karen village the village leader has given the paramilitary the authority to resolve marriage disputes and fighting cases because they have arms, according to the paramilitary leader. In the past, he used a foot lock for punishments, but it broke. Villagers claim that some people go to the paramilitary with cases and others go to the village leader. In the Mon village, the paramilitary members patrol and receive complaints directly from victims, especially in cases where drug addicts are violent or steal. Other cases include gambling, physical assault and fights. They investigate these cases and arrest the accused and call the police who then takes over the case. Arrestees can be detained for 24 hours at the paramilitary camp, if the police cannot come right away. In moneylending cases and smaller thefts and fights, they forward the case to the VTA and help to locate the accused and bring him/her to the VTA office. A paramilitary officer also works on a daily basis at the VTA office: he helps investigate cases and deliver summon letters to parties who are to be heard at the VTA office. They receive no salary, but collect market stall taxes daily, which they get a percentage of for their survival.

**Spirit mediums** have a special role in resolving witchcraft cases, which are prevalent in Buddhist Mon and Karen villages. These are not as a rule reported to the VTA/WA, but resolved by spirit mediums, who can expel bad spirits from the body of the bewitched. This for instance happened in a Mon village where a person involved in a traffic accident was suspected by the family of having been bewitched. A local spirit medium was called to the accident site and expelled the spirit by spreading rice seeds over the body of the bewitched, while reciting mantras (*Kar Htar*).

3.1.6. Forum shopping and multiple facilitators

Forum shopping (von Benda-Beckman 1981) is a concept used in legal anthropology to describe situations where parties to a dispute or a crime case seek assistance from a number of different persons and/or organizations to try to achieve the best possible outcome. This can include a combination of the use of different ‘facilitators’ with the use of one or more established justice providers (like WA/VTA, police, courts etc.). The aim is to try different avenues and to get different forms of support to achieve the desired

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72 EverJust interview, Paramilitary leader, February 2016.
73 EverJust interview, Paramilitary members, December 2016.
resolution, like the payment of compensation for lost property, the recovery of confiscated land, or the repayment of debt. In Karen and Mon states, forum shopping occur mainly in situations where:

a) The local village leader, WA or VTA is too weak and/or unwilling to find a sustainable solution to a dispute and/or where the agreement he has negotiated fails to materialize (like the losing side or the perpetrator failing to pay compensation or return property, including land).

b) When cases are too big to be handled alone by the community level dispute resolver, which mainly includes land confiscation cases.

Forum shopping, and the involvement of multiple facilitators can give way to very complicated dispute resolution processes, to cases being heard in multiple ways, involving a range of informal negotiations, and sometimes threats. Overall, this reflects the fragility of the justice system as a whole, where there often are no predictable solutions to problems and where the law and legal procedures are unclear to people and not enforced in any systematic way. Forum shopping can be very costly and time-consuming for the parties, and can be very frustrating, as contenders move between different facilitators and justice providers to try to get a final solution. In many cases, there is no final solution or the case is only resolved partly to the satisfaction of the parties. The model below illustrates the resolution process of a land confiscation case that occurred in an urban ward in Karen state, showing the involvement of various local authorities, monks, and politicians.

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**Land confiscation case**

[Diagram of land confiscation case process]

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The second model below, shows the resolution of an adultery case (referenced above) from a Buddhist Karen Village, which involves village leaders, the VTA, the Police and a Karen armed group, the DKBA.

In the a rural village in Mon state, Everjust researchers also found different kinds of forum shopping, including the involvement of monks in advising and supporting certain parties, sometimes against the decisions of the VTA. In addition, when an agreement cannot be reached at the VTA office, the VTA will give the option of either going to the GoM township administration or to the NMSP headquarters. In an arson case from 2016, for instance the case moved first from the VTA office, then to the NMSP township and district levels, then back to the VTA office, and then finally to a Tatmadaw Battalion office in a nearby town. The settlement of compensation was done already with the VTA during the first hearing, but the perpetrator failed to agree to pay, and this is why the case travelled through the other institutions. The perpetrator paid in the last forum. The model below depicts the case.
3.2. Village dispute resolution in selected KNU areas

Across Karen villages that are fully or partly controlled by the KNU, there is, like in GoM areas, a clear preference for resolving all types of cases inside the village. The first option is to try to find a solution within the family itself, or between contending neighbours. Only if this is unsuccessful, people may choose to go to village leaders or elders, as their second option. This is also confirmed by an IRC/PLE survey (2016) where 38 percent said that would go to the village leader and 17 percent to a village elder as their first option for resolving a case with a third party (13 percent would go to the village tract leader, and 14 percent to a person within the KNU) (IRC/PLE 2016: 24). However, it also happens that villagers do not report their case at all, thereby leaving it unresolved if they cannot resolve it themselves. In the IRC survey 18 percent of respondents said, they would not report at all (Ibid.: 30). Making cases public by reporting to a village leader is associated with feelings of shame, and villagers do not want to escalate problems by reporting them. There is a preference for forgiveness and for keeping things privately over seeking a remedy. Even when people are asked what they would do in case they were robbed or a family member was raped, many replied they would do nothing, but would see these cases as their fate. These culturally and religiously informed notions of fate, forgiveness and shame, which span across Christian and Buddhist Karen villages,
also exist in areas that have not been under open conflict in the past. However, the tendency not to report cases may also owe to the fact that village leadership was very fragile and at risk of Tatmadaw attacks in the past due to the armed conflict. This is to some extent still seen in GoM and KNU mixed controlled areas, where it has also been found that case reporting is lower (Kyed and Thitsar 2018; IRC/PLE 2016).

There is a clear notion that more cases are both being reported to and investigated by village leaders after the ceasefire, and especially in areas where there is stronger KNU presence. Leadership is now more stable, and at the same time the leaders, with backing from the KNU are now able to enforce laws and village rules. Stability and ceasefire also means that village leaders can without fear send cases that they cannot resolve to the KNU, and this option gives them an important back up when they resolve disputes at the village level.

When cases do escalate and village leaders give up on handling a perpetrator or on mediating two parties, there is a clear orientation towards the KNU justice system. Going to the GoM courts is seen as unthinkable. The IRC 2015 survey also reflects the support for the KNU justice system, with around 80 percent supporting that a KNU court should operate in their village (IRC/PLE 2016: 28).

Village leaders mainly use mediation and reconciliation, but compensation and minor punishments are also enforced, including labour. There is no legal representation, but it is common that parties are accompanied by relatives to a dispute resolution session (IRC/PLE 2016: 46). How and by whom cases are resolved inside the village however varies in practice between the villages. In addition, the rules and laws, if any, that they apply vary. Even though the village leader and village committee, is officially in charge of deciding cases, according to the KNU’s procedures, there are also other actors that villagers may turn to first for assistance, like KWO (Karen Women’s Organization) women leaders, specific elders, educated persons, as well as KNLA soldiers (Kyed and Thitsar 2018; McCartan and Jolliffe 2016: 24). This depends on personal relations to other influential persons, and it depends on how individuals perceive the village leaders. EverJust research and the IRC survey from 2015 did not find any evidence of external legal aid providers in the KNU villages or of available lawyers. Only the KWO, which is a CSO connected to the KNU, was active in some villages to assist female victims and help mediate marriage disputes.

Religious leaders, including Buddhist monks and Christian pastors, are not seen as dispute resolvers, but they are sometimes addressed to get advice on how people should view and approach a case, as well as to

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74 This is confirmed in other studies in Yangon, Hpa-An and Moulmein (EverJust PPP, 24 June 2016; Denney et al. 2016).

75 According to McCartan and Jolliffe’s (2016) study some KNU villages also use leg stocks.
perform prayers to help people find solutions and inner peace if problems cannot be resolved. Village leaders do not bring them in to help resolve disputes. Despite this, Christian pastors were found to play a morally important role in guiding case resolutions, for instance in marriage disputes. Astrologers were consulted in Karen Buddhist villages.

With regards to female representations there is variety across KNU areas. The IRC survey from 2015 and EverJust research in KNU village A illustrate low women’s participation in village level dispute resolution, but this was the opposite in KNU village B where the KWO village members play a crucial role in dispute reporting, resolution and record keeping. In the latter case, reporting of domestic violence has increased, whereas in the other villages such cases are largely left unreported (IRC/PLE 2016: 48).

In the following, two examples of different village level dispute resolution practices are provided, based on research conducted by the EverJust project in 2016.

3.2.1. Dispute resolution procedures, rules/norms and remedies

3.2.1.1 Karen village A

Village A has a majority of Sgwa Karen, Buddhists. It is situated in an area that used to be a battle zone before the ceasefire, which meant a system of rotating village leadership and high insecurity and mobility. Today it is considered a mixed KNU and GoM controlled area. It has one village leader who is recognized by both sides, the KNU and the GoM. With the exception of traffic accidents, which are reported to GoM township, the village leader, however, orients himself towards the KNU justice system when he does not manage to resolve disputes himself. Moreover, at the entrance to the village there is a KNLA camp, which polices all movements into the village. An ongoing leadership dispute between the current and the previous village leader, with each their supporters among the elders affects how disputes are dealt with. Sometimes people address the former leader or one of the elders on his side, who resolve the disputes without consulting the current leader. Another effect of this leadership dispute is that the current village leader tends to resolve the disputes that he receives alone, rather than as a committee. According to elders, this differed from the past, where the village leader would form a committee to collectively settle a dispute and seek advice from elders. In addition, the village leader does not make use of the women’s group when resolving marriage disputes.

Instability of village leadership caused by the situation of mixed governance by affect CBDR. This was also found by the IRC survey from 2015, for other mixed controlled villages, which had a high percentage of cases that remained unresolved (68 percent) compared to KNU controlled areas where approximately 80 percent of cases are resolved) (IRC/PLE 2016: 32).
The most common disputes are marriage related disputes, including domestic violence and smaller land disputes. The village leader said that he used whatever law he deems most relevant to the case, and he rejected ever having been given a village law book by the KNU. The village leader used more common sense rather than written rules. He said that he used compensation to victims and reconciliation. For instance, in marriage disputes, his main method is to try to make peace between the husband and wife, encouraging them to stay together and not divorce. The couple comes to his house and he listens to both sides. He then counsels them, and if one of them requests a divorce, he asks them to go back home for six months and reconsider the divorce quest. The problem then usually goes away. This method is also used when domestic violence is part of the marriage dispute. In such cases, however, the village leader also issues a warning to the husband who has beaten his wife. This includes threatening him with arrest and transfer to the KNU township level court, if he repeats the offence. The village leader does not issue punishments for domestic violence at the village level. This is left to the KNU. In the cases he has dealt with, the perpetrators did not repeat the offence after the initial warning, and thus the village leader considers the threat of transfer to the KNU as an effective method. If people do end up getting a divorce, the village leader’s role is to decide the division of property. If one of the persons in the couple has committed adultery, s/he has to pay compensation to the aggrieved. Thieves can be punished by being tied to a tree for a few days as a kind of punishment, which is combined with compensation to the victim. However, there was no recent example. When the village leader cannot resolve a theft case successfully, he will forward it to the KNU court at township level. The preference for sending cases to the KNU is despite the fact that the GoM township court is geographically much closer (3 KM) to the village than the KNU court, which is one days walk from the village. The reason for preferring the KNU court is that it has a better understanding for the Karen people, lighter punishments than the GoM and because the KNU allows for negotiation, according to the village leader. The KNU court is also seen as the cheapest. The KNU judges do not enforce fees, and it is voluntary to give a ‘thank you’ contribution by the parties in a case, such as a percentage of the compensation received.

Monks, astrologers or spirit mediums do not play a role in case resolutions, but prayers and advice from these actors are common as part of people’s ways of dealing with problems. People believe in Buddhism as well as Karen spirits, and they seek monks or pray to the spirits to get lost goods back. Some victims also go to astrologers to get advice on how to get stolen goods back and to ask who the thief is, but this information is not integrated into village level dispute resolution. Prayers and spiritual advice constitute

76 EverJust interview, village leader, March 2016.
means to also deal personally with the effects of disputes that are unreported or that never reach a satisfactory solution.

3.2.1.2 Karen village B

Village B is *de jure* a mixed controlled area, situated in the lowlands on the boundary between the KNU controlled area and the GoM controlled area. Prior to the 2012 ceasefire, the village was a combat zone and for longer periods under the control of the Tatmadaw. Villagers were subject to forced relocations to GoM areas several times since the early 1990s, but most villagers returned. The majority are Paku Karen Christians, including Baptist and Anglican. During the conflict years, there was a system of rotating village leadership, aligned with the KNU, but they had to operate secretly to avoid attacks by the Tatmadaw.

Today the village has a dual village leadership structure with one elected village leader who deals with GoM affairs, and an elected KNU village chairman who heads a committee of seven members that deals with disputes and development matters, as well as issues coming from the KNU at upper levels. However, both leaders pledge allegiance to the KNU, and stated to us that the village is a KNU village. They have a good relationship of collaboration. While a Tatmadaw camp still exists ten minutes’ walk from the village, soldiers no longer enter the village, and the GoM has made no strong efforts to expand its civilian administration. Therefore, in reality, the village is almost exclusively administered by the KNU. This was made possible with the 2012 ceasefire, which has also allowed the KNU and village leaders to engage more openly, including in justice and dispute resolution matters (Harrisson and Kyed 2017). It is unthinkable for village leaders to forward cases to the GoM courts, and for villagers to make complaints there. The only case encountered in 2016 was a land grabbing case where the GoM village leader, based on advice from the KNU, supported a villager, who was victim to military land confiscation, to consult the GoM township level administration and police, but the case was not resolved. Land grabs cannot be resolved by the village leaders.

Since 2013, the KNU laws and guidelines have been disseminated to the village, and a seven member KNU ‘Village Development and Dispute resolution Committee’ has been formed. The KWO at KNU central level has also actively empowered the village level KWO to create awareness of women’s rights and to resolve disputes. This has brought a new dynamic to village leadership, which hitherto was dominated by men. The KWO now keeps records of cases and deals with marriage disputes, as well as reports and receive cases related to adultery and rape. This empowerment of the KWO means that a female representative is always present during dispute resolution sessions in the village. The village KWO leader also collaborates with other KWO representatives from other villages in the village tract, to resolve matters involving women. They also keep guidelines and books on women’s rights and CBDR, provided to them by KWO at central
level. According to the KWO leader of the village, women are now more keen to report domestic violence disputes, and men have become more fearful of beating their wives since the KWO assumed the dispute resolution role they have now.77

In 2013, the KNU also encouraged village leaders to codify their own village rules and dispute resolution procedures. The KNU did not decide these rules, but gave overriding guidelines, and approved them jointly with village elders, KWO members and elected leaders. The village rules are essentially about morally appropriate behaviour, including: prohibitions to sell alcohol, drink in groups, drink over the age of 18, drive motorbike on church days, touch unmarried women, and cause noise and public disturbance. The rules are posted on signboards in the village and at the churches, and can lead to fines of up to 50,000 MMK or equivalent in labour. For instance, if a person under the influence of alcohol makes public noise, s/he is given a 24-hour labour punishment, like road repair. According to the village leaders, these rules have been around for a very long time, but it was only from 2013 that the village leaders could begin to actively enforce them. This is because the KNU has empowered them to do so and backs their decisions (Kyed and Thitsar 2018).

The most common cases in this village are couple’s fights (including domestic violence), adultery, inheritance (including land), breaches of the village rules, especially related to alcohol sale and consumption, and more rarely petty thefts. Officially, complainants should report to the KNU village chairman directly, who heads the Development and Dispute Resolution committee, but in practice some complainants go first to either the KWO leader (especially women), a village elder they know well, or the GoM village leader. However, as a norm, none of these persons resolve the cases individually. When they receive a complaint, they report to the chairman who then convenes the committee. They then call in the parties, who are heard separately, but are present at the same time, and thus can hear each others’ testimonies. There is also a ‘village police’ who in theory is in charge of investigating cases and reporting them to the KNU chairman, collecting information about the involved parties. He cannot arrest people but summon them to appear for a committee hearing.78 However, no actual cases were observed where this village police was involved.

77 EverJust interview, KWO village leader, September 2016. Her opinion was echoed by the most powerful elder in the village (EverJust interview, September 2016).

78 This information was according to the KNU village chairman (May 2016), but was not observed in practice or repeated by other EverJust interviewees.
There is no fixed day of the week for resolutions. They hear the case on the same day, if it is urgent, or set a date in the near future. It is common for the GoM village leader to assist in the committee’s dispute resolution sessions, and if the KNU chairman is absent, he can take his place.

Decisions are taken, based on consensus in the committee, and thus it works like a jury, rather than independent judge decisions. An exception was an urgent domestic violence case where the KWO members had to quickly intervene and consult the perpetrator, at a time when the village leaders were busy. There is a member of the committee who carries the title ‘judge’, and who is expected to have particular knowledge of the laws and rules to help decide cases. However, in 2016 the judge no longer took an active part in case resolutions, except for overseeing persons who had been given labour punishments. He is now old, and a heavy drinker, so his involvement has reduced. Whereas, the village chairman is elected, the other members of the committee are appointed by the chairman, akin to the KNU justice committees at higher levels.

The village committee uses mediation and reconciliation in the cases that do not involve breaking village rules, but they can also enforce compensation, in for instance adultery and theft cases, as well as labour punishments for the repeat of offences. Case settlements may also involve ritual offerings, associated with customary notions of the need to apologize to the community collectively. This is most common in adultery or pre-marital sex cases, which are associated with dirtying the community as a whole. Such offences require the offering of a pig and a public apology by the man and woman involved in the case. In marital disputes, not involving domestic violence, there are no punishments, however. Here the committee members consult the couple, and do everything they can to avoid divorce, as this is not permitted according to the church. The committee members call in the couple and negotiate peacefully with them: “the come to us in anger and we talk love and kindness with them”, according to the KNU village chairman.79 If the wife reports that the husband beats her, as part of a quarrel case, the committee can issue a labour punishment if he commits the offence again after the committee has warned him once and he has signed a Kahn Wan. In land disputes, including inheritance or disputed ownership between villagers, the committee convenes the parties and tries to find evidence of original ownership in accordance with customary Karen rules, which do not follow the GoM laws on user rights. Since, very few people have land certificates the committee consults the elders to testify who the original owners are. In larger thefts, like motorbike theft, the village committee sends the case directly to the KNU, but when it regards petty theft, like the theft of chickens, the committee councils the thief, asks him to compensate the victim and make

79 EverJust interview, May 2016.
him sign a Kahn Wan that he does not repeat the offence again. If he does, he will be sent to the KNU township level.

Central to the dispute resolution procedure with regards to offences is the use of a three-step system of warnings and promises that is directly linked to the KNU as a back-up. Also, this procedure was codified with KNU support in 2013. First, the committee members warn the perpetrator and makes him/her sign a form akin to a kahn Wan, promising not to repeat the offence again. If the perpetrator repeats the offence, s/he 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 reported to the KNU. During hearings, reference to the KNU is a significant way to get the parties to agree on a settlement. The leaders say: “if you do not abide by the decision you will end in the KNU prison” or “if you continue to do the bad manner we will send you to the KNU”. Threats and transfers to the KNU system regard not only crimes - like theft, adultery and domestic violence - but also repeated violations of the village rules. Alcohol sellers may in other words also be convicted in the KNU court, if they do not stop selling after two warnings from the village committee.

A core difference from Karen village A, is that in village B, the village committee charge offenders without a complainant. This is because some offences are treated as public offences or as acts that offend the community as a whole. This includes breaches of the village rules as well as adultery and pre-marital sex. Whereas the amounts of compensation in adultery and pre-marital sex cases may be subject to negotiation in terms of the amount of money to be compensated, the village committee will enforce some form of compensation, irrespective of the wishes of the victims (if any). Conversely, breaches of the village rules are not subject to negotiation, but will result in a fine or communal labour. The amount may be reduced, if the perpetrator is poor. Overall, this means that this village dispute resolution system is not confined to mediation and reconciliation, but is also a punitive system. Importantly, village elders and committee members are not considered above the law, but also convicted if they do not follow the village rules. For instance, one section leader and a committee member were fined for public disturbance under the influence of alcohol by the village committee.

In terms of written laws, the village leaders repeatedly stated that “we use KNU law”, but the law as a written document was not used during dispute resolution sessions. It is only the KWO women who use written documents for case resolutions, including the village rules and the guidelines with mediation methods, given to them by central level. Frequent references are also made to KNU laws. The following case is illustrative, and also shows the mixture of rules and norms that may be applied in one single case.
Case of pre-marital sex and pregnancy

A young woman got pregnant after having slept with three men, and none of the men wanted to take responsibility. The KWO raised the case without a complainant when they discovered that the unmarried woman was pregnant, because this is an insult to the whole community. All parties were called for a hearing and were under accusation. During the hearing, the KWO woman read the law, which were lines written down in a notebook, and said that the woman was at fault because she had pre-marital sex and made herself lose her dignity as a woman. They told her that according to KNU law, she would normally get compensation from the father until the child is 18 years old, but because she had made herself loose her dignity she would not get anything.

The three men were scolded for playing with the girl like a toy, and since no one wanted to take responsibility for the pregnancy, they were all asked to pay one lakh each for the unborn baby. They were also made to buy a pig to offer at a customary cleansing ritual where the village leaders and the KWO led the ceremony. All the married couples in the village were invited to participate and had to wash their heads. Because they are Christian, the leaders asked the perpetrators to pray for God’s forgiveness. The prayer was led by the KWO woman, because the pastor was absent. They all ate the pig as prescribed by local Karen customary rules.

In the above case, there is a combination of references to KNU law, village rules, customary norms and Christian beliefs. The reference to ‘KNU law’ should not be seen as a stringent application of written legal principles, but rather be understood as a sign of support for the KNU system and of using this system as a backup if community resolutions fail. Customary norms and Christianity co-exist. The pastors in the village, the Anglican as well as the Baptist, do not play a direct role in CBDR, but they assume an important moral authoritative role, especially with respect to marriage disputes. 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. In cases where a couple or either the wife or the husband request a divorce, the role of the church presents a strong dilemma for the village leaders. The churches make the marriage certificates, and do not permit divorce. The village leaders feel shame and fear losing face if they allow a couple to divorce, for instance if the husband has repeatedly committed domestic violence. In only one case did the current village committee allow for divorce, but there was strong disagreement between the committee members of this decision. The preference is therefore to forward the perpetrator to the KNU for punishment, rather than issue a divorce. Finally, Christian and customary beliefs and morality may contradict with the KNU law with regards to compensational payments. In one adultery case for instance, the woman who had slept with a man who later married another woman got pregnant. The village committee decided that the man should pay her compensation for the unborn child. However, the pregnant woman refused to receive the compensation, because she wanted to keep her dignity and just be able to forgive, according to her Christian and customary beliefs. In the end the woman reluctantly accepted the compensation. A cleansing ritual was also performed, and the man paid the compensation. Had he failed to do so he could have faced a prison sentence in the KNU system, after being given two
warnings. This for instance happened in a case where a man had threatened another man with a knife and verbal insults due to a land dispute (see Kyed and Thitsar 2018).

3.3. Village dispute resolution in NMSP controlled areas

There is very little empirical knowledge of how disputes are resolved in Mon villages in the areas administered by the NMSP. The following empirical examples are drawn from EverJust research in 2016 in two villages in NMSP Area C, which is geographically situated inside GoM-defined Karen state boundaries, and which also has villages governed by the KNU. General insights show that the village and village tract structures follow NMSP policies, including the existence of justice committees that are linked directly to the NMSP system.

3.3.2. Dispute resolution procedures, rules/norms and remedies

Village level

There is also here a strong preference for resolving cases inside the villages. The villages have justice committees, one has five members and another has seven members. All committee members are men from the administration, and the head of the village administration, the headman, is also the chair of the justice committee in both villages. Justice committees are re-elected every three years.

The most common disputes are about marriage (quarrels, fights and requests for divorce), moneylending, land disputes between villagers, and rarely rape and theft. The committees also deal with a range of moral breaches, related to village rules.

Reconciliation and village harmony are central to the dispute resolution methods, but punishments can be issued. These include community labour – like road construction, cutting of trees or breaking rocks for rubble - the use of the Aran Manouk (a pillary or foot lock), and confinement in the village administrative office (one of the villages). The Aran Manouk is particularly used for public disturbances and for breaking the village rules, such as when drunk people are violent or disrespectful towards other members of the community. People are put in the stock for a maximum of five hours, because a longer period is known to make the perpetrator’s mind bad and to cause anger against the village justice committee, according to one village headman.80 After being in the stock, the perpetrators are released and asked to apologise to the village justice committee.

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80 EverJust interview, village headman, May 2016.
In marriage disputes, the committee tries as much as possible to keep the couple together to ensure village harmony, even if the couple or one of the persons in the couple ask for a divorce. The committee members consult them and send them back home to give them time to reconsider. Only if a couple comes three times, they will ask deeper questions and then perhaps grant the divorce. If the woman reports domestic violence, the committee deals with it in two ways: 1) if there is no bloodshed, they will verbally warn the perpetrator and make him sign a promise letter (Kahn Wan) not to repeat the offence again. He is not allowed to leave the village for a period. The woman is also given a report to sign. 2) if there is bloodshed, the perpetrator will be confined for 6 to maximum 24 hours in the village administrative office. He has to sign a Kahn Wan and another person, like a relative has to guarantee for him.

In debt cases the village committee, if there is no formal contract, which is usually the case, can help the parties negotiate the repayment and the level of the interest rate. The committee members make a hearing of both parties, and decide whether the claim is true, and then they negotiate the date for repayment. The borrower has to sign a document where the agreement is written and which has a guarantee (for instance his property). If he does not pay back he has to sell for instance his house in order to repay the lenders. The justice committee is involved in this part of the process too, and may for instance help announce the house that is for sale.

Land disputes between villagers over unclear ownership are settled by investigating land certificates, if available and then negotiating a settlement between the parties. In one case where a person had faked a land certificate, he was given a punishment of communal labour (road repair).

Only one rape case was accounted for and it happened in 2005. It was settled through the negotiation of compensation between the female victim and the perpetrator.

The committee does not use the NMSP law books directly, but village rules, which are written down on signboards near the village centre, the school and the monastery. The village rules were developed by a group of village elders, monks and the village administrative committees and then approved by the NMSP township office. The village rules are therefore supported by the NMSP. The rules include: a ban on selling intoxicating substances, prohibition on gambling and driving irresponsibly, registration of overnighting guests, prohibition to speak disrespectfully to members of the community, and a ban on letting animals roam in the village. The rules, according to the village leaders are to ensure that the villagers do not insult the dignity of the village and to keep the village orderly and clean. Anyone who breaks the rules will be punished. The punishment can be a fine, which has to be paid to the village administration, or the perpetrator can be placed in the aran manouk. The committees also use khan wan to commit contenders to obey the decision and not to repeat the offence, as in domestic violence cases. The khan wan may be
used as a guarantee: either family members vouch for the perpetrator or the perpetrator pawns his/her land or property. This is similar to the NMSP justice system.

There is a general sense that the justice committees and headmen are respected, even when parties do not agree with the verdict. Compared to GoM areas there are few alternative justice actors or facilitators, as justice provision is consolidated around the village committee, which takes care of all cases. This role is strongly backed by the NMSP.

When cases cannot be resolved at village level or when parties are dissatisfied with the resolution there is a fixed transfer system in place upwards in the NMSP system. There is a clear hierarchy, as cases must first be reported, investigated and tried by the village committee before it goes to the tract level or to the NMSP township level. The village headman in one of the villages claimed that all cases, including rape and murder, most firstly be investigated by the village justice committee, even if it ends up being decided by the NMSP. Drug cases are, however, only investigated at township and district level.

In addition, the village committees find it difficult to deal with cases that involve non-Mon villagers, especially Bamar. The headman in one of the villages explained that it is difficult for him to deal with cases that involve Bamar workers, who now reside in the village, because they have no native family members or property to use as guarantee if they make offences. He gave a recent example with a Bamar who had married a local Mon woman. He was violent towards her and their children and caused a lot of public disturbance. The justice committee had difficulties handling him. They put him in the foot lock but to no avail, and he repeatedly broke the Khan Wans. Finally, the village justice committee consulted the village tract justice committee and they decided to expel him from the area with the backing of the NMSP. The headman told us that this has never happened to a Mon villager, because they are native to the area and usually either have property as guarantee or a family that can vouch for them. This shows that belonging and social contract are important for the village justice system to function. A person who does not conform to this interdependence is difficult to control. Therefore, the village tract level becomes important to make serious decisions, just as the NMSP is an important back up in physically excluding a person form its territorial control area (Harrison and Kyed 2018).

**Village tract level**

The eight-member village tract committee is also important when village leaders give up on cases involving Mon villagers. This committee consists of members, who are elected every three years by villagers from each of the villages in the tract. All are men, but they say that they want to improve female participation in
the future. Only a few times have they invited young women from the youth group to give advice in settling divorce cases. None of them are members of the village administration, which is also a requirement from the NMSP. The committee members have all been approved by the NMSP at township level.

As prescribed by NMSP rules, the tract committee does not issue punishments, but can re-negotiate cases that put extra weight on decisions that have already been made by the village committees. Their hearing procedures resemble those of the NMSP township justice committee, using a mixture of reference to NMSP law and reconciliation based on experience and common sense. The references to ‘NMSP law’ should not be understood as adhering to a written legal code per se, but as a sign of support to the NMSP system.

The tract committee does not have a separate courtroom for hearings, but travel to the village were the case occurred, and then use the office of the village head. However, among the eight villages in the village tract only three have regular offices, so here they use the house of the village head, the monastery or another place that is suitable. Thus, the village tract committee works like a kind of mobile court. Normally the committee collects two-four cases and discuss/solve them at one meeting. If it is a very serious case, the committee convenes as soon as possible. In order to make a decision at least six members have to be present. However, preferably all eight members should be present. They do not do participatory hearings where both parties are present at the same time. They hear them separately and then they make a decision, where after they call the parties inside to read out the decision. They give the two parties some time to discuss the decision and they ask them if they need more time to agree.

The most common cases are land disputes, motorcycle accidents, debt disputes, thefts, and fights. The latter two are rare. In debt cases they try to negotiate the repayment of the debt, and if parties cannot agree they given them 15 days to reconsider. If they can still not agree, the case is transferred to the NMSP at township level. In theft cases, the tract committee’s job is to investigate the amount of compensation that has initially been set at the village level, but which one of the parties is not satisfied with. Then they re-negotiate the amount and set a date for repayment, which depends on the economic situation of the perpetrator (a poor person gets more days to repay). If the person does not pay, the case is transferred to the NMSP at township level. A similar procedure is used in fighting cases, where compensation to the victim for hospital costs are set by the village, but if there is disagreement on the amount the tract committee gets involved. The tract committee can issue divorce papers and decisions, but as a rule they try to reconcile the couple to stay together. If they issue divorce papers, it must be based on thorough investigation of the couple and consultations with the family members. Such cases can take a long time to settle. It has to be done carefully, because according to experience people sometimes request divorce
because they want more of the family’s property or because the parents do not agree to the marriage. The community norm is that people who are married must stay together.

If a divorce case involves domestic violence and/or adultery, the perpetrator will get a reduced amount of the property, but this depends on the request of the victim. This rule about the reduction of property is taken from the NMSP law book, according to the committee members. Divorce is only issued on the basis of domestic violence if the violence is very serious (like using a knife or another tool), and as a rule the committee tries to negotiate for the couple to remain together. If the offence is repeated after the initial complaint of domestic violence, the committee will issue a divorce paper.

In motorcycle accidents, the committee resolves cases that the village committee cannot resolve, like if the accident happens between two villages. They investigate who is to blame for the accident and help negotiate the compensation to cover the cost of injuries (personal and motorbike). If the persons cannot agree on the compensation amount the case is transferred to the NMSP at township level for a re-negotiation.

The current committee has never resolved a witchcraft case, and the members claimed that the last witchcraft case occurred in 2000. In the past they used to use trial by ordeal to test whether the suspected person was a witch or used witchcraft or not. The customary practices of Jhoye Hajar is still sometimes used, however and is linked to Buddhist beliefs. This is a kind of religious-spiritual utterance where a party to a case drinks holy water and speaks before a Buddha statue, declaring that s/he is speaking the truth. If s/he is not speaking the truth something bad will happen to him/her. In a land dispute for instance one of the land claimants said to the committee that he wanted to make a Jhoye Hajar about his landownership. The committee and the other party had to simply accept this, and the other party could no longer claim the land. Shortly after the Jhoye Hajar, the land claimant was arrested for stealing, so the perception was that he had lied about the land, and thus the arrest was seen as a consequence of the Jhoye Hajar. In such a case the committee cannot do much further, except explain to the parties the implications of doing Jhoye Hajar.

The committee members describe their work as voluntary, in services of their community, and there is no salary. However, it happens sometimes, that when a case is settled with a compensation, that people wish to donate some of the amount to the committee, but this is rare.

The tract justice committee is also important when disputes happen between parties from different villages, or if there is a dispute between two villages. This serves to lift the case a step above local connections and loyalties. The tract committee is also important in cases involving a Mon and a non-Mon.
One example was a debt dispute. A Karen living in a KNU controlled village had borrowed money from a person from a Mon village, but did not repay. The tract committee initiated the conflict resolution process by inviting the Karen village representatives to negotiate the case. After a hearing, the tract committee and a representative from the Karen village administration came to a mutual agreement and the case ended. Tract committee members said that this case would have been complicated not just at the village level, but also higher up in the system, because then the case would involve the NMSP and the KNU. It would implicate two different organizations. At this local level, jurisdictional lines are less delicate, and also the village level justice actors on both sides are familiar with each other.

When cases only involve Mon villagers, however, the NMSP system functions as an unquestionable place to turn to for both village administrators and disgruntled villagers. This also regards serious cases where village and tract level actors do not dare to intervene. The following example of directly taking cases to the NMSP was encountered during fieldwork: the headman heard about a violent fight and when he reached the spot, the victim was in very bad shape. The village justice committee found that the perpetrator had beaten with the intention to kill, and they decided to inform the township level. They arrested the perpetrator by themselves, but threatened him, saying that if he did not go with them peacefully they would call MNLA soldiers for backup. They wrote a letter of referral to the township stating that it was a criminal case. The relation between the village and the NMSP and the MNLA is close and apparent. In cases of doubt, advice, disagreements or requests for permissions, the township office is the place to go to for the village leaders. There is a close relation, and a clear hierarchical structure. Where issues become more complicated is when they involve non-Mon and go beyond the territorial boundaries of the NMSP.

3.4. Community Dispute Resolution in Kayah/Karenni State

In Kayah state there are nine main ethnic groups, and various groups, GoM and EAOs, who have de facto authority across the state. This means that dispute resolution processes vary considerably across the state, including the application of different customary norms in village level dispute resolution (MercyCorps 2015: 12).

IRC workshops with community leaders and CSOs/NGOs (September 2016), point to similar common disputes in Kayah state as in Mon and Karen states: land disputes and confiscation, marriage disputes, drugs, and rape cases for the majority of the townships (five out of six). According to IRC workshops and MercyCorps (2015), village administrators (GoM areas) and village heads (EAO areas) are the first instance for resolving the majority of disputes, however, not including crimes, even though in GoM areas they do not have the formal authority to do so. Crimes are forwarded to the tract level (GoM areas), but at this
level the VTA cannot deal with large land confiscations or cases involving larger businesses, like mining companies (MercyCorps 2015: 13). In one township, there were instances where villagers had gone directly to a regiment commander of the Tatmadaw to negotiate land disputes that involve land grabbing. As a result, some land has been returned to villagers (ibid). The land management committees seem to be active, also at village level, where they do not have the authority to decide cases, but where they collect information for resolving land disputes at tract level and above in GoM areas (ibid.). Both IRC workshops and MercyCorp consultations confirm that there are several CSOs that are active in Kayah state, not only in terms of providing awareness about rights and laws, but also in solving disputes in some areas. More knowledge is needed about who these CSOs and their leaders are, and how they work with and/or independently from village leaders and higher-level authorities. The same applies to religious leaders, which according to MercyCorps consultations, sometimes lead dispute resolutions as well as give suggestions on how villagers should address the cases they face. People address religious leaders, because they trust them (MercyCorps 2015: 14).

At village level, the main resolution procedure is to call in both parties, after a complaint has been raised. Both parties are heard, and the task of the village leader is to mediate to reach a compromise between the two parties in order to reach an agreement. In a theft case, for instance, a village head investigated the case by questioning the accused and getting the testimony of the victim. The decision is reliant upon the accused admitting guilt and agreeing to the traditional customary punishment, which in this case included a smaller compensation to the victim (one cock and 500 Kyat). Compensation is a common form of remedy, even in severe criminal cases. For Loikaw, the IRC workshop participants said that the village leader was able to successfully resolve a rape case through community mediation, and with the payment of compensation, which was based on a request of the victim’s parents. Other members of the community were invited to observe the decision-making process. IRC workshop participants said that village leaders use customary law, but more information is needed about what this law implies, and it is unclear whether it is written or codified in any way, and how customary law may vary across ethnic communities.

The biggest challenge that villagers raised to the IRC, was the capacity of village leaders to enforce compensation. In the first instance, it is difficult to reach a consensus about the payment of compensation, which requires good negotiating skills, but even after there is a signed agreement, there are problems with enforcing the outcome in terms of paying compensation.

3.5. Similarities and Differences between GoM and EAO areas

The matrix below displays the main differences and similarities between ward and village level dispute resolution across GoM, KNU, NMSP and KNPP areas. These are based on a generalised picture of the four
types of areas, and there may be considerable variety in practice, especially for mixed controlled areas, as well as for GoM administered villages where the ethnic majority is Mon, Karen or Kayah. In the latter, some village and village tract administrators also give parties the option to go to the EAO system or go to the GoM institutions. There are however, important similarities in dispute resolution procedures, which are dominated in all four types of areas by mediation, negotiation and consensus seeking. Arbitration in the sense defined by LAC/IRC guidelines is not systematically used, but in some areas, a medium to low level of arbitration practices are applied. In KNU and NMSP administered villages there is a medium level of arbitration involved when people are charged with breaking the written village rules. In GoM areas, arbitration is very rare. The higher level of arbitration in NMSP and KNU villages can be linked to the fact that the villages have EAO-backed written village rules, which can lead to punishments and allow the justice providers to charge offenders without their being a complainant. This is not the case in GoM areas. Another difference is that in KNU and NMSP administered areas there is an institutionalised link between the village/village tract justice committees and the EAO’s court systems, including for appeal and transfers. This does not exist in GoM areas, which reflects that GoM legislation does not clearly outline the official mandates of the WA/VTAs in dispute resolution, nor provide and institutional link between these administrators and the GoM courts. This lack of institutionalisation in GoM areas may also explain why there is no consistency in the existence of special justice committees, which differs from KNU and NMSP areas.

Two other important differences stand out. There is a high tendency for dispute resolution fees to be fixed in GoM areas, albeit not formalised in law. By contrast, in NMSP and KNU areas people are not forced to pay fees, but may make voluntary ‘thank you’ donations after a case has been resolved (rather than paying a fee when they make the complaint). The other difference is the level of women’s participation in dispute resolution, which is only institutionalised in some KNU administered areas.

Matrix over similarities and differences, based on the researched villages and wards.

<table>
<thead>
<tr>
<th>Topic</th>
<th>GoM (WA/VTA)</th>
<th>KNU (village)</th>
<th>NMSP (village)</th>
<th>KNPP/Kayah</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Organisation</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Formal Justice Committee</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>?</td>
</tr>
<tr>
<td>Comment</td>
<td>Individual leaders may organise</td>
<td>Not mixed areas</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fixed female participation</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>?</td>
</tr>
<tr>
<td>Comment</td>
<td>Not mixed areas</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual judge resolves</td>
<td>Some</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Resolves as jury</td>
<td>Some</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

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81 See MDRG - Mediation and Dispute Resolution Guidelines, produced in collaboration with LAC/IRC, undated.
In addition to the above similarities and differences, it is also important to note the variety in how cases are reported by different villagers and ward residents. While the majority go first to their village leader or 100 household leader, there are also situations where the first instance for reporting begins with other actors inside the village or ward, or with external justice facilitators. As Denney et al. (2016) have shown for GoM
areas, justice pathways also vary according to the type of case in question (see also section 3.1.5. on justice facilitators in this report).
Chapter 4: Strengths and limitations of Community-Based Dispute Resolution

This chapter looks at the different strengths and limitations of CBDR as it is practiced in the areas of Southeast Myanmar, covered by this report. These can help to identify entrance points for IRC support to CBDR. To comprehend the strengths and limitations some comparison is also made with the formal justice systems (GoM and the EAOs).

The most important strength of CBDR is the empirical fact that the majority of ward and village residents across GoM and EAO areas preference to have the disputes and crimes that they face resolved at as low a level as possible and with low public attention. Many ordinary citizens do not even report cases. The first section in this chapter explores the underlying reasons for why people prefer local resolutions, which is linked to particular justice perceptions, informed by a complex mixture of, inter alia: socio-cultural and religious beliefs; habits and custom; familiarity and shared identity with dispute resolvers, including language; fear of formality, and; consideration of costs, effectiveness and timeliness. The influence of these factors implies that, even if the formal justice system was working according to international rule of law standards, there would in many instances still be a preference for CBDR. The second section outlines a number of the limitations of current CBDR by ward and village actors, including inter alia: weak enforcing power; few accountability mechanisms; the significance of a formal system back-up; lack of capacity to deal with big cases; low legal knowledge of most local dispute resolvers.

4.1 Local Justice preferences and perceptions support CBDR

4.1. Cultural norms and religious beliefs

Shared across ethnic-religious communities is a culturally-informed understanding of justice as the capacity to ‘make the big cases smaller and make the small cases disappear’ (in Myanmar language: Kyi te amu nge aung, nge te amu pa pyauk aung) (see also Denney et al. 2016b: 1). This supports the resolution of disputes and crimes at as low a level as possible, and a desire for cases to be resolved through a mediation process where both parties reach an agreement. When a case is reported to a third party this is perceived in the first instance as conflict escalation, which is associated with feelings of shame and the loss of dignity. Such feelings are increased if the case cannot be resolved within the village or ward through a consensual agreement. Going to a higher authority, like police or court, equals more shame. There is also a common saying, Kot paung ko hlan htaung (equivalent to the English saying: you do not air your dirty laundry in
public), which underscores a disincentive to report a case, because it would draw a dispute into the public realm, which causes shame and loss of dignity. Some EverJust informants said that when they went to the WA/VTA office with a case, they tried to hide it from their neighbours, because if a person goes there others will think s/he is a person who creates conflicts. This underscores a preference for ‘making cases disappear’ and avoiding conflictual and confrontational dealings with disputes. Sometimes this means that people refrain from reporting cases at all, not even to a facilitator or a local justice provider. The tendency to not report is also influenced in different ways by religious beliefs, Buddhist and Christian.82

Theravada Buddhist beliefs strongly influence Mon and Karen Buddhists’ understandings of injustices and victimhood. Problems are generally understood as the result of (mis)fortune and can only be resolved within oneself by coming to peace through detachment (Schober 2011, in Denney et. al 2016b: 2). Accepting problems is understood as a way to pay off past life deeds, thereby ensuring good karma in the future. If a person is robbed for instance, this can be understood as a result of the victim having robbed someone in his/her past life. Not seeking a remedy means that the victim of theft can pay up for the misdeeds he/she did in his past life. This may prevent the injured party to seek a third party resolution. A Mon woman who faced a complicated inheritance case explained:

> When my husband died, his sister wanted to get half of the share of our house. I did not know what to do, except to cry. I gave her 30 Lakh for her share and I did not report the case, because I thought that this happened because of my past life deeds.

There is also a belief that those who cause harm in this life will be punished in their future lives, which makes a third party resolution unnecessary. Injustice in this way can be understood as deserved and almost inevitable consequences of fortune that must be personally endured, rather than externally resolved (Denney et. al 2016b: 3).

Among Christian Karen in the village researched by EverJust, there is also a prevalent understanding that problems are associated with a person’s fate, which, however, is not linked to notions of past life deeds. One Karen 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. However, this perception was also linked to fear of losing dignity and feeling shame if the case was reported. Reluctance to report cases can also be related to a belief in God’s punishment of wrongdoers.

82 There is lack of research on Hindu and Muslim beliefs in this regard.
When cases are reported to third parties, EverJust researchers encountered a strong preference for forgiveness among victims over seeking remedies, including compensation. In one case from a Christian Karen village, a female victim of adultery refused initially to accept the compensation that the village justice committee had negotiated with the perpetrator, because she wanted to find inner peace through forgiveness. This Christian belief also supports mediation, rather than arbitration and the use of punishments.

The flip side of no reporting cases, due to religious beliefs, is that victims are left with their own suffering and/or are unfairly deprived of recovering stolen goods, land that has been taken or debt that has not been paid. Failure to resolve disputes or deal with perpetrators of crimes can also undermine efforts to prevent future incidences and may also leave for instance victims of rape, child abuse and domestic violence in a state of continuous suffering. In those cases, people may seek spiritual rehabilitation through prayers (monks and pastors) or Ye Dar Yar (spiritual protection) from astrologers/monks/spirit mediums, but this is a highly private affair that does not involve reconciliation between the involved parties.

Religious beliefs imply a low desire for secular punishments (prison, compensation, fines, communal labor). When a third party is addressed, this means a preference for reconciliation through a consensual agreement. Religiously-informed understandings of disputes and crimes can, however, also be seen as a kind of coping strategy in situations where the injured party does not believe that justice will be provided efficiently and/or where they fear to address a third party.

4.2. Habits and the authoritative orders of local leaders

When people are asked directly the first time where they would go with a dispute or minor crime the most common answer is that they would go to their village leader, 100 HH leader or ward administrator, because this is where they have been told to go with problems. If asked where they would go if this failed, many respondents answered that this will depend on the decision of the local leader. Denney et al. (2016b) found that some people reported to their VTA even though they did not trust him. There is a strong sense of obedience to local authorities, and it is only when researchers dig deeper into people’s preferences that they begin to speak about other matters like costs, beliefs, effective resolutions, preferable outcomes and so forth. This reflects one of the weaknesses of CBDR: very little public awareness is given to ordinary citizens about the options they have for resolving cases and what dispute resolution procedures are available and used. They gain such knowledge mainly through experience with real life cases and/or by speaking to relatives and neighbours.
4.3. Trust, familiarity and shared identity with dispute resolvers

One of the core strengths of CBDR is that people know and feel familiarity with their village or ward leader. Shared ethnic identity between people and their leader also plays a role in making people feel more comfortable with resolving their disputes at the community level. Conversely, Denney et al. (2016b) found that Hindus and Muslims living in communities where the leaders are Mon, Karen or Bamar, feel more comfortable with resolving their cases with their religious leaders. Language is also an important issue for ethnic minorities who do not understand Burmese well. Because VTA/WAs are now elected (since 2012), there is a clear tendency for them to belong to the majority ethnic group in a given village/ward. Shared identity is not, however, a guarantee that people will feel secure in reporting their case to their local leader. Trust is also an important issue, and where leaders are seen as corrupt and/or unfair, fewer cases tend to be reported to them.

Familiarity and shared identity, conversely, also inform the reasons given for why people try to avoid going to the official GoM courts and police: judges, lawyers, and police officer are often Bamar, and higher educated people who many villagers do not identify with.

Some people also said that because they are poor and have low or no education they do not feel equipped and in a position to face GoM courts: they feel shame, fear and loss of dignity. These feelings can also arise with village and ward leaders, but are much lower, because these leaders are also members of the community. They are seen as more aware and sensitive towards people’s socio-economic situation and literacy level. This is for instance evident in how community dispute resolvers consider the financial situation of people who have to pay compensation or repay a debt. In Mon state, it was also found that although the official documents are written in Burmese, and require a signature, the VTA always orally translates the information into Mon and allows people to use fingerprints.

4.4. Fear of authority and formality

As mentioned above, many villagers and ward residents have a fear of official authorities, especially those from outside of their village and ward. This is likely caused by 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 (Denney et al. 2016b). In addition to this very important reason, there is also a general fear of formality and of highly bureaucratised procedures: entering a formal court setting, displays of official documents, use of formalistic language, etc. are experienced as intimidating.
In this context, a core strength of CBDR is the relatively high level of informality: commonly hearings are conducted in a relaxed atmosphere and with a high level of horizontal communication as well as space for negotiation. One side-effect of this, however, is that procedures are more unpredictable and inconsistent.

4.5. Costs, timeliness and effectiveness

The low costs of CBDR, even where there are fixed fees, is a key strength when people compare with the formal GoM justice system (not applicable to the EAO systems). For poor people a court case is so costly - including transportation costs, bribes, and fees to diverse actors - that it appears as an almost impossible option. CBDR is also commonly seen as quicker than the official courts, although it depends on the case. For the NMSP and KNU justice systems the reality is different: here there are no fixed costs, and sometimes the transfer to the NMSP or the KNU is seen as a way to bring a conclusion to a dispute or a repeat offender that has dragged on for a long time without effective solutions at the village level.

Costs and time can be weighed against effectiveness, in the sense of making binding decisions, and the latter is often a key weakness of ward/village leaders (as discussed further below).

4.2. Weak enforcing power for outcomes and agreements

When parties to a dispute have agreed to a mediation by a third party there is a relatively high success rate across GoM and EAO villages/wards in reaching an agreement. This reflects a relatively high level of respect for village/ward dispute resolution forums, and a desire for making peace and reconciliation. A main challenge is the effectiveness of making decisions binding, after the initial agreement. Payment of compensation or repayment of debt – at least the full amount - is difficult to enforce in many cases. Lack of financial means is a main cause of this, rather than a reluctance to pay. Sometimes, offenders have to take loans to be able to pay the compensation, which can lead to further indebtedness and potential debt disputes. The options available to village/ward leaders in GoM areas is to either re-negotiate the dispute/criminal offence or to transfer it to a higher level (township police, court or administration). Because many people are reluctant to use the latter option (due to the above-mentioned reasons), many cases remain unresolved, or give way to the involvement of informal justice facilitators, which only sometimes is successful and may induce additional burdens on the parties. The weak enforcing power of the VTA/WA and village leaders in GoM areas is partly related to the fact that they according to the law are not given the authority to issue punishments and perform arbitration. This is particularly critical because the formal justice system is simultaneously mistrusted and seen as an ineffective back-up (by villagers and village leaders alike).
In NMSP and KNU villages, the village dispute resolvers have the option to provide minor punishments and fines if people do not follow initial decisions/agreements made through mediation. In addition, there is a more institutionalised link between these systems and the village level, which functions as a viable and institutionalized back-up when decisions are not abided by. The EAO’s, in practice also serve as a back-up for mediation and reconciliation, rather than being merely focused on punitive remedies. However, the capacity problems of the EAO justice systems, and in particular their human resource constraints, means that back-up is not always secured and it can be complicated to summon the judge.

Enforcing power is the weakest in mixed controlled areas where there is no singular, stable external authority to transfer cases to. Such a situation creates insecurity of authority among village leaders, who feel split between two ‘masters’ and two sets of laws, and who are more easily contested by other powerful actors in the community. These may be former village leaders, monks, elders or armed actors. These issues related to local politics and the wider governance arrangements often directly impact on the capacities of local leaders to resolve disputes. It also underlines, that for CBDR to be effective it can be important to have a viable ‘back-up’ in the form of a formal justice system.

4.3. The formal justice systems are an important ‘back-up’

CBDR forums and mechanisms in Southeast Myanmar depend to some extent on references to external law and institutions as one method to make the parties agree to negotiate and reach an agreement. As noted in chapter 3, this seldom implies literal references to articles in laws, but ‘the law’ and the option to transfer a case to an upper-level institution work as important resources to carry through a mediation process. The way this is done is not in line with international ADR standards, as it often works as a threat, rather than in the form of explaining to the parties what options they have in the formal system (see LAC/IRC guidelines for Thai Camps, unpublished).

A core weakness of current CBDR in GoM administered areas is not only the way that the formal justice options are communicated, but also the lack of institutionalised links to the formal legal system. The formal legal system works as an important ‘back-up’ in theory, but in practice it is seldom an option that works for the parties or that the local justice providers would rely on.

In EAO areas, the village leaders have a clearer institutional link to the EAO justice systems, and it works more in practice as a viable back-up. However, due to the volatility and mobility of the system, there are many insecurities about the reporting and transfer procedures.
4.4. Community level actors cannot deal with ‘big’ cases.

Community dispute resolvers cannot resolve big cases like land confiscations, commercial investment disputes, conflicts around development projects, and drugs. This is a major obstacle, because especially drugs and land grabbing are seen by villagers as the most severe cases in Mon, Karen and Kayah states today. People feel that there are no upper-level authorities who tackle these problems. Only to a certain degree do the KNU and the NMSP handle drug problems, but this is precarious for them without the authority to do so from the GoM.

Drug cases are also precarious, because trafficking is often associated with the involvement of powerful armed actors. Village/Ward leaders can only deal with drug-related offences, like fights or minor thefts, committed by users, but they cannot do anything about the dealers. In many areas, the villagers are very frustrated with their VA/VTA/WA, and even sometimes suspect them of being involved in drug dealing, because these leaders are not doing anything about the drug problem. Villagers do not realise that maybe the inaction is because the leaders have no skills, authority or courage to engage with the drug issue.

WA/VTAs in GoM as well as in KNU and NMSP areas fear to deal with land confiscation complaints in any kind of formal way, because they know of the political interest and powerful persons, oftentimes involved. Sometimes mediation can be partly successful. This can be done if the land that is being reclaimed is occupied by local villagers/ward residents. In such cases, the village/ward leader can negotiate between the original and new owners for a kind of compensation that they can both agree on.

There is a need to make villagers aware that their village/ward leader does not have the capacity to resolve big issues related to drugs and land confiscation, but that these are matters that must be resolved politically and by state authorities. It is also important that village/ward leaders get knowledge of and mechanisms to handle complaints related to drugs and land confiscation: like knowing where to report and what institutions/organisations to involve to help the village/ward residents.

Finally, more knowledge is needed of how village leaders may deal with abuses and corruption by higher level authorities, including EAO soldiers and the military. From what little knowledge exists, it seems that villagers and village leaders have no mechanisms to hold these actors accountable, even though the formal justice systems can prosecute them for offences (on the KNU and the NMSP see McCartan and Jolliffe 2016).

4.5. Accountability: fairness depends on individual leaders

Empirical research illustrates that the fairness of dispute resolution depends largely on the individual leaders’ attitude and personality, rather than on any institutionalised accountability mechanisms. Even for
elected leaders (since 2012) there are examples of some extorting money and discriminating against those who have not paid bribes. Other elected leaders keep transparent accounts of fees and fines, which are used for community development work. What this variety points to is that there is a clear lack of: 1) strong down-wards accountability mechanisms, and; 2) transparent and consistent information to village and ward residents about the dispute resolution procedures and ground rules for how to interact during mediation sessions. Much of what goes on in dispute resolution processes are based on individual leaders, and their committee members/advisors, experience, common sense and ideas about how such processes should be conducted. There is little open and transparent reflection on how mediation is done.

Even though elections of village and ward leaders are institutionalised in GoM and EAO areas, these are not done through universal suffrage. In some places, those who accept the post are those who accept the post given to them by elders. In other areas, the village leaders have been appointed by a VTA without prior approval by community members. Elections are therefore an insufficient accountability mechanism for ensuring fair dispute resolution. According to EverJust research, village and ward residents predominantly think that they can only make complaints about their village or ward leader to upper-level authorities. There are examples of this being successful, but they are few. The one case that EverJust encountered from Hpa-An only gave way to a complaint because the WA committed a criminal offence (i.e. illegal land sale). He was known to take bribes in dispute resolution, but no one dared to complain about that, so it was only when he committed a crime that he was held accountable and removed from his position. Complaint mechanisms to higher-level authorities are insufficient due to many people’s fear of reporting cases outside the village/ward more generally. This calls for more localised accountability mechanisms.

4.6. Varied knowledge of responsibilities, jurisdictions, and laws by local leaders

IRC workshops in Mon, Karen and Kayah states with community leaders and CSOs have clearly identified that community leaders (VA/VTA/WAs and below) are unclear about their responsibilities and roles in relation to GoM law and regulations. They are not sure what cases they should resolve and what cases should be forwarded upwards in the system. This is confirmed by other research (Denney et. al 2016; MLAW and EMR 2014). This lack of knowledge creates a worry among some ward and village leaders that they trespass their mandates and jurisdictions, which sometimes keeps them from effectively resolving disputes. Some give up easily on trying to mediate a case, and transfer the case up in the system, without the parties necessarily wanting this option. Unclear mandates and the lack of a referral system in the GoM legal system creates this insecure environment for some WA/VTAs. This is even more of a problem where
local leadership is disputed and/or the individual leader has low experience and knowledge of how to resolve cases.
Chapter 5: Future support to Community-Based Dispute Resolution

This chapter recommends a number of possible entrance points for IRC’s support to CBDR in Southeast Myanmar. The recommendations derive from the empirical findings, presented in the previous chapters of this report. These findings are compared and related to IRC guidelines and principles for CBDR in order to identify future areas of support.

Overall, it is recommended that IRC support takes an outset in already existing CBDR forums, rather than trying to establish alternative or parallel solutions. Support should be firmly grounded in how disputes and crimes are already dealt with and understood in the target communities. This requires in-depth knowledge of the local political landscape and of the socio-cultural and religious beliefs and norms that inform existing CBDR. A starting point is to focus on what already works, and then to identify areas for improvement, based on participatory dialogues with local justice providers, facilitators and ordinary community members. Reliance on a standard set of externally defined concepts and intervention models should be avoided.

Below is a list of the entrance points for support, with a particular focus on: 1) how to support and help improve already existing CBDR practices to make the them more effective, transparent and inclusive of marginalized groups; 2) women’s protection and inclusion, and; 3) legal and rights awareness.

Core modalities of support by IRC can be summarised as follows, cutting across the below entrance points:

1) Dialogue meetings about justice, rights, participation and CBDR.
2) Training in legal awareness and mediation skills *inside* the village/ward through participatory and active learning methods, rather than academic-style lecturing.
3) Contextual mappings of local powerholders and informal justice facilitators.
4) Assistants to develop and write simply guidelines and ground rules for CBDR, which should be transparent and broadly communicated.
5) Facilitate broader inclusion of marginalised groups in CBDR, like women and minorities.
6) Focus on CBDR, but where needs are identified, assist in efforts to improve linkages to formal systems.

5.1. Work with the grain, rather than implement new institutions and standard models

Empirical findings testify that village and ward leaders are already practicing mediation in accordance with some of the core principles of ADR, as defined by the IRC. Some of these include: a focus on reaching a consensual agreement between the parties; high participation of parties in sharing their side of the dispute
and in proposing remedies and solutions; the mediator does not enforce a decision without mutual agreement of the parties; the dispute resolver acts in general as a neutral third party; the mediator tries to ensure that agreements are realistic (like taking into consideration the economic situation of the person who has to pay compensation), and; agreements are confirmed in writing (in most of the researched areas).

External support should take its point of departure in those dispute resolution practices that already work and are seen as legitimate in the targeted communities, rather than train dispute resolvers in standard internationally-defined models. This includes a consideration for the variety of practices that exist between villages/wards. The IRC can facilitate reflection and dialogue about what practices are already being used, in order to help make these practices, and the principles that inform them, more explicit and broadly understood among dispute resolvers and ordinary community members.

Reflective dialogue should also help identify strengths and areas for improvement in CBDR. However, rather than beginning with weaknesses, a good starting point is to broker a conversation about those types of disputes that are (usually) successfully resolved at village/ward level. This could be marriage disputes, debt cases, and minor land disputes and crimes. Discuss how these are concretely resolved and with what common outcomes. Role-plays and scenario construction around these common cases is a good method to create a reflective dialogue. Then later the participants can begin to identify potential areas for improvement. Once these are identified, the IRC can give inspiration on how to develop mechanisms that can improve the weaker points.

Methodologies for reflexive dialogue about current practices should include:

1) Active and participatory learning through role-playing and scenario reconstruction based on real-life community problems and disputes, rather than instructive learning such as lectures.
2) Take a point of departure in success stories (disputes that are usually successfully resolved in the given village or ward) before moving on to areas for improvement.
3) Ensure participation of already existing dispute resolvers and gradually include representatives of different groups in the community.
4) Conduct training and dialogue meetings inside the village, rather than in a nearby town.

Working with the grain also means that international support should not establish new ADR institutions, like parallel community courts. This can create potential conflicts with already established justice providers and local leaders. It is more sustainable to work with those actors who are already involved in dispute resolution, and then encourage increased inclusion of groups who are seen to be underrepresented in existing forums, such as women and minorities.
5.2. Support transparent CBDR procedures and rules

One challenge in Southeast Myanmar is that there is very little, if any, explicit awareness and reflection about the main principles and rules of conduct for CBDR. In general, there are no written guidelines or rules, and even oral communication of how a dispute resolution process will be conducted and how the parties and the dispute resolves should act is lacking. Consequently, parties to a dispute are not always clear of what they can expect from a mediation process. This may be one of the reasons for underreporting. It also implies inconsistencies in how different leaders conduct dispute resolution. For instance, when new village/ward leaders take the position they must rely on common sense and the experience of elders or committee members, because there are no clear rules and guidelines to follow. In some contexts, this has meant changes in dispute resolution practices from previous to current leaders. Lack of publicly known guidelines and rules of conduct also makes it more difficult to hold mediators and third parties accountable for how they mediate disputes, i.e. in situations where people are dissatisfied with how a mediation is conducted and/or its outcome.

As noted in this report, dispute resolution is easier for village leaders when they have written guidelines and rules for mediation and offences, as was evident in the KNU village B and in the NMSP administered villages researched by EverJust.

Procedural safeguards against corruption and unfair treatment of parties are also important to include in rules and guidelines. In GoM administered areas, there is already a practice of fixed dispute resolution fees, which are in general seen as legitimate service fees. It is important that these are transparent and publicly known and agreed upon, otherwise there is a risk that people may see them as corruption. Payment of ‘fees’ by parties in hidden and non-transparent ways during the course of a dispute resolution process is commonly seen as illegitimate. Fixed fees and/or regulated community contributions can help reduce the likelihood of corruption and bribery. It is also important to broker a dialogue and give suggestions to possible complaint mechanisms that go beyond the (re)elections of village/ward leaders and their appointment of committee members, where these are used. More localised complain mechanisms are also needed, because most village and ward residents fear to make complaints to higher level institutions.

The IRC can:

1) Facilitate a reflexive dialogue about dispute resolution principles and rules of conduct.
2) Help develop a set of easily understandable written guidelines together with community members and dispute resolvers. These should be easily assessable to the public and be explicitly communicated.
before a dispute is resolved. In doing so, it is important to avoid stringent rules that undermine the values of flexibility, informality and participation during mediation processes. There should be guiding principles, but not formalistic rules or legal codification.

3) Facilitate discussions about service fees or regulated community contributions, as a means to safeguard against corruption or illegitimate fees.

4) Broker dialogues about and suggest possible local-level complaint mechanisms for leaders who do not resolve cases fairly or who take bribes.

5.3. Understand the local political landscape and support leadership stability

Sustainable support to CBDR requires a deep knowledge of the local political landscape in each targeted village/ward. This means not only knowing who carries the official titles of WA/VTA, village leader and HH leaders, but also understanding what kind of support and legitimacy they have in the community. Have they been elected/chosen by a broad representation of the community? What elders or other de facto powerholders and influential persons support them, and do they have these actors’ support? The latter includes religious leaders, like monks and pastors, and it can also be a local commander of a brigade (EAO and military). Are there any conflicting or opposing relations between official leaders and other powerholders/influential persons?

Trust and confidence in those actors who resolve disputes are very significant for creating a conducive and safe environment for mediation. Everjust researchers found that where people do not trust the village/ward leader they feel less comfortable in bringing disputes or crimes to them. Backing and support from respected village elders and other influential persons are important for village/ward leaders to effectively resolve disputes. In contexts where there are leadership conflicts, for instance between a current and a previous village leader, decision-making is weaker and people may feel insecure about where to bring their dispute or fear that if they bring it to one leader and not the other they may face future problems. This can be one reason for not reporting. It can also explain why some agreements are not sustainable. Finally, it can lead to negative forum shopping whereby one party in a case, who is not satisfied with an agreement, seeks an alternative dispute resolver, who is in a conflictual relationship with the official village leader.

When trying to understand the local political landscape it is important to be aware of what could be called ‘shadow authorities’. These are influential persons in the village or ward who do not hold official titles, but who are important in supporting leadership and decisions in the community. Monks, pastors, elders, businessmen, educated persons, and armed actors (EAO and military) often play this role, depending on
each context. They are also sometimes used as ‘justice facilitators’. Special attention must be paid to the extent to which ‘shadow authorities’ support or disrupt dispute resolution processes by village/ward leaders.

Where CBDR is most ineffective is in mixed controlled areas where village leadership is unstable or directly disputed. This is because of the existence of two external systems and governing authorities: village leaders have to respond both to GoM and EAO requirements, loyalties and laws. In these areas, village leaders sometimes resolve disputes on their own, rather than draw on elders and committee members, because they are not sure who supports them.

The instability of village leadership is a political matter that requires political solutions. However, there are two ways that IRC can support more stable leadership, and thus more confidence and trust in the actors who resolve disputes:

1) Encourage dispute resolution not by individual leaders, but with the assistance of committees or ‘juries’, including respected village elders and other influential persons. As addressed below, include where possible women and minorities through an incremental approach.

2) Include ‘shadow authorities’ and identified justice facilitators in dialogue meetings, training and awareness raising, in order to facilitate that these support rather than obstruct CBRD.

Before providing such support, it is necessary to make a thorough mapping of the local political landscape.

5.4. Be sensitive to socio-cultural norms and religious beliefs

An access to justice or legal aid approach that strongly encourages victims of crime or parties to a dispute to report to a third party can be counterproductive and actually do harm. This is because of established socio-cultural notions of shame and loss of dignity associated with making complaints and going to a public space to have a dispute or crime resolved. Religious beliefs in forgiveness (Christianity) and the repayment of past life deeds (Buddhism), which supports the spiritual well-being of a victim or a party to a dispute, also influence people’s decisions not to report cases.

Changing socio-cultural and religious beliefs and norms is a longer-term process. A focus on rights-awareness and seeking justice must be balanced against ensuring that victims or parties to a dispute do not suffer more from feelings of shame and loss of dignity than what they can gain from mediating a dispute or seeking a remedy. Special attention must be paid to types of problems that are particularly associated with shame and loss of dignity, like domestic violence and rape. Rather than pushing people to report to a third
party, it is more viable to inform people about the options they have, in order for them to make informed choices. It is unsustainable to approach this matter as externally-driven behavioural and attitudinal change. More efficient is to work on building trust and confidence in people to feel more comfortable in seeking third party resolutions.

At community level, the IRC can:

1) Broker conversations about people’s socio-cultural and religious understandings of problems, and about the possible advantages of seeking mediation and third party resolutions, like preventing future conflicts and crimes as well as easing the suffering caused by injustices. Specific attention should here be paid to more vulnerable groups, like women and the poor.

2) Encourage mechanisms that make disputing parties aware that their dispute will be treated with confidentiality when it is heard by a third party. Practice multiple scenarios that deal with issues of confidentiality to ensure understanding and ability to apply.

3) Encourage that disputes are mediated in an environment where parties feel secure and relaxed. Trust and confidence building is very important.

5.5. Women’s protection through incremental and participatory gender inclusion

Female participation in dispute resolution in Southeast Myanmar is very low, and is mostly limited to a few women and women’s groups acting as ‘justice facilitators’. In addition, certain types of injustices that tend to face mainly women, like domestic violence and rape are often underreported and/or not fully considered in CBDR. It is difficult for women to get a divorce, even when they have suffered from domestic violence. Many women fear to or feel shame about reporting rape and domestic violence cases to a third party, let alone the formal justice system. It is common that when domestic violence occurs, and it is reported, the case is defined as a marriage dispute or a divorce case, which does not adequately consider the victimised party. There are various socio-cultural reasons for this. These include not only the importance of gender inequalities in society and low participation of female dispute resolvers. Shame associated with making a family dispute public as well as the view of divorce as highly unacceptable in society are equally important reasons (Than Sorn Poine 2018).

Increased female participation in dispute resolution has proven elsewhere to hold the potential for important norm changes that can favour better outcomes and dispute resolution procedures for women. However, it is important that female participation is done in a gradual way that is supported by male leaders and dispute resolvers (Ubink 2011). Support is likely to be more successful if male leaders can see a
clear advantage from including women as advisors and decision-makers. It is important that the male leaders too feel ownership of the change process.

A good example of increased female participation in CBDR that has yielded positive results for women is the Karen Women Organisation (KWO) in some KNU administered villages. Apart from training KWO village members in women’s rights, mediation skills, and in case reporting, an incremental approach of gradually bringing females into village dispute resolution has had positive results. To begin with, the KWO village members were tasked with dealing with marriage disputes and other cases involving women, and this was accepted and seen as an advantage by the village leaders and elders. When the KWO women proved skilful in mediating marriage disputes, they were also gradually drawn upon to help resolve other kinds of disputes in the village. Now there is a fixed KWO member of the village justice committee, and she also has become in charge of case records. This arrangement has also created an option for women to report their cases directly to the KWO first, without having to go to a male elder or leader. The KWO member accompanies the women to the village justice committee. Women feel more comfortable with this approach, and this has enhanced women’s complaints about domestic violence in the village. Another important aspect is that the KWO also works with the contributing factors behind marriage disputes and domestic violence, especially alcohol abuse. Rules against alcohol sale and abuse have been approved and are enforced by village leaders in collaboration with the KWO. Importantly, this successful female inclusion is reliant upon strong female personalities, literacy and respect by elders and village leaders, which has been supported by the KNU. The village level KWO has also been supported by KNU in giving awareness to villagers and village leaders on women’s rights and protection. This illustrates the need for a good balance between external support and internal change processes.

When addressing gender-based violence it is crucial to consider the influence of power imbalances and dynamics in society as a whole and within the family (IRC WPE 2012). In general, domestic violence is not considered by villagers in Southeast Myanmar as a crime that must be punished. There are clear disadvantages of mediating domestic violence disputes, because mediation is focused on mutual agreement between the parties. Where power imbalances prevail, women may not adequately be able to deal with the suffering they face, and mediation may not prevent future violence (IRC WPE 2012). However, given the current formal legal context in Myanmar and women’s general fear of seeking formal justice, CBDR may still be the most viable option. Some level of arbitration may be combined with mediation, as is the case in some KNU villages, where perpetrators have to sign a warning letter, promising if the offence is repeated he will serve a community labour punishment. For the female victim to feel safe in making a complaint and hearing the case, it is also important to encourage that they have the support of family
members and/or other actors in the village who can stand by them during the mediation. After the case has been resolved, safeguarding mechanisms are needed to ensure that the agreement not to commit domestic violence again is upheld. Surveillance and visits by village elders and members of women’s groups to the affected couple is one such mechanism.

To support women’s protection and female inclusion in dispute resolution the IRC can:

1) Prompt open debate at the local level on issues of gender-based violence and discrimination in culturally sensitive ways that are not confrontational. For instance, rather than beginning with a discussion of domestic violence as a crime that can be punished, begin with a debate about problems associated with marriage disputes and how to resolve these in non-violent ways. This should also include a debate about the most common and serious contributing factors to gender-based violence and marriage disputes, such as alcohol abuse and drugs.

2) Apply an incremental approach to the gradual inclusion of women in dispute resolution. Rather than immediately installing women as decision-makers or encouraging fixed gender quotas, women could begin by taking advisory roles in dispute resolution. Another option is to begin by encouraging that women participate in resolving marriage disputes and other cases that involve women. This can be a first step to gradually involve women in resolving all types of disputes.

3) Include women in training about mediation and allow them to try out their skills in front of male leaders, as a step to convince existing male dispute resolver of the values and advantages of including women in dispute resolution.

4) When seeking to include women in dispute resolution, begin by identifying existing women’s groups in the village/ward and assess to what extent they are active and respected in the community. Take a point of departure in these existing groups, and encourage increased participation from other women.

5) Training in literacy and report writing can strengthen women’s role as dispute resolvers.

6) Encourage mechanisms for more sustainable resolutions of domestic violence through CBDR, such as agreements that have consequences for repeated offences (drawing on already available practices, like community work) and that involve social surveillance mechanisms to safeguard against repeated violence. Inform victims of the options available to them, including in the formal justice systems.

5.6. Inclusion of discriminated minorities

In southeast Myanmar is an increasing number of especially Bamar labour migrants who have become minorities in relation to the native majority of for instance Mon and Karen. It is common that these migrants live in informal settlements and are economically worse off than most natives. They often do not
have their own household leaders or elders, who are connected to or included in the village or ward leadership structure. The latter can be important as witnesses and for ensuring fair treatment in CBDR. While ward and village leaders do resolve disputes involving migrants, they are often hesitant to do so, and tend to forward such cases to higher levels. This may be because Karen and Mon leaders do not feel comfortable resolving disputes involving Bamar, as they believe it could have negative repercussions if the case is appealed to GoM institutions. This is especially the case in KNU and NMSP areas. There are also situations where the migrants feel that they are discriminated against in the form of getting unfair resolutions when they face a dispute with a native. There seems to be a general perception that village and ward leaders can best mediate and reconcile parties who are from the same ethnicity as them and who know each other in the village. There is a fear that conflicts may escalate when one of the parties is a non-native or newcomer. Similar scenarios apply to religious minorities, especially Muslim and Hindu.

In these situations, the IRC can:

1) Prompt debate at the local level about the need for broad-based inclusion and participation as a means to mitigate conflict escalation and ensure equal access and treatment.
2) Encourage expanding the dispute resolution ‘circle’ (committee and advisors) to include not only women, but also representatives of migrant communities and religious minorities. Use a similar incremental approach as with female inclusion, beginning with advisory roles and training, rather than move straight to making these actors decision-makers.

5.7. Participatory and practical legal rights awareness

Lack of reporting cases to third parties and finding sustainable solutions to disputes can also be caused by lack of rights awareness and conflicting notions of what justice and seeking justice mean. As discussed above there are also socio-cultural and religious reason for this, along with a strong disbelief in the formal system being able to provide justice. In Myanmar, justice carries many meanings, which are informed by the political historical context as well as normative beliefs, cultural and religious. Justice can be thought of both as a process – the mechanisms used to resolve disputes and seek redress for injustices – and as an outcome – the extent to which a resolution of a dispute is seen as just (Denney et. al. 2016b: 1).

One prevailing perception is that justice is when a problem is made to disappear, which can support both underreporting and that disputes are resolved privately or within the village through a mutual agreement. Others associate justice with a fair and unbiased hearing and/or resolution of a crime and dispute (Denney et al. 2016b). Conversely, the word justice in Myanmar carries connotations of ‘law and order’ due to the
particular political history. In this understanding, justice is associated with the punishment of (criminal) wrongdoers, rather than the protection of legal rights (ibid.; 2). Seeking a remedy and a resolution of a dispute according to the law, is therefore not necessarily perceived as a right to justice. This perception serves mainly to explain why people do not seek justice in the formal system, which may support a preference for CBDR. Simultaneously, the lack of rights awareness, can also have a bearing on inhibiting some people from seeking third party mediation, with the risk of conflict escalation or personal suffering from injustices. The fear to report domestic violence, rape, land trespassing by neighbours, unfair inheritance and so forth, may also be caused by a lack of awareness of the right to seek justice.

To enhance people’s awareness of the right to seek justice, the IRC can support in the following ways at the community level:

1) Legal rights awareness should not begin with abstract definitions of what justice is, but with the brokering of community conversations about what justice means to people and how they can realistically seek it.

2) Training in legal rights should emphasize practical skills, and methodologies should seek to operationalize and connect them to everyday life, as opposed to applying a theoretical and academic approach. For instance, training in how to obtain a land registration document, inheritance documents or make a loan contract may have greater resonance than information on statutory legal principles.

3) Training material should be written in a non-formalistic language, and preferably make use of drawings and images.

4) Selection of trainers is very important. They should know the local language and context, and there should be a good gender and ethnic balance.

5.8. Create awareness about ‘big’ cases and how to deal with them

It is commonly accepted by village and ward residents that severe crimes, like murder, cannot be resolved by village or ward dispute resolvers. However, there is a growing frustration in some areas, that local leaders are incapable of dealing with the growing problems of drugs and land confiscation. Some leaders are even suspected of being involved, but in the majority of cases their inaction is more likely caused by fear of engaging with such big cases.

At community level, IRC support can:

1) Help create awareness about ‘big’ cases and the lack of legal mandate and capacities of village and ward leaders to resolve larger land confiscation and drug-related cases.
2) Support to identify and link up village/ward leaders with ‘justice facilitators’, including NGOs and CBOs, who are working on land confiscation issues, and who more realistically can represent affected parties in front of the relevant institutions.

3) A choice may also be to support the training of paralegals at community level, who can inform, support and help parties to a dispute or victims that cannot be resolved at the local level. In such cases, it is important that victims or parties to a dispute do not get the impression that legal aid provision is equal to necessarily obtaining justice in the formal system. Thorough awareness should be given about the possible outcomes from seeking a formal justice option.

5.9. Dialogues about official law and linkages to the formal legal system

In Myanmar, there are only informal linkages between village/ward levels and GoM courts and police, and it is beyond the scope of IRC’s support to work directly on trying to make such linkages more institutionalised. This requires a comprehensive justice sector reform, which codifies clear procedures and linkages between the courts and community/customary institutions. In EAO administered areas such linkages are much more developed, but can be strengthened, particularly in mixed administered areas. Simultaneously, many community dispute resolvers in GoM areas depend on an upper-level backing when negotiating and mediating agreements and dealing with criminal offences. While few cases actually end up in the GoM courts, there is a need for many village and ward leaders to gain better knowledge and skills of how to transfer cases to the formal system in ways that do not do harm or put parties at risk. Many are also insecure about what cases they can transfer and which ones are better resolved at the community level. Lack of knowledge of the formal system and official laws underscores these difficulties.

Most village/ward leaders know that parties may not obtain justice and/or will face high costs, spend a lot of time and feel shame by going to the formal system, but have low knowledge of how to mitigate these risks (except from warning people of seeking formal justice). These are very real risks, which can only be resolved through a longer-term formal justice sector reform. However, in the interim, there are ways to facilitate improved linkages and knowledge of the option to seek formal justice, while still keeping in mind the obstacles of getting adequate justice in the formal justice system:

1) Legal awareness to community dispute resolvers on what cases they have the mandate to resolve and which ones are beyond their jurisdiction. Such information should also be shared with community members, so they do not get frustrated with village/ward leaders about them not being able to resolve certain cases.
2) Identify those ‘justice facilitators’ that already exist in a given ward/village and that people use to gain access to the formal system and include these in workshops and trainings with village/ward leaders. Where relevant such justice facilitators can also be targeted with legal aid/paralegal training.

3) Help to develop the skills and legal knowledge of village/ward leaders to explain about the alternative options of seeking formal justice. Such information should not take the form of a threat, but as an informed alternative option. A practical way to do this is to focus on specific types of cases that are identified as common in the village/ward, like debt, marriage and land disputes. An important background for providing this kind of support is to create legal awareness of relevant official laws, like the land law, in locally understandable ways. Pamphlets with images and easily understandable language in the local dialect are useful for this kind of awareness raising.

4) Convene dialogue meetings at village/ward level where representatives from the formal justice system (lawyers, judges and police) participate and discuss transfer options with village/ward leaders and representatives from the community.

5) Coordinate with other international and national NGOs who work with legal aid provision, in order to discuss how legal aid providers can assist and work with village/ward dispute resolvers in transferring cases to the formal system.
Chapter 6: Risks and risk mitigation

Myanmar is a transitional context with ongoing governance reforms and a protracted peace process. This presents good opportunities for influencing positive changes, but also poses challenges and risks. A number of international and national organisations are working to support justice sector reform at different levels, including various legal aid projects, focused on diverse thematic areas like women, land, and children. Fewer international NGOs are, however, engaged directly with support to CBDR. When support targets the community level, it usually takes the form of legal rights awareness, rather than working with already existing forums and practices. IRC can therefore help to fill a gap in support to CBDR at village and ward levels, which is the most commonly used justice option in Myanmar.

An overall risk is the unclear political commitment to and perception of the value of CBDR by the GoM. It is unclear how the GoM envisions the position of this lower level in future justice sector reform. This uncertainty can present a risk for the sustainability of IRC support, and must be factored in when designing support to the community level and selecting target areas.

Conversely, support to village dispute resolution in EAO or mixed administered areas must consider the wider context of peace negotiations. Currently, there is no clear position on the future role of EAO justice systems. A political settlement, as a result of the peace negotiations, may substantially change the jurisdictions and mandates of community dispute resolvers in EAO areas. Currently, there is a risk that engagement with CBDR in EAO areas may be seen by the GoM as political support to EAO state systems. To mitigate this risk it is important that the IRC gets not only EAO leadership permission, but also makes sure that the state level government is informed through the EAO liaison offices or other relevant institutions.

The IRC should be cautious of the risk of spreading out support activities too thinly across villages/wards. Sustainable support requires strong investments in obtaining deep knowledge of the local political and socio-cultural context, and in ensuring broad-based participation. Such an approach is time-consuming. This calls the selection of a low number selected village/wards to begin with. In addition, it is vital to rely on strong local partners who know the local context well. Failing to factor in local power relations holds the risk of instigating conflicts and/or that support activities are not accepted or become subject to elite capture. Without understanding socio-cultural and religious understandings of problems and justice, support may also risk inflicting harm or diverting groups of people away from CBDR.

It is apparent that CBDR cannot be delinked from wider societal changes and governance structures, including the formal justice systems. Ideally, support should therefore focus on a range of levels and
entrance points. However, it is important to be realistic about what can be achieved by one programme. There is a risk that if IRC engages in too many diverse activities that support will not be sustainable or have an enduring effect. A strategic focus on helping to improve already existing CBDR procedures and practices is recommendable. Rather than spreading out support to a range of activities, the IRC can collaborate with other NGOs or donors who are providing support to legal aid providers and paralegals, as well as engage in dialogues with donors working with formal justice sector reform.

There is also a risk of duplication and overlapping support activities, which can create confusion and contradictory outcomes at community level. When selecting a village/ward it is important that the IRC identifies what other INGOs are working with related forms of program support, including on thematic areas like land and gender. The IRC should also identify initiatives by CBOs, the EAOs and the GoM, such as women’s groups that are working with gender-based violence. Creating parallel forums can risk competition between local actors and insecurities among people who want to report a case. Collaboration and inclusion around existing dispute resolution forums are therefore significant.

A legalistic approach to rights awareness and access to justice that strongly focuses on pushing villagers or ward residents towards obtaining justice with third parties, particularly in the formal justice system, risks creating harm and excluding people from obtaining the justice outcomes that they desire. A participatory and grounded approach that takes its point of departure in dialogues and practical exercises at village/ward level can help mitigate such risks. This supports an approach that is based on what already works in each particular local setting, while also facilitating incremental improvements based on dialogues with community members and dispute resolvers.

6.1. Further research

More and more empirical research is appearing on CBDR, but there are still considerable gaps in knowledge of the varied socio-cultural and religious beliefs that inform how justice and problems are perceived. Knowledge in this field is very important, given that such beliefs inform people’s justice seeking preferences and play a role in deterring reporting. There is particularly a gap in knowledge about how Hindu and Muslim beliefs influence justice preferences.

Knowledge of how disputes are actually resolved and by whom in one village cannot be generalised to other villages and wards. Especially, Kayah state and EAO areas remain under-researched. This calls for ongoing learning and research as an integrated part of IRC programme activities. This report suggests that learning about actual practices and preferences are best done not through surveys, but through
participatory dialogues and exercises where people are asked to talk about actual cases that have been resolved and where conversations are brokered about different meanings of justice. Once trust is built with villagers and ward residents, more sensitive topics can be addressed in more depth. One important under-researched topic is how ordinary citizens and local dispute resolvers deal with potential abuses by higher-level authorities, including the military and EAO soldiers.

Another form of research that takes on a practical approach is to explore specific thematic areas or types of problems that are identified as significant in each village and ward: this could be land disputes, marriage disputes, including domestic violence, or debt cases. In doing so, it is important to identify and draw on already existing research related to a given topic, like land (i.e. Namati 2017) and gender-based violence. With regards to women’s protection more specific research is needed of CBDR practices, which has a particular gender lens.

Finally, research is needed on the perceptions of GoM justice officials and police about CBDR, in order to better broker dialogues about improving linkages and collaboration between the formal system and the community level.

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Appendix A: GoB Justice and administrative Systems
Appendix B: KNU Justice System

Supreme court

District Judge and committee members
(Arbitration/mediation)
(prison punishment)

Township Judge and committee members
(Arbitration/mediation)
(prison punishment)

Township

Village tract committee
(mediation, low arbitration, village punishments)

Village committee

Village tract committee

Township

District Judge and committee

Village tract committee

Township

Village Committee

village tract committee

Village Committee

Village Committee
Appendix C: NMSP Justice System

- Supreme court
  - District Justice committees
    - (Arbitration/mediation)
    - (prison punishment)
  - Township
    - (investigation & mediation)
  - Village tract committee
    - (investigation & mediation)
  - Village justice committee
    - (mediation, investigation, village punishment)
  - Village tract committee
  - Village justice committee
  - Village tract committee
  - Village justice committee
Appendix D: Dispute resolution process – ward and village tract

Complaint
One party makes a complaint directly to the ward or village leader, or goes through a ‘facilitator’ first.

Summon parties
HH leaders (fewer places paramilitary) - written documents by WA/VTA level on a specified date.

Reading complaint
A clerk or 100 HH leader reads the complaint. If it is a crime the accused is asked if he/she can admit guilt.

Hearing
Each party is heard one by one in front of each other, and asked to give their opinion on how the case should be resolved.

Witnesses
Relatives or others who are accompanying the parties are asked for additional information (the do not sit outside, but take part in the whole session).

Threats
The dispute resolvers says that the case can go to an upper level institution (police, court, adm.), and/or that it could be charged according to the law if they do not find a resolution here.

Negotiation
A participatory negotiation of the settlement of the case, usually concerned with the payment of compensation or debt and/or division of property, if applicable.

Agreement
After negotiation of an outcome the WA/VTA repeats the decision that has derived from the negotiation and asks the parties if they both agree. If a payment is involved, this is followed by an open discussion of the terms for payment.

Decision and signing
The dispute resolver reconfirms the decision and asks the parties to sign (witnesses also sign). If applicable a Kahn Wan is signed by perpetrator. Threats/warnings of being sent to upper levels if agreement not kept.