Introduction

The Naga Self-Administered Zone (SAZ) is located in the north-western corner of Myanmar on the border with India. Since 2003, Naga leaders from the different sub-tribes have worked together to codify a common customary law for all the linguistically different Naga sub-groups. A core aim is to unite the various Naga groups around a common identity and to obtain Myanmar state recognition of Naga customary law. Engaging the debate on legal pluralism, this chapter provides nuanced and ethnographically-based reflections on the pros and cons of state recognition of customary law. It does this by exploring the strengths of the Naga customary justice system in one rural and one urban context within Layshi Township in the Naga Self-Administered Zone (SAZ). The fieldwork underpinning the findings and analysis presented in the chapter was conducted from mid-2017 to early 2019.1

The current political transition in Myanmar has allowed for bigger efforts to institutionalise Naga customary law and legal practices, but the process had already begun in the 1990s, when the Naga leaders organised the Naga Literature and Culture Committee Central (NLCC-C) to improve access to justice for all the different Naga tribes and to create a shared Naga spoken and written language. The NLCC-C is now working to achieve Myanmar state recognition of a codified version of Naga customary law (NLCC-C 2003). We argue that the strengthening of customary law is part of a Naga nation-building effort that seeks to unite the Naga sub-groups around a shared group identity and to protect this identity against erosion by the majority Bamar culture and by the political influence of state-led nation building.

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1 The research was conducted as part of the EverJust project, financed by the development research fund of the Danish Ministry of Foreign Affairs. The first author to this chapter is herself from the Naga Goga tribe and therefore speaks the relevant local dialect.
While key aspects of the history of the Naga, including in particular questions related to political and cultural identity, are dealt with in existing literature (Hutton, 1965 and 1969 [1922]; Kotwal 2000; Stirn and van Ham 2003; Tohring 2010; Thomas 2016), not much has been written on justice and the ways in which it is dispensed within Naga society. Based on data from in-depth interviews with rural and urban residents and leaders, women as well as men, in the Naga SAZ, this chapter provides novel insights into an area that has so far been overlooked in the scholarship on Myanmar and legal pluralism. The fieldwork underpinning our analysis was conducted in Layshi Township, focusing on two sites: the main rural village of the Naga Goga tribe, which we here call Dah Tri Gyu village, and a ward in Layshi town. Focusing on these two sites allowed us to explore possible differences in dispute resolution across the rural–urban divide. We do, however, remain aware that our analysis is limited in both time and space and does not enable us to generalise across all Naga sub-groups.

To situate our findings within the wider literature, the chapter begins with a brief discussion of legal pluralism, followed by a shorter overview of the Naga and the main characteristics of their social organisation. Following that, we describe the Naga justice system, including Naga principles of justice and procedures and the Naga Book of Customary Law (NLCC-C 2003), and we discuss the ways in which these have been applied in practice in three specific cases of dispute resolution. In the conclusion we return to the overall question of state recognition of customary law within the current Myanmar transition, in order to discuss the various dilemmas it presents both for the Naga and for the Myanmar state and international donors.

Legal pluralism and recognition of customary law

In scholarly and policy circles, questions concerning access to justice and the right to self-determination are often framed within the notion
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of legal pluralism. According to Merry, legal pluralism can be defined as ‘a situation in which two or more legal systems coexist in the same social field’ (1988: 870). While this may sound simple, it is not. Legal pluralism implies that ‘every functioning sub-group in a society has its own legal system which is necessarily different in some respects from those of the other subgroups’ (ibid.). For this reason, legal pluralism is often highly complex and difficult to capture in practice (Merry, 1988: 871). Identifying the relevant subgroups and determining their particular rules is complicated and calls for extensive fieldwork, especially when the rules are not codified. Importantly, however, it also calls for analysis of both the interaction and the dialectic between different normative orders, taking into account the ways in which these have evolved historically. These theoretical insights are important in our analysis of Naga customary law and practices. They highlight the difficulties of clearly outlining a specific homogenous Naga legal culture, and they also draw attention to the need to understand how customary law evolves and varies between different groups as well as through interaction with official state law. This matters hugely to discussion of the codification and recognition of a common customary law for the Naga sub-groups.

The United Nations Declaration on the Rights of Indigenous Peoples in 2007 provided an international basis for recognising the juridical systems and customs of indigenous people within a majority society or nation-state. Article 34 of the declaration states that: ‘Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards’ (UN 2008: 24). Thus we see that recognition of indigenous judicial systems is considered a human right for the protection of indigenous people. However, such systems must not contradict international human rights standards, such as non-discrimination, fair trial and individual rights. This emphasis on international standards has the potential to raise dilemmas in recognising the customary law of a particular group (Muriaas 2003).

Customary justice systems tend to be overwhelmingly focused on the group, rather than the individual. Accordingly, they are often criticised for undermining individual rights, for being exclusionary, and
for being vulnerable to local power dynamics (Muriaas 2003). They often rely on an identity-based perception of jurisdiction, whereby it is only the members of a certain group that can use it and are protected by it. This can lead to the exclusion of people who are not accepted as members of the group. Customary laws also tend to reinforce and build upon local social hierarchies that support the power of local elites. In some contexts, this sustains gender imbalances, which means that women are not treated equally with men before the law. At the same time, part of the reason why customary legal forums are often regarded as more effective than official state courts in restoring social relations is precisely the fact that they promote reconciliation and are focused on group harmony rather than on the rights of the individual (Muriaas 2003: 217–218).

Another dilemma is between state recognition on the one hand and local legitimacy and the independence of customary law on the other. In the socio-legal literature scholars have used the concept of ‘weak legal pluralism’ (J. Griffiths 1986; Merry 1988; F. von Benda-Beckmann 1997; Kyed et al. 2012) to describe situations where state recognition of customary law establishes a hierarchy where state law and institutions are seen (and defined in national constitutions) as superior to other legal orders. In practice, this can imply that states use the recognition of legal pluralism or customary law as a means to increase central state control over non-state or customary legal orders, and by extension of those groups of people who apply these orders (Kyed et. al. 2012: 22; A. Griffiths 2012).

The most prominent example of weak legal pluralism is the forms of indirect rule that were applied in Africa and Asia under British colonial rule. Here the recognition of customary laws served as a means for the colonial rulers to control and transform indigenous groups. A repugnancy clause was used widely in these systems, which meant that customary law was only recognised if it did not contradict colonial state law (A. Griffiths 2012: 35). Sheleff (1999: 122) contends that such repugnancy clauses undermined indigenous law, as they used the values of western culture as the yardstick for determining the legitimacy of customary norms and practices. In this way, the recognition of customary law can be political and undermine the ability of indigenous people or ethnic minority groups to themselves define their customary law independently.
‘Strong legal pluralism’, by contrast, describes the diversity of already existing norms and practices that are not part of the state system, but which are seen as locally legitimate and which evolve according to their own internal dynamics (A. Griffiths 2012). State policies that recognise strong legal pluralism are based on principles of equality rather than on a hierarchy of laws, and on the right of particular groups to define and live according to their customs and norms as they themselves define them (J. Griffiths 1986; Woodman 1999; Kyed et al. 2012: 23; A. Griffiths 2012). Current examples of states that recognise legal pluralism in the ‘strong’ sense are, however, rare. Bolivia is one example. Here indigenous legal orders are granted the same status as state law, and a high degree of independence. This applies to all of Bolivia’s ethnic groups and their particular legal frameworks. This is reflected at the national level, where different ethnic groups are represented in the Constitutional Court (Albrecht and Kyed 2010). Strong legal pluralism requires that customary law be defined through participatory and inclusive processes whereby it is the indigenous people themselves who set the agenda – and not the state.

Strong legal pluralism is not uncontroversial, however, because it has political implications. Effectively it means ‘that the state will no longer maintain a monopoly on the production and application of law’ (Sieder 2002: 185), and therefore the state may perceive legal pluralism to be a threat to its sovereignty. For this reason, it is vital to take into account and to understand the incentives of the state when discussing state recognition of customary justice. What can the state gain by recognising it? As noted by Muriaas, one positive incentive for states is related to the capacity problem of official state courts (2003: 214). In many countries in the Global South, customary courts are seen to ease the case-load of the state courts. Another incentive could be to heighten state legitimacy in contexts where the state has low legitimacy – recognising customary justice systems demonstrates to indigenous people that the state is inclusive and supportive of them. This is particularly important in contexts like Myanmar, where state oppression and attempts to extend state law to indigenous communities during periods of conflict and authoritarian rule have ignited resistance and largely failed to embed the state in society.

When considering state recognition of customary law it is also important to be cognisant of local elite dynamics. The push for recognition
of customary law most often comes from the leaders or organisations of indigenous people themselves, for instance during democratic and post-conflict transitions (Sieder 2002). These leaders have their own political agendas, which may be related to self-determination as well as to upholding the rights of indigenous people and their access to justice. The aim of these leaders is rarely, if ever, simply a return to or a continuation of traditional or customary law, as Sieder (2002: 199) notes for Latin America – it is, rather, the much broader desire of indigenous groups to gain the legitimate power to regulate their own affairs. We would suggest that this applies to the current situation of the Naga and their efforts to consolidate a common customary law during the time of the Myanmar transition. To understand the current situation, we begin with some brief background on the Naga and their social organisation.

**Brief background on the Naga**

The ethnic group referred to as Naga includes over 40 tribes who inhabit an area divided between northwest Myanmar and northeast India, a mountainous region known as the Naga Hills (RRtIP 2018: 11). As census data is unclear, it is not known how many Naga live in Myanmar and inside what today is the Naga Self-Administered Zone (SAZ). However, according to the Naga Literature and Culture Committee (NLCC), Myanmar is home to nine Naga tribes and a population of 400,000 people identifying as Naga.

The Naga people have always been a very heterogeneous group, divided into various tribes, sub-tribes and clans with varying customs, traditions, dress and languages, and divided into different polities (Kotwal 2000: 753). In fact, the term ‘Naga’ is of foreign origin – it was invented by the British. The different tribal languages are very distinct.

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4 While the 1991 Indian Census of India records 35 Naga tribes (Shimray 2007), some independent studies listed 66 Naga tribes in total (Tohring 2010).

5 The nine Naga tribes listed by NLCC-Central are Tangshang, Lainong, Konyak, Khiamiung, Para, Makury, Tangon, Gonwonnbonyo and Paungnyonnmachan tribes. The Goga tribe discussed in this chapter is not mentioned here because the Goga tribe is not yet recognised as a main tribe by the Central level NLCC. By this level, the Goga are considered part of the Tangon Naga tribe. For almost two decades the Goga people have been demanding to be separated from the Tangon Naga and to have their own tribe recognised. The religious leaders and the NLCC in Layshi township are already recognising the Goga as a main tribe.
and even today Naga on the Burmese side belonging to different tribes usually communicate in Burmese. The Naga tribes do not have their own script (Longvah 2017: 125), and only a few tribes, such as the Tangon Naga, have codified their language, using the English alphabet. Today a large majority of the Naga are Christians. While the earliest conversions to Christianity took place in the late 1800s, with the advent of American Baptist missionaries, a number of the tribes on the Myanmar side, including the Goga tribe with which this chapter concerns itself, only converted from the late 1960s. A much smaller number of Naga became Buddhists after independence from the British. Before this time, the majority adhered to beliefs in spirits, beliefs that were categorised by the British as ‘animist’ (see Longvah 2017: 126). While very few today self-identify as animist, we found that these beliefs are still evident in dispute resolution. Christianity has been used to explain why certain customary practices have been disappearing, but we did not detect any significant influence of Christianity on the norms that govern dispute resolution, perceptions of justice and customary laws. Instead, our impression was that Christianity played a role in nurturing a shared Naga identity during late colonial rule. Later it also informed shared experiences of oppression by the Burmese military regime, which particularly targeted ethno-religious minorities.

Efforts to unite the different tribes under a ‘Naga’ ethnic identity, using the term that the British had introduced, were initiated by the leaders of the disparate Naga tribes in order to defend their land and culture from foreign occupation during colonialism (Longvah 2017: 126). Presently, the term ‘Naga’ is used to denote the ethnic identity of the Naga people, although the term is not widely acknowledged outside of Naga communities. The concept of ‘Naga’ is still under debate among the Naga themselves, with some tribes viewing it as a broader identity encompassing different sub-tribes, while others see it as a unifying ethnic identity. This debate reflects the complex and diverse nature of the Naga community, which is characterized by linguistic, cultural, and religious diversity.

6 A common Naga language, known as Nagamese, has, by contrast, been developed on the Indian side.
7 As Hutton (1969 [1922]: 19) noted long ago in relation to languages among the Naga: ‘I suppose there is no part of the world with so much linguistic variation in so small a population or in so small an area. The result of the isolation of village communities, living entirely independently and often with almost entirely self-contained economies, cut off from their neighbours by forest, mountain, and river’. Furthermore, the lack of a Naga script reflects the dominance of an oral tradition, which also means that there are no written records from pre-colonial times (Longvah 2017: 125).
8 The first missionaries who came to the Goga tribe were Karen from southeastern Myanmar who had converted to Christianity much earlier.
9 For a critique of the use of the term animist to describe the Naga, see Longvah (2017: 127), who argues that the Naga also believed in a superior creator and in an afterlife, beliefs that do not, he argues, fit in with the definition of animism.
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122–124; Thomas 2016: 2).\(^{10}\) Around the time of independence from the British, this unification effort developed into nationalist movements with aspirations for self-determination and an independent Nagaland. The day before India gained independence from the British, the Naga nationalist movements on both the Indian and Burmese (now Myanmar) sides unilaterally declared Naga independence, but this was unsuccessful (Shapwon 2016). After a period of armed conflict, the Indian government in December 1963 officially recognised Nagaland as the sixteenth state of India and subsequently delegated extraordinary executive and judicial powers to village levels, including recognition of customary courts. Parallel political developments did not, however, occur in Myanmar (then Burma), which left Nagaland on the Myanmar side as a ‘forgotten land’, with very little development and no recognition of Naga customary systems (Zarleen 2010).

During Burmese military socialist rule (1962–1988) the Naga Hills were put under full Burmese administration, but the Naga had very little access to citizenship rights such as education, health, and infrastructure. During this period, armed struggle for a united, independent Nagaland continued on both the Indian and the Myanmar sides, and an armed resistance group, the National Socialist Council of Nagas (NSCN), was established in 1980. In the next period of military rule (1988–1997) – under the State Law and Order Restoration Council (SLORC) – the Naga were subjected to extensive human rights violations and were forced, sometimes by force of arms, to convert to Buddhism. The military government built many pagodas in Christian Naga villages, as part of an effort to crush Christianity and Burmanise the Naga. If the Naga refused to convert, they risked being used as military porters and they (and their children) could not apply for government jobs (Stirn and van Ham 2003).\(^{11}\) Torture for disobedience was applied. A number of Naga

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\(^{10}\) During British colonial rule, the colonial government used a policy of non-intervention in much of the Naga Hills on the Burmese side, especially in the north. In the southern part of the hills the British established indirect rule, whereby the tribes and villages were permitted to govern according to their own customary systems, but with some colonial regulation (RRtIP 2018: 13). However, at that time they did not have a common Naga customary law, but separate systems.

\(^{11}\) According to those we interviewed, many Naga wanted their children to obtain government employment, as this was often the only route to income and security, given that there were few business opportunities at the time. Therefore some people converted to Buddhism, even though they did not know how to worship the Buddha.
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families converted nominally to Buddhism and kept their Christian faith hidden. Even today, some Naga have ‘Buddhist’ on their national ID cards even though they practise Christianity.¹²

In 1988, the armed rebellion was weakened as the NSCN split into the NSCN-IM and the NSCN-K (Wouters 2017). The NSCN-K, which only signed a ceasefire with the Myanmar government in 2012, was the most active in Burma but it did not have widespread support among the various Naga tribes.¹³ Instead, what dominated in this period were civilian and non-violent efforts to strengthen the Naga group. As early as 1993, influential Naga tribal leaders from the different tribes inside Myanmar formed the Naga Literature and Culture Committee (NLCC), an unarmed, civilian organisation that aimed to unite the Naga across the different Myanmar-based tribes. The NLCC aimed to develop a common language, consolidate common customs, and organise the Naga New Year Festival, where Naga people can meet and gather consensus about developments for the Naga people. The vision of the NLCC was that it should become a Naga national institution that would help organise the Naga tribes into one national identity.¹⁴ It was also the NLCC that consolidated a common Naga customary justice system, which we will discuss further below.

During the last period of Burmese military rule (1997–2011), under the State Peace and Development Council (SPDC), which led to the 2008 Myanmar Constitution, the Naga Hills were established as a Self-Administered Zone (SAZ). The existence of the SAZ does not, however, imply self-determination for the Naga, as it only provides for very limited administrative and legislative rights on the part of the SAZ Local Leading Body (Dae-tha Oo-se Ah Phwe). It should also be noted that this body does not only include Naga, but also elected members of State/Region Parliaments, the military officer in charge of Border Affairs and Security, who is appointed by the Commander in Chief of the Myanmar Army, and the District Head of Administration. According to Schedule 3 of the Myanmar Constitution, only ten legislative rights are

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¹² Interview with community members, Goga village.

¹³ In late January 2019, the ceasefire apparently broke down, as the Tatmadaw overthrew the headquarters of NSCN-K, alleging that it was connecting with rebel groups in India and providing them with shelter and military training.

¹⁴ This information is based on our interviews with members of the NLCC at central level.
granted to the SAZ Local Leading Body. These are vaguely defined and limited by a clause that holds that their application cannot override the legislative powers of the central government. Judiciary power is exclusively held by the Myanmar state’s townships and district courts. This leaves Naga customary law and justice systems without official state recognition.

Since the establishment of the SAZ and the end of military rule in 2011, the Naga have seen a number of new developments, including the improvement of infrastructure, transportation, education and trade. The different villages and townships are now better connected, which facilitates improved collaboration between the Naga. At the same time, the SAZ has meant a greater encroachment of the Myanmar state in the Naga Hills. The government has built many government buildings and put up official signposts with its logo in the region, marking the physical presence of the government. The government does not recognise the voice of local Naga sufficiently and it is trying to place all administrative matters under its supervision.

The Bamar-dominated Union Solidarity and Development Party (USDP) and the National League for Democracy (NLD) are the dominant political parties. Nevertheless, the transition has left a space for Naga political and judicial consolidation. In 2018, a number of Naga politicians organised the Naga National Party (NNP), which is now registered to participate in the 2020...
elections. The NLCC also continues to work to promote shared Naga institutions and to unite customary laws across the Myanmar-based Naga tribes. There is a growing number of different CSOs that work across the Naga tribes on ethnic issues, on peace, on issues related to the young, with students, and on political and religious topics. The social organisation and justice system of the Naga also continues to be significant in regulating everyday life, as we address next.

Local social organisations of the Naga

In our research among the Naga Goga tribe in Layshi township we found that the most significant units in Naga social organisation are the village, the patrilineal kinship group (pha thar su), the clan and the tribe. Of these, we found that the pha thar su plays a particularly pivotal role in resolving disputes. The pha thar su bonds all males and females together on the patrilineal side within the same tribe. They protect each other, help each other in dispute resolution, secure social harmony with other people, and support each other with food and other key items related to survival. Male members of the pha thar su also protect female members if, for instance, their husbands do not treat them well. Whereas the pha thar su is within the same tribe, the clans cut across tribes and serve to facilitate cross-tribe communication (see Hutton 1969 [1922]: 20–21).

In terms of leadership, each of the larger villages still has a traditional headman, whose position is based on hereditary status within the patrilineal kinship line. He traditionally worked together with elders or pha thar su leaders (the eldest man in a pha thar su is its leader), but since the SAZ was introduced, he also works with the village NLCC and the government-appointed village or village tract administrators. Thus, village leadership has changed somewhat and has become a dual system that incorporates Myanmar village administration structures. Dah Tri Gyu village is categorised as a ‘village tract’ and therefore has a village tract administrator (VTA), who is appointed by the Myanmar government. Until recently, the VTA and the headman (ah ma aé in the Goga Naga language) was the same person, but because the headman of Dah

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15 According to the 2012 Ward Administrator and Village Tract Administrator law of Myanmar (see Kyed et. al. 2016), the VTA is now supposed to be elected, but this is not the case as yet in Dah Tri Guy village.
Tri Gyu village was getting old, his son had become the VTA. This shows that hereditary traditional leadership continues despite government intervention. Officially, the VTA deals with issues related to orders from the government, including matters relating to education, ID, health and infrastructure. The headman is involved in internal village matters, including dispute resolution.

Since the formation of the NLCC at village level, the headman works with and is himself a member of the NLCC.

In Dah Tri Gyu village, which is the main village of the Goga tribe, the majority are Christian, with only six households being Buddhist, among them the headman and his family, whose son is also the government village leader. They probably converted because being a Buddhist is an advantage if you want a position with the government. According to our interviewees, no one identified as ‘animist’ any longer, but the elders had a good knowledge of spirit beliefs. Some traditional dispute resolution practices also relate to spirit beliefs.16

The Goga tribe write in Burmese (or, less frequently, in English). Only in 2017 did the Goga tribe begin to create their own written language, with help from a foreign linguist. They now have a Goga primary school textbook and a small number of Goga were trained to teach using it in February 2019. They use the English alphabet.

As the Naga have a patriarchal system, Naga women are subordinated to their parents and brothers, and, when they marry, to their husbands. Women have no right to assume leadership positions, neither religious nor administrative. They also lack rights with respect to inheritance and divorce.

16 Naga were famous for being a headhunting tribe in the past, but according to the elders of Dah Tri Gyu village, headhunting disappeared about 100 years ago. They still, however, keep the headhouse and the stone block where heads used to be displayed.
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The Naga justice system and dispute resolution procedures

Traditional dispute resolution is still very much intact in the Naga villages like Dah Tri Gyu, and even in towns like Layshi. Before the NLCCs were formed at tribal village, township and central level, the Naga applied only orally transmitted rules and norms, and there was no clearly institutionalised hierarchy of ‘justice committees’ for the Naga as a whole. As a result, customary laws, transmitted orally, varied from village to village. From what informants told us, however, it is clear that the central principles of justice were similar across the diverse tribes. These principles include a focus on compensation, reconciliation and shaming as remedies, and a concern with truth-seeking, using witnesses, trial by ordeal and oaths as the main dispute resolution mechanisms. Naga principles of customary law do not include the use of prisons or physical punishment.

According to the village elders and leaders whom we interviewed, the purpose of compensation is not only to punish the perpetrator and reconcile the parties, but also to prevent new offences, which is achieved by setting the level of compensation high. Shaming measures are additional penalties (to compensation) and are also seen as preventive. They include *ywar say* (‘cleaning the village’) and *mee sar yay sar* (‘eating fire and water’). Naga tribal leaders explained that they used village cleansing rituals to make the offender or his/her family feel shame for an offence. If a perpetrator repeats an offence several times, his/her own *pha thar su* can expel him or her from the *pha thar su*, from the whole village and/or from the tribal community. Another option is to send repeat offenders to the state legal system, but this, like expulsion, is a last resort. Forgiveness without compensation is only possible if the disputants are members of the same *pha thar su*. In such cases, the victim’s family will refuse to take any compensation even if the perpetrator and his/her family offer to pay it. In fact, according to the Dah Tri Gyu village headman, it is bad luck for the family to take compensation from within the same family: doing so could, he said, cause misfortune for the next generation. This is connected to tradi-

17 *Mee sar yay sar* must take place within 15 days of a settlement being decided upon. Each of the two sides must pay for a pig at least four years old. These animals are slaughtered and the meat is served to leaders and to the *pha thar su*; and both sides must agree the case is over and that there is no longer any animosity between them. The offender must, in addition, pay a knife to the victim’s family. *Mee sar yay sar* is commonly used for very serious cases involving such crimes as rape and murder.
tional spirit beliefs. In the same way, if a crime takes place within the same *pha thar su* it is bad luck to forward the case to higher levels such as the NLCC or the state courts.\(^\text{18}\)

During the dispute resolution process, truth-seeking is a core moral value and is the obligation of the individual and the community as a whole. However, material evidence of a crime or of what really happened in a dispute is often lacking. For instance, in the land dispute cases we encountered in Dah Tri Gyu village, the disputants found it difficult to prove land ownership, as they have no official documents relating to ownership and traditional markings showing land boundaries are often unclear. Therefore, in settling disputes, the system relies heavily on witnesses. If witnessing does not work satisfactorily, trial by ordeal may be used, together with oaths. These are practices that predate conversion to Christianity. Traditionally, they included ‘diving into the water by disputants’ (*sulidah* in Goga),\(^\text{19}\) ‘daring to eat soil’ (*lahlaw dze* in Goga),\(^\text{20}\) ‘biting a tiger-tooth’ (*rhuke mahgaw* in Goga)\(^\text{21}\) or offering a domestic animal to the spirits. Naga believed, traditionally, that an oath taken to the spirits of the forest, to the earth, or to the ancestors would have serious consequences for their lives and well-being. While these traditional practices are now used less frequently in dispute resolution, Naga leaders still draw on them to explain how the Naga have traditionally taken pride in revealing the truth. According to interviewees in Dah Tri Gyu village, trial by ordeal is now disappearing, due to Christianity. They said that they never use the tiger tooth any more, but ‘diving into water’ is still used, although as a very last resort when other attempts at resolution fail.\(^\text{22}\) The reason that it is considered a last resort is that many Naga still believe that using this method leads to bad luck for the disputants or their family members in the future.

\(^\text{18}\) Interview, headman, Dah Tri Gyu village, 24 February 2019.

\(^\text{19}\) The two disputants have to dive into a pool of water and the one who stays longest under water is telling the truth – for instance, in land disputes, the one who stays longest in water is said to have made the true claim to the land ownership.

\(^\text{20}\) You eat soil and take an oath, and if you are not telling the truth you will vomit, get sick and your great grandson will have bad luck (interview, Dah Tri Gyu village elders, 24 February 2019).

\(^\text{21}\) If you bite the tiger tooth, and you are not telling the truth, you will get a very dry mouth (interview, Dah Tri Gyu village elders, 24 February 2019).

\(^\text{22}\) The most recent example at the time of writing was in April 2019 in Layshi township, when two land disputants dived into water. The event was filmed and posted on Facebook.
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This notion of bad luck is informed by traditional spirit beliefs, despite the fact that the majority now self-identify as Christians and no longer practice animism, no longer worshipping or making offerings to the spirits. Christian churches have also encouraged people to move away from traditional practices such as ‘diving in water’.

Regardless of whether the emphasis is on remedies or on truth-seeking, we learnt that the pha thar su plays an important role in dispute resolution, as it is the first port of call. It seems to be a shared principle across tribes that a case must be dealt with at the pha thar su-level before it is moved to the village level for resolution. Only if a case involves different tribes is it common to go directly to the township level NLCC, as all tribes are represented at this level.

We found that it was considered shameful not to go first to the pha thar su when dealing with a crime or dispute. If a case is between members of two pha thar su, the two pha thar su come together first to try to settle the case. Only if they fail to find a settlement is the case forwarded to the village level headman; and only if that fails is the case forwarded to the NLCCs at higher levels (first the tribe, then the township, and then the central level), following a step-by-step procedure. The involvement of the pha thar su remains important at every step. The NLCC committee negotiates with the two pha thar su, and unless they are both satisfied the committee cannot make a decision. It is not enough that the victim is satisfied. If a perpetrator runs away from a court case, the closest members of his/her pha thar su take responsibility in the case and must also pay the compensation that has been determined. Irrespective of tribe, the Naga traditionally regard the pha thar su as ‘second parents’. According to the village headman in Dah Tri Gyu, an important responsibility of the pha thar su is to make sure that the cases do not become ‘big’, by which he meant that they should be resolved peacefully at the pha thar su level and should not escalate to higher levels.

When a case reaches the NLCC system, a jury committee is formed, which analyses the case based on testimonies from the plaintiff and the accused. The jury members report their findings to the executive com-

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23 The jury committee consists of people who are part of the NLCC committees, which are elected by the tribal leaders from each tribe. Which NLCC members are part of the jury varies from tribe to tribe, but the jury must include, as a minimum, the chairman and the secretary of the NLCC committee at the relevant level (township,
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Committee, which in turn makes recommendations to the jury members, who then make the final judgement. Both sides in the case must pay *khone kha* (‘charges for jury members’) to the jury committee. The amount depends on the type of case. NLCC houses, known as ‘Naga traditional museums’, are situated in some larger villages and township towns, and are not only used as courts, but also for keeping Naga costumes and traditional instruments. They are also used for the Naga New Year opening ceremony, during which traditional totem poles are beaten.

The Naga Book of Customary Law

In their everyday work, the various committees and juries of the NLCC system apply the Naga Book of Customary Law. This was produced in 2003 by the different tribal leaders of the NLCC, who collected the oral customs and practices from each of the tribes to provide a codified version of Naga customary law. The NLCC leaders see the Book of Customary Law as one of their major achievements. The current version lists 95 offences and details the punishments for each of these. In district, central). They will also consider which tribes the disputing parties are from, and will then try to ensure that there is a jury committee member from each of those tribes.

24 As there are many different Naga tribes, they use the following name in Burmese *Naga yoe yar yin kyay hmu pyaut tike* to describe the Naga Traditional Museums.

25 There was no evidence to suggest that this Book of Customary Law was a copy of the Naga book of customary law which exists on the Indian side, although the leaders may have been inspired by the fact that the Indian Naga have had a codification of their customary law for a much longer time.
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Doing this, it adheres to the traditional Naga principle of compensation. For instance, for murder and rape it states:26

Article 1. Murder: Whoever intentionally causes another person to die yet makes the evidence disappear; is culpable of homicide not amounting to murder; or causes death by performing an act with the intention of causing death or with the intention of causing bodily injury as would be sufficient in the ordinary course of nature to cause death, commits the offence of murder.

Punishment: Whoever commits murder shall be liable to pay (a) five buffaloes over four years old (or) the equivalent in cash to this, as a fine; and (b) one 90-inch gong, one 140-bead coral necklace, one loincloth decorated with beads and one blanket decorated with beads (or) the equivalent in cash, to the victim's wife, son, daughter or closest heir.

Article 17. Rape: Whoever has sexual intercourse with a woman without the consent of that woman is guilty of the offence of rape.

Punishment: Whoever commits such an offence shall be liable to pay three buffaloes over five years old and one pig of a girth exceeding five-fists, (or) the equivalent in cash, as a fine.

Today the Book of Customary Law is widely used across the Naga region. The purpose, as is stated in the Book, was to bring the different tribes together under one law, based on an understanding that the Naga prefer to follow their tradition and culture in juridical matters:

Different Naga ethnic groups have similar traditions and cultures, and they all accept, to this day, that a case is only finalised when the offender is punished according to their traditions, which they acknowledge even if the offender is punished by existing [State] law. The traditions and culture of different Naga ethnic groups differ according to the different places of residence. Therefore, this law is being established in order to ensure consensus about judicial punishment. In proceeding with established judicial punishment, the court uses this judicial [Naga] law in cases between Naga individuals and between Naga and individuals belonging to other ethnic groups only if the plaintiff states his desire to use this law (see NLCC-C 2003: Preface).

26 These extracts from the Book of Customary Law were translated from Burmese to English in July 2017 by Waili Soe Win.
It can be seen from this statement that the Book of Customary Law acknowledges differences between Naga tribes; and that adjudication according to the Book of Customary Law should always be consent-based: both the plaintiff and the accused should be free to choose to seek justice under other systems of law (such as Myanmar state law).

Currently, according to the NLCC at central level, the Book of Customary Law is in the process of being amended, because at the time of the codification the NLCC did not adequately consult with all the village and tribal leaders or with certain other relevant stakeholders. There is also a desire to invite legal experts to amend the law. The Dah Tri Gyu headman complained to us that some of the compensations
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mentioned in the Book of Customary Law are not appropriate to the Goga tribe but draw on the practices of other tribes. Gender inequalities also persist in Naga customary law, such as unequal inheritance and lack of female representation. Finally, the law lacks a procedural code stating how cases should be resolved and how the NLCC committees should refer cases to each other. Nevertheless, our findings show that the Book of Customary Law is widely used, especially in guiding the setting of compensation.

Examples of dispute resolution from Layshi township

In what follows we provide examples of dispute resolution, pointing to the importance of the *pha thar su*, of the NLCC and of Naga customary law. The first case, from Dah Tri Gyu village, serves primarily to illustrate the role of the *pha thar su*, while the second case, from Layshi town, illustrates in addition how Naga leaders try to circumvent the state judicial system and to revert to Naga customary law. Finally, the third case shows that customary law is not static, but gradually changes in accordance with changes in wider society, here with respect to gender equality. This adaptability is, we suggest, one of the factors that contributes to the prevalence of customary law. In addition, the strength of customary law is in the role it plays in nurturing a shared Naga identity and in providing an alternative to state justice.

Case 1 – A case of accidental death and the role of the *pha thar su*

In 2014, U Law Ri went on a two-day hunt with five people, including U See Kyu, who had recently moved to Dah Htay village to serve as village pastor. On the second day, they followed a group of monkeys. U Law Yi aimed at a monkey, but he decided that it was too small and dropped his gun. Suddenly, he saw a monkey that seemed to be mocking him, and he shot at it. When he got closer to the target, he found that he had shot U See Kyu, who died on the spot. When they got back to Dah Htay village, the hunting group informed the village leaders of the death. The perpetrator’s *pha thar su* informed U See Kyu’s family of the incident.

27 This case was narrated to us on 20 May 2017 by an NLCC member in Layshi who is in the same *pha thar su* as the deceased and who was also involved in the resolution. We also interviewed the victim’s first cousin’s brother about this case on 8 January 2018.
They live in another village, but are also from the Goga tribe. The close relatives of the perpetrator stayed away. U Law Ri’s *pha thar su* went to meet U See Kyu’s family and *pha thar su*, to settle the case. U See Kyu’s close family members wanted revenge and demanded that U Law Ri be put to death for having killed U See Kyu.

Both U Law Yi’s and U See Kyu’s *pha thar su* quickly realised the tension and the emotional reaction of U See Kyu’s close family members. Therefore they negotiated the case on behalf of (and in the absence of) the victim’s closest family and the perpetrator. Within three days, they had agreed to settle the case, with compensation of MMK 3,000,000 (USD 1,950) in cash, a Naga traditional man’s blanket, and one buffalo, to be killed for the funeral. The amount of money followed the Naga Book of Customary Law, whereas the blanket and the buffalo for the funeral were extra, to please the victim’s family. When they had reached agreement, both *pha thar su* sides promised not to have any animosity or hatred over the case.

U See Kyu could not, however, afford to pay the compensation, as he is quite poor. Therefore other members of his *pha thar su* paid it. The other members of the hunting group also contributed to the compensation, paying one third of this. This was based on the fact that the Goga tribe has a hunting rule that holds that hunting group members share whatever they get in terms of prey. When the money had been paid, a *mee sar yay sar* (‘reconciliation ritual’) was performed. As is usual, a large meal was served, and the two most responsible persons from each family in the case exchanged plates and ate each other’s food on the plates. The purpose of this ritual is to ensure that these people and their descendants will not mistrust each other. Both sides accepted the decision, without any threats, and this reduced the likelihood of social tension between the two *pha thar su*.

This case emphasises the significant role of the *pha thar su* in settling what in legal language would be called involuntary manslaughter. In Naga terms, however, the case fell under the category of *taw mout tel* (‘bewitching by forest ghosts or spirits, causing loss of sight’), which is a concept that is used specifically to explain accidents that take place during hunting expeditions. Traditionally, when such accidents occur, the person who has killed someone is hidden while the relatives from the two sides discuss and negotiate. However, if the victim’s side wants revenge (a man for a man), the *pha thar su* leaders step in to mediate and
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persuade the victim’s side to find a peaceful settlement that restores the relationship between the two *pha thar su*. The satisfaction of the victim is less important than social harmony. We saw in this case that the *pha thar su* used the compensation laid out in the Naga Book of Customary Law, together with traditional reconciliation rituals and hunting rules. According to the Dah Tri Gyu village administrator and one of the NLCC township members, the NLCC prefers that the *pha thar su* resolves important cases like these, with a focus on peacefully reconciling the two sides. They fear that if the NLCC were to resolve it, one of the parties might be dissatisfied and seek revenge. It is only if the *pha thar su* is unable to resolve the case that the NLCC must step in.

According to Myanmar state law, this type of case – the taking of life – should have been adjudicated in the courts. However, this option was seen as too risky, according to the NLCC member with whom we spoke: if the perpetrator were to go to prison, he could die, and this would create tension between the two *pha thar su*. Also, the victim’s family might be dissatisfied with the lack of compensation if the perpetrator were to go to prison, and this could lead the victim’s side to seek revenge and maybe even kill the perpetrator. This might mean, the NLCC member said, that there could be another murder case, if the case went to the state system. When we spoke to the police about such cases, we found that there were different opinions. One officer in Layshi said that sometimes the police officers avert their eyes to the handling of cases by the Naga themselves, because they know that the Naga prefer to resolve their cases in the customary way. He agreed that the Naga’s own customary resolution system is the most suitable for local people. However, some judges and policemen were not happy about village leaders dealing with such a case. They insisted that there is only one law: the Myanmar state law. The next case discussed below will reveal some of the tensions between state and customary adjudication. This case was resolved by the NLCC, probably because it had already ended up in the hands of the state police and because the parties were from different Naga tribes. The case also illustrates how Naga leaders have an interest in diverting cases away from the state system, so as to strengthen the Naga institutions, and thus also their own authority.

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28 Interview with NLCC member on 7 January 2018.
Case 2 – A traffic accident and avoidance of state justice

Mg Yi Pae, a 23-year-old man from the Goga tribe who ran a transportation service, had a collision with a motorbike carrying a husband and a wife who were from the Tangon-Naga tribe.29 The man died on the spot, and the woman was seriously injured. Once Mg Yi Pae’s pha thar su heard about the case, leading members of it went straight to the Layshi township NLCC and requested its support in resolving the case following Naga customary law. However, when they arrived at the site of the accident two hours later, Mg Yi Pae had already been arrested by the township police. According to an NLCC member, a witness on the road had informed the police of what had happened. The police refused to allow the case to be negotiated by the NLCC, saying that the case had already been submitted to the district level in Sagaing region, which is located outside the Naga SAZ. Over the next two days, the township NLCC (yin kyay mhu) met with representatives of the pha thar su of the victim (the husband) and of the perpetrator, and both sides accepted that the case should be settled following Naga customary law. Then the NLCC went to negotiate with the township police, asking the police to transfer the case from the state’s jurisdiction to the NLCC. The police officer on duty refused to do this, saying, according to an NLCC member: ‘The case cannot be resolved with Naga customary law. Who recognises your law?’ One member of Mg Yi Pae’s pha thar su also told us, during an interview: ‘When we talked with the township police, the station officer replied very roughly, shouting back at us, saying: “We have one law for the whole country, no separate law for Naga. You Naga leaders have to obey that law too”. Then the Naga leaders just said straight back: “The Naga have Naga Law, and Naga law should be respected. Will you take responsibility for what will happen in the future? We speak for them [the Naga people]”’.30

By that time, the case was already being handled by the state township court. However, the NLCC did not give up easily, and they kept negotiating. After one month, the police agreed to the NLCC’s request. The township police went to the district hospital where the injured woman was hospitalised and brought her back to Layshi, so that she could help

29 This case was narrated to us by the perpetrator’s uncle, a member of the township NLCC and a local resident.
30 Interview, 21 March 2018.
to remove the case from the state court. The woman followed state court procedures, by reading aloud that she did not wish to take forward any grievance related to the case (either on her own behalf or on her husband’s behalf), and therefore did not want to pursue a court case. After that, Mg Yi Pae was released from police custody. For the process of moving the case from the state system to the NLCC, the perpetrator's family had to pay several informal fees – what we might consider bribes: MMK 4,000,000 (USD 2,600) to the township law office, MMK 500,000 (USD 333) to the township police chief, MMK 350,000 (USD 233) to the second police chief, and around MMK 50,000 (USD 33) to other police personnel.

The day after the case was revoked at the court, the hearing at the township NLCC office began. Within one day both sides' families and pha thar su had been heard, separately, and compensation for the victim’s side had been decided. This case, like the previous one discussed, was regarded as involuntary manslaughter, meaning that compensation of four buffaloes was due, equivalent to MMK 800,000 (USD 533) at the time, as well as MMK 3,500,000 (USD 2,330) in cash. For the serious injury to the woman and compensation for her medical treatment, the perpetrator had to pay another MMK 3,500,000 (USD 2,330). Each side had to pay MMK 25,000 (USD 17) for the mee sar yay sar (reconciliation ritual), as they had to buy a four-year-old pig each. The perpetrator's family also paid a smaller amount (khone kha – ‘charges for jury members’) to the NLCC as a kind of court fee. After the decision had been made, both sides agreed to settle the case: they promised not to pursue any revenge against each other in the future. Then the victim’s side paid 10 per cent of the compensation to the NLCC’s association fund.31

In total, the case cost Mg Yi Pae’s side MMK 20,000,000 (USD 13,315). The vehicle he had been driving had been seized by the state and it was never returned, because it did not have registered Myanmar licence plates (and was therefore regarded as illegal by the state). However, Mg Yi Pae’s pha thar su was satisfied that the case had been settled so quickly, and that Mg Yi Pae did not end up in prison, due to the help of the NLCC. Despite the costs incurred by Mg Yi Pae's family, the family members preferred customary justice to state justice, which

31 NLCCs at every level have their own funds. These are used for the renovation of office buildings and for buying other things, as well as for the New Year ceremony and for developing Naga literature.
meant both avoiding imprisonment and ensuring reconciliation with the victim's side. Customary justice was also preferred by the victim's side: the injured woman, who had lost her husband, was satisfied that she did not have to travel again and again to the district court, which is located far from her home. This would have been costly for her. Also, she knew that, had the case been adjudicated in court, she would have been unlikely to have received any compensation. Her *pha thar su* and the members of the NLCC were instrumental in convincing her of these potentially negative aspects of going to court. They convinced her that the court was not the best option for her.

This case helps to shed light on the different reasons why the Naga and their tribal leaders prefer the customary system to the state system, even when a case has in fact initially gone to the state police and courts. We suggest that both endogenous and exogenous factors are at play. There are two endogenous factors. The first is that the preference for customary justice in the above case was linked to the type of remedies that are applied through customary law: compensation for the victims, and reconciliation aimed at restoring social harmony and peace between the parties involved in the case and their *pha thar su*. These remedies were regarded as comparing favourably with imprisonment, which could, it was feared, have led both to the death of the perpetrator and an absence of compensation for the victim.

The second endogenous factor is that it is evident that in a case like the above reverting to the Naga customary system contributes more generally to efforts on the part of Naga leaders to strengthen that system and by extension to support Naga social organisation and cultural identity. Had it not been for the insistence and the negotiation skills of the members of the NLCC, the case would probably have been adjudicated in the state court. The members of the NLCC are the most important Naga tribal leaders, and they had an interest in making sure that the case was handled within the system that they represent and from which they gain their authority. Apart from a concern for the parties’ access to justice, these leaders were also concerned with preserving Naga organisation, ethnic identity and leadership, when they insisted on handling the case within the NLCC. The leaders worry that their traditions, and the forms of organisation they sustain, will disappear if cases are resolved by the state. We would suggest that keeping cases within customary jurisdiction is part of building ethnic
identity – an identity that also sustains the authority of the Naga leaders. Achieving this, as we have seen in the above case, requires very good negotiation skills on the part of the Naga leaders, who had to convince both the victim and the state officials to allow the case to be handled in the customary system. The process of reverting cases to the customary system can also be rather costly, once the case has gone to the state institutions, as it involves, as we have seen, the payment of a number of informal fees.

There are also exogenous factors involved here. The preference for resolving cases in the customary system cannot be divorced from the historically embedded understandings of the state system on the part of the Naga. The bitter experience of suppression that they suffered under six decades of military rule have alienated the Naga from official state institutions, including the state courts and the police. This alienation is today reinforced by the high costs associated with involving the state system in dispute resolution and by the use of formalistic Burmese language in the courts – which most Naga, who lack higher education, do not understand. As a Naga senior clerk at the township court in Layshi explained to us, most Naga face difficulties in understanding and trusting state court procedures. However, as is evident in the above case, transfer of a case to the customary system is dependent on the willingness of state officials to negotiate with the Naga leaders. We were told by one of the NLCC members involved in the case that it was fortunate that the main officer at the district court was sufficiently sympathetic to the Naga to allow the case to be handled by the Naga themselves. This contrasts with the attitude of the police officers, who were initially against the transfer and only allowed it after the payment of informal fees. The contrasting views of different state officials, and the need for informal payments to ensure that cases are settled in the customary system, reflects the insecurity facing the customary system, as a system that remains unrecognised by the state.

We would suggest that this lack of official recognition informs ongoing efforts on the part of the Naga leaders to strengthen Naga traditions and their customary system in everyday dispute resolution. In discussing the next case we intend to show that these traditions are also being internally negotiated and challenged in order to keep up with changes in society. Gender is one such area of change.
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Case 3 – A case of domestic violence – adapting to the rights of women

In 2008 a 20-year-old girl named Ma Lo Se and her husband, U Kha Thee, aged about 60, both from the Goga tribe, moved into a house near Daw Khaw Htar’s home in Layshi town. Ma Lo Se was U Kha Thee’s fourth wife, and she was the niece of his second wife (who is still married to U Kha Thee, though not in contact anymore). Ma Lo Se gave birth to a boy a year later.

When the boy was six months old, Daw Khaw Htar noticed that Ma Lo Se was very often being beaten by U Kha Thee. She could see this with her own eyes, and she also saw that U Kha Thee was behaving in a sexually improper manner. Once she went to try and stop U Kha Thee from beating his wife. Then one day, in the middle of the night, Ma Lo Se fled to Daw Khaw Htar’s home with her child. However, U Kha Thee followed her; and when Ma Lo Se refused to go back with him, U Kha Thee pushed her down, grabbed the child and left. Ma Lo Se stayed with Daw Khaw Htar. However, she worried a great deal about her child. Sometime later, U Kha Thee threatened her, saying that he would send the child away if she did not come back home. Ma Lo Se went home. The next day, Ma Lo Se’s pha thar su heard about the situation, met with U Kha Thee and asked on behalf of Ma Lo Se for a divorce. While they were talking to U Kha Thee, Ma Lo Se fled out the back door with her child. The next day, Ma Lo Se’s pha thar su brought the case to the township NLCC. Within a few days, the NLCC heard the case. Daw Khaw Htar was the key witness, and a few days later the NLCC granted the divorce, deciding that U Kha Thee should compensate his wife with four buffaloes. Ma Lo Se was allowed to keep the child until he was three years old, and after that the child would have to live with the father’s family. She was also given MMK 600,000 (USD 400) to cover the costs of caring for the child. U Kha Thee’s pha thar su was not present, apparently because they disliked him. One of the NLCC judges in this case, shared his view about the decision with us, and explained that it had involved some changes in the customary law:

Normally, compensation has to be paid by the person who seeks divorce [the wife, in this case]. In a case of divorce where there is mutual agreement, the husband and wife have to divide the

32 This case was narrated to us by the perpetrator’s sister in law, but we were first made aware of the case by a Naga MP, when we were discussing changes in society.
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property in half. In this case the NLCC agreed to the divorce and also decided to penalise U Kha Thee for torturing his wife. But we still need to change more [of our customary law], and we need to improve the law to adhere to international conducts and standards, even though now we think more about the [rights of] women.33

The justice practitioners we spoke to, both old and young, appreciated the need for such changes in order to protect the rights of women more effectively. Traditionally, women had no right to divorce their husband, and if they wanted to divorce, they would not get any property; and ultimately, all the children would stay with the husband – because when a woman marries, she automatically becomes (as do her children) part of the husband’s lineage. Traditionally, only sons, not daughters, have the right to inherit from their parents. Previously, even if the parents wanted to give a share to their daughters, the pha thar su would not accept this, seeing it as a violation of group principles. Some changes are now taking place, which are reflected in Naga customary law. Now parents can give property they accumulate during their lifetime to their daughters, although they still cannot pass on ancestral property (land and houses) to them. Naga customary law also now allows for both husbands and wives to petition for divorce (if they do not live up to their duties and responsibilities), and both sides can seek compensation from each other and share the property.

However, these changes have not done away with gender inequality in the Naga justice system. As we have seen, in the above case the woman was only allowed to keep her child until he was three years, rather than getting full custody. There continue to be no female members of the Naga NLCC or any female village headmen. There are no changes to the rights of women in many families, especially not in rural areas, where women are still marginalised. For instance, if a couple does not have a son, their property is automatically taken by the husband’s brother’s family, even if they have many daughters. The following story by a young Naga woman illustrates the hardships many Naga women endure:

Sometimes, I pray that my mum will not have a long life, because my dad’s cousins are not good to our family. My mum and dad had seven children, but only one was a son and he passed away. My dad is the eldest son, so when he married he got the family inheritance.

33 Interview with MP and former NLCC chairman, 13 May 2017.
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My parents bought new land after they married. When they wanted to send us to school, they wanted to sell some of that land to pay for our schooling, but my dad's cousins did not agree. They said that the women will be taken care of by the families that they marry into. My dad did not want to have a conflict with his cousins, so now we cannot finish our education. My mum is very sad all the time. So what I feel is that we women are not born as human beings.34

Adjusting to changes in wider society is important for the continued strength of Naga customary law and practices, and with more and more women getting education this will be especially important. Such endogenous developments of customary law are therefore also important to the relevance of the Naga customary system, in addition to the potential for state recognition.

Concluding discussion

The key finding of this chapter is that the customary justice system of Naga plays a key role in regulating social life among Naga in the Naga Self-Administered Zone (SAZ), at all levels of society, from the patrilineal kinship group (pha thar su) to the district level. To explain this key role, we have pointed to the interrelationship of endogenous and exogenous factors. Together, these factors show that, despite continuities with the past, customary justice is a dynamic and evolving field that is linked to political developments. Our analysis has shown in particular that efforts to further strengthen customary justice are part of ethnic identity formation and of the consolidation of a Naga political position in the current Myanmar transition.

The first important endogenous factor explaining the strength of Naga customary law is Naga social organisation, which knits people together through the pha thar su, based on patrilineal descent. The role of the pha thar su demonstrates a social obligation to seek customary justice that is focused on reconciliation and the restoration of relationships through compensation and rituals. This can be contrasted to seeking official state justice, which is focused on punishing individuals. The pha thar su protects its members, but the main purpose of justice is social harmony, and this makes it difficult for the individual to pursue other forms of justice than customary justice. Customary procedures

34 Interview, 14 December 2017.
support the continued relevance of the *pha thar su* and secures peaceful relationships between the different *pha thar su*. In addition, many Naga still adhere to the traditional spiritual belief that it can be dangerous to by-pass one's *pha thar su* in dispute resolution, as this may result in misfortune for future generations. The role of the *pha thar su* is, in turn, supported by the headmen and other tribal leaders, and is therefore closely linked to local positions of power.

This relates to the second important endogenous factor underlying the strength of Naga customary law, which is the desire of Naga tribal leaders to promote Naga ethnic identity and Naga nation-building. This is the basis of recent efforts by Naga tribal leaders to consolidate the Naga customary system by codifying it in the Naga Book of Customary Law and by holding NLCC trials at different levels. It is clear from our analysis that these institutionalising efforts help to strengthen Naga access to justice when cases cannot be handled within the *pha thar su* or the village. However, the institutionalisation of the customary system across tribes is also part of promoting a common Naga ethnic identity, and therefore has a political goal that is focused on Naga nation-building. In everyday justice, this is evident in the way in which the tribal Naga leaders try as much as possible to draw disputants towards the customary system and to push them away from the state system. When disputants use the customary system, they are simultaneously increasing the strength of the Naga organisation and of the tribal leaders who represent this.

There is also an exogenous factor at play here in strengthening Naga customary law. The strength of the customary system cannot be understood independently of the views and experiences that most Naga have of the official state justice system. This system is not seen as a provider of justice, but as an uncertain and mistrusted alternative to customary justice. Even though few Naga are involved in armed rebellion against the Myanmar state, the history of the military oppression of the Naga continues to inform negative views of the state justice system. State avoidance is therefore not equal to state opposition, but it does help to support the preference among the Naga for the customary system, as opposed to the state system. In this sense, state avoidance can be seen as a factor strengthening the political position of the Naga within Myanmar.

There is a fourth factor strengthening Naga customary law. This is the willingness of Naga tribal leaders to try to adjust customary law to
wider changes in society. This is, and will probably continue to be in the future, an important part of strengthening customary justice among the Naga. We have in this chapter focused on gender as an area that is being gradually changed, but other areas, such as increased inclusion and a wider representation of Naga people in defining and implementing Naga customary law, could be another important area of change.

We would like to conclude by returning to some reflections on the possible state recognition of the Naga customary system within the current transitional context of Myanmar. It is evident that the political transition has opened up a space for ethnic minority leaders and organisations to raise claims from below. In this process, minorities like the Naga are using familiar strategies of nation-building, such as promoting a common language, common cultural practices and a common law. In the context of Myanmar, these forms of minority nation-building are also a strategy for the survival and protection of minority rights in the context of a long history of centralised Myanmar state-led nation building, which sought to suppress and assimilate minorities into the majority Bamar culture.

Against this background, state recognition of Naga customary law can be seen as one factor protecting and supporting minority rights. However, it is also important to be aware of the political challenges of such state recognition, as is reflected in the wider literature on the topic (Sieder 2002; Kyed et al. 2012; Muriaas 2003; Sheleff 1999; Leonardi et al. 2011). Three important sets of questions must be addressed. Firstly, what is the goal behind the recognition of customary law and whom does it intend to serve? Is the aim to improve and enhance ordinary people’s access to justice and rights, according to what they find legitimate, or are the political goals of elites dominant? And, related to this, do the political goals of the elite support the interests of ordinary people and their rights? Secondly, how and by whom is customary law defined, and thus where does the power of definition lie? Are ordinary people participating in defining customary law, including women and vulnerable groups, or is it mainly a local elite exercise? Thirdly, it is important to ask how the recognition of Naga customary law may contribute to sustainable peace and development in the Naga area, and consequently how it plays into wider negotiations for federalism and ethnic minority rights within the wider political context of Myanmar.
As Sieder (2002) notes, historical experiences from elsewhere show that the extent to which political autonomy granted to minorities results from state recognition of customary law depends on how and by whom ‘customary’ or ‘tradition’ is defined and applied. In some contexts, and certainly during colonial rule, recognition of customary law has mainly been used as a tool of the elite and of the central state to control indigenous people. It has not been used as a tool to enhance ordinary people's access to justice. This is what has been referred to as ‘weak legal pluralism’ (Merry 1988; J. Griffiths 1986). Sieder (2002: 200) writes that: ‘Legal recognition of indigenous norms and practices – subject to national and international human rights norms – [sometimes] represents a way in which ruling elites map out new territories and communities, extending their control to areas formerly beyond their reach or currently beyond their control’ (Sieder 2002: 200). However, this political instrumentalisation of customary law should not only be understood as an extension of power from the top down, or from the centre outwards. It is also important to be aware of local power dynamics. In some contexts, local leaders and elites assume the power to define customary law, without adequate inclusion of ordinary people, and sometimes they use this position to consolidate their own position of power. This may result in the exclusion of some members of the minority groups (for instance along the lines of gender, generation or sub-tribe) not only from defining customary law, but also from equal access to justice, property and resources (Kyed et. al. 2012: 24). With these risks in mind, it is very important that the process of recognition among the Naga be carried through in such a way that it benefits and includes the whole population. It must be an inclusionary and participatory exercise. Otherwise, the recognition of customary law, which is based on group rights, may undermine some individuals’ or sub-groups’ right to equal justice.

Currently, the codification of customary law in the Naga Book of Customary Law has not been based on wide participation, but there is a willingness among tribal leaders to take into account a greater respect for human rights, as we have seen in relation to gender. These leaders will need to collaborate to achieve wider inclusion of Naga voices, such as those of women. This could be supported by international organisations and by the growing number of educated young Naga (see also Tobin 2014: 76). These internal processes of inclusion are important. However, it is also important to look at the external challenges.
The most pressing challenge to access to justice and customary law nowadays does not come from within Naga society, but from the Myanmar state and its (un)willingness to recognise the customary law of ethnic minority groups. Apart from the risks associated with weak legal pluralism, the challenge is to create incentives for the Myanmar state to recognise legal pluralism in the strong sense, that is, to genuinely recognise locally-defined customary laws and institutions. This is necessarily a political choice and involves a change in perspective and political culture to include more recognition of the rights of minorities. As we discussed in the theoretical part of this chapter, a classic dilemma for states (anywhere) is that recognition of customary law in the strong sense will imply the need to devolve judicial power from the centre to the peripheries. For the state to do this in Myanmar would require a fundamental shift in how power has been organised and nation building has been pursued, namely through centralisation and assimilation into the majority Bamar culture. It would also require a change of perspective. Rather than seeing customary law as undermining state unity, the central government would need to be convinced that the recognition of the customary law of minority ethnic groups would create more trust in the state and the peace process. Recognition of minorities could, in fact, afford legitimacy to the central state. At a more practical level, the recognition of customary law and institutions could also ease the burden of the state justice system. The transition may provide the momentum for such shifts and incentives to be articulated. Sieder (2002: 201) notes for Latin America that during times of democratic transition there, the weaknesses of state judicial systems and (at least some) international donor preferences for strengthening informal justice can constitute a means by which spaces for customary law can be strengthened, even when the government seems to continue to block recognition of ethnic minorities’ right to exercise it. This statement applies equally to Naga and other ethnic minority groups’ customary law in Myanmar.

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