Introduction: Everyday justice in a contested transition

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Rebuilding and reforming the rule of law and justice sector is a top priority for Myanmar. It is also vital for our efforts towards sustaining peace and development (...). It is my observation that at the community level, the majority of people continue to use long-standing local methods for solving disputes and are reluctant to take cases to the formal or official justice system of the state (...). The public trust in people who are working in the Justice Sector has eroded. It is because of corruption, exercising the law for their own interests, [and] failing the principle of upholding justice without favour (Daw Aung San Suu Kyi, Naypyitaw, 7 March 2018).

Myanmar’s de facto leader, Daw Aung San Suu Kyi, spoke these words at a conference on ‘Justice Sector Coordination for the Rule of Law’ almost two years after she and the National League for Democracy (NLD) won a landslide victory in the country’s first democratic elections in six decades. The need for fundamental reforms of the ways in which justice is dispensed in Myanmar is evident. Aung San Sui Kyi’s civilian government inherited a flawed justice system, which since the inception of military rule in 1962 had been more concerned with extending a centralised vision of law and order than with providing equal and impartial justice (Cheesman 2015; Crouch 2014). Widespread corruption and inefficiency, and a concern for regime preservation rather than individual rights, still haunt the official justice system, the courts and the police. Lack of state-provided justice remains a core concern. The continuing armed conflict and large-scale military campaigns against ethnic minorities, especially in Rakhine, Northern Shan, and Kachin States, are headline reminders that the transition from military junta to democracy is fragile and contested (Chambers and McCarthy 2018: 3). The serious injustices of the past are still not being dealt with, and there has been little attempt to compensate victims and acknowledge their suffering; and everyday exclusion and discrimination, often based on
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ethnic and religious identity, continue to be at the heart of the transition (South and Lall 2018; Chambers and McCarthy 2018: 15).

In this wider context, the ordinary people of Myanmar are trying to avoid the official state system and are seeking other avenues to obtain justice in the everyday, as Daw Aung San Suu Kyi notes in the speech quoted above. These other avenues do, as she says, include ‘long-standing local methods for solving disputes’ (see quote above) that are culturally and religiously informed, but they also include innovative, evolving and creative ways of dealing with matters of justice, ways that are outside the state system (Kyed 2018a).

This book tackles the vexed question of how these ‘local methods’ – better captured using the term ‘everyday justice’ – play out in the current transitional context of Myanmar. Based on ethnographies in different localities, each of the book’s contributions takes the perspective of ordinary people and asks how people deal with disputes and crimes; whom they turn to for resolutions; and what the various ways are in which they perceive (in)justice. These empirical questions serve as a lens through which to analyse the dynamics of state-making, the role of identity politics and the constitution of order and authority in present day Myanmar.

The concept of the ‘everyday’ is not only appropriate as a way of indicating that our focus is on ordinary, typical, ‘small’ justice issues – as opposed to extra-ordinary, exceptional, ‘big’ justice issues such as mass atrocities, structural discrimination, and human rights violations. It also conveys a particular mode of thinking about social life and politics that moves beyond macro structures, elite politics and abstract processes, by acknowledging the agency of ordinary people and the interaction of a multiplicity of practices, relations, and meanings (Guillaume and Huysmans 2018). In the context of Myanmar, this means foregrounding the experiences of previously ‘ignored actors’ (Ibid. 688): people on the margins of the state, minorities, women and the economically deprived. It also means understanding how these people’s very localised ways of dealing with disputes and crimes interact with and reflect the wider context and the ‘big issues’ that haunt the political environment in the country. While this book does not deal directly with the question of how to pursue transitional justice nor with how to reform national judicial institutions, its contributions serve as an avenue through which to grasp and address bigger issues relating to
justice in a way that is grounded in ordinary people's experiences and everyday practices.

In line with the focus on the everyday, the book adopts a legal pluralistic approach (Merry 1988; Griffiths 1986; von Benda-Beckmann 1997) that acknowledges the possible coexistence of different forms of social ordering, meanings of justice, and interpretations of the causes of disputes, victimhood and suffering. This approach is open to various culturally specific meanings of justice that are not necessarily in accordance with state-legal norms or international human rights, but which may follow local, customary, religious and/or other perceptions of just, adequate and sufficient resolutions to disputes and crimes (Kyed 2018a: ii). It also enables the analytical inclusion of actors who are not officially part of the state legal system in the category of ‘justice provider’ or ‘dispute resolver’. In this book we take this category to include not only judges, police and court officials but also religious leaders, customary authorities, and armed actors. Finally, an everyday and pluralistic perspective allows insights into a variety of individual and collective strategies for seeking justice, including the use of brokers or facilitators.

The contributions to this volume illustrate the existence of legal pluralism in Myanmar across both urban and rural contexts: from the cities of Yangon and Mawlamyine to the Naga hills, the Pa-O Self-Administered Zone, Thai refugee camps and villages in Karen and Mon States. In all of these sites, the official state system is only one among many avenues for seeking resolution in criminal and civil cases. More often than not, the main actors consulted in everyday justice are village elders, local administrators, religious leaders, spiritual actors and/or the justice systems or individual members of ethnic armed organisations. The contributions to this volume explore how these actors address disputes and crimes, and why people turn to them (rather than the state), based both on the *emic* opinions of people themselves and on our *etic* analysis, which draws on history, political context, and comparative theoretical literature (Morris et al. 1999).¹

¹ As discussed by Morris et al. (1999: 781–2), *emic* refers to the insider perspective, or what in anthropology has been defined as the ‘native’s point of view’ (Malinowski 1922) in understandings of, for instance, culture and justice; whereas the *etic* is the perspective of the outsider or observer, taking into account antecedent factors such as economic, historical and political conditions that may not be salient to the cultural insider.
The volume does not pursue a systematic comparative analysis, but provides in-depth empirical insights that juxtapose differences and similarities across local field sites, based on the interrogation of a set of shared questions. This illuminates local contextual variety in the composition of justice actors, customs, identities and socio-political relations, but it has also allowed us to come up with insights into four important themes that are shared across all of the sites covered: a strong preference for local and informal resolutions; an omnipresence of state evasion in justice-seeking practices; the prevalent influence of religious beliefs and cultural norms in how people understand (in)justice; and the significant role played by identity politics both in including and excluding people from access to justice and in shaping local justice preferences.

To situate these findings in the wider literature on legal pluralism and justice reform in general, and the Myanmar transition in particular, this introductory chapter firstly outlines the main debates, concepts and methodology with which the book engages before going more into detail in relation to the four themes shared across the different field sites mentioned above. Finally, it provides an outline of the chapters and a brief discussion of the limitations of this volume and the need for further studies.

The debate and concept of legal pluralism

This book inserts itself into the debate about legal pluralism and the recognition of customary, informal, or non-state systems that now cuts across academia, policy circles, and development practitioners. Since the 1960s, the concept of legal pluralism has been used by anthropologists and socio-legal scholars as an analytical concept to describe situations where there is a plurality of legal orders within the same social field (Merry 1988: 870; Griffiths 1986: 2). It has been applied in a range of studies, spanning the interactions between indigenous and European law during colonialism and newer studies of the dialectic of different normative orders within industrialised societies and post-colonial settings (Merry 1988). As is evident in the work of John Griffiths (1986), the scholarly understanding of legal pluralism as an ‘empirical state of affairs’ implies a critique of the state as the singular and essentially given foundation of ‘law’ and unit of political organisation. Griffiths (1986: 2–4) defined this singularity of state law as ‘state legal centralism’,
which he saw as an ideological project aimed at subordinating all other legal orders, whether defined as customary, informal or indigenous, under the sovereign command of the state (see also Merry 1988: 870). State legal centralism, Griffiths argued, inhibits us from considering alternative, non-state forms of ordering as legal phenomena and types of law equal to state law (ibid.: 3). What Griffiths called the ‘strong’ or ‘descriptive’ legal pluralistic approach, by contrast, allows for the inclusion of norms, meanings, and practices of ordering and justice that can differ from state-legal criteria; and it does not presume a predefined hierarchy of legal orders.

The contributors to the book use this strong legal pluralistic perspective as their analytical foundation. At the same time, they acknowledge the political stakes and dilemmas that are inherent in legal pluralism within transitional and conflict-affected societies like Myanmar, which, since the late 1990s have also permeated international debates among policymakers and practitioners of justice sector reform. Paralleling the United Nation’s recognition of the rights of indigenous peoples (UN 2008), international agencies such as the World Bank, USAID, UNDP and DFID have increasingly adopted a more legal pluralistic perspective, seeking ways to incorporate ‘non-state’, ‘informal’ and ‘customary’ actors into programmes aimed at improving access to justice for poor and marginalised people, especially in so-called ‘fragile states’ (Andersen et al. 2007; see also DFID 2004). This marks a shift from what used to be an exclusive focus on formal state institutions and on top-down state-building in donor policies, reflecting what Griffiths (1986) calls state legal centralism. The main reason for the shift has been the poor success rate in reforming official state institutions and a realisation that the ‘non-state’, ‘customary’ or ‘informal’ systems were often the most accessible, legitimate, and effective justice providers in the eyes of ordinary people (Kyed 2011: 5–7; Harper 2011; Isser 2011; Baker 2011). International agencies – and indeed some states in the Global South – have come a long way in accepting the reality of legal pluralism, but important political dilemmas continue to permeate the field.

One core dilemma is the often-perceived opposition between informal or customary practices and international human rights and rule of

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2 For a detailed and critical discussion of the application of legal pluralism by international development agencies, see Kyed (2011) and Albrecht et al. (2011).
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law principles. The former are often valued for their local accessibility, flexibility and capacity for mediation, but are criticised for failing to adhere to the principles of equality before the law (especially with regard to gender, due process, legal certainty and predictability; see Kyed 2011: 7).

Another core dilemma is the tension between recognising a plurality of justice systems within the territory of the nation state and international adherence to the state as the superior form of political organisation. The strength of this idea of the state, as Bruce Baker (2011) has pointed out, makes it difficult for international agencies to accept a plural system where non-state systems are equal to, rather than subordinated to, state law and authority. Politics are involved here, because justice systems are not politically neutral but are embedded in particular socio-political structures (Tamanaha 2008: 400). Recognition of legal pluralism can therefore be seen by existing states as a challenge to their sovereignty, and thus to their claim to superior authority vis-à-vis non-state claimants (Kyed 2009: 115).

In state and donor policies these dilemmas have mainly been tackled by compromising existing forms of pluralism, through interventions that try to ‘fix’ or ‘harmonise’ customary/informal practices so that they fit better with state-legalistic definitions of law and justice (Isser 2011: 342–343; Harper 2011: 41–51; Albrecht et al. 2011; see also Chapter 10, this volume). The actual incorporation of non-state legal orders into justice sector reforms has frequently either been treated as a ‘transitional strategy towards’ pursuing conventional state-building (Isser 2011: 325; Kyed 2011: 6) or has been used by states as a means of subordinating and regulating non-state legal orders (Kyed 2009). Very few policies recognise the plethora of actual non-state practices and actors on their own terms or regard these as being on par with the state. There is also often a failure to acknowledge that local understandings of justice may not adhere to international state-legal definitions but may be multiple and diverse (ICHRP 2009: 93). As Kirsten McConnachie (Chapter 10, this volume) shows, international interventions (in the case she discusses, refugee camps) that seek to ‘fix’ and ‘harmonise’ local systems, while well-intentioned, can end up undermining what local residents view as legitimate justice provision. An alternative approach is to employ an open-ended and non-state centric perspective on legal pluralism in the ‘strong’ sense, as Griffiths
(1986) argues. This is exactly what this book does, in its analysis of everyday justice in Myanmar.

Moving towards legal pluralism in Myanmar

While some donor agencies and government officials acknowledge that justice provision in Myanmar is not solely a state affair, existing laws, policies and most justice sector programming do not support a recognition of legal pluralism (Kyed and Thawnghmung 2019). State-legal centralism prevails strongly, at least officially. The judicial system of the state is legally the only official court system in present-day Myanmar: it holds a monopoly on the mandate to adjudicate civil and criminal cases (Kyed 2018a; Kyed 2018b; Denney et. al. 2016; MyJustice 2018; Saferworld 2019). Even the officially recognised customary law, which applies to family law matters only – based on the four main religions (Buddhism, Islam, Hinduism and Christianity) and codified during colonial rule – can only be applied by the official courts (Crouch 2016: 62–92). The customary rules practiced within the many ethnic groups, and locally codified by some (such as the Naga), remain unrecognised by the state. Legally speaking, they are outlawed, although the application of such rules may be tolerated in practice, as they were during colonial rule. The same applies to the parallel justice systems and laws that have been developed by some of the ethnic armed organisations (EAOs), as documented by McCarthy & Joliffe (2016) (see also Kyed 2018b; Harrisson and Kyed 2019; Kyed and Thitsar 2018). In practice, these systems challenge the monopoly of the central state to define what law and justice are, and they also claim to be able to resolve disputes and crimes that are officially within the mandate of the state. It is very likely that they are not legalised for this precise reason.

State recognition of ethnic minority systems is a deeply political and contested issue in Myanmar, not least given the many years of conflict, ethnic minority struggles for self-determination, and the efforts on the part of the previous military regime to enforce superior rule and to force minorities to submit to majority (Burmese) culture. In this larger picture, what has been particularly silenced and has also remained unrecognised is the plethora of local justice actors, who may not always constitute a ‘system’ but who are important in everyday justice in local settings.
To analyse legal pluralism in Myanmar from the emic, insider and everyday perspective, the contributors to this book apply open-ended, rather than universalist, definitions of justice and justice provision. This approach allows us to include in the category of justice provider actors and forums other than those who hold the official title of justice provider (such as court judges). It also means that we do not take it for granted that people everywhere understand disputes and crimes in the same way or that justice conveys the same meaning to everyone. What may be regarded as a crime in one context, punishable by a given law or set of rules, may not be regarded as a crime in another context. Similarly, while a sense of justice to some may be associated with the punishment of a perpetrator of a crime, to others material compensation or reconciliation may be understood as appropriate justice. Based on this acknowledgement of pluralism, justice provision is used here as an umbrella term to describe the resolution of disputes and crimes that involves deliberate efforts to provide a remedy, a reparation, a punishment and/or an end to a conflict between two or more parties, regardless of the outcome of those efforts. Justice provision may be associated with material outcomes and based on secular mechanisms, as is, for example, a third-party decision on reconciliation, but it can also be non-material, as is spiritual, religious and social healing or repair. Across the book, we see various combinations of these forms of justice, influenced by cultural norms, religious beliefs, historical experiences and socio-political conditions.

In studying everyday justice from an emic perspective, the contributors to this volume do not, however, use a normative approach that reifies and romanticises ‘the local’, ‘the customary’, or ‘the informal’. Rather, the book pays close attention to local power dynamics and to how, at various levels, politics permeates the provision of justice within local arenas and in the relationship between the state system and other legal orders. Following Tamanaha’s (2008) approach to legal pluralism, we take the view that justice provision, and social ordering more broadly, are not neutral, apolitical activities. They provide a route to authority – and often an income too – as well as supporting positions of power within the social organisation of a given society (Kyed 2009: 115). Keebet von Benda-Beckmann (1981) has introduced the concept of ‘shopping forums’ to capture these power dynamics as forms of competition between justice providers in legally plural contexts (see
Poine and Kyed, Chapter 1, this volume and Richthammer, Chapter 4, this volume). Paying attention to power dynamics also means analysing the possible forms of inclusion and exclusion from access to justice, which may be based, for instance, on differences in gender, generation, ethnicity, religion and socio-economic status. Finally, the book pays attention to the politics of justice provision that emerges in the relationship between the state and other forums. In Myanmar, unlike some other contexts (Kyed 2009; Tamanaha 2008), this relationship seldom takes the form of open competition over the making of final decisions in settling individual disputes or crimes. Rather, it is expressed in state evasion or through different forms of identity politics.

Legal pluralism in Myanmar is characterised by deep splits between the state and local justice forums, but this does not mean that we can conceive of these as expressive of two distinct legal orders – the state and the customary. In the contemporary world, as Merry (1988: 872–873) has highlighted, it is difficult to apply the ‘classic legal pluralism’ perspective, which, with its focus on the effects of imposing colonial law on the colonised, tended to conceive of state and customary systems as inherently distinct and separate. The reality is much more pluralised and hybrid (Albrecht and Moe 2014). In Myanmar, as elsewhere, justice providers often draw on a body of rules and procedures that derive from a mixture of different legal orders from the past and the present. There are many mutual influences and there exist both internal and external dynamics of change and continuity. The chapters in this book try to capture this complexity, based on detailed tracing of cases and analysis of everyday dispute resolution.

The methodology: Ethnography and case studies

A legal pluralistic approach and a focus on the everyday calls for a research methodology that covers in-depth empirical studies of justice practices, actors, and perceptions within selected localities. Ethnography enables the kind of ‘insider’, emic accounts that such a research endeavour requires, but does not preclude a historical and contextual analysis (Hammersley and Atkinson 1995). With its combination of participant observation, semi-structured interviews and informal conversations through longer-term stays or several return visits to a single field site, ethnography offers insights not only into people’s (stated)
perceptions, as captured in structured interviews and surveys, but also into social actions and practices (Hughes 1992). The methodological focus on practices necessarily has theoretical dimensions, linked to an actor-oriented approach to social structure and social life – which holds that actions and social interactions are not simply reflections of (or deviations from) an innate or fixed social structure, but are part of producing social structure (Holy and Stuchlich 1989: 6). This also implies a view that norms (what ought to be or prescriptions for actions) are not necessarily always the same as practice (what people do). If a person is asked, for instance, how a theft case is handled in their village, the answer will typically describe a prescribed norm or rule relating to how and by whom thefts are supposed to be handled. This can provide valuable answers about people's perceptions of the ideal way for justice provision to work or what they have been told is supposed to be the norm. However, our research shows that this does not always reflect real life cases: i.e. theft cases are handled in often ambiguous and varied ways, following different routes, in practice. In addition, social actors ascribe different meanings to actions, such as why a case was reported to a certain forum. People also understand central concepts like justice in different ways. Triangulation of data on norms, perceptions and actions allows ethnographers to explore both what (different) people do and why they do it, seen from the perspective of the individual within a specific social setting.

Each of the chapters in this book draws on such ethnographic research, which, in the context of Myanmar’s history of military rule and isolation from the outside world, has been very difficult, if not impossible, until very recently. The transition has implied openings for empirical research, allowing both Myanmar and foreign researchers to stay for longer periods of time in a research setting and to access areas that they were previously prohibited from entering by the government. In fact, the contributions to this volume present the very first ethnographies of everyday justice in Myanmar since the beginning of the military regime in 1962. This means that the studies are very exploratory and that they could not draw upon existing post-colonial research on justice or on

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3 McConnachie’s chapter on justice in the refugee camps (Chapter 10, this volume) was based on ethnographic research prior to and during the very first year of the transition (2008–2012), research which was only possible because the places covered are outside the territorial governance of the Myanmar state.
the localities in which fieldwork was carried out. Thus, the researchers had to rely on the oral accounts by local informants, for instance in getting to know the history of each field site and changes in local justice provision and in social life in general.

The recent history of military government means that access is still difficult in many localities, not only in terms of official permission to conduct fieldwork but also in terms of building the kind of trust and confidence with informants that is necessary to discuss sensitive issues such as disputes, relationships with authorities and so forth in depth. Ethnography, with its focus on long-term stays in one setting and/or several return visits to one or a few selected places, is particularly well-suited to trust-building and to getting people to share their stories, views and dispute cases. Trust-building is particularly important for researchers who are foreigners (from outside of Myanmar) or outsiders (Myanmar researchers of other ethnicities) to the local setting and its inhabitants, which is the case for most of the contributors to this volume. As Than Pale, a Shan Buddhist, notes in her chapter, it took her several return visits to the mixed Buddhist–Muslim village in which she carried out her fieldwork to get Muslim women to speak to her, and achieving this has been essential to her ability to analyse the relationship between Buddhists and Muslims in local dispute resolution.

However, ethnography does not remove the challenges of translation, cultural and linguistic, and of the positionality of the researchers as ‘outsiders’ who will always, necessarily, interpret their data in ways that can never be completely aligned with the ‘insider’ view (Hammersley and Atkinson 1995: 93–102). To take these challenges into consideration requires ethnographic reflexivity and attention to local language, especially in relation to the meanings of core notions like *justice*, which are culturally loaded and based on different experiences. In the chapters in this book, the authors try as much as possible to include the meanings of those local words that are most significant to their topic of analysis, in order to reduce the risk of losing their local meanings with translation into English. In the field, this has been facilitated by working with assistants and translators who are familiar with or from

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4 Exceptions include Thang Sorn Poine, who is from the Mon village studied in Chapter 1; and Lue Htar, who is a Goga Naga, the group studied in Chapter 3, which she has co-written.
the local context and by actively discussing the meanings of local words with key informants.

Ethnography, being essentially qualitative, captures the complexities of social contexts with less focus on the generalizable and the comparative. The chapters in this book are built on qualitative case studies in one or two localities (for example, a village or a ward), and most of them analyse everyday justice through the presentation of one or a few selected case examples of disputes, injustices or crimes. The focus is on depth rather than breadth. This has the advantage of teasing out the ambiguities, inconsistencies and complexities that exist even within a single village and a single case, but it also means that the book cannot claim to represent and generalise in relation to everyday justice in Myanmar as a whole, or even within one ethnic group or within one state. This book is therefore not a book of systematic comparison. Instead, the authors use the case-study method to identify attitudes and patterns of behaviour relating to everyday justice seeking practices and perceptions within the case-study field sites while also maintaining a focus on inconsistencies and variation in everyday practices (Flyvbjerg 2006). In addition, the case studies answer both ‘how’ and ‘why’ questions by relating a case to its wider contextual conditions and by triangulating data sources (Baxter and Jack 2008: 544–545). Through looking at all of the individual cases in this book, we are able to identify important similarities and differences, which can serve as a basis for proposing tentative generalisations that can be tested in future research.

In most of the chapters of this book the case studies aim to cover both of 1) the ‘locality’ of the fieldwork within which everyday justice is explored, through interviews and observations; and 2) a selected number of real-life disputes and crime cases. Rather than beginning with how already-known justice providers or institutions, such as a village administration, resolve disputes, the primary focus of data collection and analysis is the cases themselves, which relate to disputes and to crimes. This method serves to capture actual practice, based on oral accounts, and, where possible, also the ways in which cases are handled within specific forums. In the EverJust project we referred to this method as ‘case tracing’, which means that the researchers followed different cases of disputes or crimes, where possible from beginning to end, and included the accounts of as many persons as possible.
a given case (including disputants, victims, perpetrators and dispute resolvers) or who observed it, asking them in detail about the trajectory of a case (who resolved it, what was the cause of the case, what were the outcomes, which resolution procedures were used). Interviews also served to capture the different norms and perceptions that interviewees ascribed to a case, by asking them to evaluate the process, outcomes and choices made (why was this and not that pathway to a resolution used, was the outcome seen as satisfactory/just, how was the cause of the conflict understood). The distinct advantage of this approach, over one that focuses on particular types of institutions, is that it remains open to a variety of reactions to disputes and crimes as well as to the possible use of justice providers who are not officially recognised as such (Isser et al. 2009: 14).

The case studies in the chapters are used to analyse attitudes and patterns of behaviour relating to everyday justice, through triangulation with data from other cases about which some data was gathered, as well as through triangulation via interviews with justice providers who described the norms and rules for justice provision in the field site in general. In some chapters, typical or more representative cases are used as examples, allowing an analysis of general attitudes and patterns of behaviour; in other chapters the cases selected were atypical or likely to shed light on particularly complex circumstances. Than Pale in Chapter 6, and Poine and Kyed in Chapter 1, for instance, are interested in understanding what happens when crimes cannot – against the norm – be resolved within the village, and thus they use a case that is (atypically) resolved outside of the village.

The selection of cases of crimes/disputes (and the selection of interviewees) does not follow the logic of random sampling and is therefore not statistically representative (Small 2009: 24–25). Instead, cases were selected according to information-oriented sampling (Flyvbjerg 2006), based on sequential interviewing, snowballing, observations and the identification of typical and atypical cases (Small 2009: 28). While this selection method is characteristic of qualitative case studies, it is also suitable for the fieldwork contexts we covered, where there are no available dispute/criminal case registers from which random sampling can be made. Therefore, the cases included in this book are those that the informants, in a given setting, chose to tell the researchers about. Furthermore, the selection of field sites as case-study areas was not
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based on sampling, but on access options, connections and security concerns. Thus, the chapters can claim neither to be representative of, for instance, (all) Karen villages or (all) urban wards in Mon State; nor can a particular field site be claimed to represent a typical or atypical field site. Instead, the case studies provide in-depth empirical insights into ongoing processes and engage in explaining those processes by analysing them in relation to their own contextual conditions.

In all of the chapters in the book, care is taken not to treat the inhabitants in the field sites as homogenous ‘communities’ with the same opinions and experiences. Thus, as many voices as possible are included, and it is made clear ‘who is speaking when’ (according to gender, generation, ethnicity, religion, socio-economic status and so forth). Due to the sensitivity of the research topic, all persons and local place names (villages, wards) are anonymised in all the chapters. Only information on the state, town and/or township is included.

The insights of the book: Shared themes across field sites

Given the ethnographic case-study approach, each of the chapters in this book provides unique insights into everyday justice in particular fieldwork sites. Each focuses on analysis of different sub-topics. These include property disputes and brokers; the role of religion; ethnic exclusion/inclusion; the influence of armed groups; customary law codification; critical affects of the state; forum shopping; and camp justice in the context of international interventions. Cutting across this variety, the book presents significant insights into four themes that are, in different ways and with different weight in different sites, shared across field sites, which come through in all of the chapters.

1. Preference for local, informal resolution

This is the first of the themes. The vast majority of dispute and crime cases never make it to court, but are, if they are ever, indeed, reported to a third party, handled by local actors within the village or neighbourhood. In the field sites covered by the chapters in the book, this applies to cases including theft, physical fights, domestic violence, public disturbances and arson; and to disputes related to marriage, land, property, and debt. Not all such cases are reported to a third-party
justice provider, as some are settled within the closest structures of the family, neighbours, or the kinship-group, while others are left unadressed. This is not simply a rural phenomenon or evident only where the state courts are geographically distant. Even in Yangon city, where the state has a strong presence and seems unavoidable, a considerable number of cases do not go to court but are handled informally by local actors or brokers (pweza in Burmese), as Lwin Lwin Mon and Rhoads show (Chapters 5 and 9, this volume). These empirical findings correspond well with people's justice preferences as expressed in qualitative interviews and confirmed by available surveys. A survey conducted by the EverJust research project in 2016 showed that approximately 70 per cent of both male and female respondents in selected urban and rural areas in Yangon, Karen State, and Mon State think that disputes and crimes, irrespective of type and gravity, are best resolved within their local area.6

Village and ward leaders are by the far the most significant local justice providers, and across all of the field sites they perform most third-party resolutions. In the Myanmar government-controlled areas covered by the chapters, this category of local leaders includes a hierarchy comprising 10-household and 100-household leaders (sal eain mu/ yar eain mu), who are organised under a ward administrator (yat kwet oak choke yey mu in urban areas) or a village tract administrator (yat

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6 A UNDP survey on Kachin, Rakhine and Shan States generated similar findings – between 71 per cent and 85 per cent of the respondents felt that it was best to resolve disputes within the community (Kachin (71.7 per cent), Rakhine (85.5 per cent), Shan (73.1 per cent) (UNDP 2017). Similarly, in a country-wide survey conducted by the MyJustice project, covering areas controlled by the Myanmar government – it was found that approximately 70 per cent of respondents felt that the ward, village tract, or household leaders were most appropriate for settling disputes between people (MyJustice 2018). Our own EverJust survey was conducted in the areas where we were also doing qualitative research. In Karen State, these included two urban wards and two villages in government-controlled areas, as well as one village in an area controlled by the Karen National Union (KNU) (an ethnic armed organisation). In Mon State it covered one village in an area controlled by the New Mon State Party (NMSP), another ethnic armed organisation, as well as three villages and one urban ward in government-controlled areas. Five urban wards were covered in Yangon Township. A final analysis of the survey is still underway. It did not cover the Pa-O and Naga Self-Administered Zones, which are covered by chapters in this book (Poine and Win, Chapter 2; Htar et al., Chapter 3), as qualitative studies there were carried out after the survey was finalised. These are therefore only estimated figures – which do, however, confirm what has emerged from the qualitative studies.
kwet oak choke yey mu (in rural areas). Often, these administrators are assisted in the resolution of disputes by elders (ya mi ya pha in Burmese) or by a committee of elders and 10-household leaders. Officially, the ward and village tract administrators constitute the lowest level of the Myanmar state administration and are elected by a member from each household (Kyed et al. 2016; Kempel and Aung Tun 2016). However, these leaders’ extensive role in justice provision is, in practice, only vaguely recognised by the state. The law of 2012 that regulates the ward and village tract administrations states that these administrators must ensure ‘security, prevalence of law and order, community peace and tranquillity’ (The Republic of the Union of Myanmar 2012: Chapter VII, article 13a). However, it does not specify the types of cases that local administrators may deal with, hear or resolve. The only explicit reference is to thieves and gamblers, who must be reported to the police (ibid.: Chapter XV, Article 35). Ward and village tract administrators are detached from the official judiciary, with no system of appeal and referrals – which also reflects the fact that they do not have a de jure mandate to punish and adjudicate crimes. As such, they constitute mainly informal justice providers, who operate outside the law – but who are, nevertheless, widely preferred and more trusted than the official justice system.

Trust, and the fact that the village and ward leaders are embedded in the local setting, are both significant in understanding their prominent role in justice provision. The informal resolution mechanisms that they use also afford them local legitimacy. They mainly apply compensational justice and try to reach consensual agreements through negotiation and mediation, which fits well with most interviewees’ stated justice preferences. The emic notion of nalehmu (literally, ‘understanding’) is often used to describe the way in which resolutions are based on mutual understanding, trust, and support from social relations (for a discussion of nalehmu see Rhoads, Chapter 9, this volume). There is a strong focus

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7 The 10 household leaders are elected representatives for each 10 households in a village and a ward, and from among these 10-household leaders a 100-household leader is elected, who work closely with the ward (urban) and village tract (rural) administrators. In rural villages with around 100 or less households, the 100-household leader is often referred to as the village leader, which is a category of leadership that was initially removed by the 2012 ward and village tract administrator law, but reintroduced when this law was amended in 2017 to ensure village leader representation in smaller villages, below the village tract level.
on reconciliation, social harmony, and avoiding the escalation of conflict, rather than on punishing perpetrators. Warnings against repeat offences are used, but social sanctions and ‘promise letters’ (*kahn won*) are the main mechanisms for retaliation, rather than recourse to the punitive (official) justice system. In this regard, the dominant mechanisms are non-judicial and similar to community-based or customary dispute resolution in other contexts (Albrecht et al. 2011; Harper 2011). The prominent role of negotiation and informality is also reflected in the use of orally transmitted rules and norms.

The studies covered by the contributors to this volume found no examples of the use of written laws or village principles in the areas fully administered by the Myanmar state. Things are different in the areas under the partial or full control of ethnic organisations, where written village rules and principles were found to be used in many cases. Interestingly, the studies on the Pa-O and Naga Self-Administered Zones (SAZ) show that the degree of legal institutionalisation at the village level is higher than in Myanmar state areas (see Poine and Win, Chapter 2, this volume; Lue Htar et al., Chapter 3, this volume). The same applies to areas controlled by ethnic armed organisations such as the KNU (Karen National Union) and the NMSP (New Mon State Party), as Harisson and Kyed (2019) show (see also Kyed and The Thitsar 2018). In these areas there is also a clear preference for local dispute resolution and village systems have fixed justice committees, use written principles, and have direct links of referral to higher-level justice forums within the ethnic organisations. Village justice committees in these areas can also issue punishments such as fines, communal labour and/or expulsion, but they do not have prisons. These differences from the Myanmar government-controlled areas reflect the fact that the ethnic organisations, unlike the Myanmar state, recognise village justice systems as part of their systems of governance, even though this is not officially recognised by the Myanmar state. This point of difference becomes important when cases cannot be successfully resolved at village level.

When disputants cannot agree or when perpetrators cannot be identified, fail to respect decisions, or repeat their offences, village or ward leaders sometimes give up on resolving a case. When this hap-

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8 The ethnic armed organisations, like the KNU and the NMSP only have prisons at levels above the village (Harrisson and Kyed 2019).
pens, disputants and local leaders alike try as much as possible to avoid cases ending up in the Myanmar state system. In the Pa-O and Naga areas, the typical reaction is to transfer the case to the higher-level ethnic or tribal forums, which are mostly trusted and seen to use dispute resolution mechanisms that are familiar and preferred. By contrast, in Myanmar government-controlled areas it is very rare to see a case being transferred to higher levels in the official system or even leaving the village or ward. Sometimes this means that cases are left unresolved, but on many occasions the parties instead turn to a variety of alternative actors or ‘informal justice facilitators’ (Kyed 2018a; 2018b).

‘Informal justice facilitators’ are actors who have no explicitly recognised role in justice provision, but who give advice, connect people to justice providers, pressurise the opposing party to pay compensation or come to an agreement, or provide spiritual remedies and rehabilitation. They include, for instance, religious and spiritual leaders such as Buddhist monks, astrologers, and spirit mediums, as is evident in Richthammer’s analysis of a theft case (Chapter 4, this volume). They can also include individual armed actors, such as the member of a KNU splinter group in Than Pale’s chapter (Chapter 6, this volume) who helps to pressurise the perpetrators not to repeat an offence. In Poine and Kyed’s chapter (Chapter 1, this volume), the mixture of informal actors is evident – when the village tract administrator gives up on resolving an arson case, it initially goes to the NMSP justice system, but is finally brought to a conclusion by members of the Myanmar military (the Tatmadaw) within a secret military office. Recourse to politicians, the media, demonstrations and other ‘out-of-court’ mechanisms are also evident in Poine and Nilar Win’s chapter (Chapter 2, this volume), which shows how the Pa-O victims of land confiscation give up on help both from the state system and from their own ethnic organisation.

This recourse to informal justice facilitators reflects the complex pluralism of justice provision and also a prevalent mistrust in (most) external systems and authorities, especially those of the Myanmar state. This mistrust reinforces a preference for having one’s case resolved by local forums, whenever possible.

9 A similar pattern of referral to higher-level ethnic justice committees within the ethnic organisation was seen in KNU and NMSP areas (see Harrisson and Kyed 2019; Kyed 2018b; Kyed and The Thitsar 2018).
Local forums, as McConnachie (Chapter 10, this volume) discusses with regards to local camp justice, also have limitations. This is evident when what people refer to as ‘very serious cases’ occur, such as murder, homicide, rape by strangers,\(^{10}\) drug trafficking, and land confiscations by external actors. These cases are difficult for local justice providers to resolve, either because people expect high penalties or because, as is often the case with drug trafficking and land confiscation, they involve armed actors – military or ethnic – and/or persons with powerful political connections, whom local leaders do not dare confront (Kyed 2018b; see Htar 2018 on this point for Karen State). Again, when tackling these cases, people seldom report them to higher levels of the official Myanmar justice system, but either leave them unresolved or engage informal justice facilitators or ethnic systems where these exist – as they do in NMSP, KNU, Pa-O, and Naga areas. In Lue Htar et al.’s chapter on the Naga (Chapter 3, this volume), for instance, a homicide case is resolved through negotiation and compensation between the kinship groups (pha thar su) of the victim and the perpetrator. If this had not been successful, the case would very likely not have been reported to the Myanmar police but instead to the higher-level ‘Naga literature and cultural committee’. There is no confidence that the Myanmar state system will provide satisfactory results, and the Naga prefer to be tried under their customary law, which focuses on compensation rather than imprisonment, and is applied by Naga people. However, recourse to ethnic organisations may not in all instances be successful, either because their authority to enforce decisions is not sufficiently well recognised, as Poine and Kyed show (Chapter 1, this volume) or because members of these organisations are sometimes themselves involved in cases, as Poine and Nilar Win (Chapter 2, this volume) illustrate. As these two chapters on a Mon and a Pa-O village demonstrate, many of those cases that are not successfully resolved locally tend to get very complicated due to power dynamics and the presence of multiple authorities and overlapping systems. This too reinforces a preference for local resolutions.

As already hinted above, there are several reasons for the preference for local and informal resolutions, related to a combination of politi-

\(^{10}\) Rape of women by relatives or by people whom the women and their families know is usually dealt with within the community, initially within the families. Sometimes a local dispute resolver such as a village leader is involved. However, many such cases are not heard or resolved at all (see Denney et al. 2016; Poine 2018).
cal-historical and socio-cultural factors (Denney et al. 2016: 11; Kyed 2018a). Many decades of military rule, conflict, and corruption have created a distrust in and a fear of formal Myanmar state institutions, but this is only part of the explanation. Another important part of the explanation for the preference is specific forms of belonging, often expressed in identity politics of some kind, as well as culturally and religiously informed perceptions of justice, misfortune, and dispute that exist within groups and localities. Before turning to this topic, we will look first at the tendency to evade the state.

2. State evasion

This is the second of the themes that are shared across the case studies dealt with in this book. Despite the transition, a negative narrative of the Myanmar state prevails within the localities covered in this book, and this leads to a decided and deliberate ‘turning away’ from the justice institutions of the state. This is not just about avoiding the state, in the sense of keeping away or not doing something, but is about explicitly evading it, with ‘evasion’ being understood as an act of avoiding something unpleasant or unwanted (Cambridge Dictionary, online). What are the reasons for this evasion? According to interviewees across the study areas, evasion is because of the way that the official legal system functions: it is seen as costly in time and money, and as infected by corruption and complicated legal procedures. The state system is not associated with justice but is perceived as being beneficial only to those who have sufficient powerful connections and financial means to win a case (MLAW and EMR 2014; Kyed 2018a; Denney et al. 2016).11 Far from being associated with justice, people associate engagement with the state system and with higher-ranking authorities with psychological and emotional harm.

Many people view the official system as intimidating, because anyone who brings a case to it must face higher-level state authorities. People also view the formal court setting, displays of official documents, and the use of formalistic language and complicated procedures as intimidating. As court proceedings are held in Burmese, this feeling

11 For a description of Myanmar’s legal system as it has evolved over time, including how it suffers from many challenges to providing equal justice, see Rhoads, Chapter 9, this volume (see also Cheeseman 2015; Crouch 2014).
is even stronger among those who do not speak Burmese well, such as members of the ethnic minorities. Contacting the state is seen to create problems and to worsen an already bad situation, as Harrisson (Chapter 8, this volume) notes from the point of view of the residents of a poor ward in Mawlamyine: even if you are a victim, it brings you into a web of complications, costs, shame, disruption of social relations and potentially a loss of justice or even life (as Harrisson shows in discussing a case where a man who was very likely innocent of the crime that he had been convicted for lost his life in prison). The situation is even more precarious for those people who are excluded from citizenship, and who therefore have no ID documents, as is currently the case with many Muslims and Hindus in Karen State (and elsewhere), as Gravers and Jørgensen discuss (Chapter 7, this volume).

State evasion does not reflect an aversion to formality or legal procedures as such. Rather, it highlights people’s underlying distrust and oftentimes fear of the Myanmar state and its authorities. Distrust and fear are, in turn, deeply embedded in historical experiences of state oppression and abandonment. Even though most people mentioned in this book have never actually experienced a court case or reported a case to the police, the negative historical narrative related to the state (Richthammer, Chapter 4, this volume) informs their evasion of the state in the present. This is particularly, but not exclusively, evident among the ethnic and religious minorities, who have experienced particularly harsh forms of military state oppression or who are still excluded from citizenship (see Gravers and Jørgensen, Chapter 7, this volume). In many ways this book illustrates that the present-day state remains associated with the military state, and that the political transition has done little to change this. In the poor urban ward of Mawlamyine studied by Harrisson (Chapter 8, this volume), this continuity with the past is experienced as a lack of state care and an indifference towards the concerns of the poor. When people do engage the state, it is experienced as predatory. Thus it is better to evade the state whenever possible.

In practice people evade the state by carving out temporary ‘non-state spaces’ (Scott 2009) where disputes can be resolved and interpreted, in a different way, outside of the legal and political framework of the state. Sometimes this simply means not reporting a case to the state, even if it is a severe crime. Instead the case is concluded locally. At other times, evasion is more explicitly and deliberately articulated. In these instances,
local leaders or informal brokers often play a crucial role as ‘evaders of’ and ‘gate-keepers to’ the state system. Ward and village leaders often warn people that going to the official system is time-consuming and costly, and that it may not serve their justice needs (such as their desire for compensation) but may instead escalate the problem (see Poine & Kyed, Chapter 1, this volume; Richthammer, Chapter 4, this volume). Ward and village leaders do not believe that the official system effectively supports their local-level decisions, but see it as undermining these decisions. They too mistrust the courts and the police, and state evasion is articulated as a way of protecting village residents. Rhoads (Chapter 9, this volume) shows how informal property brokers (pweza) in Yangon divert cases away from the state legal system, even before a dispute begins, by relying on informal transactions and paperwork. In the chapter on the Naga (Lue Htar et al., Chapter 3, this volume), tribal leaders actively divert a case involving a traffic accident (which resulted in a death) away from the official court and back to the customary system, claiming that this system serves the Naga better, as it secures compensation for the victim’s family and reconciliation of the parties involved.

It is evident that state evasion reflects the preference for local resolution, but acts of evasion also serve, in many instances, to sustain ‘the local’, ‘the tribal’, or ‘non-state spaces’, something James Scott also suggests in *The Art of Not being Governed* (Scott 2009). This has clear political dynamics. In some situations, for instance, state evasion works to support the authority of village and ward leaders, because dispute resolution affords status and standing (Lund 2006; see also Poine & Kyed, Chapter 1, this volume; and Richthammer, Chapter 4, this volume). Thus, when local leaders advise people not to report to the state, they reinforce their own authority. However, state evasion is infused not only with individual interests but also with local collective interests focused on strengthening community cohesion and ethnic identity.

Than Pale shows, in her chapter on a mixed Muslim–Buddhist Karen village (Chapter 6, this volume), how joint resolution of disputes, without state interference, preserves internal social harmony and avoids the escalation of conflict between the two groups in the village. This is because, as Gravers and Jørgensen (Chapter 7, this volume) also show, tensions between groups and discrimination against Muslims derive mainly from the actions and attitudes of external state officials and monks. State evasion can thus be a way of preserving peace inside
smaller, mixed villages. In Lwin Lwin Mon’s chapter, we see how the resolution of disputes among the Karen themselves serves to strengthen a united Karen ethnic and Christian identity (Chapter 5, this volume). A similar point can be made about the Naga leaders’ insistence (see Lue Htar et al., Chapter 3, this volume) on using customary law, which in this context is explicitly linked to identity politics. As Lauren Nader (1990: 291) argues, the emphasis on achieving social harmony in local dispute resolution can be interpreted as a way to resist external control by the state so as to preserve local autonomy.

State evasion does not, however, mean full state absence nor does it necessarily mean overt resistance to the state. Rather it often involves complex relationships between state presence and state absence, as well as state ‘mimicry and contradiction’ (Scott 2009: 182). The option to transfer cases to the state system always lurks in the background as a possibility and as a site of comparison with local resolution. It is not uncommon, for instance, for village or ward leaders to threaten to send perpetrators or disputing parties to the police, if the parties are reluctant to obey decisions or to come to an agreement (Poine and Kyed, Chapter 1, this volume; Kyed 2018b). Even if this transfer to the police seldom actually happens, the state (here the police) serves as a kind of reference point to facilitate local resolutions.

Harrisson (Chapter 8, this volume) makes the point that the state can actually be present despite its physical absence, through the ways in which it affects people in the local contexts. In the poor urban ward that she studied, the state’s lack of care, its indifference and its acts of predation affects social relations, creating mistrust among neighbours and a fear of reporting crimes (for instance by victims of rape or domestic violence), even to the local administrator. Here state evasion does not lead to social cohesion, as it does in the rural villages of the Karen, Naga, and Mon, but signals a deeper disruption of sociality, following years of negative state interference. The ward Harrisson studied is, in fact, itself the result of a large-scale eviction from the city centre to the periphery of the city and this has deeply affected people’s relationship to the state.

State evasion therefore takes different forms and serves different purposes, depending on the local context. Shared across the case studies in this book are, however, a historical experience of state oppression and abandonment. The state is, as a result, disassociated from access
to justice, which in various ways supports the preference for local resolutions. Yet this preference is not always a matter of evading state authorities *per se* but may also be influenced by culturally and religiously informed notions of justice that differ from the kinds of justice that a state-legal system enforces. We now turn to this.

3. The centrality of cultural norms, social harmony and religious–spiritual beliefs

The third of the themes that are shared across the case studies of this book relates to the valuation of social harmony and the significant role of cultural norms and beliefs when we address questions of justice. ‘Make the big cases smaller and make the small cases disappear’ (*kyi te amu nge aung, nge te amu pa pyauk aung* in Burmese) is a well-known saying that is used across most ethno-religious communities in Myanmar (see Denney et al. 2016: 1; Kyed 2018a). It strongly reflects *emic* notions of justice, based on the cultural norm of social harmony, which favours reconciliation and the restoration of social relations. State-legal justice, with its focus on punishments and identification of ‘winners’ (victims) and ‘losers’ (perpetrators), is, by contrast, perceived as confrontational, is associated with conflict escalation, and is thus regarded as antithetical to social harmony. The understanding of justice as ‘making cases disappear’ also sometimes means that victims or disputants refrain from reporting a case at all, even to village or ward leaders.

Under-reporting is quite common in Myanmar (Denney et al. 2016; MyJustice 2018). When a case is reported to a third party, this is perceived in the first instance to amount to conflict escalation, and this is associated with feelings of shame and loss of dignity. It is particularly shameful to take a case outside one’s own village or neighbourhood, as this is seen as particularly likely to escalate the conflict and undermine local social relations (see also Kyed 2018a). Such feelings of shame are stronger if parties fail to resolve a dispute within their own village or neighbourhood through reconciliation or a consensus-based agreement on compensation. It is considered most shameful to take a case to the state at higher levels.

Even when punishments (such as fines or payment of compensation) are issued by village or ward leaders, the primary focus is on restoring relations between the parties and preventing any escalation of conflict.
There is another common saying in Burmese, *kot paung ko hlan htaung* (equivalent to the English saying: ‘You should not air your dirty laundry in public’) that underlines the disincentive to report, pointing to the fact that this would draw a dispute into the public realm and make it visible. For example, Richthammer (Chapter 4, this volume) shows how a Karen-Buddhist woman whose gold was stolen did not want to report her case to the police because she was afraid of being seen as shameful by other village residents, because reporting the case would be regarded as ‘escalating the problem’.

As Nader (1990) argues, social harmony can be understood as a kind of ideology that can work to avoid state intrusion, but it also typically supports a particular social organisation, especially in small-scale, closely-knit societies. This is very evident in Chapter 3 (this volume) on the Naga, where the primary focus of dispute resolution is to secure good relations between the patrilineal kinship groups (*pha thar su*) of the disputants (i.e. the victims and the perpetrators), as the *pha thar su* constitutes the most significant base of the social organisation. In trials it is distant *pha thar su* relatives of the disputants who negotiate the case, not the individual disputants themselves. This is to avoid actions of revenge, which would escalate the situation and potentially harm social organisation. If a case should proceed to the state court, resulting, for instance, in imprisonment, reconciliation would not be possible. A similar example is explored by Lwin Lwin Mon (Chapter 5, this volume), who shows how the village leader and the Baptist minister focus on social harmony and reconciliation in domestic violence cases, so as to preserve an image of the urban Baptist Karen community as peaceful and sustain religious norms (e.g. of not pursuing divorce).

As is evident in several of the chapters, religious and spiritual beliefs also influence how people act when they face a case and how they understand misfortune, injustices, and victimhood. Religion can also serve as a kind of private or personal retreat from seeking secular justice or from confronting the dispute in public. It can be a way to make inner peace with a dispute or crime, either after it has not been successfully resolved by a third party or as a substitute for reporting the case at all, or of negotiating directly with the other party. Often this is combined with seeking spiritual remedies to ease the suffering, such as through prayer or by going to a religious or spiritual actor (a monk, astrologer or
spirit medium) to pray or get ye dar yar (spiritual protection). Doing something of this kind is a private affair that does not involve direct reconciliation between the involved parties.

Theravada Buddhist beliefs, which are widespread across Myanmar, influence understandings of injustices and victimhood. Many Buddhists understand problems as being the result of misfortune, which can only be resolved within oneself by coming to peace, through detachment (Schober 2011). Accepting problems is understood to pay off deeds committed in past lives, thereby ensuring good karma (kamma in Pali; kan in Burmese) 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. This is illustrated in Chapter 4, in which Richthammer shows how a Buddhist Karen woman who lost her gold savings accepted this explanation about deeds in a past life when she realised that she would not get her gold back. Not seeking a (secular) remedy means that a victim of theft, such as this Buddhist Karen woman, can repay such misdeeds from a past life. 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. In this way, injustice can be understood as a deserved and almost inevitable consequence of fortune, which must be personally endured rather than externally resolved (Denney et. al 2016: 3). This strengthens the tendency not to report cases to a third-party justice provider and is the basis for the fact that some people seek spiritual rehabilitation by visiting monks or spirit mediums instead (see also Poine 2018; Kyed 2018b).

Among the Baptist Karen in Yangon, whom Lwin Lwin Mon (Chapter 5, this volume) discusses, there is also a prevalent understanding that problems are associated with a person’s fate or with the actions of God. This is associated with a strong preference for forgiveness over seeking remedies and punishments. Prayer is often the first, and sometimes the only, action that is taken when a person faces misfortune or is a victim of crime. Here the Baptist minister and the Sunday school play a strong

12 Following Spiro (1966) karma is defined as action (deeds, words and thoughts). Karma determines one’s rebirth and can be understood as the net sum of one’s actions in the present life and in past lives, notably actions that have to do with one’s merits and demerits. Karma is connected to a law of cause and effect. In daily lay Buddhist understandings of Karma in Myanmar, karma is also associated with good/bad luck or with fortune/misfortune, that is, it is for example understood as poor karma if a person faces bad situations.
role in nurturing religious understandings of justice and wrongdoing. In the Goga Naga tribe, discussed by Lue Htar et al. (Chapter 3, this volume), beliefs in invisible spiritual repercussions also mean that only forgiveness, rather than punishments (including compensation), can be issued if the disputants are members of the same *pha thar su* (patrilineal kinship group). If any compensation is paid, the Goga Naga believe that it will likely cause bad luck, such as illness in future generations of the *pha thar su*. Thus, punitive justice is believed to potentially cause harm even to the victim. This may also help explain why people evade state justice, which is focused precisely on punitive justice.

Religious beliefs mean that there is less of a desire for secular punishments, especially those (such as state-legal imprisonment) that do not foreground reconciliation. Buddhist, Christian, and customary beliefs in spirits all tend to support the cultural norm of social harmony. In addition, religion offers explanations for misfortunes the victims face, which gives them relief and comfort, especially in the absence of secular justice. As Nader (1990) argues, the supernatural becomes important when visible, secular or public institutions fail to resolve a case or to provide preferred justice outcomes (see also Richthammer, Chapter 4, this volume). However, this does not mean that beliefs only become relevant when state or village justice fail; they also guide interpretations of and actions in relation to disputes and crimes in the first place, as is evident in the many instances where people refrain from reporting cases at all. These beliefs also support the preference for local dispute resolution.

While local dispute resolution can be seen to protect people from the negative consequences of state-legal justice, the focus on social harmony and the role of religion can also be problematic for those people who are particularly vulnerable and less powerful in the social organisation of a given group. Lwin Lwin Mon shows (Chapter 5, this volume), for instance, how female victims of domestic violence agree to reconcile with their husbands as they do not want to appear conflictual or to contradict the advice of the (male) Baptist minister and the (male) village leader. It is therefore not coincidental, as Mi Thang Sorn Poine (2018) shows, that in a Mon village, women tend to report cases less often than men and are the ones who most frequently seek rehabilitation from spiritual or religious actors. In Naga society, customary norms also disfavour women, especially in the areas of inheritance and divorce, something which accords with a strongly patrilineal kinship
organisation which is also central to local dispute resolution. As Lue Htar et al. (Chapter 3, this volume) point out, Naga tribal leaders are now beginning to gradually change the customary law articles that discriminate against women, but many challenges remain. Women are not the only vulnerable groups, as Gravers and Jørgensen (Chapter 7, this volume) show: ethnic and religious minorities within a given locality, such as Muslims and Hindus, who face discrimination from the authorities, also frequently avoid reporting cases locally, as they do not want to stir up attention or be suspected of engaging in conflict escalation (see also Harrisson 2018 on a similar point for a ward in Mawlanyine).

4. **Identity politics: Exclusion and inclusion**

The importance of exclusion and inclusion, frequently linked to identity politics, constitutes the fourth theme found in the case studies in this book. Identity politics has played an important role in Myanmar’s history since colonial times. It has permeated the (still ongoing) armed conflicts between the military and ethnic armed organisations and has been an important theme both in the military atrocities against minorities and in claims to self-determination on the part of minorities, based on their ethnic group identity. Identity has a profound effect on everyday forms of governmental exclusion of and discrimination against certain categories of people. Identity politics in Myanmar is based on a deeply entrenched reification of ethnic, racial and religious group identities, one that dates back to the British colonial administration’s divide-and-rule tactic of governance (Gravers 1999). As Gravers and Jørgensen (Chapter 7, this volume) discuss in detail, the divisive colonial categorisations of ethnicity spilled over into a pervasive Burmese nationalism during the post-colonial military regime. An ethnic hierarchy was furthermore formalised in the citizenship law (1982), one that still excludes some ethnic groups from citizenship (Muslims, Hindus and Chinese) and makes the Bamar–Buddhists the highest-ranking group within the polity (Cheesman 2017). Burmese nationalism, with its focus on national unity and integrity, has worked to justify violence and discrimination against other ethnic and religious groups, who were unwilling to ‘Burmanise’
and convert to Buddhism (on how this was experienced among the Christian Naga, see Lue Htar et al., Chapter 3, this volume).13

Despite the transition, Gravers and Jørgensen (Chapter 7, this volume) argue that nationalism and ethno-religious divisions persist today in Karen State (and elsewhere), something which is particularly evident in the denial of ID documents and provision of justice to Muslims and Hindus (see also KHRG 2017). This continuity, Gravers and Jørgensen argue, is exacerbated by the situation in Rakhine State since 2011, as well as by the strengthened role of nationalist monks, who use their spiritual power to spread anti-Muslim sentiments (often on social media), through a discourse of saving the nation and Buddhism (Wade 2017).

At the same time, ethnic identity divisions permeate not only ethnic insurgencies against the state, but also the non-violent and yet inherently political efforts by ethnic minority leaders to strengthen internal ethnic unity and recognition. This is, for instance, evident in the Naga codification of a shared Naga customary law (see Lue Htar et al., Chapter 3, this volume). Lwin Lwin Mon (Chapter 5, this volume) also provides an example of ‘quieter’, more subtle forms of internal strengthening of ethno-religious identity vis-à-vis the surrounding Burmese society among the urban Baptist Karen. Ethnic boundary-making penetrates deeply into society, both as a tool of governance, type of resistance and as a mode of self-identification and community-making, which involves various forms of ‘othering’.

As is evident in many chapters in this book, identity politics shapes everyday justice in both inclusionary and exclusionary ways in local settings. Sharing an ethnic or religious identity with local justice providers, such as village or ward leaders, makes people feel more comfortable with reporting cases and resolving their disputes at the local level. McConnachie (Chapter 10, this volume) recounts, for example, how the Baptist Sgaw Karen refugees prefer local camp justice, both because they fear Thai state justice and because they share Karen cultural values and identity with the camp justice providers. Shared identity can work in inclusive ways, securing access to justice that may be denied or not fulfilled in a state system that is known to intimidate or discriminate against ethnic/religious minorities. Shared language, cultural norms and loyalties based on ethnic identity were also articulated as important

to the choice of non-local justice providers, as Poine and Nilar Win (Chapter 2, this volume) show, with respect to Pa-O village residents, who prefer to report cases to the Pa-O National Organisation (PNO) when disputes cannot be successfully resolved inside the village. The Naga interviewed by Lue Htar et al. (Chapter 3, this volume) made similar points. Shared identity also played a role when the victims of an arson case in a Myanmar government-controlled village in Mon State chose to turn to the Mon ethnic armed organisation, the NMSP, rather than to the state legal system, as discussed by Poine and Kyed in Chapter 1. Even though the victims in this case were well aware that the NMSP had no official jurisdiction to deal with the case, the victims believed that the NMSP would be more willing than the Myanmar state to treat them and their case well, because they are also Mon.

When access to justice follows ethnic or religious identity, it can, however, also work as exclusionary. The preference for local resolutions within one’s own ethnic group frequently relies on different forms of ‘othering’, as Lwin Lwin Mon (Chapter 5, this volume) argues. Even though the urban Baptist Karen about whom she writes are not hostile towards their Bamar neighbours, their understanding of the need to resolve matters among themselves rests on the articulation of outsiders and non-Karen as causes of insecurity. This othering of outsiders is pitted against an image of the Baptist Karen as peaceful and united, which can only be maintained by keeping the village purely Karen. Thus, not only do they try to avoid involving external authorities in disputes; they also have an informal rule of not selling land or renting houses to non-Karen. This form of ethnic boundary-making at the grass-roots level reflects deeper divisions and forms of inclusion and exclusion in Myanmar society, even if these are not overtly hostile.

The link between access to local justice and ethnicity is particularly problematic in mixed villages or wards where geographical boundaries do not follow ethnic or religious ones. As is argued elsewhere (Harrisson and Kyed 2019; Kyed 2018b), village leaders in Karen and Mon State under the governance of the KNU and the NMSP find it hard to deal with cases that involve people belonging to other ethnicities, especially Bamar, who are now increasingly residing within their areas due to labour migration. In practice, these non-Karen or non-Mon find it hard to access local justice. Denney et al. (2016) also found that Hindus and Muslims living in villages or wards where the leaders are Mon, Karen or
Burmese prefer to resolve their cases with their own religious leaders, as they feel they are more likely to get fair treatment there. In Gravers and Jørgensen’s chapter (Chapter 7, this volume), the Karen Muslims in one mixed village claimed that they always tried to avoid raising disputes, because they believed that they would lose the dispute or have to pay more in compensation than their Buddhist Karen neighbours. It is evident, however, that these local forms of exclusion are particularly likely when external forces that promote identity-based divisions are strong.

Gravers and Jørgensen (Chapter 7, this volume) demonstrate the impact of external forces on the relationship between different groups in Karen State. In some mixed Muslim-Buddhist villages, the nationalist Ma Ba Tha monks, with their strong anti-Muslim rhetoric, have created tensions between Muslim and Buddhist villagers that previously did not exist. In addition, bureaucratic-state discrimination against Muslims and Hindus – who struggle to get ID, travel freely, and get land ownership documents – is increasingly affecting some local villages and is making it difficult for Muslims and Hindus to get access to local justice and security. In another study in Karen State, Than Pale (Chapter 6, this volume) underlines the significance of the presence or absence of external influences when she demonstrates how the absence of external influences supports a peaceful relationship between Muslim and Buddhist villagers. Despite the fact that Muslims in the village studied face state-bureaucratic discrimination outside the village, they have managed to maintain a shared identity with their Karen Buddhist neighbours, one that is based on shared ‘locality’ (they have lived in the same village for 100 years). Locality, rather than religion, is here the most significant form of community identification, Than Pale argues, because the two groups resolve disputes together and are able to avoid negative external influences. It is clear that here, evading state justice is one way of keeping external influences at bay. Thus, when cases cannot be concluded in the village by Muslim and Buddhist leaders, people do not turn to the state or to their religious leaders at higher levels, but to a Karen armed actor who is originally from the village and who thus shares their identity based on locality. These localised ways of securing social harmony nonetheless co-exist with discrimination against Muslims outside the village.

Resolving disputes through one’s own ethnic leaders or organisations is not, however, a guarantee of justice or effective dispute resolution,
even if people may feel more comfortable with it. The capacity of local and ethnic leaders to enforce justice is often challenged by the wider political situation of overlapping authorities and unclear jurisdictions. It is also challenged by the lack of state recognition of ethnic systems of justice. As Poine and Kyed (Chapter 1, this volume) show, the NMSP’s justice system lacks the enforcing authority to settle cases that involve Mon people who live in Myanmar government-controlled areas. Poine and Nilar Win (Chapter 2, this volume) show that the Pa-O National Organisation (PNO), although often trusted with cases, struggles to protect the villagers and provide justice, because it competes with state institutions and is involved in a web of different armed actors, partly connected to the PNO and partly to the military. The PNO’s ability to serve the justice needs of the Pa-O villagers is particularly precarious when large business interests are at stake in a dispute. Chapters 1 and 2 provide powerful illustrations of the complex and politically charged situation of legal pluralism in the everyday lives of people in Myanmar, which is infused with identity politics, ethnic divisions and the continued role of militarised actors. The critical repercussions of this situation for access to everyday justice are particularly noticeable when cases cannot be resolved locally.

The contributions: From urban Yangon to rural Naga

After this introduction, the book opens with a chapter that takes us to a large village in southern Mon State that no longer is affected by armed conflict but which, albeit being officially governed by the Myanmar state, still has a plurality of de facto armed and non-armed authorities. In Chapter 1, by Mi Thang Sorn Poine and Helene Maria Kyed, the authors explore what people do when crimes cannot be resolved inside the village. They argue that ‘forum shopping’ outside the official state judiciary is a common strategy, but one that is fraught with high levels of uncertainty and risk. The informal alternatives, such as the NMSP and a secret military office, do not provide entirely satisfactory solutions: the NMSP because it lacks enforcing authority, and the military because it takes a high informal fee. ‘Forum shopping’ is not here equal to free choice but is rather a symptom of a deep and persistent instability of authority, which has roots in the long history of militarisation and
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conflict preceding the transition. This situation further underscores a preference for settling crimes, whenever possible, inside the village.

Chapter 2, by Mi Thang Sorn Poine and Nan Tin Nilar Win, also gives insights into the effects of plural authorities and justice systems for village residents, but in a slightly different political context: the Pa-O Self-Administered Zone (SAZ). Here, village dispute forums have to relate to a complex mixed administration of Myanmar state institutions, the Pa-O National Organisation (PNO) – now a political party, with its own informal justice system – and the Pa-O National Army (PNA) – now under the Myanmar military, but with links to the PNO. When disputes cannot be settled at village level, Pa-O village residents prefer the PNO to the Myanmar state, but the PNO’s capacity to dispense justice and protect village residents is significantly compromised when perpetrators are powerful armed actors. Mi Thang Sorn Poine and Nan Tin Nilar Win argue that the continued role of armed power is a significant obstacle to justice in the Pa-O SAZ, where the population is becoming increasingly aware of their rights due to the transition. The PNO is trying to codify its customary law, in order to strengthen its system of justice, but this is challenged by lack of state recognition.

This topic of codifying customary law is also taken up in Chapter 3, but here it is not a former ethnic armed organisation who are dispensing justice, but a ‘literature and cultural committee’ of civilian Naga leaders – who are trying to promote a common Naga justice system as part of a Naga nation-building strategy. Lue Htar, Myat The Thitsar, and Helene Maria Kyed argue in this chapter that the political transition has created a context for these efforts, which are centred not only on creating a united Naga group identity but also on obtaining state recognition to support Naga self-determination. Drawing on the wider literature on legal pluralism, the chapter discusses the political dynamics of state recognition of customary law. In particular, the authors argue for the need to include more Naga voices in the revision of customary law and to ensure gender equality in the application of law.

Chapter 4 also explores the strong role of cultural norms in the preference for local dispute resolution, here in a small Pwo Karen village in Karen State, where spiritual beliefs – Buddhist and animist – substitute for the lack of official state justice, both as remedies and as explanations for misfortunes. Marie Knakkergaard Richthammer argues in this chapter that state evasion is not only due to negative
historical experiences with the state but also to the fact that state-legal norms contradict cultural and spiritual norms. This has the effect of undermining state authority, while enhancing the legitimacy of local actors, such as the village leader and spirit mediums. She argues that the legitimacy of justice sector reform in Myanmar will depend on recognising and including ordinary villagers’ culturally specific understandings of justice.

In Chapter 5, Lwin Lwin Mon explores the role of religion in local dispute resolution, in an urban Karen village where the majority are Baptists. Here religion also operates as a form of socialisation centred on strengthening a united Karen ethnic identity. By contrast with the Naga and Pa-O, this identity formation is not, however, linked to an explicit political strategy of recognition. Rather it reflects ‘quiet’ ways of evading the state aimed at keeping the area purely Karen, which in more subtle ways reproduce the ethnic divisions reflective of Myanmar society at large.

Than Pale in Chapter 6 explores a rather different scenario, showing how the joint resolution of disputes by Muslim and Buddhist village leaders in a mixed village in Karen State is central to maintaining a shared communal identity based on ‘locality’. Joint resolutions help prevent any potential tensions caused by religious differences. Than Pale argues that the significance of shared locality rather than religious identity provides a promising paradigm for legal pluralism and community-based resolution, but to achieve this more broadly would require wider political changes in the surrounding society. Conflict avoidance between the two religious groups inside the village is dependent on evading precisely those external forces that have contributed, elsewhere, to igniting enmities against Muslims.

The fact that ethno-religious conflict and discrimination are politically constructed by external elite forces, rather than being locally driven, is particularly evident in Chapter 7, which also focuses on Karen State. In this chapter, Mikael Gravers and Anders Baltzer Jørgensen explore the growing discrimination against Hindus and Muslims on the part of state authorities, evident in lack of access to ID documents on the part of these minorities, documents that are essential to their justice and security. They detail how this discrimination is embedded in a long history of ethnic divisiveness, which has created a kind of ‘bureaucratic indifference’ on the part of the state towards marginalised people with
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no right to citizenship, and which is increasingly promulgated by nationalist monks within villages and urban wards of Karen State.

In Chapter 8, Annika Pohl Harrisson deals with the topic of how state indifference and lack of care towards marginalised people are negatively affecting access to justice, in this case within a poor urban ward of Mawlamyine. Drawing on theories of ‘state affect’, Harrisson argues that state evasion is never completely possible for those living in this poor urban ward, because the history of state oppression, evictions, and surveillance that they have experienced is reproduced internally in relations of mistrust and lack of care between neighbours and family members. She also shows how mistrust of the state causes people to use informal brokers (pweza) as a costly, but often the only, means of obtaining documents without having to directly engage the state.

In Chapter 9, Elizabeth Rhoads looks closely at the role of these urban informal brokers (pweza), focusing on property transactions and disputes across Yangon city. With the high level of insecurity of state justice, the low level of protection of property rights, unclear (or no official) ownership documents, and widespread informalisation of property, reliance on brokers is essential to securing and resolving disputes over property. Brokers rely on their social capital, on connections and on knowledge. The system of brokerage is based on trust (rather than on formal papers), as the brokers vouch for property transactions. In many cases, this means that brokers are the ultimate arbiters in the event of a property dispute. Rhoads argues that the role of brokers in property transactions reflects a deep-seated mistrust of the state system. The flipside is that the strong role of brokers can prevent people from resolving property disputes in the official system in the event that people should wish to do so. It also often implies very high broker fees.

Chapter 10 takes us to the mainly Karen-populated refugee camps in Thailand, where Kirsten McConnachie explores the trajectory of the international interventions that were attempting to reform existing forms of self-organised camp justice since the mid-2000s. Like other groups discussed in this book, the Karen refugees were, she found, very reluctant to engage the formal justice system – in this case the Thai system – and feared doing so. However, international agencies tried to encourage the refugees to use the Thai system, based on a state-centric approach to access to justice. In their efforts to reform camp justice, the international agencies have codified new rules and created new
dispute forums, while dismissing existing camp justice as ineffective and as contradicting international human rights. This led to a clash of legal cultures and a struggle over the ownership of justice between the internationals and the refugees, ultimately undermining the willingness of local camp leaders to engage in justice provision and to bring about change in justice practices – e.g. with regards to gender-based violence. Besides focusing on everyday justice for Myanmar camp refugees, this chapter also provides an insightful discussion of the potential pitfalls of international engagement with community-based justice, which is beginning to take root inside Myanmar.

**The limitations of the book and directions for future study**

The chapters in this book provide profound insights into everyday justice practices and perceptions and their political and societal meanings; but one caveat is that they are limited by their narrow geographical scope. Due to the multiplicity of ethnic and religious forms of belonging and the plurality of authorities across Myanmar, more in-depth empirical case studies in other states and regions, and among other ethnic organisations that engage in justice provision – armed and non-armed – would probably reveal an even higher level of complexity in legal pluralism in the country. Another limitation of this book is that the chapters do not cover studies carried out inside the official judiciary, including the courts and the police. With the notable exception of the work of Nick Cheeseman (2015) and Melissa Crouch (2014), there is a general dearth of studies of the official system, which, as pointed out in a recent report (Justice Base 2017), may be linked to the continuing difficulties in gaining access to the courts, even though these now are officially open to the public. In addition, no ethnographic studies have so far been carried out within the police force, who are often the first line of reporting to the state and who also often engage in dispute resolution (Kyed 2018b). In-depth ethnographies of court hearings and everyday case handling by the police would add further richness to the insights on legal pluralism and would probably shed light on the challenges facing state officials as well as lawyers in Myanmar. Finally, the book does not include studies of the growing role of non-governmental (NGO) and community-based legal aid providers, which tend to focus particularly on assisting children and victims of gender-based violence to access justice, but which are also moving into the areas of land and dispute
resolution by village and ward administrators. These ‘new’ actors add to a field that is already plural and will probably expand, as part of the growing international involvement in programs on the rule of law and human rights that are accompanying the Myanmar transition. McConnachie’s chapter (Chapter 10, this volume), which focuses on this type of international intervention in refugee camps, serves as a source of inspiration for similar critical studies within Myanmar.

Despite these limitations, it is our hope that this book will become a valuable contribution to the scholarship on legal pluralism in transitional societies and that it will invigorate the debate about access to justice in Myanmar. In particular, it is hoped that the book’s empirical insights may help influence policies in the justice sector, encouraging a recognition of the plurality of actors who contribute to resolving disputes and taking seriously ordinary people’s preferences in relation to justice. Many of the chapters in this book conclude by reflecting on this recommendation.

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