Forum shopping and plural authorities in southern Mon State

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Introduction

This chapter explores everyday justice in Seik Soi, a Mon village in southern Mon State, with a particular focus on what people do when disputes and crimes cannot be resolved inside the village. Drawing on theories of legal pluralism, we argue that the long history of armed conflict and state suppression has led to a pluralisation of authority that makes ‘forum shopping’ a core justice-seeking strategy. The term ‘forum shopping’ refers to situations where people choose between different justice forums to try to get the best outcome relating to a dispute or crime (von Benda-Beckmann 1981: 117; Unruh 2003; Sikor and Lund 2009). In the chapter, we discuss the various consequences of forum shopping for village residents’ access to justice and the role that power dynamics play in this practice. While forum shopping provides alternatives to what is experienced as an inadequate official justice system, it also reflects a high level of unpredictability and risk for litigants. Ultimately, forum shopping is caused by a high level of uncertainty about authority, as well as by the continued militarisation of power in Mon State.

For many years Seik Soi was affected by the armed conflict between the Burmese military (Tatmadaw) and the main ethnic armed organisation (EAO) of the Mon people, the New Mon State Party (NMSP). Since the ceasefire in 1995, the village has officially been a Myanmar government-controlled area, but the NMSP still constitutes a significant de facto authority in the minds of many Mon villagers. They sometimes take disputes and crimes to the NMSP headquarters, if village-level resolutions fail. This is despite the fact that villagers and the village leader know that the NMSP’s justice system is not legally

1 All place and person names are anonymised in this chapter in order to protect our interlocutors’ confidentiality.
recognised in Myanmar law, and therefore lacks the official authority to enforce resolutions for people who live in government-controlled areas. The reason is that the NMSP is generally seen as a better option than the official Myanmar system. The co-existence of official and unofficial justice systems is complicated, however, and Seik Soi villagers are not fully satisfied with any of the systems.

Instead they prefer to have cases resolved inside the village, and this is supported by the village leader, who gains authority and standing from handling disputes locally. It is only when resolutions at the village level fail that people forum shop. In doing this, they try, as much as possible, to avoid the official Myanmar system and instead try out case resolutions with various unofficial actors.

The chapter is based on empirical findings from ethnographic fieldwork in 2016–2018, which used in-depth interviews, case-tracing and participant observation. We illustrate legal pluralism and forum shopping by drawing on an extended case study of the burning of a rubber plantation – i.e. an arson case – in Seik Soi. Before moving to the village, we first outline our main theoretical approach, including a discussion of the concepts of legal pluralism and forum shopping. This is followed by a brief background to the history and current situation of Seik Soi. Thirdly, we illustrate the insights of our empirical findings by drawing out the details of the arson case. We then discuss the underlying reasons for forum shopping and what repercussions it has for Mon villagers’ access to justice. We conclude by reflecting on the policy implications of the study’s insights.

**Legal pluralism and forum shopping**

Anthropological studies of micro-level dispute processes have the capacity to uncover the political dynamics and strategic manoeuvring involved in contexts where there is legal and institutional pluralism. They do this by exploring how different institutions that resolve disputes
Forum shopping and plural authorities – both state/formal and non-state/informal institutions – relate to each other, as well as exploring the ways in which individuals pursue dispute resolution strategies in the context of a plurality of institutions (Merry 1988: 882). A core insight is that rather than simply co-existing, the different dispute resolution institutions influence each other through collaboration, competition, and opposition, often irrespective of their official legal status. At the same time, the preferences and strategies of people with disputes influence the actions and, ultimately, the authority of the different dispute resolution institutions (Lund 2006; S.F. Moore 1978; von Benda-Beckmann 1981; Kyed 2011). This study follows a similar inquiry. In particular, we engage with Keebet von Benda-Beckmann’s use of the concepts of ‘forum shopping’ and ‘shopping forums’ to discuss the ways in which Mon villagers and village leaders navigate and influence the plural landscape of dispute resolution inside and outside the village.

Forum shopping describes a strategy where a disputing party or a victim or perpetrator of a crime switches between different dispute resolution forums. This occurs when contestants base their claims on the legal framework that suits them best among different alternatives – such as state law, customary rules and religious/spiritual norms. The choice of forum is based on what the contestant deems most likely to produce a satisfactory outcome, even though they might not always be successful (von Benda-Beckmann 1981; Lecoutere 2011). At the same time, forum shopping is a negotiation process in which power relations matter a great deal (Lecoutere 2011). To capture these power dynamics in a context of legal pluralism, von Benda-Beckmann (1981: 117) also introduces the concept of ‘shopping forums’. She argues that it is not only the contestants who shop between different forums; the forums also ‘shop’ for clients and disputes. They do this to serve their own political ends, because resolving disputes is an important source of authority, and often of income too (Sikor and Lund 2009: 10). Put simply: when, for instance, village leaders are able to handle crimes outside of the official courts in Myanmar, this affords local authority to those village leaders, while also challenging the de jure authority of the courts. In von Benda-Beckmann’s study in Indonesia, she shows how local authorities compete over and manipulate disputes to serve their own power agendas. In other situations, they fend off those disputes that might, they fear, threaten their position (von Benda-Beckmann 1981: 117).
On the other hand, dispute resolvers may also play a significant role in trying to prevent people from going to other forums or in guiding people's choices of alternative options, as we show in this chapter. Von Benda-Beckmann (1981: 139) argues that such strategies, which often involve what she calls 'jurisdictional disputes between institutions', can be seen as 'the legal expression of the struggle for power'. That is, shopping by forums is driven as much by a concern for consolidating positions vis-à-vis other forums as by the intention to ensure the best substantive outcome for the contestants. However, forums also need to take into account the fact that dissatisfaction with outcomes may lead contestants to shop for other forums.

As Sikor and Lund (2009) argue, the field of legal pluralism involves a dynamic relationship between institutions that resolve disputes (shopping forums) and individuals who have disputes that need to be dealt with (forum shoppers). This is because the 'claimants seek socio-political institutions to authorise their claims, and socio-political institutions look for claims to authorise' (Sikor and Lund 2009: 10). The relationship between different 'shopping forums' is also a dynamic one. Competition between forums often co-exists in the context of various forms of collaboration or cross-referencing. For instance, when village leaders cannot resolve a dispute or realise that resolving a particular dispute may harm their position, they may forward it to another institution or draw on other actors for assistance. In some situations, the mere threat of sending contestants to another institution can work as a tool to get the contestants to accept the decisions of the dispute resolver or to come to an agreement. The intention may not actually be to transfer the case to another institution, as this could undermine the authority of the dispute resolver, but rather to use the threat to leverage the contestants. As such, the different institutions may use each other strategically, while also seeing each other as competitors (Kyed 2011; Albrecht et al. 2011).

Some studies have shown how forum shopping can enhance people's access to justice, because it gives them different options in situations where, for instance, the official system is inadequate or fails to meet the justice demands of ordinary people (Unruh 2003; Meinzen-Dick and Pradhan 2002). Other studies have, by contrast, pointed to ways in which forum shopping enhances problems of insecurity and inequality (Crook 2004) or increases potential conflicts between different
justice providers and authorities (von Benda-Beckmann 1981; Sikor and Lund 2009). What seems to matter is the relative power status of people involved in forum shopping (Lecoutere 2011: 262; Meinzen-Dick and Pradhan 2002). Under some conditions, forum shopping is mainly a strategy of the more powerful, who know the different options better and often tend to be less constrained by social pressure to go to particular forums (Lecoutere 2011: 263; E.P. Moore 1993; Vel and Makambombu 2010). In other contexts, forum shopping can be a tool for the marginalised to access justice. For instance, as shown by Lecoutere, women, who are treated as inferior in the Tanzanian village system, have successfully turned to state law or other institutions to get their claims met (Lecoutere 2011: 255).

It follows from this that the specific effects or outcomes of forum shopping depend on the empirical context, the people involved, and the dispute in question. In all situations, however, the concepts of forum shopping and shopping forums bring to the fore a focus on human agency that allows us to look beyond clearly defined rules within a single coherent legal system (Meinzen-Dick and Pradhan 2002: 27).

A core question is to what extent forum shopping is reflective of free choice between available alternatives, and thus what factors influence how people can shop between forums. The level of free choice depends, according to von Benda-Beckmann and von Benda-Beckmann (2006: 25), on a complex set of factors, including self-interest, commitment to or rejection of normative orders, suitability of the law to one’s objectives, personal characteristics and economic factors. Social control and pressure to resolve disputes in certain forums also play a role. For instance, villagers may be reluctant to submit their cases outside the village, because they fear challenging the authority of village institutions or because they are tied to them through social relations (von Benda-Beckmann 1981: 143; see also Chapter 3, this volume). In this sense, choices are not entirely free.

Our study adds nuances to this insight by showing how state avoidance plays an important role in shaping forum shopping. While the state courts and the police are certainly options in forum shopping, both the village leader and villagers in Seik Soi try to avoid them as much as possible, because they see them as expensive, time-consuming and hazardous. Secondly, forum shopping in Seik Soi is influenced by the low enforceability of the different dispute forums. When people switch
between forums it is often because the dispute forums are not able to enforce compensation or another outcome that they have decided upon. Here legality and norms become less relevant than efforts to get a verdict materialised, and thus it is the forum with the strongest enforcing power, even if this is illegal, that sometimes ensures the final outcome. Thirdly, language and identity influence the choice of forum outside the village, which is part of the reason why the NMSP, as an organisation that represents the Mon people and uses Mon language, is often the preferred option. Here, concern for legality is substituted by loyalty and identification. These different factors, along with social control and power dynamics more generally, shape and reshape the agency of, and choices available to, both forum shoppers and shopping forums, as they manoeuver and reproduce legal pluralism in Seik Soi.

The plural political and legal context in Seik Soi village

Seik Soi village is located in Ye township, which is the most southern of the ten townships in the geographical area of Mon State, as defined by the Myanmar state. It has a population of over 2,000, with a large majority of Buddhist Mon. Since 1995, it has been officially governed by the Myanmar state, represented in the village by a village tract administrator (VTA), who himself is Mon. However, in the past the village was situated in a conflict area where battles occurred nearby between the Mon nationalist movement (NMSP) and the Myanmar military (the Tatmadaw). The long history of civil war has contributed to a situation of de facto legal and institutional pluralism in Ye township, as it has in other conflict-affected areas of southeast Myanmar (see Joliffe 2015; South 2017; Harrisson and Kyed 2019). In Ye township some villages are governed fully by the NMSP, others have mixed governance, and others are governed fully by the Myanmar state. The main highway that runs through the township divides the NMSP areas on the eastern side, where the NMSP has a township and district headquarter, from the Myanmar state areas on the western side, along the coast. Seik Soi village sits squarely on the western, and thus on the Myanmar state, side. This division has come about after many years of disputed control and armed fighting, which ended with a ceasefire in 1995.

3 Interview, village tract administrator (VTA), 28 February 2018.
Seik Soi village was already feeling the effects of the civil war in the 1950s, when the main Karen ethnic armed group, the Karen National Union (KNU), was operating in the area, mobilising support for the ethnic nationalist cause in collaboration with the Mon nationalist movements (South 2003: 109–117). The NMSP, which today continues to be the main Mon nationalist movement, was formed in 1958, after the Mon People’s Front (MPF) signed a ceasefire with the government (ibid.: 118–119). Its armed wing, the MNLA (Mon National Liberation Army), was formed in 1971. After the military took power in Burma (now Myanmar) in 1962, the NMSP and the KNU made an agreement on the division of Mon and Karen territories (ibid.: 132–142). Along with fighting the Burmese military, the NMSP tried to establish control over Mon areas and in the 1970s it created ‘liberated areas’ where it started to develop civilian governance structures, including a tax system, an administration, schools and clinics. In was also during this time that the NMSP developed a justice system and a law book (McCartan and Jolliffe 2016). The NMSP’s justice system consists of justice committees at central or Supreme Court, district, and township levels, with members from the administrative (NMSP) and armed (MNLA) wings, connected to the village level. The law covers all types of crimes and civil disputes.4

The NMSP tried to expand its system of civilian governance and justice to the whole area of what it regarded as the Mon Republic. However, most areas only had a meagre NMSP presence due to the ongoing fighting and the presence of the Burmese state’s own structures (South 2003: 174–175). Seik Soi village exemplifies this complicated situation. Here the NMSP established a Mon school in the mid-1980s, but NMSP officials did not directly govern the village.5 They could only move in and out of the village to collect contributions and provide MNLA patrols. Thus, except for education, the NMSP was not able to provide Seik Soi villagers with substantial services or protection inside the village. Villagers were also afraid to bring disputes and crimes to the NMSP.

Following the 1995 ceasefire, the NMSP was allowed to stabilise and consolidate its civilian governance structures, but only inside designated territories, known as ‘permanent ceasefire positions’ (ibid.: 225, 245). In Ye township this covered small patches in the thickly forested hills in the southeastern area just north of Ye town, where the

4 For more details on the NMSP justice system see Harrisson and Kyed (2019).
5 Interview, teacher in Mon school, 28 February 2018.
NMSP today continues to have township and district headquarters and to exert direct governance. However, the NMSP-controlled area did not include Seik Soi and other villages on the western side of the road. The ceasefire allowed the NMSP to set up Mon schools using the Mon language across Mon State. At the same time, the ceasefire enabled the military government to strengthen its control over non-NMSP areas. The government also kept the NMSP on its list of unlawful associations, which made it illegal and prosecutable for Mon people to engage with the NMSP outside the ceasefire areas (ibid.: 224).6

Between the ceasefire in 1995 and 2014, Seik Soi was regarded by the villagers as a kind of mixed-controlled area. Despite some tensions, and although the administration was under the Burmese government, the NMSP and the village administrators coexisted fairly peacefully. The NMSP could, without any major difficulties, collect household donations (a kind of tax) from villagers as well as have campaigns on social issues, such as education and the dangers of drug use. Many disputes and crimes that the village leaders could not resolve were also sent to the NMSP, rather than to the Myanmar state. The villagers we interviewed told us that at that time there was a sense of tolerance towards engaging with the NMSP, despite this being illegal according to Myanmar state law. Gradually however, the NMSP has had to operate more carefully: now, for instance, the NMSP does not collect household taxes, but only sells its own lottery

6 A bilateral ceasefire was renegotiated again in 2012 between the NMSP and the new quasi-civilian government under U Thein Sein, following a period of tension when the NMSP refused to come under the Burmese military-controlled Border Guard Force, along with other ethnic armed organisations (EAOs) (Kyed and Gravers 2015). In 2018 the NMSP signed the National Ceasefire Agreement (NCA), which took it off the list of unlawful associations. However, the fieldwork for this chapter was conducted prior to this agreement, and thus we do not include an analysis of the impact this agreement may have had on how the villagers can interact with the NMSP.
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tickets and calendars in the village, to avoid problems with the Burmese government. No-one could tell us exactly why this gradual withdrawal of the NMSP had occurred, but from our interviews it seems that shifting village tract administrators have become more reluctant to openly engage with the NMSP after the political transition. One member of the village development committee, however, told us that he believed that the NMSP’s influence had decreased in the 2005–2010 period because the then VTA was corrupt and had an alliance with the police and township officials, with whom he shared bribes if he sent cases to the Myanmar state. The VTA during our field research period had a very different reputation – he was known to be incorruptible and to be someone who tried to avoid sending cases to the Myanmar system. He was not against people going to the NMSP with cases that he could not resolve in the village, but he was careful, he told us, because he was aware that doing this was illegal. While the impact of wider national political dynamics is certainly important in influencing people’s justice practices, our field work also suggests that dispute resolution both inside and outside the village remains strongly tied to the actions and positioning of the individual VTA. As we show further below, the VTA is also instrumental in balancing the relationship between actors and dispute forums outside the village, including the NMSP, the Tatmadaw and the Myanmar state’s legal system.

Village dispute resolution and forum shopping

The village tract administrator (VTA) is the central person in Seik Soi when it comes to third party resolutions of crimes and social disputes. Below him are elders and 100-household leaders, who resolve smaller disputes and crimes and who may also assist in reporting cases to the VTA, if they cannot find solutions to the problems. There is also a paramilitary group in the village, which, during fieldwork, only comprised two members, who assisted the VTA in arresting suspects and in summoning parties to a dispute to come to the VTA office. They can

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7 The lottery tickets that the NMSP sells are not tickets for the official government lottery, but for their own. This lottery is part of Mon National Day and Mon Revolution Day celebrations. Sometimes calendars are also sold. People buy these to show support for the NMSP.

8 Interview with a member of village development committee, June 10, 2016.
also take suspects to the Myanmar police, if the VTA judges that the case cannot be handled inside the village. Originally, the paramilitary group was formed by the Myanmar military to provide surveillance and gather information about insurgent groups; however, although they are still under the military and have guns and uniforms from the military, they are now mainly engaged in village security and they follow the orders of the VTA.

These village-level actors constitute an informal system of village dispute resolution, which uses reconciliation and mediation as its main mechanisms, combined with compensational justice and promise letters (kahn won) which instruct offenders not to repeat their offences. Although Myanmar law recognises these village-level actors as part of the state, they are not officially part of the judicial system. In practice, they are also relatively detached from the official justice system, not only because there are no official transfer procedures or appeal mechanisms, but also because the village actors have a very low level of trust in the official system. An extremely small number of crimes and civil disputes reach the courts and the police.

According to the VTA, who was in office until mid-2016, around 90 per cent of the cases that villagers reported during his term of office were resolved at the VTA office. He told us that of the rest, 3 per cent were forwarded to the official Myanmar system and 7 per cent were dealt with by the NMSP. According to the ordinary villagers whom we interviewed, this reflects a strong preference for resolving disputes and crimes within their own village. As we have discussed elsewhere (Kyed 2018a; Poine 2018), bringing one’s case to a public place is associated with shame and loss of dignity, sometimes combined with fear of authority, and these feelings are worsened if you report a case outside the village. This means that not all cases are reported to the VTA, but are resolved inside the family or among neighbours. In certain situations, people do not even try to resolve their own disputes or crimes. Women in particular – as discussed by Mi Thang Sorn Poine (2018) – are reluctant even to report cases to the household leaders, elders or the VTA. They prefer either to keep a matter to themselves, to deal with the matter within the family, or to seek advice and spiritual guidance from astrologers, spirit mediums and sometimes monks. Villagers are also reluctant to go to the official system because it is associated with high costs and very slow and difficult

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9 Interview, VTA, 1 March 2018.
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procedures. Language is also an issue, because many do not know Burmese well, and this is the language spoken in the official system. The VTA, on the other hand, speaks Mon, charges much lower fees, and taking cases to him leads to quicker resolutions and compensation being paid to the victims.

At the same time, our findings also suggest that the predominance of village-level resolutions is influenced by the fact that the VTA operates as a kind of gatekeeper to outside institutions. Because the VTA is the highest authority in the village, the villagers feel compelled always to first report any issue to him, even if they desire to have a case resolved outside the village. They are reluctant to ask for the VTA’s advice on state justice or to get the recommendation letters from him that are needed in order to send cases to the state system unless he himself suggests that a case should be forwarded to the state. In general, we found that the VTA always seeks to resolve crimes and social disputes himself, even when such cases are beyond his official mandate (which is the case with more serious crimes and divorce). The VTA explained that it was both shameful and complicated for him to transfer cases to higher levels. He did not believe that the official system would be able to properly resolve the cases. He did not trust the system and feared that it would place high costs and burdens on the parties. Often when villagers had been to the official system they would come back and complain to him about negative experiences. In addition, the VTA felt that if cases went to the formal system the village would look bad, as a place with problems.

Several times when we were at the VTAs office we observed how the VTA would threaten or warn villagers about the problems associated with going to the official system, explaining, for example, how slow and costly it was. This made people even more reluctant to go to the official system. As we will discuss in detail below in relation to the arson case, the VTA preferred to use various informal contacts and mechanisms to

Figure 1.2 Village tract administrator’s office where many disputes are heard and settled in the village. Colour image p. 357.
resolve difficult cases, rather than sending them to the official courts. In fact, the VTA indirectly compelled people to go to the NMSP courts, even if this was presented as a free choice. We can therefore see that the VTA plays a kind of gatekeeper role to the official justice system. This means that the choice of justice provider is not entirely free, and this, we suggest, shapes the way in which forum shopping unfolds in the village.

With this in mind, it is worth noting that the VTA and the leaders and elders who work with him do have an economic and political interest in resolving disputes inside the village, as this brings them both income and authority. Each dispute resolution case carries a fee of MMK 5,000 per party (USD 3.50), which goes to the VTA; and in 2019 the fee for granting a divorce was MMK 10,000 for women and 15,000 for men (previously it had been a total of MMK 50,000). The VTA does not, in fact, have a legal mandate to handle divorce, but in practice he does do so. While these fees are substantially lower than the costs associated with the formal system (which in addition to court fees also include transportation costs to travel outside the village), they still matter to the VTA, as he can use them for village development, which augments his standing in the village. For instance, MMK 5,000 is equivalent to half a day’s wage for a worker at a rubber plantation and a third of the daily wage of a construction worker, so it is a considerable amount – though not too much for an ordinary villager to afford.10

Thus, most cases in Seik Soi are resolved inside the village, and the VTA is central to their resolution. When difficult cases come up which need to be referred outside the village, the VTA still plays an important role, acting as the focal point and steering the process of allocating and advancing the cases. During our fieldwork, this typically involved strategies of state avoidance and finding alternatives to the formal system. The VTA would give parties the choice of either going to the official system or to the NMSP, but in his explanation of these choices we detected a certain favouring of the NMSP – or at least a more negative attitude towards the Myanmar system than towards the NMSP. This bias was

10 According to what we were told in conversations with various people in the village, a family with five or six members spends somewhere between MMK 3,000 and 8,000 a day on food and other expenses. In terms of salaries there is a bit of difference between seasonal and permanent workers – the former, who only work 6–7 months a year in the rubber plantations, typically have a yearly income of 50 lahk (USD 3,500 approximately), whereas a person with a permanent job earns 35 lahk.
shared by the villagers we interviewed, who said they preferred to go to the NMSP if the VTA could not resolve their case. Although people also hesitated to go to the NMSP, because they knew that their courts are not legal, they still preferred to do this, because the NMSP are Mon; they use the Mon language, and people often have personal connections to individuals within the NMSP. Also, the NMSP justice system is free, as there are no fees to pay. While villagers are never absolutely sure that the NMSP will provide a fair and effective resolution, they are even less confident of this in the Myanmar system. Geographical distance seems to be much less of an issue. For Seik Soi villagers it takes one hour to get to the NMSP township office and one and a half hours to get to the district office by motorbike. By comparison, it only takes 20 minutes by motorbike to reach the Myanmar police and 45 minutes to reach the Myanmar township court. Thus, while the Myanmar state is much closer, and officially governs Seik Soi, there is still an orientation towards the NMSP system.

In what follows we will look in more detail at how Seik Soi villagers face challenges to justice when village actors cannot resolve a difficult case. We will see how, in addition to seeking justice through the NMSP, there is also an informal involvement of armed actors as well as the use of spiritual advice. Here forum shopping is not based entirely on free choice, but it steered by the village authorities and shaped by the limits to justice and the plurality of authorities outside the village.

The rubber plantation arson case

On 5 April 2016, around 500 rubber trees in A’s plantation were burnt and in the same fire B lost all of his garden trees.11 This happened just outside Seik Soi village. The two victims suspected that C had caused the fire, since A had seen that the fire came from C’s garden on the day of the fire.12 A village committee member was also witness to the fire. The vic-

11 The account of the case provided here is based on interviews with members of the family of one of the victims, with the VTA, and with a few other villagers who knew about the case, as well as on participant observation of some parts of the case resolution. Unfortunately, it was not possible to interview the second victim or the accused, as they were not present in the village when we tried to interview them, and the family members of the accused did not want to speak about the case. We realise that this biases our account.

12 Participant observation, 12 July 2017, VTA office; and interview, VTA, 8 October 2016.
tims reported the case to the VTA’s office and informed the VTA of the identity of the suspected perpetrator. The VTA tried to get C to come to the office, but C did not turn up. So the VTA got help from the paramilitary leader, who warned C twice, saying that if he did not come to the office he would be arrested and sent to the police. After that, C came to the VTA’s office, but he denied the accusations. The VTA and the paramilitary leader went to the field to investigate the site of the fire, and based on this and A’s eyewitness account the VTA decided that C was guilty and that he should pay 30 lakh (USD 2,100) in total in compensation to the victims, an amount that is close to the minimum annual income of a village resident who works in rubber plantations (yearly incomes range from 35 to 60 lakh). However, C did not agree to this.

While the process was being handled at the VTA office, A’s wife went to seek spiritual advice. First she went to a fortune-teller and later to a spirit medium. Some of their neighbours and relatives believed that the fire might have been a sign that one of the victim’s family members had been attacked by a bad spirit (out-lan). However, A and his daughter told us that A’s wife did not go to the spiritual actors because she believed that there had been possession by an evil spirit but rather to hear if 2016 would be a fortunate year to win the case. The spiritual actors had said that the A family would indeed win the case. However, they also said that the perpetrator would pay less in compensation than the victims wanted. This was actually what happened in the end.

The VTA tried hard to get C to pay the victims. He threatened to send the case to the NMSP if C did not agree to pay. While this kind of threat sometimes works to get the accused party to agree on a settlement at the VTA’s office, C did not comply. He simply told the VTA that he

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13 At this point they did not discuss how this amount should be divided between the victims.
was not afraid of the threats, because he did not commit the crime. The VTA now told the victims that he could not negotiate anymore. The case needed to be transferred to a higher level. He explained to A and B what the two options available to them were: to proceed to the NMSP or to go to the Myanmar government at township level. In his explanation he cast a negative light on the Myanmar system, saying that the process would be lengthy and costly, and that compensation was not guaranteed and might even be lower than the fees they would have to pay to go to court. He also warned them that the officials might ask for bribes.

The victims chose to go to the NMSP, and the VTA agreed. Subsequently, the VTA told us that he was well aware that by allowing the case to be handled by the NMSP he was moving outside the legal boundaries of his position, 'because the NMSP is still considered an armed group [and] the Myanmar government has told us that we cannot send cases to the NMSP'. Therefore he could only 'secretly send litigants to the NMSP if the litigants preferred this [to the Myanmar government]'\(^\text{14}\) The family of A told us that they preferred the NMSP, because, as A himself said: ‘We have heard that this is best, and also the perpetrator cannot speak Burmese – so we believed it was better with the NMSP’\(^\text{15}\)

The victims then went to the NMSP at the township headquarters with an informal, unstamped, letter from the VTA. This prompted the NMSP at the township level to call both parties for a hearing. Members of the NMSP also went to the plantation to investigate the fire and estimate the damages. Like the VTA, the NMSP also decided that C was the perpetrator. At the township headquarters, C admitted his guilt and said that he would pay if the authorities told him to do so. In doing this, he was submitting himself to the NMSP decision. The NMSP officials said that the loss of the trees totalled 84 lakh (USD 5,900) and instructed C to compensate the victims with that amount. C, however, said that he was unable to pay such a large amount. The NMSP officials then negotiated with the victims to reduce the sum to 40 lakh (USD 2,800). This was also too high for C, who only wanted to pay 20 lakh — an amount that in turn was too low for A and B. A said to us: ‘The NMSP tried to convince us to accept [the 20 lakh], but we did not agree.’\(^\text{16}\)

\(^{14}\) Interview, VTA, 15 December 2016.
\(^{15}\) Interview, Victim A, 13 December 2016.
\(^{16}\) Interview, Victim A, 13 December 2016.
The victims returned twice to negotiate the case at the NMSP township level, but C did not turn up, and consequently the case was transferred to the NMSP district level. C, however, never turned up for the hearings at district level and the NMSP subsequently gave up on the case. This was in the month of May.

According to A, the NMSP officials explained that they could not force the perpetrator to turn up at the district headquarters, because they had no power to arrest people from Seik Soi. A explained to us that: ‘The NMSP cannot use pressure because we [victims and perpetrator] are on the other side of the road [in relation to] Burmese control. For us people on this side [under Burmese control] the NMSP can only call people and negotiate with them. They cannot arrest people on the Burmese side’.17 This illustrates the limits of the authority of the NMSP and of their capacity to resolve cases that occur within areas officially controlled by the Myanmar government.

The case now returned to the VTA with a transfer letter from the NMSP. On July 12, we were present at the hearing of the case at the VTA’s office. Three months had passed since the fire. Both A and B were at the office when we arrived and they complained to us that they were very tired of C and could not understand why he did not properly appreciate their big loss. Now, they said, they had also had to spend a lot of money on transport to go to the NMSP. Eventually C turned up with his wife. The VTA called both parties to sit in front of his desk and started the hearing. At first, the VTA listened calmly and spoke with a soft voice. However, when C said that he was not guilty, the VTA got very upset, asking C how he could refuse guilt after admitting guilt at the NMSP township level. The VTA shouted at C: ‘What do you want now?’ C answered in a low voice: ‘I didn’t burn their rubber trees, so I want to do yorhjal’. Yorhjal means to swear to say the truth and has traditionally been used among the Mon when guilt cannot be established through material evidence. If the other parties agree to yorhjal they must accept it as a statement of truth, which means they can no longer pressurise the accused to admit guilt and pay compensation. If what is sworn to in yorhjal is false, however, the person who has sworn that it is the truth will be punished through bad fortune, such as having an accident or losing property. Nonetheless, yorhjal always means, whether the person swearing is telling the truth or not, that the victim

17 Interview, Victim A, 13 December 2016.
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gets no compensation. By asking to do yorhjal, the perpetrators were not only refusing guilt, but also trying to avoid paying compensation by referring to a Mon customary norm and practice. He was in a sense doing his own kind of forum shopping in terms of switching from a secular to a non-secular legal framework.

At the hearing on 12 July, the VTA did not agree to yorhjal. The victims were not asked if they agreed or not. Instead, the VTA got very angry with C, and said: ‘I don’t understand why you say that now [that C wanted to do yorhjal]. You have transferred the case many times and you agreed that the court could make a decision. Now the case has come back to me again, from the NMSP court, because you didn’t pay the compensation. You are wasting our time and making all of us tired. Now you are saying something different again. You are making us crazy.’ The VTA was clearly very upset that C did not agree to the conclusions of the negotiations at his office and at the NMSP. He also felt that C had failed to show respect, stating that: ‘You made people feel confused, when we were considering and understanding of your side of the case.

The VTA told the parties that he would no longer deal with the case, but that now: ‘I will let the police resolve it.’ By police, he meant the Myanmar state police, at township level. Later, the VTA told us that part of the reason why he was upset was that when such a case was returned to him from a higher-level authority such as the NMSP, he lost the power to deal with the perpetrator. This is because ‘it gives the perpetrator more confidence to win,’ the VTA explained. He further said: ‘Cases are very difficult to deal with when they come back from the upper level because the perpetrator is more difficult to deal with as he has got confidence through not having had to pay [compensation] at the higher level.’ This whole situation forced the VTA to derive pressure from elsewhere, namely from the Myanmar state police. He explained to C that the police would not speak as nicely to him as he, the VTA, had done. C left with his wife, and before the victims left, the VTA told them to go the police the next morning together with the paramilitary leader. He advised them to treat the police to tea or breakfast. That way, the police would be friendly to them (i.e. they would treat them well and favour their case), the VTA said. The VTA was clearly not happy about sending the people to the police, but he felt he had no

18 Fieldnotes, 12 July 2016.
19 Interview, VTA, 15 December 2016.
other choice, because by continuing to try to resolve it he would lose face. But he also felt that he had no good alternative and no authority to back him up outside the village. His suggestion to flatter the police with breakfast also clearly reflects the fact that the VTA knows that the police work best with bribery.

The case, however, did not proceed to the police or the official Myanmar court. Without telling the victims, the VTA told the police to wait, as he would try to negotiate once more. The police accepted this and allowed the VTA to work further on the case. The VTA later explained to us that he never really wanted to send the case to the police, but just wanted to use this as a threat, because he hoped it would make C pay finally. On other occasions we also witnessed this kind of threat, which the VTA used to try to get the parties to agree on a resolution at his office. The villagers are very afraid of the police, the VTA told us, and this fear may help to ensure that cases are resolved inside the village.

In this case, however, the threat of sending the case to the police did not work. So the VTA had to come up with another alternative to pressurise C to compensate A and B. In early October the VTA asked the secret service (Saya Pa Yin) of the Tatmadaw (the Burmese military) to help in getting C to pay.20 The Saya Pa Yin has an unofficial office just outside the ordinary Tatmadaw camp, located on the main road, some six kilometres from Seik Soi village. According to the VTA, the Saya Pa Yin is specialised in watching the armed groups in the area and is therefore not an official place for handling crimes. Nonetheless, the personnel at the office took over the arson case.

When the case reached the Saya Pa Yin office, the officers there spoke to the VTA about the case over the phone and called the victims. This was on 9 October and the case was resolved the next day. A described to us what happened: ‘When we first arrived at the office there was a Bamar three-star Tatmadaw officer inside, but when he realised that we are Mon, he called a Mon guy, who was dressed in civilian clothes. The Mon person’s assistant went to arrest the perpetrator. He was like a secretary of the Mon man and he was wearing a Mon longyi. C was kept at the office for one night.’21 The people at the Saya Pa Yin office said that he should compensate the victims with two cows, because they had seen that the man owned two cows. But C insisted that he did not

20 Some people call the Saya Pa Yin the Thatt Yin (‘Military Camp’) office.
21 Interview, Victim A, 13 December 2016.
own much and that his family would not be able to survive without any cows. So the Saya Pa Yin officer called the VTA on the phone, and the VTA suggested that the compensation should be one cow. This was the final decision. The perpetrator would not give his cow up voluntarily, so the military officer from the Saya Pa Yin office went to C’s field, found a cow and gave it to the victims. The victims subsequently sold the cow and split the money. A, who had lost the largest number of trees, got six lakh, and B got three lakh. They were not satisfied, because, as A said: ‘We lost a lot of compensation [84 lakh, according to the NMSP valuation]. The amount was low compared to what we lost. But we had to accept or get nothing.’ In addition, they had to pay 10 per cent of the compensation and an additional MMK 50,000 case resolution fee to the Saya Pa Yin office. The victims felt that this was a large amount, but they acknowledged that this kind of payment was inherent in dealing with the Myanmar state. At the VTA office they would have had to each pay MMK 5,000. The NMSP system was free of charge. Having the case resolved by the military was thus the most expensive option, but the victims found that it was their only option.

The victims were not entirely sure who the people at the Saya Pa Yin office were, and neither did they know the man who arrested the perpetrator and negotiated the case. At that point, they were exhausted, after being redirected so many times, and were mainly concerned to get something out of the case. They were simply following the advice of the VTA. A said that he believed that the office was, in fact, a place where the Mon and Karen armed groups that have signed ceasefires with the government meet to work together on resolving matters, such as cases that come from the village.

The VTA, however, denied that the Saya Pa Yin office had anything to do with the ethnic armed groups. He said it was purely a Tatmadaw office and that it is located outside the military camp because it is not permitted to let civilians inside the camp to deal with civilian matters. It is a secret, unofficial place, which most villagers do not know about, he said. But he knows the people at the Saya Pa Yin office because they go to the VTA for intelligence – such as information about the movement of ethnic armed groups in and around the village. The VTA told us that: ‘It is illegal for me to resolve [cases] there. It is like an informal

22 Interview, Victim A, 13 December 2016.
understanding. So I had to stay at my office. He explicitly said that
the Saya Pa Yin office cannot officially get involved in village matters.
He only uses it, secretly, as a last resort, when the accused party is ‘very
difficult’ – by which he meant when the accused refuses to agree to a
negotiated settlement at the VTA office. He is also reluctant to send
people there, because the fees are high. The Saya Pa Yin office thus
comes through as a pragmatic yet precarious last resort for avoiding the
official Myanmar justice system.

Discussion: Unpredictability and unstable authority

The arson case illustrates the plethora of dispute resolution actors who
may get involved in resolving a crime in Seik Soi when village level
resolutions fail. It is clear, from this case, that the official state institu-
tions, beyond the VTA, play no direct role in the provision of justice.
The police and the courts are present, but only as a point of reference,
in the form of a negative warning and a threat which the VTA uses to
facilitate an informal resolution (for instance, when he gives litigants
the choice of sending the case to the court and when he threatens to
send the parties to the police). Instead, what dominates in the pursuit
of a outcome (in this case, compensation for the victims) are informal
and illegal forums, outside the sphere of the official juridical system: the
VTA, the NMSP, members of a secret military intelligence group, and,
to a lesser extent, spiritual actors.

In this section, we wish to discuss the underlying reasons for forum
shopping and the wider consequences that forum shopping has for
villagers’ access to justice. The arson case illustrates instances of both
‘forum shopping’ and ‘shopping forums’, as described by von Benda-
Beckman (1981), but we suggest that the choice of justice provider
is not based entirely on free choice and strategic calculations. While
effective outcomes and financial costs are important to the trajectories
of forum shopping, the underlying causes of forum shopping are the
deep instability of authority in the area and a widespread distrust and
fear of official law and institutions. Issues like trust, familiarity, and
shame are equally important, and these concerns are not only in danger
of overruling legality, but also the effectiveness of resolutions.

23 Interview, VTA, 15 December 2016.
In the arson case, the immediate concern of the victims was not a desire to follow the law and official legal procedures, but how to obtain the compensation they wanted in a way that placed the minimum possible burden on them in terms of financial costs, dignity and feeling comfortable with the situation. The first choice for the victims was therefore not to go to the police with the case, but to resolve the case at the village level, which is associated with lower levels of cost, fear and shame. It was only when the village resolution proved ineffective that the victims chose an external provider. Although the NMSP is illegal, and therefore a risky choice, as well as being geographically much farther away than the Myanmar police and court, it was still the preferred choice of the victims. Guiding this choice was not only the lower costs associated with going to the NMSP, but also the higher level of trust that the victims had in the NMSP as compared with the official Myanmar system. The NMSP officials speak Mon and are perceived to be valid representatives of the interests of the Mon people. Although the NMSP does not have much ability to enforce its authority in government-controlled areas like Seik Soi village, the fact that the NMSP is a Mon organisation plays a significant role here.

This preference for the NMSP is, we suggest, heavily influenced by the long history of ethno-nationalist conflict and the military government’s oppression of ethnic minorities, which has fostered a strong sense that Burmese government officials will be biased against Mon villagers. This sentiment, along with experiences with corrupt Myanmar state officials, causes many to associate state justice with high financial costs, fear and loss of dignity. These feelings are so strong that the villagers risk the long journey across government boundaries into rebel territory to have their cases heard, even though they are aware of the NMSP’s lack of authority to actually enforce decisions, something that was clear in the arson case. Avoidance of the Myanmar state is therefore central to forum shopping.

Importantly, consulting the NMSP was not based only on free choice on the part of the victims. Central to the whole process of forum shopping is the gatekeeper role of the VTA. In the arson case, the VTA steered the choices of the parties quite forcefully, and directed how the case travelled between different forums and moved in and out of his own domain of dispute resolution. At first, the VTA tried as hard as he could to resolve the case at the VTA office. When this proved difficult,
he used the NMSP and the official Myanmar system to threaten the accused, to make him admit guilt and pay compensation at the VTA office. On many occasions such threats are successful, and the case ends with the VTA, but in this arson case the VTA felt that he had no other option but to transfer the case outside the village. When he instructed the victims to choose between the NMSP and the Myanmar system, he clearly favoured the former. Later he was also the one who decided to send the case to the military intelligence office, instead of the police. Through these moves, the VTA office operates as a ‘shopping forum’ (von Benda-Beckmann 1981), because the VTA seeks to resolve and manoeuvre cases himself, even when such cases are beyond his official mandate. However, in contrast to what von Benda-Beckmann found in the study in Indonesia, shopping by forums in Seik Soi does not reflect direct competition between different dispute resolution forums and authorities *per se*. While it is evident that the VTA’s redirection of cases towards the informal arena contributes to undermining the authority of the official Myanmar system, the VTA’s primary concern is not to oppose the Myanmar state or compete with it. Rather, his actions reflect his own distrust of the state, of which he is, in fact, formally part. His main concern is to end the conflict and get the victims an acceptable outcome, in order not to lose face and standing in the village.

Overall, the manoeuvring by the VTA demonstrates neither strong opposition nor loyalty towards any state or authority outside the village, be it the NMSP or the Myanmar state. As a Mon, he recommended that victims go to the NMSP, but in our interviews with him he made it clear that he did not have much faith personally in the NMSP, because of its lack of effective enforcing power outside NMSP territory. In addition, by deciding to finally send the case to the ‘other side’ – to the Tatmadaw military intelligence office – he demonstrated that his main concern was to end the case as quickly as possible and not to demonstrate loyalty to any particular authority outside the village. This whole process of switching forums reflects the deeper instability and pluralism of authorities, among which the VTA must carefully navigate in order to safeguard his own position within the village. His standing is less dependent on support from upper level authorities, and more on acceptance by the villagers. Thus, he engages external powers only as a very last resort. This approach is broadly shared by the villagers, who prefer village level resolution by far. The insecurity
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associated with engaging forums outside the village is part of the explanation for this preference.

As was evident in the arson case, the whole process of forum shopping is fraught with unpredictability and chance, because you can never be sure of the outcome. Victims must be persistent in constantly trying their luck, and risk facing higher costs and burdens at every step. The accused is not sure to get a voice or a proper investigation into his culpability. The victims are not sure to get compensation. This uncertainty helps explain why the woman associated with victim A sought spiritual advice to learn whether her side would have luck with the case. In other cases that we followed, people gave up on pursuing their cases altogether or went to spiritual actors for advice on how to deal, at a personal level, with their grievances. This underlines the fact that you must be rather courageous to engage in forum shopping, as it always involves additional burdens, both financial and emotional.

Forum shopping in a context where there are plural and uncertain authorities as well as high levels of mistrust in the official system has, we suggest, both positive and negative repercussions for ordinary villagers’ access to justice. On the one hand, the availability of alternatives to the official Myanmar system provides litigants (and village leaders) with less costly avenues for seeking justice outcomes. On the other hand, forum shopping reinforces the very uncertainty and unpredictability of justice outcomes and processes that are part of the reasons for forum shopping in the first place. In Seik Soi, the trajectories and results of forum shopping are also highly dependent on the attitude and capabilities of intermediary actors, here the VTA, rather than purely on free choice on the part of the disputing parties. The VTA, in the arson case, was clearly intent not only on safeguarding his own position, but also on securing a satisfactory outcome for the victims. The previous VTA was not like that, interviewees told us. He was selfish and corrupt, and sent many cases to the police, we were told, with whom he shared bribes. During his time in office, people reported fewer cases to the VTA, or tried to forum shop themselves. Thus, forum shopping does not resolve the underlying challenge of uncertain authorities and mistrust that makes access to justice so unpredictable in Seik Soi. Notably, in the arson case, this means that the last resort becomes the Tatmadaw – the very institution that is associated with the decade-long violent oppression of the Mon minority.
The arson case is atypical in the sense that few cases in Seik Soi are resolved with the direct involvement of armed men. We encountered only four that had occurred in recent years. However, the fact that such cases exist reflects the way in which the continued militarisation of power in Mon State is kept in place by a dysfunctional official justice system and a disempowered NMSP alternative. It also illuminates the reasons for villagers and village leaders alike persisting in their preference not just for resolving disputes within the village, but also for using forum shopping – primarily as a strategy for avoiding the state.

Conclusion

Drawing on the legal anthropological literature on forum shopping, we have explored the provision of everyday justice in a village in southern Mon State. For villagers, accessing justice outside the village is challenging. The socio-political context within which they navigate contains multiple competing authorities and powerholders, who either do not enjoy legitimacy – due to fear and mistrust – or do not have enough legal and institutional backing to enforce decisions. We suggest that this reflects a deeper history of conflict, militarised governance and competing state formation processes.

While informal village resolution and forum shopping constitute positive alternatives to the distrusted and costly official judicial system, forum shopping within informal arenas also perpetuates high levels of uncertainty in ordinary villagers’ access to justice. Much depends on individual leaders and actors, and their capacity to manoeuvre and be courageous and persistent in obtaining justice outcomes. For this reason, less resourceful victims or parties to a dispute, such as women, often give up on seeking remedies altogether, or turn to religious and spiritual actors, as Mi Thang Sorn Poine (2018) has described in another article on Seik Soi.

To address these challenges to everyday access to justice in Myanmar, we suggest that justice sector reform should not aim at erasing legal pluralism, but should rather focus on establishing more reliable linkages between the multiple forums. This would include stronger legal backing for those justice providers who are trusted by the ordinary villagers. Supporting a more pluralised and inclusive system could also put indirect pressure on the official system to be more responsive to the justice demands of ordinary
villagers. As a first step this could involve officially recognising the role in justice provision of Village Tract Administrators (VTA), who are currently disconnected from the official judiciary and have to act without official mandate and guidance when they deal with civil and criminal cases. There are no safeguards and there is no reliable outside backing for these administrators, and their ways of resolving disputes remain highly dependent on their individual attitudes and capacities. Recognition of their role in justice provision and support for their enforcement authority could reduce the insecurity felt by village leaders in carrying out their tasks. It could also lead to an improvement in dispute resolution by making procedures and mechanisms more transparent and predictable.

Secondly, the Myanmar state should consider ways to recognise the justice system of the NMSP as an alternative option for Mon villagers, one that is more familiar, less costly and more trusted. Since the initial fieldwork was done for this study, the NMSP has signed the National Ceasefire Agreement (NCA) with the Myanmar government, which could open up ways to build linkages and achieve mutual recognition between the Myanmar and NMSP systems. In fact, the NCA recognises that the ethnic armed organisations (EAOs) ‘have been responsible for development and security in their respective areas’ and stipulates that signatory EAOs and the Myanmar state should coordinate ‘matters regarding peace and stability and the maintenance of the rule of law’ (NCA, quoted in McCartan and Jolliffe 2016: 22–23). However, the NCA does not provide a plan for how such arrangements should be implemented. This needs to be decided among stakeholders in the political dialogue (Cathcart 2016). However, currently (February 2020) this dialogue seems to be stalled, because of continued fighting in other areas of Myanmar as well as persistent fear and mistrust on both sides. This shows how justice provision is often driven more by politics and power than by efforts to ensure that ordinary villagers get the kinds of justice they seek.

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