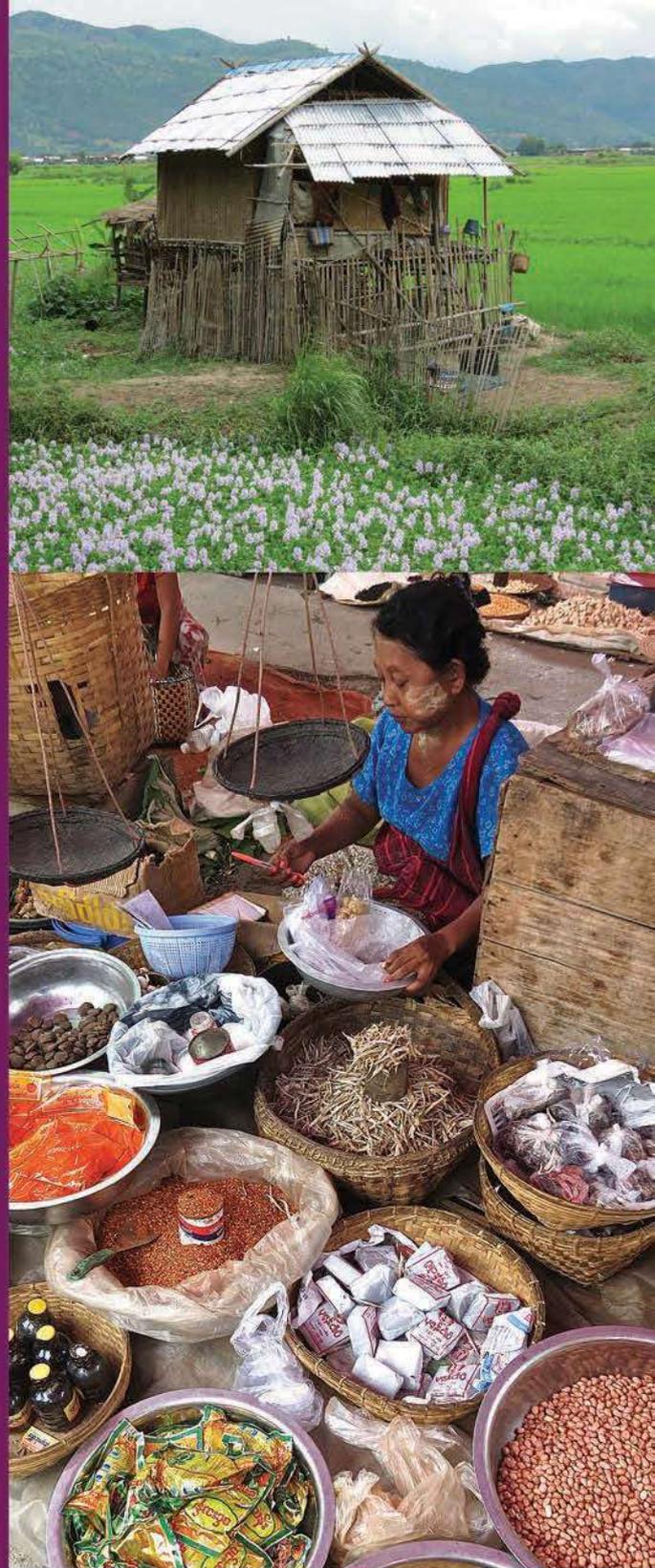


Ethnic Armed Actors and Justice Provision in Myanmar

Brian McCartan and
Kim Jolliffe

October 2016



The Asia Foundation

Improving Lives, Expanding Opportunities

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Brian McCartan is the primary author of this report, while Kim Jolliffe provided additional primary research and editorial input.

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Preface

As a result of decades of ongoing civil war, large areas of Myanmar remain outside government rule, or are subject to mixed control and governance by the government and an array of ethnic armed actors (EAAs). These included ethnic armed organizations, with ceasefires or in conflict with the state, as well as state-backed ethnic paramilitary organizations, such as the Border Guard Forces and People's Militia Forces. Despite this complexity, order has been created in these areas, in large part through customary justice mechanisms at the community level, and as a result of justice systems administered by EAAs.

Though the rule of law and the workings of Myanmar's justice system are receiving increasing attention, the role and structure of EAA justice systems and village justice remain little known and therefore, poorly understood. As such, The Asia Foundation is pleased to present this research on justice provision and ethnic armed actors in Myanmar, as part of the Foundation's Social Services in Contested Areas in Myanmar series. The study details how the village, and village-based mechanisms, are the foundation of stability and order for civilians in most of these areas. These systems have then been built through EAA justice systems, which maintain a hierarchy of courts above the village level. Understanding the continuity and stability of these village systems, and the heterogeneity of the EAA justice systems which work alongside them, is essential for understanding civilians' experiences of justice and security across Myanmar, as well as the opportunities for positive change that exist in Myanmar's ongoing peace process and governance reforms.

This research paper is authored by two independent researchers, Mr. Brian McCartan and Mr. Kim Jolliffe. Brian McCartan specializes in security, ethnic politics and development, while Kim Jolliffe specializes in areas of security, ethnic conflict and aid policy. The report was generously funded by the United Kingdom's Department for International Development (DFID) and the Australian Department of Foreign Affairs and Trade (DFAT). The opinions expressed in this report are solely those of the authors and do not necessarily reflect those of DFID, DFAT or The Asia Foundation.

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Acronyms

BGF	Border Guard Force
BSPP	Burma Socialist Program Party
CBO	Community Based Organization
CPB	Communist Party of Burma
DKBA	Democratic Karen Benevolent Army
EAA	Ethnic armed actor
EAO	Ethnic armed organization
EC	Executive Committee
KA	Karenni Army
KHRG	Karen Human Rights Group
KKO	Klohtoobaw Karen Organization
KIA	Kachin Independence Army
KIO	Kachin Independence Organization
KNDO	Karen National Defense Organization
KNLA	Karen National Liberation Army
KNPF	Karen National Police Force
KNPP	Karenni National Progressive Party
KNU	Karen National Union
KWO	Karen Women's Organization
MNDAA	Myanmar National Democratic Alliance Army
MNLA	Mon National Liberation Army
MPF	Myanmar Police Force
MTA	Mong Tai Army
NCA	Nationwide Ceasefire Agreement
NDAA	National Democratic Alliance Army
NMSP	New Mon State Party
PMF	People's Militia Force
PNA	Pa-O National Army
PNO	Pa-O National Organization
PNLO/PNLA	Pa-O National Liberation Organization / Pa-O National Liberation Army
PPF	People's Police Force
RCSS	Restoration Council of Shan State
SNDP	Shan Nationalities Democratic Party
SLORC	State Law and Order Restoration Council
SPDC	State Peace and Development Council
SSA-N	Shan State Army - North
SSA-S	Shan State Army - South
SSCA	Social Services in Contested Areas Project
SSPP	Shan State Progress Party
SURA	Shan United Revolutionary Army
TNLA	Ta-ang National Liberation Army
UMP	Union Military Police
UWSA	United Wa State Army
UWSP	United Wa State Party

Glossary

Civil law – rules and regulations governing transactions and grievances between individual citizens.

Court – primary venue where disputes are settled and justice is administered.

Criminal justice – the system of practices and institutions that upholds social control, deters and mitigates crime, and sanctions people and entities who violate laws with criminal penalties and rehabilitation efforts.

Criminal justice system – a criminal justice system comprises a legislative body to create laws, a police force to enforce law and order, a courts system, and corrections facilities. In a functioning criminal justice system, these three agencies operate together under the rule of law as well as the principal means for maintaining rule of law within a society.

Criminal law – law concerned with actions deemed dangerous or harmful to society as a whole. Its purpose is to provide specific definitions of what constitutes a crime and prescribe punishments for committing a crime. A criminal law is not valid unless it includes both a definition and a prescribed punishment. In criminal law cases, prosecution is pursued by the state and not by an individual person.

Customary law – law based on a loose legal code derived from various notions of ethnic traditions, generally maintaining social harmony rather than following or enforcing particular laws.

Dispute resolution – the process of resolving disputes between parties. Dispute resolution is carried out either through adjudicative processes, or through consensual processes such as mediation, conciliation, or negotiation.

Judge – an elected or appointed individual who is knowledgeable about the law and formally empowered to objectively administer legal proceedings and offer a final decision to dispose of a case.

Judicial system – a network of courts that interpret the law in the name of the state, and carry out the administration of justice in civil, criminal, and administrative matters in accordance with the rule of law.

Judiciary – the personnel who form the core of the judiciary – judges, magistrates, and other adjudicators – as well as the staff that administer the system.

Justice – the legal or philosophical theory by which fairness is administered.

Justice system – the network of police forces, courts, and detention facilities operated by the government or non-state governing actors.

Policing – the keeping and enforcing of criminal law based on a particular jurisdiction. The predominant concern of policing is the preservation of order.

Executive Summary

As a result of decades of ongoing civil war, large areas of Myanmar remain outside government rule, or are subject to mixed control and governance by the government and an array of ethnic armed actors (EAAs). These included ethnic armed organizations (EAOs), with ceasefires or in conflict with the state, as well as state-backed ethnic paramilitary organizations, such as the Border Guard Forces (BGFs) and People's Militia Forces (PMFs). Despite this seeming recipe for chaos, there is a startling level of order in most of these areas. This order has been created in large part through customary justice mechanisms at the community level, and as a result of justice systems administered by EAAs, and in some cases by ethnic paramilitary organizations. In EAO-controlled areas, their justice systems are often the only formal structures present, while in mixed-control areas, government and EAA justice systems exist separately, but side by side.

The village, and village-based justice mechanisms, are the glue that provides stability and order for most civilians in these areas. Often reliant on a long tradition of customary law and practices, village heads and village justice committees handle civil disputes and petty crimes – the bulk of justice issues in these areas. EAAs have built their justice systems on top of the village structures, relying on them to handle most justice issues, while requiring more serious crimes to be handled in EAO courts, which are also available for appeals from the village level.

On paper, at least, EAA justice systems are hierarchical, allowing for referral up the chain from village tract to township to district to the center. These structures, often backed by official procedures, also provide for the assignment of progressively more serious cases and progressively more severe punishments at each level. Judicial procedures differ between organizations, with some following a more formal model while other systems are more rudimentary. In practice, there may be variation from established procedures due to the ebb and flow of conflict, the capacity of an organization in a given area, or the personal connections of an individual to members of an EAA.

Internal security for most EAOs is provided by their regular soldiers and militia they establish at the local level. These formations commonly function as arresting agencies as well as jailers. A few EAOs have established police forces dedicated to preserving public order among the populace. Criminal investigations are usually conducted by EAO administrative authorities, except in the case of the Karen National Union (KNU), which has a police force authorized for this.

Village customary justice and EAA justice structures have continued to maintain order in EAA areas through periods of conflict and ceasefire. Without the EAA justice systems and the stabilizing effect of village customary justice structures, this order and stability would have been far less likely.¹ In many areas of Myanmar where EAAs operate, the central government has only ever had tenuous control, if any control at all. The ability of EAOs to maintain order and a degree of justice in turn contributes to their legitimacy among the population they claim to represent in areas they control, in mixed-control areas, and often to some degree in government-control areas adjacent to conflict zones where members of the group's ethnic base also reside.

The rule of law and the workings of Myanmar's justice system are receiving increasing attention, while the role and structure of EAO justice systems and village justice remain relatively little studied or understood. The continuity and stability of village justice systems provide the bedrock on which official justice systems – the government's and the EAOs' – are built, and thus are important to maintaining order and stability across the country. The fact that EAO justice systems operate in parallel with that of the government in large areas of the country, and provide the only means of justice for large portions of the population, should indicate their importance for the peace process as well as for the future governance of Myanmar.

¹ Undoubtedly, there are periods of great instability and disorder among the civilian population in these areas due to military operations, but when those operations are over, village and EAO governance – including justice – resumes, and order and stability return.

Section ONE: Introduction

This paper presents a survey of the justice systems of Myanmar's most prominent ethnic armed organizations and state-backed militias, and the associated rule-of-law dynamics in their areas of influence. The study was conducted as part of the Social Services in Contested Areas Project (SSCA), and follows in a series of research projects focused on the governance and social service roles played by Myanmar's ethnic armed actors and their networks.

For the remainder of this report, the term ethnic armed organization (EAO) will be used to refer to ceasefire and non-ceasefire armed organizations that remain in political opposition to the state. EAOs and state-backed ethnic paramilitary organizations will be referred to collectively as ethnic armed actors (EAAs).²

EAA justice systems have a major impact on the lives of many people in Myanmar's ethnic areas. In some areas, EAAs provide the only justice systems that local people have ever known. For many people in areas of mixed control, EAA justice systems represent a known quantity compared to the costs and other unknowns of the government's justice system. In the context of the ongoing peace process, the future governance arrangements for conflict-affected areas are of central importance. Therefore, understanding the role of EAA authorities, courts, laws and regulations, policing methods, and accepted punishments is of great value.

The remainder of this introduction looks first at some of the existing theory around justice systems created by armed organizations globally, and how this relates to their other governance aims. It then provides a basic introduction to the structure and operation of these systems in Myanmar. Finally, it outlines the methodology and scope of the research, including what is not covered, and gives an overview of the remainder of the report.

1.1 Armed organizations and justice in theory

Ethno-nationalist armed organizations typically seek to establish control over distinct territories and populations as a means of furthering their claim to represent the aspirations of their ethnic group. After this is accomplished, the populace needs to be governed, a process that usually begins with the most traditional obligations of governors, including the provision of police and judicial functions, promotion of material security and welfare, and protection of the populace from external attacks.³

A key foundation of governance, and thus one of the first elements established by armed organizations, is a force capable of policing the population. This is often the leadership's highest priority, and may determine whether the organization is able to transition from a roving guerrilla movement to a stationary, state-like governing structure.⁴ Scholar of insurgent governance Zachariah Mampilly considers it "easily the most important" governance function.⁵ Such a force provides stability and order, which are also key for the establishment of other governance functions, such as taxation and more advanced services. Policing may be carried out either by a dedicated police force or by the organization's armed forces – often militia forces.

A second necessary feature is the creation or cooption of a dispute resolution mechanism, or even a constituted legal system. This may follow a formal judicial structure or be a more ad hoc system. In

² State-backed paramilitary organizations include Border Guard Forces, People's Militia Forces, and other forms of government organized militia. See Buchanan (2016).

³ Timothy Wickam-Crowley, "Del Gobierno de Abajo al Gobierno de Arriba...and Back: Transitions to and from Rebel Governance in Latin America 1956-1990," in *Rebel Governance in Civil War*, eds. Ana Arjona, Nelson Kasfir, and Zachariah Mampilly (New York: Cambridge University Press, 2015), 47.

⁴ Timothy Wickham-Crowley. "The Rise (and Sometimes Fall) of Guerrilla Governments in Latin America." *Sociological Forum* 2, no. 3 (1987): 482-483.

⁵ Zachariah Mampilly, *Rebel Rulers: Insurgent Governance and Civilian Life during War* (New York: Cornell University Press, 2011), 134.

order to be seen as legitimate, the system needs to be useable by civilians in disputes with each other as well as with the armed organization.⁶ The dispute resolution system provides a degree of stability to controlled territory, allowing civilians to “normalize” their lives under armed organization rule.⁷

The justice systems of armed organizations are rarely entirely new structures created by them. More commonly, these organizations adapt elements of existing justice institutions and practices, including those of the state as well as customary mechanisms, and bring them in line with the organization’s interpretation of local cultural norms for regulating civil and criminal practices. A bifurcated system may result, particularly at a very local level, in which customary law exists on a parallel track with a modern legal system based on a standardized code of laws emphasizing concrete findings of culpability.⁸

Armed organizations that provide systems of justice or other services differ greatly in the extent to which they do so informally or through established rules. Many organizations evolve over time, starting with ad hoc arrangements and later bureaucratizing them.⁹ They also differ in how they select cases to handle, and in how they treat everyday crime. Some predominately deal with high-profile cases, while others maintain courts to judge a much wider variety of crimes.

The degree of order in areas ruled by armed organizations is often related to the organization’s degree of legitimacy in the eyes of local people. Due to the nature of civil war, two or more forms of government can often come into competition to become the sole governing body of a specific territory. The successful creation of justice structures underscores a particular actor’s authority over a population, and is often used by armed organizations to demonstrate that they can be as sophisticated as the state.¹⁰ This in turn influences the organization’s legitimacy among the population.

Governance by armed organizations is characterized by a combination of different types of legitimacy, but it is always at least partially based on coercion. Through the policing functions of its internal security forces, the armed organization may lay claim to a key component of “Weberian sovereignty,” the monopoly over the use of violence within a specific territory.¹¹ The organization’s judicial and dispute resolution structures provide a conduit for interactions with the populace. Handling criminal cases and arbitrating civil cases between civilians further the organization’s legitimacy by keeping order. Through a functioning justice system, even a rudimentary one, armed organizations can gain credibility by being recognized as the dominant force by the civilian population as well as by other challengers of their authority.

Maintaining the armed organization’s legitimacy often means meeting the expectations of the governed population. This often requires that armed organizations cooperate with civilians and other social and political actors, at times leaving some of their authority with them.¹² One area where this may occur is in the villages, where customary village justice mechanisms may be allowed to retain their authority. Religious actors, educated persons, and other influential parties also often retain de facto authority with the direct or indirect sanction of armed actors.

The village is the most basic and relevant unit of society for people in rural areas. By not interfering with village justice mechanisms, armed organizations provide a degree of continuity and “normality” in the lives of the civilian population. This mitigates the possibility of instability that could result from the imposition of a completely new system of justice at this level.¹³

⁶ Ibid., 51.

⁷ Ernesto Guevara, *Guerrilla Warfare* (New York: Vintage Books, 1969), 83.

⁸ Mampilly, *Rebel Rulers*.

⁹ Nelson Kasfir, “Rebel Governance – Constructing a Field of Inquiry: Definitions, Scope, Patterns, Order, Causes,” in Arjona, et al., *Rebel Governance*, 43.

¹⁰ Bert Suykens, “Comparing Rebel Rule Through Revolution and Naturalization: Ideologies of Governance in Naxalite and Naga India,” in Arjona, et al., *Rebel Governance*.

¹¹ Mampilly, *Rebel Rulers*.

¹² Till Förster, “*Dialogue Direct: Rebel Governance and Civil Order in Northern Côte d’Ivoire*,” in Arjona, et al., *Rebel Governance*, 204.

¹³ Mampilly, *Rebel Rulers*.

1.2 EAO justice in Myanmar

EAOs in Myanmar have generally followed the patterns described above. As the majority of state-backed militias were originally formed as EAOs, they have followed a similar course, and have often maintained their own parallel justice systems to some extent, even after they have begun cooperating with the state.

Each EAA looked at in this report has some form of justice system in the areas where it has influence over populations. In many cases, these justice systems extend to areas of mixed control, where the government or other armed actors also have influence. Some organizations have established relatively organized and complex justice institutions, with legal codes, police forces, a court system, and jails. Others have merely laid a thin veneer of organized justice over an existing structure of traditional village justice. Even in most areas where EAAs have strong judicial administration, village justice is largely left up to village heads and village committees.

Some EAAs use a form of law originating from the British India common law system, albeit with a number of additions over the years and some incorporation of customary law. In practice, however, EAA legal codes are more akin to civil law systems, wherein laws are codified into a referable system by the organization. Judiciaries are often not empowered to make, review, or amend current laws. This function is reserved either for the organization's executive bodies or for separate departments that devise laws that are later ratified by congresses or other collective bodies.¹⁴ Courts do not set precedents through their decisions.

EAAs tend to make clear distinctions between criminal and civil law. Most organizations have their own legal codes or regulations defining crimes and stipulating punishments. Some also have codes for civil disputes such as physical assault, land inheritance, and divorce. Most cases involving civil disputes or petty crimes are dealt with in the villages by village heads or village judicial committees. Offenses for both are often decided through arbitration and negotiation, often abiding by local customary law, with the aim of maintaining stability and harmony in the village. Meanwhile, more severe crimes such as murder, rape, and narcotics offences are usually referred directly to EAA justice systems. After reviewing a particular case, a village head or committee may also refer a civil matter to the EAA justice system if they are unable to solve the case at the local level. Additionally, such cases may sometimes be dealt with by village tract authorities, through largely informal processes.

1.3 Methodology

Research for this paper was conducted between September 2015 and May 2016. This included a review of the limited available historical literature on policing, judicial structures, and punishment in ethnic-majority areas of Myanmar. Information on EAO justice systems was gathered through primary interviews, group discussions, and email. Interviews and informal discussions were held with current and retired senior members of EAOs and militias involved in their justice systems, members of political parties and community based organizations (CBOs) knowledgeable about justice in EAO-controlled areas, and individual observers with strong ties to EAOs. Interviews were conducted in Karen, Mon, Shan, and Kachin states and Yangon in Myanmar, as well as in Thailand. Supplementary interviews were conducted with foreign researchers and aid workers with knowledge of ethnic justice systems and processes. This research was also informed by the authors' many years of research in Myanmar's ethnic areas.

¹⁴ The latter is the case in the KNU, NMSP, and KNPP, in which congresses that are intended to equally represent their various districts are seen as the primary decision-making bodies.

1.4 Scope and focus of the research

This discussion paper provides a descriptive overview of the formal and informal justice systems of seven major EAOs and one large state-backed militia, and draws on additional information about other EAAs. In a few cases, it also sheds light on the interactions between the justice systems of EAOs, militias, and the government in areas where they overlap.

The paper focuses on the institutions and practices that EAAs have established to handle ordinary forms of crime between civilians, and to a lesser extent on those for handling crimes committed by their own personnel. It does not look at trials and punishments for crimes specific to EAAs' conflicts or other organizational agendas, which might include cases involving persons accused of being informers, spies, or traitors, avoiding taxes, or evading conscription, or cases involving the treatment of prisoners of war.¹⁵

Although the paper provides some insight into how justice is perceived in EAA areas, it does not make a full inquiry into the actual experiences and preferences of communities, nor does it aim to judge the perceived legitimacy of the EAO justice systems. Nonetheless, the descriptions in this report aim to describe the actual practices of these systems, rather than merely the way they have been designed or conceived by the EAAs.

1.5 Structure of the paper

The remainder of this paper is divided into five sections:

Section 2 provides a brief history of justice systems in Myanmar from the establishment of British colonial rule through the 2010 elections. This section is primarily concerned with how the colonial, post-independence parliamentary, and Burma Socialist Program Party justice systems influenced the creation and growth of EAA justice systems. Brief descriptions are also provided of justice systems under the State Law and Order Restoration Council/State Peace and Development Council (SLORC/SPDC) and the current government to provide a contrast to those of the EAAs.

Section 3 gives some historical background on the customary village justice system. Many of the practices described in this section continue in the present.

Section 4 is a survey of seven EAOs (including all of the major ones) and one state-backed militia organization. This section, where possible, lays out each organization's judicial structure, policing capabilities, sources of criminal and civil law, chains of referral, trial procedures, punishments, and detention capabilities.

Section 5 explores the findings and implications of this research. It looks at village-based justice mechanisms, the effectiveness of EAO justice systems, and the integration of individual EAO justice systems with each other and with the government's justice system.

Section 6 ends the paper with some broad conclusions on justice in EAO-controlled areas, possibilities for future research, and possible areas of future interaction between the state and EAA justice systems.

¹⁵ The distinction between justice for everyday crimes and crimes related to an armed organization's specific aims is discussed in Suykens, "Comparing Rebel Rule," 147.

Section TWO: The Myanmar Justice System and Influences on EAO Justice

In contexts where insurgent armed organizations have taken control of territories previously governed by a state, the experience of the state and its administration typically remains embedded in the collective memory of the population. In these cases, armed organizations' governance often takes forms that neither simply reproduce previous state practices nor make a total break with the past. Similarities in governance will remain, since armed organizations typically replicate governance practices that are considered effective and that suit their aims. However, differences between the state's and armed organizations' governance are also prevalent due to differences in organizational structures, capacities, and resources, and because populations in such areas have often been dissatisfied with the performance or nature of the state's administration.¹⁶

In the case of Myanmar, most EAAs have governed in areas that have not been host to a stable state presence at any time since independence. Nonetheless, there are various ways that the Myanmar state system has influenced their justice systems. Firstly, many EAAs inherited significant justice practices from the colonial state, which applied its justice system differently in different areas. Other EAAs picked up these practices through the Communist Party of Burma, which governed some of the country's most remote regions for decades and then splintered into EAOs, formed by mutinying forces, in the late 1980s. EAOs have also sometimes been influenced by trained lawyers or other rule-of-law practitioners with experiences of the state system.

In addition, EAO justice systems, regardless of the level of influence of the state, exist in opposition and as alternatives to the state justice system in mixed-control areas and areas of government control adjacent to EAO-controlled territory. It is thus necessary, before more closely examining EAO justice systems, to briefly explore the history of state justice systems in Myanmar. This section provides that exploration, beginning with a short subsection on the ways that EAO systems have been influenced by the state, followed by subsections on each of the country's main eras of development.

2.1 How EAO justice systems have been influenced by the state

Overall, very little information is available about the formation and evolution of EAO justice systems. However, colonial and state influences can be detected in many current EAA justice systems.

Following the defeat of the last Myanmar king in 1867, British colonialists divided the territory that now forms Myanmar into two broad administrative areas. Today's Shan, Kachin, Chin, and Karenni states and northern parts of Kayin State, Rakhine State, and Sagaing Region were designated the "Frontier Areas," where existing ethnic leaders were allowed to retain significant levels of autonomy. Meanwhile, the rest of the country – termed "Burma proper" and eventually "Ministerial Burma" – was subjected to a much more intensive process of rationalization and systematic state rule. This divide had significant influence on the extent to which different EAOs later inherited practices from the colonial and post-colonial state.

In Burma proper, where ethnic minority communities were generally more interspersed with those of the Bamar, colonial law was applied more strongly, and a more formal justice system existed. Burma proper included the main Karen and Mon areas,¹⁷ which would later see the formation of the Karen National Union (KNU) and the New Mon State Party (NMSP) – two EAOs with perhaps the most comprehensive justice systems.

¹⁶ Förster, "Dialog Direct," 204.

¹⁷ Except for the Trans-Salween District, an area that included the mountainous parts of the government's Kyauk Kyi and Shwegyin Townships of Bago Region, and Papun and Thandaung Townships of Karen State.

Upon independence in 1948, Myanmar adopted almost wholesale the British colonial codes of justice as well as judicial and policing procedures. When the initial wave of ethnic rebellions occurred in the late 1940s and early 1950s, some of the EAOs took with them the experience and example of this justice system. Indeed, early KNU leader Saw Ba U Gyi was a British-trained lawyer, who held several ministerial posts, before going underground with the KNU. The KNU was then instrumental in the formation of the NMSP, the Karenni National Progressive Party (KNPP) and Pa-O National Organization (PNO), which also included officials with varied colonial government experience.¹⁸ Additionally, the Communist Party of Burma was formed by members of Burma's Bamar-dominated independence movement, some of whom had experience working in the colonial and interim governments.

Initially, these organizations were too busy fighting to organize extensive justice systems, but as control of territory became more stable, they gradually organized more formal and efficient systems. In the case of the KNU, this happened in the 1970s with the creation of its current set of law books and judicial and policing procedures, based heavily on the old British texts.¹⁹ Additionally, from the 1960s and 1970s onwards, individuals trained as lawyers and with experience practicing law in the state system went underground and joined some of these ethnic movements, further imparting state influence to the EAO systems.²⁰ As in northern Myanmar, however, these more structured systems were laid atop an extant village-based customary justice system.

Meanwhile, traditional power structures in the Frontier Areas retained far greater autonomy through 1962, as discussed in section 2.3. As a result, when EAOs and militia formed in these areas, they often simply placed a layer of governance atop traditional structures. In the case of justice, this involved a formal justice structure atop village-based practices of customary justice. However, some of the more advanced EAOs likely felt some influence from the colonial system, as ethnic leaders brought with them their experiences of the state justice system, from living, studying, or involvement in government in central Myanmar, when they later joined their respective ethnic movements.

There is a notable difference between EAOs in the southeast of Myanmar and those in Shan State and Kachin State in the extent to which they have taken on formal codes of law from the colonial state. Most ethnic Shan EAOs, and many of the militias in northern Myanmar, are primarily military formations with relatively rudimentary governance structures. This includes their justice systems, which are, for the most part, thinly organized, with a marked preference for the use of militias for arrest and customary, village-based law practices.

On the other hand, as the Communist Party of Burma (CPB) later came to rule significant territories in Shan and Kachin states along the border of China, a number of EAOs that were formed from its ranks – the United Wa State Party (UWSP), the National Democratic Alliance Army (NDAA), and the Myanmar National Democratic Alliance Army (MNDAA) – were influenced to a degree by the Bamar intellectuals who formed the party and much of its leadership. Their systems were perhaps more strongly influenced, however, by communist ideas of justice through their strong connections to China, and by Chinese Red Guard volunteers who assisted the CPB in the late 1960s.

The Kachin Independence Organization's (KIO) justice system has been relatively rudimentary, and despite the organization's strong connections to the West through Christianity, it was not heavily influenced by the colonial state. The KIO itself was formed by students and by traditional chieftains, *duwa*, who had some interaction with the state at different periods but likely little direct involvement

¹⁸ Notably the KNPP operates in Kayah State, which enjoyed particularly autonomous arrangements during the colonial era. Nonetheless, its justice system draws heavily on the colonial system, likely due largely to KNU influence. Notably, the PNO – whose area is in Shan State, a former Frontier Area, and was formed in direct opposition to traditional Shan royalty – has a justice system that is based largely on local Pa-O customary practices.

¹⁹ This was carried out by a group of lawyers who had previously practiced in government-ruled Myanmar and later chose to join the KNU. They included Saw Htoo Htoo Lay, Saw Reginald, and Saw Benjamin.

²⁰ These include former KNU general secretary and current advisor Saw Htoo Htoo Lay, and the Pa-O National Liberation Organization's former chairman, Hkun Okker.

in its justice system.

2.2 Colonial Burma (1886-1948)

The distinction between the Frontier Areas and Burma proper survived through multiple waves of administrative reforms, including major reforms in 1923 and 1937. The latter saw the separation of Burma from India through the Government of Burma Act of 1935,²¹ which designated Burma proper as “Ministerial Burma,” and divided the Frontier Areas into Part I and Part II areas. Ministerial Burma had a limited form of local democracy including a parliament, although matters of external affairs and defense remained in the hands of the governor. Part I and Part II Frontier Areas remained directly under the governor, and were loosely supervised by the Burma Frontier Service, while only Part II areas were able to send representatives to the parliament.²² All civil, criminal, and financial affairs continued to be administered by hereditary chiefs and rulers.²³

The British established a Chief Court for Lower Burma in 1900, and installed a judicial commissioner of Upper Burma. These were replaced in 1922 by a High Court with jurisdiction as the highest court of civil and criminal appeal over all of Burma, excluding the Frontier Areas. A separate Judicial Service was created in 1905. With the Burma Courts Act of 1922, the Judicial Service was reorganized. District judiciaries were created that operated in parallel with magistrates at the district, subdivisional, and township levels. The district and sessions judges and their subordinate judges of the Judicial Service were mainly responsible for civil cases, but also helped with criminal cases. Magistrates, although members of the civil service and thus answerable to the executive government, were responsible to the High Court in the exercise of their magisterial functions. In contrast, members of the Judicial Service were purely judicial officials and directly subordinate to the High Court.²⁴

Criminal law and procedure in colonial Burma was based on British practice.²⁵ The Indian Penal Code of 1860 provided the entirety of substantive criminal law. Rules of procedure were codified in the Criminal Procedure Code of 1889, with the law of evidence provided for in the Indian Evidence Act of 1872. The Procedure Code detailed which court was competent to try which crime.

For serious criminal cases, a magistrate held a preliminary inquiry, and if there was sufficient evidence, committed the accused to be tried in sessions court. Sessions judges tried cases with the assistance of two assessors. Their opinions could be disregarded by the judge, who could pass any sentence allowed by the appropriate law. Death sentences had to be confirmed by the High Court. Offenses tried before a magistrate could proceed in two ways. For minor cases, the accused was summoned before the court, the alleged crime was explained, and if the accused admitted guilt, the accused could be immediately convicted and sentenced. If not, then evidence was assembled and recorded and the accused was either acquitted or convicted. For serious cases, the accused could be brought before the court by warrant, though not always under arrest. Evidence for the prosecution was presented and the accused questioned. He could then be discharged; however, this did not preclude a re-opening of the case later. If a prima facie case was established, the accused was formally charged and asked to plead. Once a plea of “guilty” or “not guilty” was recorded, the magistrate heard and recorded evidence for the defense and the prosecution. An order of acquittal or conviction was then given. The same criminal laws and procedures applied to everyone in colonial Burma regardless of ethnic group or religion, with the exception of the Frontier Areas and allowances for European British citizens in certain cases.²⁶

Western-style laws were applied in most civil cases except those involving marriage and inheritance.

²¹ Separation did not actually occur until 1937.

²² Government Act of Burma, 1935. The dispensation of Part I and Part II areas is provided in the Second Schedule, page 62. Available at: <http://www.asianlii.org/mm/legis/const/1937/1.pdf>.

²³ Martin Smith, *Burma: Insurgency and the Politics of Ethnicity* (New York: Zed Books, 1993), 42-43.

²⁴ Furnivall, *Governance of Modern Burma*, 12-13.

²⁵ The main exception being that the only jury trials put before the High Court were original cases.

²⁶ Furnivall, *Governance of Modern Burma*, 13.

Civil procedures were codified in the Civil Procedure Code of 1882, which was later replaced by the Code of 1908. A number of other acts applicable to civil law, including the Indian Contract Act of 1872, the Transfer of Property Act of 1882, and many others, were based on principles entirely foreign to local ideas of justice, which favored compromise rather than a strict adherence to the law. Customary local arbitration was replaced by codified law emphasizing written documentation, established precedent, and a search for justice based on “facts” in order to determine legal rights.²⁷

In the Frontier Areas, local chiefs and rulers retained their powers to administer justice, and there was partial recognition of customary law in addition to the laws of Ministerial Burma. The governor’s powers in the Shan states extended to the modification of customary law. Criminal jurisdiction was exercised by two superintendents – one for the northern Shan states and one for the southern Shan states. The exception was if both complainant and accused were Shan, in which case the case was dealt with through traditional law exercised through the *sawbwaw*.²⁸ The Wa, originally not administered by the British, were placed under the superintendent for the northern Shan states in 1935 after a border demarcation with China.²⁹

Serious crimes in Kachin Hill Tracts were dealt with by a deputy commissioner, who acted as a sessions judge, and a divisional commissioner who functioned as the High Court. Other legal matters were left up to the hereditary duwas, in accordance with Kachin customs. The duwas were assisted in the trial of cases, in addition to other duties, by officials known as *taung-oks*, who were appointed by the government.³⁰

In general, the Chins were governed in the same manner as the Kachins, through local chiefs under the supervision of superintendents or their assistants. In the Arakan Hills, the civil powers of the High Court were exercised by the commissioner of Arakan, and criminal cases were subject to the highest judicial authority in Myanmar.³¹

Administration of justice for the Karen was somewhat complicated by the fact that the majority of Karen lived alongside Burmans in the Ministerial Burma areas of the Irrawaddy Delta, Yangon, and Bago regions, as well as in areas of what is now northern Mon State and central and southern Karen State. However, a portion of the Karen population lived in the Salween District of the Frontier Areas, which was later designated as an Excluded Area.³² This district fell under the administration of a deputy commissioner, who was also superintendent of police and ex officio judge.³³ A few other Karen areas, in today’s southeast, were designated as Part II Excluded Areas, and were under semi-autonomous arrangements. In practice, while the Karen in Ministerial Burma were subject to its judicial institutions, the Karen in Salween District and a few other areas were governed by their own traditional leaders, and were subject to their justice mechanisms.³⁴

Policing during the colonial period was the responsibility of the Burma Police (BP), the primary component of the administration’s coercive apparatus.³⁵ The police developed an extensive intelligence network that allowed them to act as the eyes and ears of the colonial government.³⁶ In 1906, a Criminal

²⁷ Robert H. Taylor, *The State in Myanmar* (Singapore: NUS Press, 2009), 255.

²⁸ Also known as Saopha or Chaopha in Shan.

²⁹ Furnivall, *Governance of Modern Burma*, 11.

³⁰ *Ibid.*

³¹ *Ibid.*, 12.

³² The Salween District encompassed the area from the mountains east of Sittaung to the Thai border and from the Salween River northward to the border of the Karenni states. Today this would encompass Papun and Thandaung Townships of Karen State as well as parts of eastern Bago Region. It was variably called the Trans-Salween District, the Papun District, and the Salween Hill District in different colonial documents.

³³ Salween District excerpt from “The Imperial Gazetteer of India, 1908.”

³⁴ Furnivall, *Governance of Modern Burma*, 12.

³⁵ The Burma Police were formally organized in 1861 and later joined by the Burma Military Police (1887), the Railway Police (1890), and the Rangoon Town Police (1899).

³⁶ The Intelligence Branch was established within the Burma Police by at least 1890. It later became a part of the CIB. In 1948 it was taken out of the CIB and renamed the Special Branch.

Investigation Branch (CIB) was created with wide powers of surveillance and intelligence gathering.³⁷ Following the 1937 separation of Burma from India, two-thirds of the Burma Military Police (BMP) were reformed as the Burma Frontier Force and tasked with providing order in the Frontier Areas. The police were not respected during the colonial period, and were often seen as tools of the colonial rulers.³⁸ They were also somewhat divisive in their ethnic makeup. The BMP consisted almost entirely of Indians, Gurkhas, and members of Myanmar's ethnic minorities. Recruitment in the civil police was also strongly skewed towards Indians and ethnic minorities.³⁹

2.3 Independence and parliamentary Burma (1948-1962)

Upon independence in 1948, the structure of the judiciary as set forth in Sections 133 to 153 of the 1947 Constitution remained largely the same as that of Ministerial Burma under colonial British rule, and was expanded to include the former Frontier Areas. The only major change was in the creation of a Supreme Court as the court of highest appeal. The High Court exercised original jurisdiction over cases in the city of Rangoon and acted as the principal appeals court in criminal and civil cases for the whole of the Union of Burma. All capital sentences required confirmation from the High Court.⁴⁰ The judicial machinery in the districts was retained by the new government. In the districts there were magistrate courts empowered to try criminal cases with sentences of a maximum of two years, and special magistrates for cases with possible sentences of up to seven years. All of these magistrates were officials of the executive administrative service, but in their judicial capacity answered to the High Court. Alongside the magistrates were the district courts, which had jurisdiction in civil cases. Sessions courts heard the more serious criminal cases and appeals from magistrate courts.⁴¹ The British conception of the rule of law remained firmly entrenched in the Constitution. A number of laws were enacted to amend pre-independence laws, such as the Code of Civil Procedure (Amendment) Act in 1956.

The 1947 Constitution divided the country into Burma proper and four – initially three – ethnic states.⁴² While each state had its own administration, council, and taxation rights, the federal structure was more nominal than real, since effective power remained with the central government. In justice matters, the former Frontier Areas were ostensibly brought under the central judicial system, but with some important differences. States were allowed to write their own laws as long as they did not conflict with Union laws. Shan, Kayah, and Kachin states had previously been under the Frontier Areas Administration and thus loosely supervised, with allowances for customary law practices.⁴³ This practice continued, as the government's judicial reach rarely extended far beyond the cities and towns. Villages in these areas continued to largely rule themselves, including the dispensing of justice. In Kachin State, for example, local chieftains continued to administer as they had before with the help of civil service officials as "assistant residents".⁴⁴ As the civil war expanded in the 1950s, many areas in the ethnic states – as well as extensive areas in central Burma – came under the control of an array of ethnic and communist insurgents, and thus remained outside the reach of the government's judicial system.

³⁷ Andrew Selth, "Myanmar's Police Forces: Coercion, Continuity, and Change." *Contemporary Southeast Asia* 34, no. 1 (2012): 55-56.

³⁸ *Ibid.*, 57.

³⁹ *Ibid.*, 66.

⁴⁰ Furnivall, *Governance of Modern Burma*, 76-77; Hugh Tinker, *The Union of Burma: A Study of the First Years of Independence* (New York: Oxford University Press, 1959), 140.

⁴¹ Furnivall, *Governance of Modern Burma*, 78; Tinker, *First Years of Independence*, 140; Nang Yin Kham, *An Introduction to the Law and Judicial System of Myanmar*. Myanmar Law Working Paper Series, Working Paper No. 001 (Singapore: Center for Asian Legal Studies, Faculty of Law, National University of Singapore, 2014), 6.

⁴² These were Kachin State, Karen State, Karenni State (Kayah State from 1952), and Shan State. However, Karen State was not created until 1951; prior to this, the Salween District and adjacent Karen areas were designated as a special region named *Kawthoolei*. The Chin Special Division was an appendage of Burma proper with its own council but only a few of the rights accorded the other states.

⁴³ Josef Silverstein, *Burma: Military Rule and the Politics of Stagnation* (New York: Cornell University Press, 1977), 58-59. Karen State was composed of the Salween District, which had been administered as a Frontier Area, as well as several districts that were previously under Ministerial Burma rule.

⁴⁴ Nang Yin Kham, *Judicial System of Myanmar*, 6.

Traditional leaders in the Shan and Karenni States, the sawbwas, retained particular autonomy through constitutionally mandated roles in government. The Shan sawbwas maintained their traditional privileges in accordance with the *menyaw* system started under the British in 1887, which included the administration of justice. These powers were nominally renounced in 1950 and formally in 1959, when the Shan and Karenni sawbwas agreed to give up their traditional powers. At this time the sawbwas' judicial powers were replaced by the Union system as used in Burma proper. This system had judges at the district and township levels.⁴⁵ Residents, with the powers of a district and a sessions judge, were empowered to require cases be brought before them for revision. "In practice, the little isolated worlds of these remote valleys and hills continue in the old ways: the revenues are collected in kind, the officials are all hereditary local leaders, the hill peoples come down for the Fifth-Day Market, the [sawbwa] rules in his Haw, and Rangoon is very far away."⁴⁶

With independence, a new Burma Police Organization and the Union Military Police (UMP) were created. U Nu's post-independence government considered the police an integral part of its plan to bring peace and prosperity to the Union of Burma. However, the serious internal security situation meant the police struggled to exercise their basic functions. By the time of the first military coup, in 1958, the police had already been overshadowed by the growing *Tatmadaw*.⁴⁷ The U Nu government's use of the police against political opponents only furthered widespread perceptions of the police being inefficient, corrupt, and politically partisan.⁴⁸ Furthermore, although racial distinctions in the police force were supposed to have ended after independence, the prevalence of Bamar policemen in the BP resulted in complaints from ethnic minorities who felt discriminated against.⁴⁹

2.4 The Ne Win era (1962-1988)

After the 1962 coup, a Chief Court of Burma was established by the Revolutionary Council to replace the Supreme and High courts. The Chief Court was the court of final appeal, exercising the same functions as its two predecessors. Special crimes courts were created to deal with "acts of insurrection, crimes against public safety, and those endangering life, property, culture, and national economy."⁵⁰ The special crimes courts could impose ordinary imprisonment, exile, or the death penalty. A new confirming authority reviewed the sentences, and death sentences were reviewed by the Chief Court.⁵¹ Under the Revolutionary Council, all existing laws continued to remain valid, and subordinate courts functioned as before.⁵²

The Revolutionary Council aimed to create uniformity in the administration of justice throughout the country through its reform of the court system. This was stymied by the differing standards between Burma proper and the ethnic states. The military rulers argued that in areas "where justice is dispensed with according to local usage and custom," the government's goal should be "to get these areas... eventually to adopt the same set of laws and courts as are functioning in Burma proper." To this end, state-level officials were required to work with the central government to try to create a uniform pattern of justice.⁵³

One of the many problems facing the military rulers was the contradiction between the emphasis upon the rights and duties of the individual under common law as inherited from the British, and the responsibilities and objectives of the socialist system. The Revolutionary Council intended to remove professional judges and lawyers from the administration of justice and to replace them with people's

⁴⁵ The current structure of divisions (later regions) and states, districts, and townships was not set up until the 1974 Constitution.

⁴⁶ Tinker, *First Years of Independence*, 162-163; Nang Yin Kham, *Judicial System of Myanmar*, 6; Smith, *Insurgency*, 193; interview with Shan elder and historian, 2016. During this period, people were unable to pay to avoid justice.

⁴⁷ Selth, "Myanmar's Police Forces," 56.

⁴⁸ *Ibid.*, 57.

⁴⁹ *Ibid.*, 66.

⁵⁰ Silverstein, *Politics of Stagnation*, 95.

⁵¹ *Ibid.*

⁵² Taylor, *State in Myanmar*, 339.

⁵³ Silverstein, *Politics of Stagnation*, 95.

courts. The purpose of the people's courts was to replace the British-instituted, single-judge system with a socialist-influenced system of a panel of judges chosen from among the people.⁵⁴ However, even with these moves to establish local people's courts, appeals courts, and other administrative judicial bodies with nonjurists as members, the basic legal structure remained professional and bureaucratic. During this period several laws were amended, through the Criminal Law Amending Law in 1963 and the Code of Criminal Procedure Amending Law in 1973.

More intensive work to change the system began in 1972 with reforms that established a new hierarchy of courts and jurisdictions closer to those of the colonial past than the ideals of a socialist future.⁵⁵ Districts were abolished, and with them the role of district officers as judicial authorities. Security and administration committees at state/division, township, and village tract/ward levels were formed and given judicial powers.⁵⁶ The security and administration committees included members of local populations and became part of the mandated system of people's courts.

The 1974 Constitution formally established the Burma Socialist Party Program (BSPP) as the government, with significant changes to the judicial landscape at the top. The Judicial Department was abolished and replaced by a Council of People's Justices chosen from among members of the *Pyithu Hluttaw*. The Council of People's Justices supervised and administered the judicial system. A Council of People's Attorneys, chosen in much the same way, supervised the government's law officers and prosecutors. The Central Court was the highest appellate court in the land.⁵⁷ Subordinate to the Central Court were the state and division people's courts, township courts, and ward and village tract people's courts.⁵⁸ The new system became a hybrid combining traditional Myanmar practices of arbitration and norms of justice with the Western legal traditions of procedure and rules of evidence.⁵⁹

The state continued to make lay justice a hallmark of its judicial system, and the Council of People's Justices continued to rely on the advice of professionals for their knowledge of law and custom.⁶⁰ According to Robert Taylor, there was a feeling among the peasantry that the colonial legal system had provided inadequate protection of their interests and the rights of society. The emphasis placed by the colonial state on the right of property over that of the individual was felt to be not only morally wrong, but intentionally designed to ensure the poor had no chance of getting justice.⁶¹

In terms of law enforcement, the 1962 coup resulted initially in the military taking responsibility for most law-and-order functions. While the police remained a separate institution, it answered to the military, and some senior positions in the police began to be filled by army officers. The police remained heavily Bamar in ethnic makeup. The police regained some power and formal status after a major reorganization in 1964, which saw them renamed the People's Police Force (PPF) and the UMP absorbed into the Tatmadaw.⁶² But this resurgence appears to have been short lived, as throughout this period the PPF was treated by the BSPP as somewhat of a poor cousin of the Tatmadaw, resulting in a loss of status and resources.⁶³ The police were commonly perceived as willing partners in the military regime, a feeling that was later strengthened by the brutal role of the *Lon Htein* riot police before and during the suppression of the 1988 demonstrations.⁶⁴ Additionally, The PPF was severely criticized both inside and outside the country for performing poorly during the period of protests.

⁵⁴ Taylor, *State in Myanmar*, 340.

⁵⁵ Silverstein, *Politics of Stagnation*, 96.

⁵⁶ In 1974, a territorial restructuring created divisions that encompassed the territory of the former districts of Burma proper.

⁵⁷ Silverstein, *Politics of Stagnation*, 129-130.

⁵⁸ Nang Yin Kham, *Judicial System of Myanmar*, 7.

⁵⁹ Taylor, *State in Myanmar*, 340.

⁶⁰ Silverstein, *Politics of Stagnation*, 129-130.

⁶¹ Taylor, *State in Myanmar*, 255.

⁶² Selth, "Myanmar's Police Forces," 56.

⁶³ *Ibid.*, 66-67. A number of policemen were seen marching with the protestors during the 1988 demonstrations.

⁶⁴ *Ibid.*, 57, 67.

2.5 The State Law and Order Council and the State Peace and Development Council (1988-2011)

With the abolition of the 1974 socialist constitution following the takeover of the state by the SLORC, there was a formal reversion of judicial structures to the colonial and immediately post-colonial order. The second legislative act of the SLORC was the Judiciary Law (2/88), which abolished the Council of People's Justices and reestablished the Supreme Court as the highest court. Created under the Supreme Court, and nominally appointed by it, were state, divisional, district, and township courts. The previous emphasis on lay justice was replaced by professionalism, as law officers who served as advisors to the people's courts at various levels under the BSPP now assumed the formal role of judges or magistrates. Further reforms in the judicial system were carried out in 2000 with the enactment by the SPDC of a new, basic Judiciary Law (5/2000) recognizing special juvenile courts, municipal offense courts, and traffic offense courts in Mandalay and Yangon divisions.⁶⁵ Operational procedures for the civil courts were amended through the Law Amending the Civil Procedure Code in 2000 and 2008.⁶⁶

The PPF was reorganized under the SLORC and was renamed the Myanmar Police Force (MPF). While still in a subordinate role to the army, the MPF gained a more important position in Myanmar's internal affairs. However, military officers continued to be assigned to some senior MPF positions. While there was an impression among observers that the police were becoming better organized, better resourced, and more professional under the SLORC and SPDC,⁶⁷ the MPF's role in crushing demonstrations in 2007 hurt its reputation domestically and abroad.⁶⁸ Furthermore, the MPF largely retained the reputation for corruption and exploitation of the civilian population that it inherited from the PPF of the Ne Win era.⁶⁹

2.6 Myanmar's current judicial administration

Myanmar's current judicial system was established under the 2008 Constitution and the 2010 Union Judiciary Law. The Supreme Court of the Union is the highest court, under which are state and regional courts. Below these are the district courts, self-administered area courts, and township courts at the lowest level. Additional courts established by law include juvenile courts, courts for municipal offenses, and courts for traffic offenses. Most cases brought before the state's judicial system currently begin in township or district courts. Their decisions may be appealed to the state or region court, and ultimately to the Supreme Court. The Supreme Court's role as the highest court of the Union does not, however, infringe on the powers of the Constitutional Court or the courts martial of the Tatmadaw.⁷⁰

On paper, there are specific regulations and procedures for the handling of judicial issues. Cases are heard before a judge or a panel of judges and argued by advocates or pleaders. Civil litigation is governed by the Code of Civil Procedures. Lawyers may also refer to the Courts Manual of 1960 and the Evidence Act of 1872. The appropriate court to try a civil case is determined by the value of the claim, the location of the parties involved, the place of the business, or where the act in question was committed. In criminal cases, judges are supposed to comply with the Code of Criminal Procedure and the Law of Evidence. Criminal courts are meant to adhere to established procedures for admitting documentary and material evidence, and examine witnesses, complainants, and the accused. The accused should not be sentenced to a penalty in excess of that provided under the relevant law. Criminal offenses are ordinarily tried by a court within the boundaries of the jurisdiction where the offense or its consequences occurred. However, the president of the Union may instruct that any case before a district court be tried in a division sessions court, provided that such order is not counter to any direction previously issued by the Supreme Court.⁷¹

⁶⁵ Taylor, *State in Myanmar*, 452-453.

⁶⁶ Furnivall, *Governance of Modern Burma*, 79; Nang Yin Kham, *Judicial System of Myanmar*, 4.

⁶⁷ Including a greater role in monitoring internal security after the purge of the military intelligence apparatus in 2004.

⁶⁸ Selth, "Myanmar's Police Forces," 57.

⁶⁹ *Ibid.*, 67.

⁷⁰ Nang Yin Kham, *Judicial System of Myanmar*, 7-8.

⁷¹ *Ibid.*, 11-12, 15, 16.

The Supreme Court, high courts of the regions or states, courts of self-administered areas, district courts, and township courts are empowered to adjudicate criminal cases. Judges of self-administered areas and district judges have the power of sessions judges. Township judges, additional township judges, and assistant township judges have the powers of magistrates. A Supreme Court judge may pass any sentence authorized by law, in accordance with the Code of Criminal Procedure. A high court judge, district judge, or judge of a self-administered area may pass any sentence authorized by law. Capital sentences are subject to confirmation by the Supreme Court. A deputy district judge may pass any sentence authorized by law, except a sentence of death. A township judge may pass a sentence of up to seven years imprisonment. An additional township judge, if he is especially empowered with special magisterial powers, may pass sentences not exceeding seven years. Deputy township judges can impose sentences according to their magisterial powers.⁷²

The police currently fall under the jurisdiction of the Ministry for Home Affairs, whose minister is constitutionally required to be a serving Tatmadaw officer and is effectively selected by the commander in chief. Organizationally, the MPF has a national headquarters, state and region police forces, four special departments, five training centers, and up to nineteen police security battalions and several small auxiliary forces. State and region police forces are organized with police at district, township, and sometimes village levels, with over 1,200 police stations throughout the country. The special departments are the Criminal Investigation Department, Special Branch, Railways Police, and City Development Police Force. The strength of the MPF as of 2011 is believed to be close to 80,000, with some unofficial estimates as high as 100,000.⁷³ Along with other reforms in Myanmar since 2010, the police are also undergoing reform. The MPF is becoming more modern and civilianized, and is gradually being recognized as a large, increasingly powerful, and influential institution. Standards for the selection of officers have risen, and specialized instruction at all levels has increased. Police doctrine and training programs have been changed to place greater emphasis on “community-based policing,” making cooperation with the civilian population a higher priority. There is also a growing emphasis on personal discipline, in an effort to reduce corruption.⁷⁴

The MPF not only has responsibility for standard law enforcement activities such as crime detection and prevention and maintaining civil order, but also carries out paramilitary functions that often find it operating closely with the Tatmadaw. The police continue to be seen as not only a means of maintaining social order, but also as an integral part of Myanmar’s national security apparatus.⁷⁵ Police security battalions, in particular, are considered part of the strategic reserve to defend the country alongside the Tatmadaw.⁷⁶

⁷² Ibid., 15-16.

⁷³ Selth, “Myanmar’s Police Forces,” 59-60. For more detailed information on the MPF, see also Andrew Selth, *Police Reform in Burma (Myanmar): Aims, Obstacles, and Outcomes*, Regional Outlook Paper 44 (Brisbane: Griffith Asia Institute, Griffith University, 2013).

⁷⁴ Selth, *Police Reform in Burma*, 8, 10.

⁷⁵ This enhanced role of the police began under the SLORC and SPDC.

⁷⁶ Selth, “Myanmar’s Police Forces,” 57-58. The security battalions were formerly the *Lon Htein* riot police units, renamed several times in 1988 until becoming security battalions in 1989.

Section THREE: Village Justice

Seemingly since the period of the Myanmar kings, villages have typically been given a significant degree of internal autonomy, including in the handling of crimes. Successive Myanmar states and numerous EAOs have instated reforms intending to apply formal laws to everyone in their jurisdiction. However, in practice these laws often seem to be more like suggestions at the village level, where disputes and minor crimes are resolved through customary forms of negotiation and arbitration. With limited resources and institutional capacity, government and EAO authorities seem to have invested very little in ensuring that these matters are always handled according to the exact letter of the law. Therefore, in practice, village heads or village committees seemingly adjudicate most domestic and civil disputes as well as petty crimes.

Under the control of the state, police appear historically to have taken a minor role in village life. There was provision for local police at the village tract level under the colonial system, but it is unclear how pervasive their presence was. Occasionally, police units were stationed in villages for lengthy periods to prevent possible rebellion or to preempt civil disorder, but they otherwise remained at their township or district police stations. The 1953 Local Government Act provided for the creation of a village police force under the control of local civil authorities.⁷⁷ Currently, police stations are established at the district and township levels, often in “sub-township towns,” and only occasionally at the village tract and ward level.

Meanwhile, village justice practices form the bedrock upon which most of the EAA justice systems are built. Under the control of EAAs, villages – and even village tracts in many areas – are typically allowed to govern themselves with little interference as long as taxes are paid, important rules are followed, and other obligations are met.⁷⁸ Most EAAs only have formally appointed justice officials down to the township level or equivalent, and work through village tract and village leaders at those levels.⁷⁹ In some EAA justice systems, the township authorities are only handed cases at the discretion of village or village tract leaders, who might come to the EAA if they feel unable to handle the case and need to pass it to a higher authority. Other EAAs instruct village and village tract leaders to always submit certain crimes to higher levels and to not attempt to deal with them on their own. Even with these crimes, however, the consistency with which they are referred to the EAA varies greatly, depending on that EAA’s perceived legitimacy and how present and operational it really is in that area.

As a result, customary practices used in rural areas remain largely untouched by either the government or EAO justice systems. Customary village laws and practices differ between ethnic groups, and even within an ethnic group they may differ from township to township or even village to village. Customary laws and practices vary in their degree of formality; they are often unwritten, and typically passed down by word of mouth, but are still usually understood to be recognized by most members of the community. Customary laws and practices are sometimes explicit and sometimes exist as guides to assist a village head, elder, or village committee to decide cases through negotiation and arbitration.

These decisions may not always be intended to uphold specific and consistent laws, but will rather aim to preserve the stability and harmony of the community. Rural villages typically maintain a high degree of internal order due to deeply embedded feelings among community members that social stability is paramount and that no one wants to be responsible for upsetting it. Thus, an ideal customary justice settlement often seeks to provide a balance between stability in the community and a compromise that is agreeable to the disputants. As such, customary decisions may run counter to the ideas of

⁷⁷ Furnivall, *Governance of Modern Burma*, 86; Selth, “Myanmar’s Police Forces,” 60, 67.

⁷⁸ The kinds of basic rules and obligations imposed by each EAO vary greatly. For just a few examples, some EAOs require villages to provide recruits; some place restrictions on the use of local natural resources; and some require villages to collect basic household information. On the whole, village heads are responsible for imposing these rules and regulations.

⁷⁹ Some require the village tract and village leaders to assign someone in their committee who is especially responsible for justice or security matters, but that person is usually still an ordinary villager and is not formally incorporated as personnel of the EAA.

fairness and justice in the formal justice system, or even of one or both disputants.⁸⁰ In some cases, village authorities might threaten to hand the perpetrator to the formal authorities as part of the negotiating process. Nonetheless, there are many cases where social sanctions or punitive actions such as being placed in stocks carry more weight than the threat of the formal system.

Box 1 provides a brief history of how village-level justice evolved from the precolonial era until 1962, including how numerous government reforms attempted to establish mechanisms for dealing with crimes at the village level.

Box 1: The evolution of village-level justice systems in Myanmar before 1962

In precolonial Myanmar, the rule of Burmese kings rarely extended below the township level. Instead, they commonly ruled indirectly through local chieftains who were largely autonomous and, in effect, constituted the local government. The British largely followed this system, particularly in the Shan states and the Frontier Areas. After the annexation of Upper Burma in 1886, all the districts in Burma proper – later Ministerial Burma – were divided into largely autonomous village tracts, usually about fifty to a township, by the Lower Burma Villages Act of 1889. The hill areas of northern Burma – which would later become the Frontier Areas – were ruled indirectly, and local administrative arrangements were largely preserved.⁸¹

For justice matters in Lower Burma, a village tract headman was appointed to the village tract, with the power to try petty criminal and civil cases. It is likely, given how infrequently colonial officials came through the villages during the early colonial period, that justice was dispensed in much the same way as before, in accordance with local custom. Meanwhile, the villages within these tracts were social units rather than administrative units, and so remained largely unchanged at that level.⁸² This system, revised in the Village Act of 1907, which applied to the whole of Burma, remained in force up to the end of British rule. After constitutional reforms in 1923, which amended the Village Act of 1907, a system was put in place in which villages were given a voice in the appointment of their headman. Under the 1907 Act, a small committee of village elders was created to assist the village head in the trial of petty cases that were formerly handled by the head alone.⁸³ This basic village leadership structure continues in many villages in ethnic areas today, and forms the basis for EAO administration.⁸⁴

Village headmen were empowered to decide civil disputes up to a certain value, and to try petty crimes of assault, theft, criminal trespass, “mischief,” and other offenses. Headmen were generally limited to sentences of small fines or detention of not more than 24 hours. Under special circumstances, a higher fine or detention of no more than 15 days could be imposed. Under the 1924 amendment of the Village Act, a periodically elected village committee, with the village head as chairman, was constituted for the performance of judicial functions. Resort to this committee was optional, and orders of the committee were subject to review by the deputy commissioner or subdivisional officer. In civil matters there was no appeal, although in certain circumstances an appeal for review could be made to the local township judge.⁸⁵

This system remained in place, through independence in 1948, until the Local Government Act of 1953. It is unclear whether this Act applied to the ethnic minority states as well as Burma proper; however, it can be reasonably presumed that it was meant to apply. The Union system of governance was applied to Shan State following the relinquishing of traditional powers by the Shan sawbwas in 1959.

⁸⁰ Interview with NGO worker and long-time observer of ethnic conflict in Myanmar, 2016.

⁸¹ Furnivall, *Governance of Modern Burma*, 8, 81; Taylor, *State in Myanmar*, 82-83.

⁸² Furnivall, *Governance of Modern Burma*, 81.

⁸³ *Ibid.*, 9, 81.

⁸⁴ This is particularly the case in southeast Myanmar, where some areas have never been effectively ruled by the Myanmar government.

⁸⁵ Furnivall, *Governance of Modern Burma*, 87.

With this act, the role of the village headman was taken by an elected village council, normally of five members, with a chairman chosen from among them. All previous functions of the village head – judge, magistrate, police officer, revenue officer, and general provider of welfare – devolved upon the council. A village court was constituted for each village tract, made up of all the members of the village council. The village court took the place of the former village committee. All members of the village council were entitled to sit on the village court to try cases. No case could be tried or decided with fewer than three members, two of whom must be in the court throughout the case. The chairman of the village council was the chairman of the village court. If he was absent, a member of the council might be chosen in his place.⁸⁶ The intention of the new system was for the village court to dispose of legal matters in an informal manner by mutual agreement as far as possible in order to satisfy a sense of justice within the village that was often outraged by the strict application of the law.⁸⁷

For criminal cases, the village court's jurisdiction was intended to be much the same as the former village committee. One major difference was that the village court had greater freedom in allowing the "compounding" of offenses through the voluntary payment of compensation by offenders to the aggrieved party. This aimed to facilitate an amicable settlement of disputes. Another change was that cases that were triable by the village court should be tried only by that court. In the past, most petty criminal cases that reached the police could be sent to the township court. The police were directed to refer these cases to the village court instead of investigating them for trial at the township court. Sentences that could be imposed by the village courts were also increased. Monetary fines were increased, and offenders could be sentenced to "useful labor" of up to one month, or imprisonment for up to one month. Fines could also be levied in addition to imprisonment. In certain instances, a sentence of up to six months imprisonment could be imposed. Appeals could be made to the district magistrate. Once this happened, the case came within the purview of the High Court. This was instituted so that anyone who came before a village court had access to the full protection of the law as protection against injustice arising from ignorance, incompetence, or bias.⁸⁸

The amended act also provided for greater powers of civil jurisdiction by the village court. Village courts were empowered to try cases up to a certain value with no option to resort to another court. These included suits for damages resulting from assault or injury, defamation, contract, sale or purchase of goods, use of water, and other things. Suits for divorce or the restitution of conjugal rights were tried by village courts regardless of their value. Cases involving defendants from the same village tract, where the action occurred in that tract, were tried before the village court of that tract. If all the defendants were from the same tract, but the actions occurred in another tract, then village courts in either tract had jurisdiction.⁸⁹

At the village and ward level, the working of the courts appeared to be in the hands of local individuals, often from quite humble positions in society. Critics claimed that these courts did not place much reliance on rules of evidence and procedure and were sometimes highly informal. On the other side, there were suggestions that this very informality and the local personnel made the courts accessible and no longer shrouded in mystery. However, bribery of panels of judges was easily possible, though more expensive than in the old system, where one had to bribe only one judge.⁹⁰

⁸⁶ Ibid., 87-88.

⁸⁷ Ibid., 88.

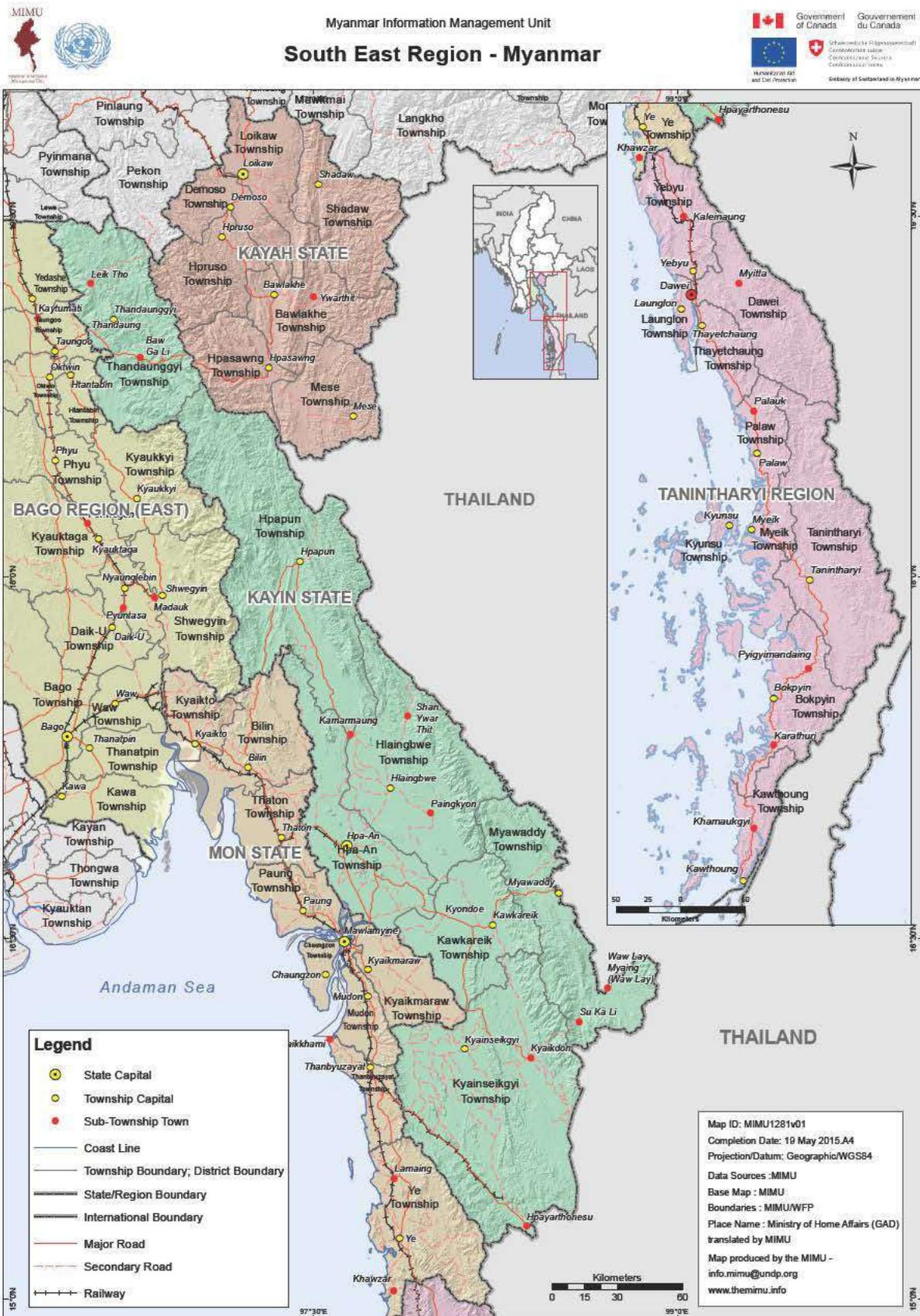
⁸⁸ Ibid., 88-89.

⁸⁹ Ibid., 90.

⁹⁰ Taylor, *State in Myanmar*, 340.

Section FOUR: EAA Justice Systems in Southeast Myanmar

Map 1: Southeast Myanmar (government administrative states/regions and townships)



Map 2: Karen National Union Districts and Townships



This section and sections 5 and 6 survey the justice systems of seven of the country's most established EAOs and perhaps its most organized state-backed People's Militia Force, the Pa-O National Army. The depth and detail of information provided on each EAA is not uniform, since data from some organizations was more accessible than others; furthermore, some organization's systems are more advanced than others and lend themselves to additional analysis. In addition to justice officials and other representatives from the EAAs, other key informants were interviewed to fill gaps in information, provide balancing perspectives, and corroborate some of the findings. These informants included former EAA members, community leaders, representatives of civil society, nongovernmental and cultural organizations active in EAA areas, locally focused journalists and researchers, and other well-informed observers. For the purposes of this report, Southeast Myanmar includes Kayah State, Kayin State, Mon State, eastern Bago Region, and Tanintharyi Region (see Map 1).

4.1 Karen National Union / Karen National Liberation Army

The KNU maintains widely varying levels of influence in rural communities across much of government-defined Kayin State and parts of Mon State, Bago Region, and Tanintharyi Region. This area is administratively divided into seven districts, which correspond directly to seven Karen National Liberation Army (KNLA) brigades (see Map 2).⁹¹ Each district is divided into two to five townships, which roughly correspond to KNLA battalions. Each township is further divided into a number of village tracts with up to twenty villages each.

The KNU is led at the central level by an Executive Committee (EC) consisting of a chairman, vice chairman, general secretary, a secretary-1, and a secretary-2, in addition to six other members that include various department heads and two senior KNLA officers. The top five members of this committee are elected by a quadrennial Central KNU Congress, which includes hundreds of representatives from all seven districts. The EC is ultimately accountable to the Central KNU Congress and to a 50-man Standing Committee in the interim. Below the EC, and answerable to the general secretary, are 14 central departments, which include departments of Defense, Interior and Religious Affairs, and Justice. Each district/brigade and township/battalion then has KNU chairpersons and KNLA commanders who head executive committees for their areas (with the KNU always being superior), in addition to congresses and standing committees representing all their constituent areas.

The KNU is strongest in mountainous areas and has a particularly firm presence in Mu Traw District, southern Taw Oo District, and eastern Kler Lwee Htoo District. It also controls or has influence over collections of village tracts in northern Doo Tha Oo District, eastern Hpa-an District, southern Dooplaya District, and two particularly forested areas of eastern Mergui-Tavoy District. In parts of all districts, its authority overlaps with that of the government and other EAAs considerably. Nonetheless, KNU district and township officers still play a strong role in Karen communities throughout these mixed-control areas.

Institutions and structures

The KNU's justice system includes three main institutions: the Justice Department, a judiciary made up of judges at each administrative level, and the Karen National Police Force (KNPF). The Justice Department and the judges are separate entities, but work closely together. The KNPF falls under the Interior and Religious Department. The judges and the KNPF work together on cases at each

⁹¹ From north to south these are Taw Oo (Taungoo in Myanmar language) District – 2nd Brigade; Kler Lwee Htoo (Nyaunglebin) District – 3rd Brigade; Mutraw (Papun) District – 5th Brigade; Doo Tha Htoo (Thaton) District – 1st Brigade; Hpa-an District – 7th Brigade; Dooplaya District – 6th Brigade; and Mergui-Tavoy District (Blih-D'Weh in Karen or Myeik-Dawei in Myanmar language) – 4th Brigade. This section uses the KNU's district and township structure, which does not exactly correspond with the government's structure. The KNU's Taungoo District roughly corresponds to Thandaung Township, Kayin State; Nyaunglebin with Kyauk Kyi and Shwegyin Townships, Bago Region; Mutraw with Papun Township, Kayin State; Thaton District with parts of Kyaikto, Thaton, and Bilin Townships of Mon State; Hpa-an District with Kayin State between the Salween River and the Myawaddy-Hpa-an road; Dooplaya District with Karen State from the Myawaddy-Hpa-an road south to Three Pagodas Pass; and Dawei District with Tenasserim Region.

administrative level.

The Justice Department

The KNU Justice Department is responsible for making laws and promoting awareness of the law, reviewing current laws, and updating them. It also supports legal decisions by providing comments and suggestions to judges in legal cases. The Justice Department is responsible for disseminating legal codes down to the village level, and provides trainings to KNU departments on legal issues. The Justice Department only maintains staff at the central level and does not have a presence at district or township level, although it provides trainings and other activities at these levels.⁹²

The Judiciary

The Judiciary is a separate and independent body. It consists of a Supreme Court, district courts, and township courts. Formal courts with KNU-appointed judges do not exist at the village or village tract level. Instead, village heads, through a village committee, have the authority to deal with minor criminal cases and civil disputes within the village. Cases that cannot be solved in the village, or which involve more than one village, are handled by elders at the village tract level.⁹³

The number of judges, the process for their selection, and the length of their terms are stipulated in the KNU Constitution. Judges are not appointed, but rather elected from within the party at township, district, and central congresses. At the Supreme Court level there are three Supreme Court judges. The supreme judges are elected at the quadrennial KNU Congress. Chosen by the Central Standing Committee of the KNU, which is itself elected at that Congress, they are then confirmed by the entire Congress and sit for a four-year term.⁹⁴ At the district and township levels, there is one judge per district and township. District and township judges are elected during their respective biennial district and township congresses, and their terms last two years. Judges have always been independent in the KNU system and make independent decisions, although perspectives are sought from other officials.⁹⁵ However, they may have other duties in the KNU besides their role as judge.⁹⁶ Judges have their own staff and receive rations and other varied forms of support for themselves and their staff from their respective district or township administration.⁹⁷ As with other KNU members, they do not typically receive formal salaries, but this might vary between districts. Current KNU judges do not have any formal university-level legal training, and most of their knowledge of legal issues comes from their own experience, but they are expected to study the KNU's legal books.⁹⁸

By law, only judges may convene a trial, although this has not always been the case in practice. On occasion, township chairpersons and secretaries as well as KNLA brigade and battalion commanders have convened trials and decided cases. In some cases, this is because they were the only authorities present at the time, particularly during times of conflict when communication and transportation were difficult; in others, it was because local people came to them directly with the case due to personal relations. Nevertheless, KNU leaders who were interviewed noted that the involvement of township and district leadership and KNLA officers opens the judicial system to favoritism and is considered a

⁹² Interview with senior KNU Justice Department official, 2016; interview with KNU Supreme Court judge, 2015.

⁹³ Interview with senior KNU Justice Department official, 2016; interview with Karen Human Rights Group human rights monitors, 2016 (2).

⁹⁴ Interview with senior KNU Justice Department official, 2016; interview with KNU Supreme Court judge, 2015.

⁹⁵ Interview with senior KNU Justice Department official, 2016.

⁹⁶ For example, the recent head judge of the Supreme Court, P'Doh Saw Daw Lay Mu, was concurrently the head of the Agriculture Department. Interview with senior KNU Justice Department official, 2016; interview with KNU Supreme Court judge, 2015.

⁹⁷ For example, in Mutraw District there is one judge, a deputy, and an administrative staff member at district level. Across the three townships of Mutraw District – Lu Thaw, Dweh Loh, and Bu Tho – there are three judges, one for each township, and nine staff members across all three. According to central policy, districts are supposed to collect all revenue from township administrations and dispense funds as needed for staff and other costs. In practice, some township administrations are more independent and pay for their own personnel from their own revenues.

⁹⁸ For example, the KNU's most experienced judge is a "very old man" in Dooplaya District who gained his knowledge through personal study of government and KNU laws and long experience working in the KNU legal system. The lack of formal understanding of the KNU's legal codes and judicial practices has fostered disinterest in their work among some judges, because they feel they do not have enough knowledge for the position. Interview with KNU Supreme Court judge, 2015; interview with senior KNU Justice Department official, 2016.

problem. The stability resulting from the KNU's ceasefire has given them space to promote the use of the KNU's formal legal procedures for dispute resolution and criminal incidents.⁹⁹

The KNU has recently created a Karen Legal Affairs Committee as an interdepartmental committee under the Central Court. The committee is made up of the heads of the Interior and Religious Department and the Justice Department, the chief justice and two central judges, and a representative each from the Karen Women's Organization (KWO),¹⁰⁰ the Organizing and Information Department, and the Agriculture Department. The committee is responsible for seeking ways to promote rule of law and legal awareness, and seeks to reform the legal system, strengthen knowledge of legal issues, and train judges to handle trials. It currently has a one-year plan to provide legal training to police, judges, and village heads in case management and complaint mechanisms.¹⁰¹

The Karen National Police Force

The Karen National Police Force (KNPF) was established in 1991 to take responsibility for keeping order, making arrests, and conducting investigations in criminal cases. Administratively, it comes under the Interior and Religious Affairs Department, established in 1948.¹⁰² Before 1991, criminal law enforcement was the responsibility of the Karen National Defense Organization (KNDO), which has now become solely a "defense" organization. Guidelines for KNPF handling of criminal cases are set forth in the Code of Legal Procedure.¹⁰³ The KNPF has a presence in all seven districts of the KNU and claims to have over 600 personnel, including female police personnel in each district.¹⁰⁴

The KNPF is currently headquartered in Mutraw District, but is slated to soon move to the KNU general headquarters at Lay Wah in Hpa-an District.¹⁰⁵ The KNPF has chiefs at the district and township levels, who are based in police offices located in the same compounds as the KNU district and township offices.¹⁰⁶ Not every township has a police office, or even a KNPF presence, and the number of personnel at each level depends on the area. Doo Tha Htoo, Bliih-D'Veh, Mutraw, Dooplaya, and Hpa-an are the most active districts in terms of KNPF presence.¹⁰⁷

The KNPF coordinates with township authorities and with village and village tract security representatives. There is usually one security person for each village who is responsible for monitoring the activities of the Tatmadaw and works with the police, KNLA, and KNDO. They also monitor the situation in their area and report any crimes. The village security representatives are managed by a chief of security selected by the indirectly elected village tract head.¹⁰⁸

The KNLA and KNDO are not supposed to perform police functions, except in particular situations, such as to arrest accused individuals when there is no KNPF available, or to provide security and keep order

⁹⁹ Interview with senior KNU Justice Department official, 2016; interview with KNU Supreme Court judge, 2015; Interview with Karen Human Rights Group (KHRG) monitors, 2016 (1).

¹⁰⁰ The Karen Women's Organization is not a department of the KNU, but is a community based organization, given special rights by the KNU Constitution, including to representation in all of the organization's main administrative and legislative organs.

¹⁰¹ Interview with senior KNU Justice Department official, 2016.

¹⁰² The Interior and Religious Affairs Department only has staff at the central level, and works through district and township chairpersons at lower levels.

¹⁰³ Interview with senior KNU Justice Department official, 2016.

¹⁰⁴ Interview with senior KNU Interior and Religious Affairs Department official, 2015. Most of the female police are low ranking, and there is a recognized need to promote them as well as recruit more to handle female suspects. One female KNPF officer interviewed was enlisted at the Mutraw District level.

¹⁰⁵ Interview with senior KNU Interior and Religious Affairs Department official, 2015.

¹⁰⁶ Interview with senior KNU Interior and Religious Affairs Department official, 2015; interview with KNU Mutraw District judge, 2015. These offices support the police with rations and other necessities.

¹⁰⁷ For example, in Mutraw District, where the KNU is particularly strong, there are 34 police at the district level. At the township level there are 22 police in Lu Thaw, 21 in Dweh Loh, and 25 in Bu Tho Townships. In Kawkareik Township, Dooplaya District, police are assigned to each village tract from the township office. Interview with senior KNU Interior and Religious Affairs Department official, 2015; interview with KNU Mutraw District judge, 2015; interview with Kawkareik Township KNPF officer, 2015.

¹⁰⁸ Interview with Kawkareik Township KNPF officer, 2015. Village Tract Heads are formally known as Chairpersons in the KNU system. They are elected through a plenary meeting between delegates from all villages under that tract. See Jolliffe (2016).

for social occasions such as Karen New Year festivities and large meetings such as the quadrennial congresses. When in this role, they usually have identifying armbands and may carry handcuffs.¹⁰⁹ However, they may occasionally be called in to perform policing functions, or even undertake them unilaterally in some cases, particularly where civilian oversight is weak or there is a limited KNPF presence. According to anecdotal reports, conflicts between the KNLA and KNPF have sometimes arisen, seemingly over conflicting interests and mandates in most cases.¹¹⁰

Once a year, there are centrally organized meetings between the Justice Department, the judges, and the KNPF. These meetings are also meant to include district chairpersons and military representatives from each district and brigade. Discussions at the meetings concern what was implemented over the past year, and making plans and strategy for the coming year.¹¹¹

The KNPF continues to train new personnel. In March 2016, 200 new KNPF personnel graduated from training.¹¹² Particularly since the current head of the Interior and Religious Affairs Department, P'Doh Saw Ah Toe, was appointed in 2012, efforts have been made to improve training for the KNPF. Several major trainings have taken place since his appointment, including in basic military skills by the KNLA, and instruction in police guidelines, rules, and duties.¹¹³ A senior police official stated in 2015 that two trainings are planned for 2016 that are slated to include police from all districts as well as judges.¹¹⁴ The KNPF also provides training through its district-level police for its own personnel, as well as for those involved in judicial activities at the district and township level.

Still, according to P'Doh Saw Ah Toe, the KNPF feels it needs additional training in policing skills and criminal investigation.¹¹⁵ Members of the Interior and Religious Affairs Department and the Justice Department feel that the KNPF is as yet unable to fulfill all its responsibilities due to inadequate numbers and inadequate training. This has resulted in some police not always knowing their duty.¹¹⁶ Senior KNU leaders say there is a recognition within the KNU that investigative techniques have been inadequate in the past and that gaps and flaws in the regulations remain, resulting in mistakes over the years. In the view of one senior KNU judge, "They [the police] did many bad things."¹¹⁷ In early August 2016, a video circulated on social media sites showing KNPF officers and KNLA soldiers beating a group of alleged drug users from Tham Hin refugee camp in Thailand. The video sparked a degree of outrage among the Karen community online, and the KNU later issued an apology, stating that the beatings were "inappropriate and [did] not align with its ideology."¹¹⁸

The Myanmar government has complained since the 2012 ceasefire about the increasing strength of the police, their training, and their recruitment. However, the KNU feels that the continuation of the KNPF is in line with interim arrangements provided for in the Nationwide Ceasefire Agreement (NCA) that recognize the continuation of governance roles of EAOs in the period prior to a political settlement. Specifically, Section 25A of the NCA makes clear that EAOs "have been responsible for development and security in their respective areas". The article goes on to state that during the interim period, signatory EAOs and the Myanmar state shall carry out certain programs and projects in coordination with each other, including, "matters regarding peace and stability, and the maintenance of the rule of

¹⁰⁹ Interview with KHRG monitors, 2015; personal observations.

¹¹⁰ Interview with KHRG monitors, 2015.

¹¹¹ Interview with KNU Supreme Court judge, 2015. Difficulties in communications, transportation, and security mean that sometimes not all district chairmen attend.

¹¹² Interview with KHRG monitors, 2015.

¹¹³ Interview with Kawkaik Township KNPF officer, 2015. One of the trainings involved trainers and resources from Co-operation Ireland, an organization focused on peacebuilding activities.

¹¹⁴ Interview with senior KNU Interior and Religious Affairs Department official, 2015.

¹¹⁵ Interview with senior KNU Interior and Religious Affairs Department official, 2015.

¹¹⁶ Interview with senior KNU Interior and Religious Affairs Department official, 2015; interview with senior KNU Justice Department official, 2016.

¹¹⁷ Interview with KNU Supreme Court judge, 2015.

¹¹⁸ This is a quote from a news article describing the statement, not a direct quotation of a statement. Buu Tho, "Video shows Burmese militia's brutal interrogations," France 24, August 8, 2016. <http://observers.france24.com/en/20160808-video-burma-karen-police-army>. The incident took place in Megui-Tavoy District in early July 2016.

law in said areas,” and “eradication of illicit drugs.”¹¹⁹ The interim arrangements do not go so far as to vest total authority for these affairs in the EAOs and emphasize the need for coordination, leaving some ambiguity, given the reality of parallel systems continuing to exist. According to P’Doh Eh K’Lu Say, “We have our own law and administration, so we must advance our own rule of law to maintain peace and order.”¹²⁰

Laws and forms of crime

The KNU’s laws were first codified in 1948, but they were very basic. With early KNU leaders focused on securing and defending territory and creating a governance system, there was little importance given to revising and expanding the KNU’s existing legal structure. During the 1970s, there was a reorganization and expansion of the legal code and criminal procedure by several former lawyers at the KNU headquarters at Manerplaw.¹²¹ Old laws were revised and new laws devised, which were codified in four law books including a book on procedure.

The Justice Department is responsible for drafting new laws and revising old ones. Once the Justice Department has a new or revised law ready, it is sent to the Executive Committee of the KNU for initial approval. If approved, it is then submitted to a vote at the next quadrennial Congress, where if passed, it is adopted as law.¹²²

The KNU has four legal books covering legal procedure, criminal law, civil law, and “magic” law. The code of legal procedure is concerned with how to implement the law, including the role of judges, how trials should be conducted, jurisdictions, roles and responsibilities of the police, and police procedures.¹²³ The criminal law book lays out the different crimes, at what level these crimes should be tried, and the type and severity of punishments which can be issued depending on the severity of the crime and the level of court at which the case is tried. The civil law book deals with disputes between private individuals over issues such as physical assault, land disputes, and compensation for injury, and also lays out the types of fines that can be levied based on the severity of the case and the level of court. The book of “magic” law is concerned with cases involving the perceived damage from spells that individuals have cast themselves or have requested a shaman to cast on their behalf. Such crimes are considered very real to many Karen, who have a strong belief in otherworldly interventions and concern for the damage that can be caused.

The most common cases handled by the courts are murder cases, as well as what interviewees often described as domestic or “family” cases involving adultery or violence. The KNU reports that the main cases that the police deal with in Karen areas involve murder, theft, rape, and the production, sale, and use of drugs.¹²⁴ Adultery was considered a major crime by the KNU justice system until after 1995, when laws were changed and penalties lessened for the offence. Offenders are now penalized with monetary fines or put in leg stocks for a period of time.¹²⁵ Adultery cases are usually decided at the village tract level through some form of compensation paid to the wronged party. Sometimes, however, the couple decides to stay together. At other times, the adulterous couple simply runs away.¹²⁶

¹¹⁹ Items number 4 and 6 of the Interim Arrangements for Administration section of the NCA.

¹²⁰ Interview with senior KNU Justice Department official, 2016.

¹²¹ These lawyers had been trained in central Myanmar and practiced law in the government system before joining the KNU. They included Saw Htoo Htoo Lay, Saw Benjamin, and Saw Reginald.

¹²² Interview with senior KNU Justice Department official, 2016.

¹²³ Interview with senior KNU Justice Department official, 2016.

¹²⁴ Interview with senior KNU Interior and Religious Affairs Department official, 2015.

¹²⁵ Interview with KHRG monitors, 2016 (1).

¹²⁶ Interview with KHRG monitors, 2015.

Judicial process

Chains of referral

When a crime occurs or there is a dispute between villagers, the case is usually taken to the village head. However, if villagers have closer relations to other influential persons, such as village elders, religious leaders, CSO members, KNU/KNLA personnel, or other EAA personnel, they may go to them first.¹²⁷ According to KNU law, village heads are authorized to handle minor crimes through a combination of KNU and customary laws and practices, and are given significant leeway in administering appropriate punishments and other measures. Such minor crimes include fistfights between villagers, domestic violence, and petty theft.

Cases that cannot be handled locally are typically referred up through the administrative levels, where sentencing follows specific guidelines laid out in the KNU's legal books.¹²⁸ Some cases are specified in the code of legal procedure to go directly to a certain administrative level.¹²⁹ Crimes punishable by sentences of less than three months labor or jail time are handled at the village tract level by the chairperson and chief of security.¹³⁰ The usual sentence at this level is a warning or a fine. A second offense results in the person being sent automatically to the township level for reoffending. In practice, village tracts in many areas likely retain a level of autonomy and flexibility in how they handle cases in their areas, but this varies depending on the degree of KNU control.

Townships are authorized to handle cases involving all offenses punishable by up to three years imprisonment,¹³¹ which include the majority of civil cases.¹³² The administrative level at which theft cases are adjudicated depends on the value of the stolen goods. Crimes including murder, torture, rape, and theft of property valued at more than MMK 5 million must be referred straight to the district level, as townships do not have the authority to handle them.¹³³ Although the township court can sentence people to up to three years imprisonment, it needs the district's permission to issue this sentence.

The district court can impose sentences of three to seven years in jail, either in the township jail or the district jail if the township does not have one.¹³⁴ However, certain crimes must be referred to the central level. The district must request an opinion from the central level for any sentence in a murder trial, and must wait 40 days for a response on sentencing. Since 2012, ten murder cases have been referred to the central level. Sentences for murder depend on the action and the level of intent. Rape, murder, and adultery are the main crimes that go before the central level.

Victims or defendants may appeal to higher-level courts by writing a letter of request.¹³⁵ Appeals must be requested within a set period of time – 45 days for appeals to the central court. There is some leeway for late appeals, given the difficulty and amount of time it may take to send in an appeal.¹³⁶ There have been incidents where cases sent directly to the district have been sent back down from a higher level in order to provide an avenue for appeal.¹³⁷

¹²⁷ Interview with KHRG monitors, 2015. CBO members or members of the KWO or Karen Youth Organization (KYO) are often better educated and perceived to be more likely to be heard by the KNU or KNLA.

¹²⁸ Interview with KHRG monitors, 2016 (1).

¹²⁹ Interview with senior KNU Justice Department official, 2016.

¹³⁰ Labor sentences may include cooking, carrying water, cutting firewood, portering supplies, and other "useful" labor in support of temporary KNU/KNLA camps as well as at more fixed administrative and military bases.

¹³¹ Interview with KHRG monitors, 2016 (2).

¹³² Interview with KHRG monitors, 2016 (2); interview with KNU Supreme Court judge, 2015.

¹³³ Interview with senior KNU Justice Department official, 2016; interview with KNU Supreme Court judge, 2015; interview with KNU Mutraw District judge, 2015. Full caseload data for all districts was unavailable, but in Mutraw District, for example, there were five cases submitted to the district court in 2014, and eight from January to October 2015.

¹³⁴ Interview with KNU Supreme Court judge, 2015; interview with KNU Mutraw District judge, 2015.

¹³⁵ Interview with senior KNU Justice Department official, 2016; interview with KHRG monitors, 2016 (2).

¹³⁶ Interview with senior KNU Justice Department official, 2016.

¹³⁷ Interview with senior KNU Justice Department official, 2016. For example, a recent killing in Dooplaya District was sent to the district

Investigation and trial procedures

Cases that are handled at the village level do not undergo formal investigation and trial processes mandated by KNU law; indeed, there are no formally appointed judges at the village level. The village head or other influential persons will typically bring both sides together with the village committee and discuss the case. Some form of arbitration and compromise, often with payment of compensation,¹³⁸ is usually involved in disposing of these cases, though punishments are sometimes also used. Other influential people may also be involved in making judicial decisions at the village level. When trials are held at the village level, the community decides the punishment, as discussed below.

Village heads sometimes call on people known as “mobile judges.” These are people who are considered to be wise and particularly knowledgeable about legal issues, but who are not part of the KNU judicial system. These people are not necessarily members of the KNU, nor are they based in any one village, but they may be summoned by the village head to hear a case, and their decisions are usually considered to be binding.¹³⁹ Even if these cases can be solved locally, the KNPF are still supposed to be informed.

Additionally, monks, who are respected as moral religious figures, have a role in village-level judicial and arbitration processes in many Buddhist villages. In some areas, the moral authority of the monks makes them more powerful than the village heads, and effectively the primary authority in that area. This is especially the case in parts of Hpa-an and Dooplaya Districts. They may also act as conduits to the KNU justice system for people unable or unwilling to take cases to the village head or KNU. Christian pastors do not seem to have a similar role, being largely uninvolved in judicial issues.¹⁴⁰

If a case cannot be handled at the village or village tract level, the normal procedure for informing the KNU is for the village tract security chief or chairperson to contact the KNPF or other KNU authorities at the township level. Once such a report is received, the first step the KNU takes is for the KNPF to investigate. This is done by talking to witnesses and taking photos of the scene. As noted below, numerous KNU officials stated that KNPF investigation procedures were in need of improvement. Suspects are taken to the township office and detained in the jail there. For cases that must be tried at a higher level, arrested individuals are held in the township jail until they can be moved to the district jail for their trial.¹⁴¹

The police then report their findings to the judge at the appropriate administrative level, usually the township.¹⁴² If the circumstances of the case are not clear, the police are instructed to investigate further. Once the circumstances of the case are clearer, it is submitted to the court at the appropriate administrative level.¹⁴³

Trials at the township, district, and central levels are conducted through judicial committees headed by a judge. Other than the judge, the composition of the judicial committee changes depending on the situation and the circumstances of the case being tried. The judge chooses the people who make up the committee based on their knowledge of the issues involved in the case or the situation in the area where the case originated. For example, KWO members are often chosen for cases involving women and children.¹⁴⁴ One other reason for the use of committees is that judges usually do not want the

because the township felt it could not handle it. The district sent it to the center, but the center sent it back to the district because if the initial trial were at the central level there would be no possibility of appeal.

¹³⁸ Interview with KHRG monitors, 2015. For more detailed information, see Drum Publication Group, *History and Traditional Justice System of the Karen People* (Kanchanaburi, Thailand: Drum Publication Group, 2006), available in Sghaw Karen and Burmese.

¹³⁹ Interview with KHRG monitors, 2016 (2).

¹⁴⁰ Interview with KHRG monitors, 2016 (2); interview with KHRG monitors, 2015.

¹⁴¹ Interview with Kawkareik Township KNPF officer, 2015.

¹⁴² Interview with KNU Supreme Court judge, 2015; interview with senior KNU Justice Department official, 2016.

¹⁴³ Interview with KNU Supreme Court judge, 2015.

¹⁴⁴ Interview with senior KNU Justice Department official, 2016. Additionally, the KWO plays an important role in improving the legal protections available to women. KNU policy dictates that every village must have a KWO representative who also sits on the village committee. KWO members often put pressure on the KNU and push for women's rights in judicial proceedings. In cases of domestic abuse or sexual

responsibility of making a judgment alone. These committees may also call for input from KWO members or other persons, such as relevant village committee members, even where they are not included on the judicial committee.¹⁴⁵ Central-level KNU leaders are prohibited from being involved in trials at all levels, but district and township leaders may be.

Trials are conducted in accordance with procedures outlined in a handbook issued to all judges when they are appointed to the position, which are occasionally updated by the Justice Department with approval of the EC and central Congress.¹⁴⁶ Notably, the KNPF acts as prosecutor during the trial and follows a set procedure.¹⁴⁷ KNPF officers prepare a form detailing the crime and the evidence and present the case to the court.

Defendants are asked to plead “guilty” or “not guilty.”¹⁴⁸ The judge then questions the victim, alleged perpetrator(s), and witnesses.¹⁴⁹ The KNPF officers, the plaintiff, and the defendant are all able to call witnesses, present evidence, and testify.¹⁵⁰ Most cases rely heavily on witnesses. This is because investigations are difficult and little evidence is presented. There are no lawyers at trials, primarily because there are no trained lawyers available in these areas.

In practice, cases are not always handled in accordance with the procedures provided for in the KNU’s legal literature and training. This is particularly the case in areas where the KNU’s administration is weak, or where activities of the Tatmadaw or other EAAs have made communication and transportation difficult. For example, in some areas, once a township authority has been notified of a case that should fall within its mandate, it will simply send a written or verbal order to the village or village tract authorities with directions on how to handle the case, rather than conducting an investigation or trial itself.¹⁵¹ Such practices violate KNU procedures.¹⁵²

Jurisdiction issues

Occasionally, cases are referred to the KNU by other EAAs, or by local authorities in mixed-control areas (see the section on the NMSP below for information on cases in areas of overlapping control between the KNU and the NMSP).¹⁵³ In areas where the government is also present, KNU liaison offices sometimes receive complaints from villagers, which are then discussed with the government,¹⁵⁴ and according to a justice department official, are sometimes “solved through negotiation.” On occasion, the KNU has charged its own personnel based in Thailand with crimes committed there. Thai authorities occasionally hand over offending Karen people to the KNU justice system, sometimes at the KNU’s request. In the case of the previously mentioned video of KNPF and KNLA officers striking prisoners, the alleged drug users had been arrested in Tham Hin refugee camp in Thailand by camp security, then handed over to the Thai police, who transferred them to KNU authorities. Thai authorities have also requested that individuals be handed to them from the KNU and other Karen EAOs.¹⁵⁵

violence, the KWO also operates safe houses for victims. However, the KWO’s reach and capacity vary from area to area, making their impact greater in some areas than others. Interview with KHRG monitors, 2016 (1); interview with KHRG monitors, 2015.

¹⁴⁵ Interview with KHRG monitors, 2016 (2).

¹⁴⁶ Interview with senior KNU Justice Department official, 2016.

¹⁴⁷ Interview with senior KNU Justice Department official, 2016.

¹⁴⁸ Interview with senior KNU Justice Department official, 2016.

¹⁴⁹ Interview with KNU Supreme Court judge, 2015.

¹⁵⁰ Interview with KHRG monitors, 2016 (2).

¹⁵¹ Interview with KHRG monitors, 2016 (1); interview with KHRG monitors, 2016 (2).

¹⁵² Interview with KHRG monitors, 2016 (2).

¹⁵³ Interview with senior KNU Justice Department official, 2016.

¹⁵⁴ Interview with KHRG monitors, 2016 (1).

¹⁵⁵ Interview with KHRG monitors, 2016 (2).

Punishments

In minor cases handled at the village level, village-level authorities will sometimes administer punishments directly. For instance, according to one informant, in the case of a fistfight, both parties would typically be detained at the village head's office,¹⁵⁶ often in leg stocks. While these local practices likely vary from area to area, the use of stocks, particularly leg stocks, by village authorities is apparently common. For theft, compensation is decided depending on the cost of the item stolen.¹⁵⁷

On paper, the KNU is supposed to have a central jail at its headquarters, as well as jails at the district and township levels. Currently, there is no central jail; four districts have jails, and a minority of townships have jails.¹⁵⁸ With the stability brought by the 2012 bilateral ceasefire and the NCA, the Justice Department is pushing to have other districts construct their own jails.¹⁵⁹

Jails are typically located near the judge's office at district or township headquarters.¹⁶⁰ Separate compounds are maintained for civilian and military prisoners. Security for the jails is provided by KNLA soldiers. Convicts are not typically shackled or chained, and escapes are rare.¹⁶¹

Jail sentences are a common punishment for criminal offenses. While in jail, inmates may be required to do manual labor, cooking, or menial work at KNU administrative offices.¹⁶² Meals are provided to the inmates by the district authorities. A person may get a reduced sentence if they show good behavior over time, and furloughs are possible.¹⁶³ The death penalty is imposed by the KNU as its highest form of punishment.¹⁶⁴

Crimes by KNU personnel

Cases may be brought against KNU officials and soldiers of the KNLA and KNDO for overstepping their authority or committing crimes, although cases of villagers reporting such incidents are said to be rare.¹⁶⁵ In the past, these cases were handled by the KNLA separately from civilian cases, without involvement of the police or judiciary. Since 2014, however, cases involving a crime committed by a KNLA soldier against a civilian have been submitted to the KNU judicial system, albeit after first being referred to the military. The change occurred because, in the past, the military simply decided cases themselves and handed the convicted persons over to the judiciary, but the judiciary had no history of the crime and did not know how to handle it. Now, KNLA or KNDO personnel who break military regulations are still tried by the military court in accordance with the Military Code of Conduct, but a judge and the police are typically invited.¹⁶⁶ Legal action cannot be taken against a standing committee or EC member unless the member is first removed from their post.¹⁶⁷ Civilian cases are never transferred

¹⁵⁶ Interview with KHRG monitors, 2016 (1).

¹⁵⁷ Interview with KHRG monitors, 2016 (1). According to this informant, these stocks are not usually on public display. Anecdotal accounts were also received of the use of stocks in some cases.

¹⁵⁸ Interview with KHRG monitors, 2016 (2); interview with senior KNU Justice Department official, 2016. The KNU operated one at their headquarters at Manerplaw from the 1980s or earlier until the mid-1990s. When Manerplaw was lost in 1995, the KNU no longer had a secure central location for a jail, and it has yet to reestablish one. The district jails are in Mutraw, Hpa-An, Dooplaya, and Bliih-D'Veh Districts.

¹⁵⁹ Interview with senior KNU Justice Department official, 2016; interview with senior KNU Interior and Religious Affairs Department official, 2015. The administrations of Nyaunglebin and Thaton districts are currently trying to build jails. Hpa-an District operates a special detention and rehabilitation center for drug addicts, in addition to its jail.

¹⁶⁰ Jails are typically constructed of bamboo or wood with separate cells.

¹⁶¹ Interview with KHRG monitors, 2016 (2); interview with KHRG monitors, 2016 (1); interview with senior KNU Justice Department official, 2016; interview with KHRG monitors, 2015; interview with KNU Mutraw District Judge, 2015. Some jails can be quite large. The jail at the Mutraw District headquarters at Day Pu Noh, for example, had around 45 inmates in November 2015.

¹⁶² Interview with KHRG monitors, 2015.

¹⁶³ Interview with KHRG monitors, 2016 (2); interview with KNU Supreme Court judge, 2015; interview with KNU Mutraw District judge, 2015.

¹⁶⁴ Interview with KHRG monitors, 2016 (2). In 2015 and 2016, the KNU executed several KNLA soldiers who were involved in the killing of five members of the KNPF in Dooplaya District. The case was decided by a military court after moving up the civilian chain.

¹⁶⁵ Interview with KHRG monitors, 2016 (2); interview with KHRG monitors, 2016 (1).

¹⁶⁶ Interview with senior KNU Justice Department official, 2016; interview with KHRG monitors, 2016 (1).

¹⁶⁷ Interview with KHRG monitors, 2016 (2).

to the military.¹⁶⁸

Reforming the justice system

KNU leaders who were interviewed clearly recognized that the justice system has some flaws, but felt that it was the best that could be done during the period of armed struggle, and said that the KNU is taking steps to improve it.¹⁶⁹ A critical problem is that while the KNU has territory, it has a serious human resource problem. Many people are already performing several jobs across different departments at the same time, particularly at the township level. There is a recognized need for more judges with better training in law and judicial procedure.¹⁷⁰

4.2 KlohtooBaw Karen Organization (KKO) / Democratic Karen Benevolent Army (DKBA)

The Democratic Karen Buddhist Army was formed by a large splinter group from the KNU in 1994. After fighting alongside the Tatmadaw against the KNU for 15 years, the organization split in 2010 amid demands from the Tatmadaw to transform into BGFs. A large faction defaulted and formed 12 BGFs, numbered 1011 to 1022,¹⁷¹ while another faction re-aligned with the KNU and entered conflict with the Tatmadaw. The latter faction signed a ceasefire with the Thein Sein government in 2011, and then renamed itself the Democratic Karen Benevolent Army, and set up a civilian body called the KlohtooBaw Karen Organization in 2012. The KKO/DKBA ousted a number of commanders in 2015 who went on to re-establish themselves as the Democratic Karen *Buddhist Army*, but that group is not covered here.

The Democratic Karen Benevolent Army is primarily a military organization and does not have a separate structure for governing civilians. The KKO was intended as the administrative arm of the organization but has yet to achieve much traction, and currently exists only as a five-man secretariat concentrated on developing basic political policy, mostly involving relations with the KNU. The DKBA leaves local administration to village heads, and prefers to concede township- and district-level administration to the KNU. This includes the administration of justice.¹⁷²

The DKBA's area of control is concentrated in southeastern Kayin State, south of the Hpa-an-Myawaddy road, and is divided into an East Daw Na zone and a West Daw Na zone.¹⁷³ The DKBA has had to cope with active efforts by the government to set up its own administrative structures in the area in the form of "sub-township towns" located at Wawlay and Sukali. The government has also applied pressure to the KKO/DKBA for it to cooperate to establish "10 household heads" and village-tract level authorities and committees according to the government system.¹⁷⁴

Judicial process

The handling of justice issues is largely the same as in other areas where the KNU has an established governance system. Typically, most minor issues are handled at the village level, potentially with the involvement of local monks or other influential persons. Interviewees in the DKBA area spoke

¹⁶⁸ Interview with KNU Mutraw District judge, 2015; interview with KHRG monitors, 2016 (2).

¹⁶⁹ Interview with senior KNU Justice Department official, 2016.

¹⁷⁰ Interview with KHRG monitors, 2016 (2); interview with KNU Supreme Court Judge, 2015; interview with KHRG monitors, 2016 (1).

¹⁷¹ BGF 1023 was formed at the same time by another KNU splinter group, called the Karen Peace Force.

¹⁷² Under the original DKBA (1994-2010), before a major faction split to form BGFs in 2010, the Tatmadaw was in charge of administering justice in DKBA areas. The only place where the DKBA could take action in legal cases was within the area of its general headquarters at Myaing Gyi Ngu. At that time, there was little presence of civilian government authorities in the area outside of the major towns. At Waley, the headquarters of the DKBA's 5th Brigade until November 2010, the DKBA did not take direct action on justice issues, instead leaving them up to community leaders. Serious cases were handled by the Tatmadaw, which prosecuted the cases and issued sentences. At the township level, the Tatmadaw arrested suspects and dealt with them. The DKBA could not interfere at that time.

¹⁷³ Interview with senior DKBA leadership, 2016. The East Dawna zone covers the area between the Dawna Range and the Moei River border with Thailand, and includes the headquarters at Sone Si Myaing (Maw Ka Ta in Karen) and the areas around Meh K'Neh, Palu, Waley, Kyu Ka Li, and Sakhanthit. The West Dawna zone includes the areas around Kyone Doe, Kyaikdon, and Three Pagodas Pass.

¹⁷⁴ Interview with senior DKBA leadership, 2016.

particularly of a customary practice wherein a villager who has done something wrong within the community is sent to be a monk for a period of time.

However, more serious or unresolved crimes are referred to the KNU. In the DKBA's main area of influence, the primary authorities are those of the KNU's Kawkaik Township. The KNU has a sub-administration including police officers assigned to the East Daw Na part of the Kawkaik Township, while the main township authorities are situated in the West Dawna part. Occasionally, cases are first referred to the KWO or other relevant CBOs.¹⁷⁵

The DKBA's territory also overlaps with that of the NMSP, numerous Karen BGFs, the Karen Peace Council,¹⁷⁶ and the government. In areas of southern Doooplaya District where the DKBA overlaps with the NMSP, if an arrested individual is Mon, that person is usually handed first to the KNU, which then raises the issue with the NMSP.¹⁷⁷ There have been, as yet, no legal cases involving issues between the Karen BGFs and the DKBA. According to the DKBA, cases are not referred to the government's justice system, although there have been cases where the government has advised the DKBA on how to handle a case.¹⁷⁸

DKBA leadership claims there have been no cases of injustice or disputes between the DKBA and local civilians. They say this is due to the high level of discipline they maintain in interactions with civilians in order to avoid conflicts. Meetings with civilians are prearranged and follow DKBA regulations on how to deal with them.¹⁷⁹ The DKBA operates a jail at its Si Sone Myaing headquarters for its own soldiers, usually for drug-related cases. Civilians are not held in this jail.¹⁸⁰

4.3 New Mon State Party / Mon National Liberation Army

The New Mon State Party has been the main EAA in Mon areas of southeast Myanmar since the 1950s. Its armed wing is called the Mon National Liberation Army (MNLA). The NMSP agreed to a ceasefire with the government in 1995, and an autonomous ceasefire zone was established. At present, the NMSP administers its ceasefire zone through three districts – Thaton, Mawlamyine, and Dawei – and a headquarters area. Each district is further subdivided into two to four townships. Each NMSP township has two or three village tracts of around ten villages each. The district boundaries of the NMSP and KNU overlap significantly, and although their relations are good, there remain some areas where actual claims to territory overlap. Village heads in the ceasefire zone consider the NMSP the sole authority, and the Myanmar authorities are barred from entry without prearranged permission.¹⁸¹

The Executive Committee of the NMSP oversees three main departments: Defense (Mon National Liberation Army), Party Affairs, and Administration. The Administration Department oversees eight other departments, including the Justice Department.¹⁸²

Institutions and structures

The Justice Department operates through judicial committees established at the township, district, and central levels. At the central level, the judicial committee consists of seven members and is chaired by the NMSP joint secretary. At the district level, the judicial committee is composed of members from

¹⁷⁵ Interview with senior KNU Justice Department official, 2016; with senior DKBA leadership, 2016.

¹⁷⁶ The Karen Peace Council is another EAO that was formed by a splinter faction from the KNU in 2007, in the Hpa-an District area. It is also often referred to as the KNU/KNLA-Peace Council.

¹⁷⁷ Interview with senior DKBA leadership, 2016.

¹⁷⁸ Interview with senior DKBA leadership, 2016. In a case where a DKBA soldier was involved in drug smuggling in the Myawaddy area, the government advised on how to solve the case. The DKBA had to send the soldier to the government.

¹⁷⁹ Interview with senior DKBA leadership, 2016.

¹⁸⁰ Interview with senior DKBA leadership, 2016.

¹⁸¹ Kim Joliffe, *Ethnic Armed Conflict and Territorial Administration in Myanmar* (Yangon: The Asia Foundation, 2015), 56-57. The headquarters area is effectively at district level, but is not considered as such.

¹⁸² Ibid.

the Administrative Department, members from the MNLA, the district chairperson, the district-level justice in charge, who is under the Justice Department, and members representing different subdepartments of the Administration Department. At the township level, the judicial committee consists of five people, including several village heads, members of the township committee, and military officers. Township judicial committees are currently not authorized to make judicial decisions, and act more as investigative working committees. The NMSP's justice system has not changed since before its 1995 ceasefire.¹⁸³

At the village level, there are judicial committees for each village, made up of the village head and the village administration members. The local community elects a village judge, who presides over the judicial committee. There are judicial investigation teams at the village and village tract levels. Village-level teams are led by the village head, while village tract-level team leaders are elected by other community members in their village tract.¹⁸⁴

The NMSP does not have a police force. The MNLA is responsible for arresting accused individuals.¹⁸⁵

Laws

The NMSP has its own longstanding legal code, but it is unclear when exactly it was established. The Burma Code, used in colonial Burma and later adopted – with some revisions – by the independent government of Myanmar, was consulted by the NMSP before the creation of a Mon legal code.¹⁸⁶ The legal code is revised and updated periodically, with experts from areas outside NMSP control sometimes invited to review the code, draft laws, and suggest punishments.¹⁸⁷ Lawyers have also been brought in from outside in the past to train the judicial committees on legal awareness.

The most common cases that go before NMSP courts are social disputes, narcotics, divorce and family problems, and land issues. Disputes related to inheritance of land are also commonly heard by the NMSP courts.¹⁸⁸

The administration of justice

Chains of referral and trial procedures

Crimes or disputes are typically first reported to the village-level judge or village head. Cases may then be reported to higher authorities if they involve a crime that only specific administrative levels are mandated to handle, if they cannot be solved at the local level, or if the plaintiff or defendant actively appeals.

Minor crimes and civil cases are handled at the village level.¹⁸⁹ Complaints go before a village-level judicial committee empowered to make decisions on petty crime and civil disputes. In areas where there are village tract-level authorities in place, civil cases may be adjudicated at that level, but criminal cases must go straight to the township level, which then refers them straight to the district level if they involve particularly serious crimes.¹⁹⁰

For example, if a rape case is reported at the village level, village authorities send a recommendation

¹⁸³ Interview with senior NMSP official and former Justice Department head, 2016; interview with NMSP Central Committee member, 2016.

¹⁸⁴ Interview with senior NMSP official and former Justice Department head, 2016.

¹⁸⁵ Interview with senior NMSP official and former Justice Department head, 2016; interview with NMSP Central Committee member, 2016.

¹⁸⁶ Interview with Mon academic, 2016.

¹⁸⁷ Interview with senior NMSP official and former Justice Department head, 2016.

¹⁸⁸ Interview with senior NMSP official and former Justice Department head, 2016.

¹⁸⁹ Interview with NMSP Central Committee member, 2016.

¹⁹⁰ Interview with senior NMSP official and former Justice Department head, 2016; interview with NMSP Central Committee member, 2016. In certain areas under the NMSP, village tracts have not been organized.

letter straight to the township level. From the township, the letter is sent on to the district, whose judicial committee then responds to the case.¹⁹¹ Typically, a warrant is obtained from the township judicial committee, and an MNLA security unit at the township level is then ordered to go and arrest the accused. If an MNLA unit happens to be nearby, village authorities can inform it directly, and it can arrest the accused immediately without a report being sent to the township judicial committee first.¹⁹²

The matter is then investigated at the township level by the township judicial committee, but the accused is detained at the district headquarters. This is due in part to the lack of holding facilities for the accused at the village level.¹⁹³ After the township-level investigation, a report is sent to the district judicial committee, which will try the case.¹⁹⁴ Civil cases and minor crimes require an investigation and determination from the township judicial committee before being sent to the district level for a decision.

At trial, both the prosecution and the defense are allowed to present evidence, speak on their own behalf, and call witnesses to testify.¹⁹⁵ While there are no lawyers in the NMSP system, defendants may choose someone to represent them.¹⁹⁶ When a decision has been made, the judge will read out the punishment.¹⁹⁷ Accused individuals are not detained in a jail before trial, but rather are held at the district headquarters, as a decision from a judge must be handed down before a person can be put in jail.¹⁹⁸ Defendants have the right to appeal a decision as well as their punishment to the chairman of the committee.¹⁹⁹ Civil and criminal trials can sometimes take a long time, particularly because there are multiple people on the judicial committees, many with other duties, who must all be assembled for a trial to take place.²⁰⁰

Most cases are fully resolved at the district level or lower, with few going to the central level.²⁰¹ If a case goes before the central judicial committee, both sides are investigated and are required to speak before the central judicial committee. Another commission is then formed to review the case and the judicial committee's ultimate verdict. This commission has the final say on the verdict and sets the punishment. Decisions by this commission must be unanimous, or the case must be reviewed again and a new decision issued.²⁰²

Jurisdiction

The NMSP Justice Department receives cases from inside and outside NMSP-controlled areas, but it will only take outside cases to trial if authorities in the other area agree. Contrastingly, people living within NMSP-controlled areas are said to report cases to the Myanmar government only rarely, believing it will be slow and involve great costs, such as for lawyers.²⁰³ Still, some "justice shopping" does go on in Mon areas. If people are unhappy with a decision by the NMSP, they may seek a different solution from the government, or vice versa. There is currently no formal coordination between the government and the NMSP on judicial proceedings.²⁰⁴

Apparently, government courts refuse to hear cases that have already gone to trial under the NMSP,

¹⁹¹ Interview with senior NMSP official and former Justice Department head, 2016.

¹⁹² Interview with senior NMSP official and former Justice Department head, 2016; interview with NMSP Central Committee member, 2016.

¹⁹³ Interview with NMSP Central Committee member, 2016.

¹⁹⁴ Interview with MNLA district commander, 2016.

¹⁹⁵ Interview with senior NMSP official and former Justice Department head, 2016.

¹⁹⁶ Interview with NMSP Central Committee member, 2016. There are no lawyers in the NMSP system.

¹⁹⁷ Interview with NMSP Central Committee member, 2016.

¹⁹⁸ Interview with NMSP Central Committee member, 2016.

¹⁹⁹ Interview with NMSP Central Committee member, 2016.

²⁰⁰ Interview with senior NMSP official and former Justice Department head, 2016.

²⁰¹ Interview with senior NMSP official and former Justice Department head, 2016.

²⁰² Interview with NMSP Central Committee member, 2016.

²⁰³ Interview with senior NMSP official and former Justice Department head, 2016.

²⁰⁴ Interview with senior NMSP official and former Justice Department head, 2016.

and vice versa.²⁰⁵ On occasion, however, the government has requested that the NMSP hand over specific individuals who are suspected of crimes. For example, there have been cases that had already been processed through the NMSP justice system when the government asked the NMSP to hand over the accused to the government. The NMSP has sometimes agreed to do so, typically in cases where the accused fled to NMSP territory after committing a crime in government territory.²⁰⁶

In areas of mixed KNU-NMSP control, the KNU tends to deal with cases in Karen villages while the NMSP handles those in Mon villages; but there are also some mixed villages. Crimes involving a Mon person and a non-Mon person are managed through the common NMSP procedure, while cases involving two Karen people in an NMSP controlled area are referred to the KNU.²⁰⁷ If a crime involving a Karen and a Mon occurs in NMSP territory, a KNU team is invited to participate in the judicial proceedings. According to the NMSP, they have the same arrangements for crimes involving Mon individuals in KNU-controlled areas.

Punishments

Punishment at the village and township levels for criminal offenses may entail being placed in leg stocks, but never for longer than 24 hours. Common punishments for crimes at the district and central level are jail time, house arrest, being placed in shackles, and fines to be paid to the Justice Department. The NMSP does not impose the death penalty.²⁰⁸

The length of imprisonment of individuals is determined by the type and severity of the crime. For civil offenses, monetary compensation is usually ordered. For serious crimes such as murder, a person may be imprisoned for a prescribed length of time.²⁰⁹ Jails exist at the district headquarters and central headquarters. They are administered by civilians under the Administration Department of the NMSP.²¹⁰ There also appears to be a form of rehabilitation for drug users in NMSP jails where detainees perform labor and other menial tasks.²¹¹

Crimes by MNLA personnel

According to a senior NMSP official, cases involving MNLA soldiers are taken very seriously and subjected to much the same judicial process as civilian crimes. An NMSP official said this was necessary because “the local Mon community must be taken into account.” These cases are first discussed by a commission made up of Administrative Department and military personnel. This commission may come to a decision on the case, but if the civil and military sides cannot agree, then the case can be sent to the Justice Department. If a soldier is found guilty, he is sent to jail.²¹² Offenses committed by one soldier against another are handled by a military committee.

4.4 Karenni National Progressive Party / Karenni Army

The KNPP is the most politically active EAA in Kayah State. It has few strongholds, but maintains numerous military bases and a mobile military presence in Shadaw and Hpasawng Townships. Additionally, the organization maintains an administrative presence in much larger areas through village-level leadership structures and the provision of social services. There are some areas within

²⁰⁵ Interview with senior NMSP official and former Justice Department head, 2016.

²⁰⁶ Interview with NMSP Central Committee member, 2016.

²⁰⁷ Interview with NMSP Central Committee member, 2016.

²⁰⁸ Interview with Mon academic, 2016. In the past, the NMSP had the death penalty in place for five crimes. Among these were murder, rape, and certain drug offences.

²⁰⁹ Interview with MNLA district commander, 2016; interview with senior NMSP official and former Justice Department head, 2016. This can be as long as ten to fifteen years or more for crimes such as rape or narcotics. Punishment for murder depends on the case and whether the act was intentional or accidental. The sentence for intentional murder is longer.

²¹⁰ Interview with senior NMSP official and former Justice Department head, 2016; interview with NMSP Central Committee member, 2016.

²¹¹ International researcher. The rate of recidivism appears to be high once a person returns to their community.

²¹² Interview with NMSP Central Committee member, 2016.

Kayah state where the KNPP is permitted to operate by agreement with the government. The KNPP has between eight and ten administrative departments, one of which is the Justice Department.²¹³ The KNPP and the government reached a bilateral ceasefire in 2012, which has been relatively stable and has allowed the KNPP to actively engage in the multilateral peace process.

Institutions and structures

The KNPP's Justice Department is active at the central, district, and township levels.²¹⁴ In accordance with the constitution of the KNPP a judicial committee within the Justice Department appoints three judges at the township level and three at the district level. Township and district judges are independent of the KNPP Justice Department or other KNPP administrative departments and work full-time as judges. However, judges at the central level may be from the Justice Department. All three judges are supposed to be present to hear any case at their level, but in reality, difficulties in communications and transportation mean that two may be considered enough to hear a case.²¹⁵

The Justice Department contains a body called the Karenni Legal and Human Rights Committee (KnLHRC), which provides training to KNPP personnel and communities in human rights, rule of law, democracy, and constitutional matters.²¹⁶

The KNPP does not have a police force. Instead, the KNPP's Interior Department has its own soldiers independent of the Karenni Army (KA). The primary duty of these soldiers is internal security, administration, and relief, but they also carry weapons and may fight if the situation warrants it. These soldiers are under the authority of the district- and township-level KNPP administrations and have the power of arrest in criminal cases. In contrast, the soldiers of the KA are primarily responsible for defense.²¹⁷

Laws

Minor crimes and civil disputes are left to village-level authorities and are typically handled through customary practices and laws, while serious crimes are tried under the KNPP's own criminal code. According to a member of the Justice Department, Karenni customary laws predate the KNPP, and while not written, have been passed down from generation to generation and are known by most rural Karenni people.²¹⁸ These laws form the basis for arbitration between members of the community and punishment for minor crimes. They are usually administered by the village elders, and villagers are expected to respect them.²¹⁹

The KNPP has a book of criminal law that lays out the different types of civil disputes, the types and seriousness of various crimes, and prescribed punishments. Drug offenses, rape, and murder are considered to be serious crimes. The laws in the book were drawn up by the KNPP Justice Department together with KNPP leaders with legal experience. Periodically reviewing them is a duty of the Justice Department, and new laws are sometimes proposed to the KNPP Central Committee in consultation with CSOs and CBOs.²²⁰

²¹³ Jolliffe, *Ethnic Armed Conflict*, 57-58.

²¹⁴ Interview with senior KNPP Justice Department official, 2016. The number and structure of KNPP districts and townships are unknown to the authors.

²¹⁵ Interview with senior KNPP Justice Department official, 2016.

²¹⁶ Interview with senior KNPP Justice Department official, 2016.

²¹⁷ Interview with senior KNPP Justice Department official, 2016. There is some overlap between these forces, since Interior Department and Defense Department personnel are currently mixed, but the KNPP hopes to separate them when the situation improves and the KNPP can develop its governance structure more efficiently.

²¹⁸ It should be noted that the Karenni nationality as understood by the KNPP includes Kayah, Kayan, and other subgroups. It is not clear if there are universal customary laws practiced by all of these subgroups, or if they vary between groups and from place to place.

²¹⁹ Interview with senior KNPP Justice Department official, 2016.

²²⁰ Interview with senior KNPP Justice Department official, 2016.

The administration of justice

Chain of referral and trial procedures

As in other EAO regions, community members usually approach village heads and other influential persons when there is a dispute or petty crime. If the case involves a serious crime, as prescribed by KNPP law, or cannot be solved at the village level or village tract level, then KNPP township authorities are informed.

When a serious crime is reported, township officials have the accused arrested, and investigate. The KNPP judges usually work by establishing temporary committees on a case-by-case basis. A typical township-level committee will comprise of township judges, village heads, village elders, and township administrative staff.

Particularly serious or difficult cases may be further referred to the district level for a hearing, where a similar committee is formed to investigate and hear the case.²²¹

Jurisdiction

In some townships, the KNPP has township administrators but no permanent office. The KNPP has offices in the government-controlled towns of both Loikaw and Demawso for township administrators who are responsible for administering the surrounding KNPP areas, but they are careful to not interfere in legal matters in these towns. These offices are separate from the KNPP's liaison offices. Townspeople may go to a KNPP township administrator in one of these offices for advice on where to go for legal assistance, but their cases may not be tried there. People may also go to the liaison offices for legal advice.²²²

Punishments

Punishments vary depending on the severity of the crime, which is a key reason that certain crimes have to be dealt with at certain administrative levels. Township judicial committees are authorized to issue punishments ranging from payment of compensation up to MMK 500,000, to a jail sentence of up to five years. At the district level, judicial committees are authorized to impose compensation up to MMK 1 million or jail up to 10 years. Punishment at the central level can consist of any range of compensation or imprisonment. The KNPP previously used the death penalty, but it is no longer authorized.²²³

According to a Justice Department official, there are no jails at the village level, and stocks are no longer authorized, although they were common in the past. During the current ceasefire with the government, and at other times of low military activity, jails have been located at townships, districts, and central headquarters. During previous periods of high military activity, all prisoners were taken to a central jail near the border with Thailand. The stability brought by the current ceasefire has given the KNPP an opportunity to plan a new central jail farther inside Kayah State.²²⁴

Military justice and planned reforms

If Karenni Army personnel are involved in a crime, the same process is followed as for civilians, and the offense is handled by the Justice Department. If the crime is serious, then it is sent directly to the

²²¹ Interview with senior KNPP Justice Department official, 2016.

²²² Interview with senior KNPP Justice Department official, 2016.

²²³ Interview with senior KNPP Justice Department official, 2016.

²²⁴ Interview with senior KNPP Justice Department official, 2016.

central administrative level. An emergency law in the mid-1990s covered legal issues involving soldiers, but this law has been rescinded.²²⁵

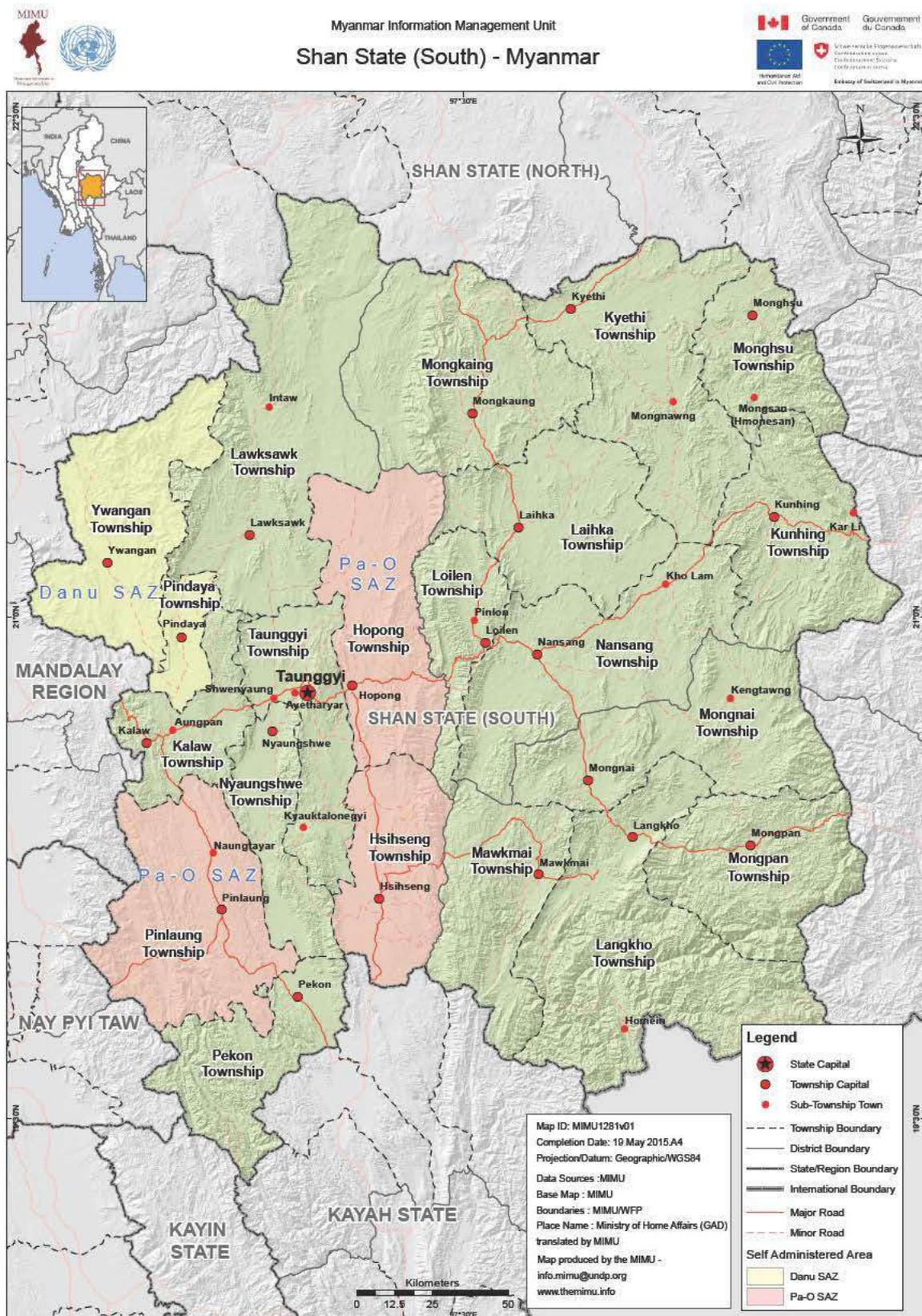
The KNPP's Justice Department claims that it tries to follow international standards for process and structure, but accepts that in their present situation they are unable to meet all the requirements of international law. The Justice Department would like to receive advice from international experts to improve its system, but the current political situation, which restricts travel by foreigners in Kayah State, was said to make this difficult.²²⁶

²²⁵ Interview with senior KNPP Justice Department official, 2016.

²²⁶ Interview with senior KNPP Justice Department official, 2016.

Section FIVE: EAA Justice Systems Shan State (South) and Shan State (East)

Map 3: Shan State (South) (government administrative states and townships)



Map 4: Shan State (East) (government administrative states and townships)



Disclaimer: The names shown and the boundaries used on this map do not imply official endorsement or acceptance by the United Nations.

5.1 Restoration Council of Shan State / Shan State Army

The Restoration Council of Shan State/Shan State Army (RCSS/SSA) is the latest incarnation of a long line of predominantly Shan armed organizations that evolved from the ranks of the late militia-cum-rebel leader Khun Sa, who was infamous for this involvement in the Golden Triangle drug trade.²²⁷ When Khun Sa's Mong Tai Army (MTA) surrendered in 1996, troops under the Shan commander Yawd Serk refused to surrender, and regrouped as the Shan United Revolutionary Army (SURA), which later changed its name to the Shan State Army, and formed the RCSS in 2000.²²⁸

The RCSS maintains strongholds along Shan State's border with Thailand, particularly in Mongton and Langkho townships, as well as a guerrilla presence and strong relations with rural populations throughout much of Shan State (South) and Shan State (East). The group also maintains some fixed camps and a mobile presence in the Shan State (North) townships of Namkham, Kyaukme, and Hsipaw.²²⁹ The RCSS central headquarters is at Loi Tai Leng on the Myanmar-Thai border.²³⁰

The RCSS/SSA organizational structure differs somewhat from that of groups in southeast Myanmar, in that it does not have parallel political and military wings. The highest organ is the Central Committee of the RCSS, made up of military officers. It determines policy and elects the chairman and an executive committee. The organization is made up largely of soldiers under a hierarchical command structure.

The RCSS has fourteen main departments. The Civil Administration Department is organized into more than twenty "administrative battalions," composed of soldiers given special training in civil administration, that work alongside the Defense Department's "operational battalions." These battalions are spread across five RCSS regions, with staff stationed at village, village tract, and township levels, where they enjoy a degree of local autonomy. Most other departments are primarily located at the central headquarters and work through the administrative battalions at the local level.²³¹

Institutions, structures, and basic procedures

The RCSS Justice Department operates at the township and central levels, and possibly also at the region level, but it is unclear exactly what its role is, or whether it oversees judges or makes specific laws.²³² At the central level there are no judges, and all decisions reportedly come from Yawd Serk, who is currently lieutenant general and remains de facto leader of the RCSS/SSA.²³³ Given militarized structure of the RCSS/SSA, it is likely that soldiers are involved throughout the system, probably through the administrative battalions.²³⁴ While there may be specific officers charged with handling criminal and civil justice issues at each level, it seems unlikely that they fall under a centralized justice structure, or particular set of rules.

The RCSS has no police force, but organizes militia units of 10-12 men, authorized to make arrests, for each village tract under its control. Soldiers from the SSA can also be summoned to arrest accused

²²⁷ Khun Sa was mixed Shan and Chinese and eventually adopted a Shan nationalist stance, though some factions that have now formed militias remain predominantly ethnic Chinese.

²²⁸ The SURA was initially close to another MTA breakaway faction, the Shan State National Army (SSNA), and was engaged in discussions with the military government for a ceasefire. However, the government refused to deal with all factions as a bloc, and while the SSNA ultimately signed a ceasefire, the Yawd Serk faction did not. The SSNA then disbanded in the mid-2000s, and the RCSS/SSA absorbed most of its troops.

²²⁹ Jolliffe, *Ethnic Armed Conflict*, 65-66. The SSA divides its operational areas into five regions: Kentung, Mong Tang (Mong Ton in Burmese), Panglong, Ho Mong (Homein in Burmese), and Loi Tai Leng. The regions vary in size, covering between one and three government-designated townships.

²³⁰ Ibid. In January 2012, an agreement between the RCSS and the government established Ho Mong (Homein) "sub-township" of Langkho township and Mong Htar (Hmone Hta) "sub-township" of Mong Tang township as recognized "RCSS headquarters administrative and development areas." The RCSS was given the power to govern civilians in these areas.

²³¹ Ibid.; interview with Shan businessman connected to EAOs in Shan State, 2016.

²³² Interview with Shan journalist, 2016.

²³³ Interview with Shan elder and historian, 2016.

²³⁴ Interview with Shan elder and historian, 2016.

individuals.²³⁵

The RCSS/SSA inherited leadership traditions from numerous predecessor organizations that date back to the 1960s, including the Shan National United Front (SNUF), Tailand National Army (TNA), SURA, MTA, and Shan State National Army. Although none of these groups had well-developed justice structures, some members of their leadership came from or were influenced by Shan intellectuals trained in universities in central Myanmar. Some sources claim that this experience would have steeped them in the Myanmar's British-derived legal traditions as well as the traditional Shan judicial mechanisms.²³⁶

The administration of justice

A number of sources for this paper indicated that, due to the remoteness of many RCSS/SSA areas and the organization's apparently rudimentary structure, they remain heavily reliant on customary, often village-level justice practices. This is the case in Shan communities as well as those of other ethnic groups residing in RCSS/SSA-controlled areas, such as Lahu and Akha. These practices are said to be aimed more at maintaining social harmony than following or enforcing particular laws, but the methods used are passed down from generation to generation and retain a level of legitimacy among local people.²³⁷

According to a number of Shan sources, Shan communities and the RCSS continue to utilize a range of traditional laws that were inherited from the Shan sawbwas, who ruled for hundreds of years until 1959. These laws typically stipulate specific punishments for specific crimes, and often revolve around compensation for victims (other punishments are discussed below).²³⁸

Typically, when civil or criminal cases occur in a village, a committee is formed to try the case, with the village head as the chair. These committees broker settlements for minor criminal cases and for cases of divorce.²³⁹ They then may refer more serious cases to the village tract level, which apparently has powers to adjudicate cases including rape and theft, but not murder in some areas.²⁴⁰ Murders are required by the RCSS to be reported to the township level, presumably to the administrative battalion staff, as are cases of tax evasion and of persons suspected of being government informers.²⁴¹ There is little specific information available on how trials proceed in the RCSS/SSA system, but according to one source, committees are typically formed at the relevant administrative level to adjudicate.²⁴²

Punishments

There is little available information on levels of compensation or punishment for most crimes under either customary village law or the RCSS/SSA justice system. According to one source, traditional laws inherited from the time of the sawbwas mandate the death penalty for serious crimes, but this is rare, even in the case of murder, which is usually punished by jail time spent in shackles.²⁴³ Claims differ as to whether the RCSS officially imposes the death penalty today.²⁴⁴ According to one source, once guilt is clearly established by township authorities, SSA regular soldiers can be summoned to carry out an execution. According to this source, the RCSS/SSA maintains a policy that executions should be carried

²³⁵ Interview with Shan journalist, 2016; interview with Shan businessman connected to EAOs in Shan State, 2016.

²³⁶ Interview with former CPB and UWSP official, 2016.

²³⁷ Interview with Shan elder and historian, 2016.

²³⁸ Interview with Shan elder and historian, 2016.

²³⁹ Interview with Shan elder and historian, 2016; interview with Shan businessman connected to EAOs in Taunggyi, Shan State, March 2016.

²⁴⁰ Interview with Shan businessman connected to EAOs in Shan State, 2016.

²⁴¹ Interview with Shan businessman connected to EAOs in Shan State, 2016.

²⁴² Interview with former Shan Nationalities Democratic Party (SNDP) Member of Parliament (MP) and CBO leader, 2016; interview with Shan journalist, 2016.

²⁴³ Interview with Shan businessman connected to EAOs in Shan State, 2016.

²⁴⁴ Interview with Shan journalist, 2016; interview with Shan businessman connected to EAOs in Shan State, 2016.

out at night, in the jungle, away from the eyes of the populace.²⁴⁵

Drug offenses are a major issue in Shan State. For the first offense, the accused is issued a warning by the RCSS/SSA authorities. If there is a second offense, the person is arrested and reportedly given the choice of jail or becoming a soldier.²⁴⁶

The RCSS appears to have both a central detention center and a jail located at its headquarters at Loi Tai Leng. The permanent jail consists of a number of holes dug into the ground.²⁴⁷ These holes are jar-shaped and about 20-feet in circumference with a small entrance at the top. They are just big enough for a person to sit in with difficulty. The minimum sentence for confinement to a hole is twenty days. There is reportedly a strong fear of being placed in one of these holes. Prolonged confinement can turn the skin yellow, and people have died after twenty-five days in a hole. Some RCSS/SSA operational and administrative battalions also have temporary detention centers using these types of holes in their areas of operation.²⁴⁸

Loi Tai Leng's detention center is used primarily for drug offenders. It is divided into two sections, one for those arrested for selling or using drugs, and the other for rehabilitation of addicts.²⁴⁹ The general aim of rehabilitation efforts is to change the person's behavior and thoughts through "practical methods," including hard labor.²⁵⁰ Administrative battalions are also required to establish rehabilitation centers in remote jungle areas for youths addicted to drugs. Rehabilitation at these jungle centers lasts for three to six months.²⁵¹ After rehabilitation, the youths are offered the choice of joining the RCSS or going back to their village.²⁵² According to a Myanmar Times article published in 2016, a rehabilitation center on Muse Township's border with China, run by a local civil society organization called "19-Villages Group," is actually an RCSS detention center for drug addicts, alcoholics, and gamblers. Reportedly, the center is also used to detain people suspected of assisting the Ta-ang National Liberation Army (TNLA) against the RCSS.²⁵³

5.2 Pa-O National Army

The Pa-O National Army (PNA) became a People's Militia Force (PMF) under the formal command of the Tatmadaw in 2009, at which time it formally separated from the Pa-O National Organization (PNO) so that the latter could contest the 2010 elections. The PNA operates in the majority of townships in southern Shan State, and parts of some adjacent areas.

It is most active in three townships designated as the Pa-O Self-Administered Zone (SAZ), Hsiheng, Hopong, and Pinlong, where the PNO has won all seats in consecutive elections and thus heads up the Pa-O SAZ Leading Body. However, these townships continue to be administered primarily in the same way as ordinary townships. Meanwhile, the PNA maintains an informal but significant administrative presence both in the SAZ and in neighboring Pa-O-populated townships. While the PNA has no legal mandate beyond its security responsibilities, its role in local governance is accommodated openly by the government and appears to further facilitate mutual cooperation. The PNA maintains several civilian administrative departments, and semi-official responsibility to help the government manage a number of areas, including crime,²⁵⁴ where its role seems to consist primarily in arresting accused parties and delivering them to the MPF for handling through the government system.

²⁴⁵ Interview with Shan businessman connected to EAOs in Shan State, 2016.

²⁴⁶ Interview with former SNDP MP and CBO leader, 2016.

²⁴⁷ Interview with Shan journalist, 2016.

²⁴⁸ Interview with Shan businessman connected to EAOs in Shan State, 2016.

²⁴⁹ Interview with Shan businessman connected to EAOs in Shan State, 2016. The facility is referred to as a detention center and not a jail or prison.

²⁵⁰ Interview with Shan businessman connected to EAOs in Shan State, 2016.

²⁵¹ In the opinion of one interviewee, rehabilitation is rarely successful.

²⁵² Interview with Shan elder and historian, 2016.

²⁵³ See Fiona MacGregor and Thu Thu Aung, "Freed from prison hell in northern Shan – by the Tatmadaw," *The Myanmar Times*, April 8, 2016.

²⁵⁴ 64. These departments include administrative, economics, information, and organization departments.

The PNA has its own territorial administrative structure dividing its area of operations into four zones – Sanda, Sanda Thuria, Myin Moe, and Prabwa – which do not correlate with the government township structure. These zones are subdivided into townships and village tracts. Representatives of PNA departments are posted at each administrative level in parallel to its military command structure, and cooperate regularly with government officials.²⁵⁵

Within each village in PNA areas, there is both a village leader and a village head. In some smaller villages this is the same person. The village head is from the community and chosen from among all the villagers, usually on the merits of their activity and level of education. The village leader is selected by the PNA, which tries to select youths or sometimes veterans. The village head is able to judge certain cases.²⁵⁶ Most villages in areas where the PNA operate have only one ethnic group, although a few are mixed Pa-O and Shan. Shan villages in PNA areas are able to elect their own heads.²⁵⁷ Village-level authorities work first and foremost with the PNA, since the government does not have official representatives at that level. For this reason, the PNA claims its role at the village level is particularly substantial, and it is said to be instrumental in local development and other activities.²⁵⁸

Laws

The PNA has a number of its own regulations that it applies to civilians in its areas of operation. As examples, dogs are not allowed in villages, because they disturb people. Chickens may not be raised in the village, but they may be raised outside it. Several Pa-O businessmen claimed this is meant to encourage public discipline and adherence to religion.²⁵⁹ Where serious crime is concerned, government law is followed.²⁶⁰ For most minor crimes and disputes, the populace continues to rely on customary laws and practices that have been passed down from generation to generation, as in other parts of Myanmar.

Judicial process

Chains of referral and trial procedures

Village heads handle minor crimes and civil disputes. Solutions to these cases are usually found through arbitration and customary practices. Most often, cases are discussed by a committee formed by the village head. According to a civil society worker in the area, arbitration usually involves summoning the people involved and hearing each side, after which the village head works out a solution, often in the form of monetary compensation. An example of a customary practice for determining guilt involves a person bringing his or her own rice to have it placed in a bamboo tower and boiled. The rice is then tasted to determine if the person is right or wrong. While this is an old tradition, it is still followed in some villages.²⁶¹

PNA leaders claim most Pa-O are satisfied with justice decisions made by the village heads.²⁶² However, if a decision cannot be reached by the committee or through customary practices, the case may be next taken to a local Buddhist religious leader. Buddhist monks are highly revered in Pa-O culture and have a strong influence on the community and on the PNO/PNA.²⁶³

If cases cannot be solved by the village head or by the monks, the case may be referred to the PNA at

²⁵⁵ Ibid.

²⁵⁶ Interview with PNA senior officer, 2016.

²⁵⁷ Interview with PNA senior officer, 2016.

²⁵⁸ Jolliffe, *Ethnic Armed Conflict*, 64.

²⁵⁹ Interview with Pa-O businessmen, 2016.

²⁶⁰ Interview with PNA senior officer, 2016.

²⁶¹ Interview with Pa-O CBO representative, 2016.

²⁶² Interview with Pa-O CBO representative, 2016; interview with Pa-O businessmen, 2016; interview with PNA senior officer, 2016.

²⁶³ Interview with Pa-O CBO representative, 2016; interview with PNA senior officer, 2016.

the village tract or township level, typically at the discretion of the village head.²⁶⁴

According to the PNA, if a criminal case is referred to it, PNA soldiers are dispatched to arrest the accused. The village head, village monks, and community members then provide character witness accounts of the accused. For serious cases such as murder or rape, the PNA hands the arrested individual over to the MPF. At this point, the accused enters the government legal system and the PNA no longer has a role in trial proceedings or judgment. According to a senior PNA official, this reflects the PNA's desire to take the needs of the community into account when an injustice occurs.²⁶⁵

The PNA seems to adjudicate less serious cases itself, particularly civil cases. However, the exact procedures for this were not documented for this report, as, during interviews, the PNA referred primarily to village-level structures and to the organization's role in cooperating with the MPF rather than its own system. According to one source, if a person is dissatisfied with the outcome of their case, they can apparently have the sentence "adjusted" through a payment at the PNA office in Taunggyi.²⁶⁶

In cases involving narcotics, the PNA works together with the MPF and village leadership to find a solution. Cases involving small-time users are usually handled within the village, but where larger quantities of drugs are involved, the village head will report the issue to the PNA or the MPF. The PNA gathers information on drug dealers and sometimes works on cases in cooperation with the MPF. In areas where the MPF also has jurisdiction, it will sometimes work on cases on its own.²⁶⁷

Since 2010, an increasing number of people from the PNO/PNA areas have begun taking their cases directly to the MPF. According to a Pa-O civil society worker, this upsets PNA leaders, as they feel that their own system has worked and preserved harmony in the villages for most justice issues. In comparison to the mechanisms used by the PNA, the government system was long considered to be too expensive and time consuming, and people did not trust the government or urban-based lawyers. But levels of trust and preference for the government system are apparently changing. This has sparked a feeling among some that the Pa-O sense of community is being lost.²⁶⁸

Additionally, individuals who disagree with the PNA's initial judgment of a case can take it to the MPF and have it tried in the government system. This may occur if a monetary penalty was imposed that a person thinks is too high.

Punishments

Monetary compensation is a common form of penalty in the Pa-O village justice system. When a decision is made, the guilty party must pay money and apologize. Monetary penalties are also applied in cases that go before the PNA. If the person cannot pay the penalty, they may be referred to the MPF.²⁶⁹

For crimes decided at the village level, the highest form of punishment is to be placed in leg stocks.²⁷⁰ For more serious offenses, which are tried at a higher level, people may be sent to the PNA's jail. The PNA operates a small, newly built jail with about 30 prisoners, administered by a new regiment at Loi Kawng.²⁷¹

Despite the PNA's claim that it typically hands all serious criminal cases to the MPF, it apparently

²⁶⁴ Interview with Pa-O CBO representative, 2016; interview with PNA senior officer, 2016.

²⁶⁵ Interview with PNA senior officer, 2016.

²⁶⁶ Interview with member of the NLD, 2016; interview with Pa-O businessmen, 2016.

²⁶⁷ Interview with PNA senior officer, 2016.

²⁶⁸ Interview with Pa-O CBO representative, 2016.

²⁶⁹ Interview with PNA senior officer, 2016.

²⁷⁰ Interview with Pa-O businessmen, 2016.

²⁷¹ Interview with Shan businessman connected to EAOs in Shan State, 2016.

sometimes imposes the death penalty for certain offenses. According to Pa-O activists who reported this, the local community must agree before the sentence can be carried out,²⁷² but according to a group of local Pa-O businessmen, communities rarely dispute decisions of the PNA, because they either agree, or are too afraid to speak up.²⁷³ In southern Shan State, some say the PNA has earned a reputation for extrajudicial killings.²⁷⁴

Crimes by PNA personnel

In instances of crimes involving PNA soldiers and civilians, PNA officers and civilian staff come together and solve the case together. The PNA claims they recognize that their soldiers come from the community, so they treat such crimes in the same way as villager-on-villager crimes. The PNA claims there are few cases of PNA crimes against villagers.²⁷⁵

According to several Pa-O merchants, low-ranking PNA troops have occasionally abused their role in local justice by asking villagers to sell methamphetamines for them. The soldiers later arrest the people who buy the pills and demand money to release them. If they are unable to pay, they are sent to jail.²⁷⁶

²⁷² It is unclear exactly what offenses merit the death penalty.

²⁷³ Interview with Pa-O businessmen, 2016.

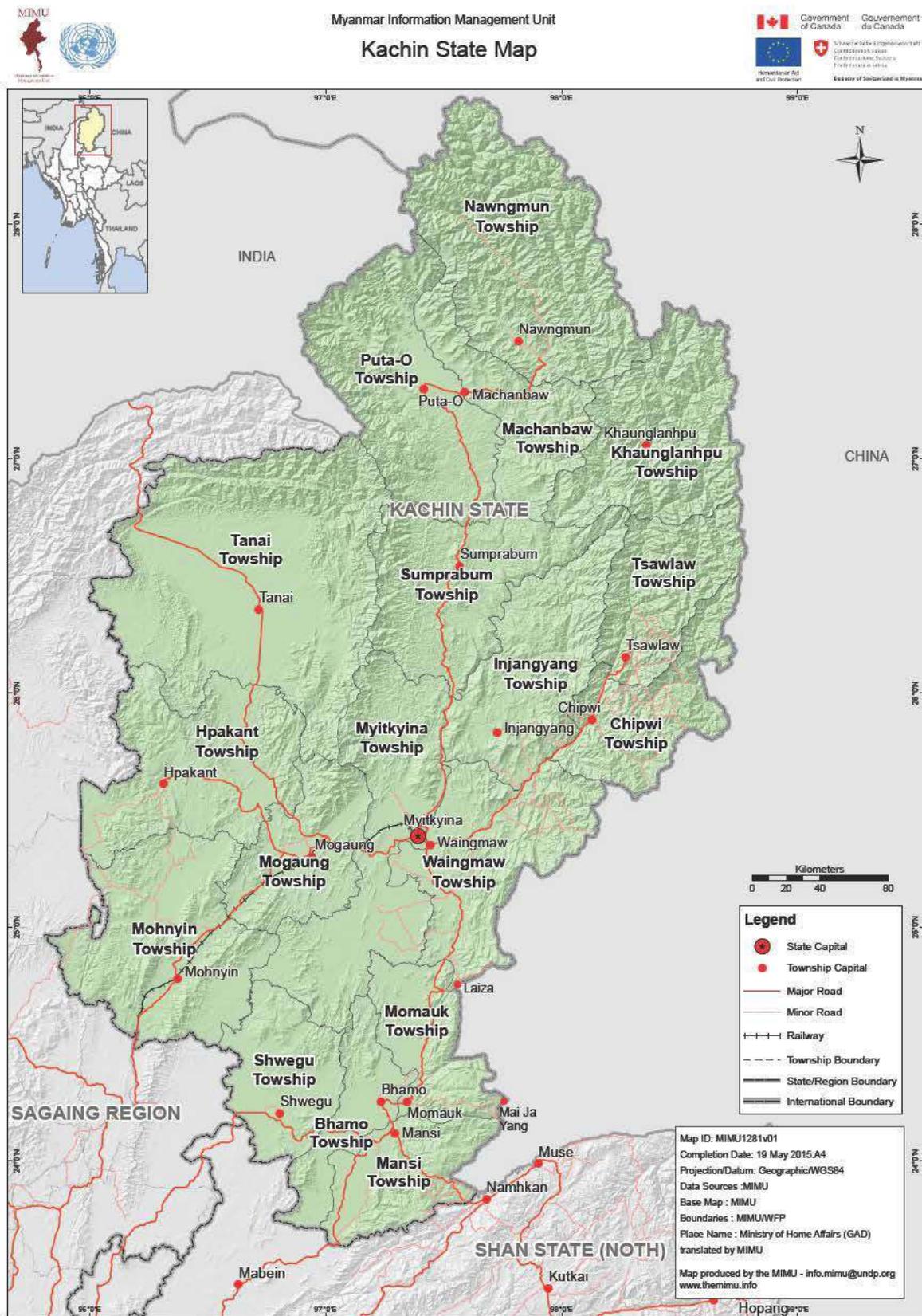
²⁷⁴ Discussions with Shan and Pa-O activists in Taunggyi, March 2016.

²⁷⁵ Interview with PNA senior officer, 2016.

²⁷⁶ Interview with Pa-O businessmen, 2016. This is likely the work of individual PNA soldiers and not done with the knowledge of PNA leadership.

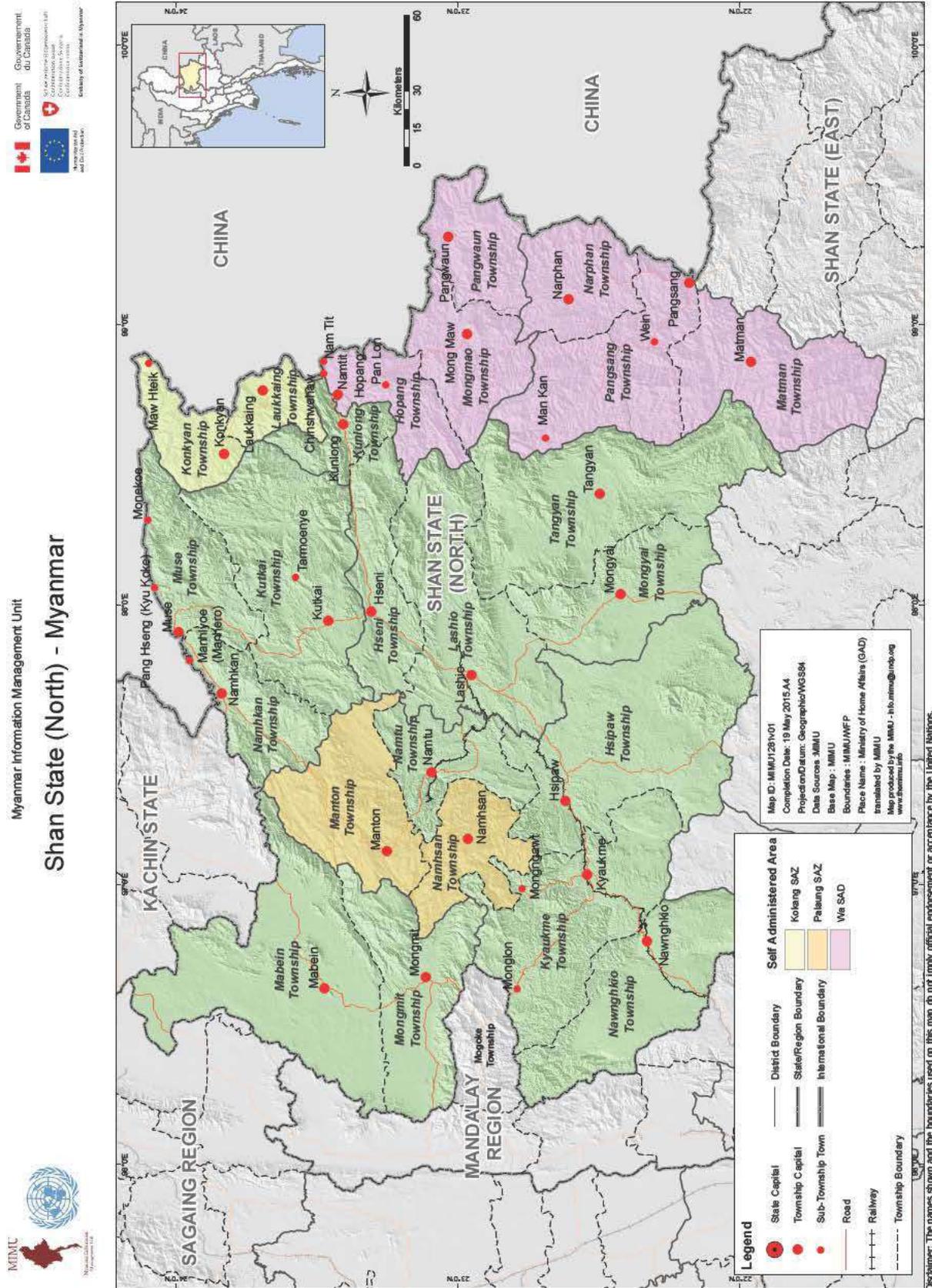
Section SIX: EAA Justice in Shan State (North) and Kachin State

Map 5: Kachin State (government administrative states and townships)



Disclaimer: The names shown and the boundaries used on this map do not imply official endorsement or acceptance by the United Nations.

Map 6: Shan State (North) (government administrative states and township)



6.1 United Wa State Party / United Wa State Army

The United Wa State Party (UWSP) and its armed wing, the United Wa State Army (UWSA), control the four government-designated townships of Pangsang, Pangwaun, Mongmao, and Narphan, as well as a significant portion of Mongyang Township and some border areas of Hopong Township.²⁷⁷ This area is semi-formally designated as Shan State Special Region 2, in accordance with its 1989 and 2011 ceasefire agreements, but does not appear in the Constitution or in law. The UWSP divides this area into four districts, named Pangsang, Maung Kak/Mong Ker, Win Kaung, and Maing Mawk, which are further divided into more than 20 townships.

The UWSP also has limited control over a large area along the Myanmar-Thai border in Mong Ton, Mong Hsat, and Tachilek Townships, to which it facilitated the migration of tens of thousands of Wa civilians in the late 1990s. This area is often referred to as the UWSA's "southern command,"²⁷⁸ under the command of Wei Hsueh Kang, and is divided by the UWSP into six administrative townships. In practice, however, the UWSP only fully administers Wa settler villages in the region.²⁷⁹ The administration of the southern command is less structured than that in the special region, and the area is not as firmly controlled by the party. This is in part due to the strong focus on narcotics production and trafficking, logging, and other trade in the area, which has led to the neglect of other aspects of governance such as justice.²⁸⁰

The UWSP's administrative system is largely based on that established by the CPB in the 1970s and early 1980s.²⁸¹ The region is divided into three districts, which are subdivided into 24 townships. Administrative committees govern at the district, township, village tract, and village levels. The party is led by a five-person politburo, and a nineteen-member central committee that oversees ten bureaus, including the Central Law Enforcement Bureau. In practice, the UWSP's governance system is highly generalized. The main interests of the UWSP are to build up its army, maintain order, and conduct business, including allegedly trading in narcotics. This means that most bureaus nominally established to provide public goods such as justice, health, and education are not particularly active.²⁸²

In general, the UWSP's administration is hampered by a high degree of centralization, resulting in administrative units of low capacity and little authority to act on their own initiative. Administrators below the district level are typically part time, receive little or no salary, and have to depend for their livelihoods on agriculture or other activities, potentially including informal taxation and corruption.²⁸³

Institutions and structures

Upon its formation in 1989, the UWSP adopted the Chinese Communist-style system of administering justice that was previously followed by the CPB. Its Central Law Enforcement Bureau oversees judicial and police sub-bureaus, which are based in Pangsang, where there is also a jail.²⁸⁴ While the justice system is supposed to operate through single judges in all districts in townships, in reality it reportedly has limited capacity in most areas outside Pangsang and the special region's few other small towns.²⁸⁵ The department appears to have even less of a presence in the southern command, where UWSP

²⁷⁷ Jolliffe, *Ethnic Armed Conflict*, 78-79. The area was designated Special Region 2 in the UWSP's original 1989 ceasefire, and this name was referred to numerous times in its December 2012 ceasefire agreement with the government.

²⁷⁸ *Ibid.* This area was established in the late 1990s when the UWSA was granted permission to seize the area from Shan rebels, after which it began a mass migration to establish Wa communities in the area.

²⁷⁹ *Ibid.*

²⁸⁰ Interview with former CPB and UWSP official, 2016; interview with Shan businessman connected to EAOs in Shan State, 2016.

²⁸¹ Jolliffe, *Ethnic Armed Conflict*, 78-79. Indeed, this was the only centralized administrative system ever established in the area by Bamar leaders.

²⁸² Interview with former CPB and UWSP official, 2016.

²⁸³ Tom Kramer, *The United Wa State Army: Narco-Army or Ethnic Nationalist Party?* Policy Studies, No. 38 (Washington, DC: East-West Center, 2007), 39, citing a study carried out in the late 1990s and early 2000s.

²⁸⁴ Interview with Shan businessman connected to EAOs in Shan State, 2016.

²⁸⁵ Interview with former CPB and UWSP official, 2016.

administration is even more sparse.

The UWSP maintains district-level police forces in Pangsang and its other small towns, but there are no police forces in rural areas. Instead, policing in the countryside is done through local-level militia units, called “people’s militias.” Each village has its own people’s militia, organized and led by the village head, who is chosen by the UWSP township authorities.²⁸⁶ The UWSP has granted people’s militias the authority to maintain internal security in areas outside the party’s direct administrative reach, and they are equipped and trained by the UWSA. According to one estimate, there are around 20,000 personnel enlisted in the people’s militia throughout the UWSP-controlled areas.²⁸⁷

Laws

According to a former member of the UWSP, the organization has rules and regulations at each level: village, village tract, township, district, and center. At the village level, penalties for civil offenses or minor crimes often take the form of monetary or material compensation.²⁸⁸ The UWSP has also adopted some laws from China for its legal code and justice system.

The administration of justice

As elsewhere in Myanmar, the bulk of minor crimes, particularly in remote areas, are dealt with at the village level. Village elders are empowered to deal with cases of petty theft and civil disputes within the village, and ultimately rely on the authority of the people’s militia, but they have no authority to make decisions in more serious cases. For those crimes, the village head is authorized to use the people’s militia to arrest suspects and send them to the township authorities for trial, in cooperation with the village elders.

At the township and district levels, cases are decided by an individual judge, not a tribunal. However, tribunals are held for crimes that reach the central level.²⁸⁹ In these cases, a judge presides over a process whereby a “people’s jury” is assembled for each trial to pronounce judgment and to act as the government prosecutor. Lawyers are not present at these trials, although an individual referred as a “people’s lawyer” may be involved in major cases, such as those involving arms or large amounts of narcotics. The people’s lawyer is essentially a law advisor appointed by the UWSP, who listens to both sides and the jury, and then makes remarks for the jury to consult.²⁹⁰ Final decisions in these cases are said to result about 80 percent from the judge’s input and 20 percent from the jury’s. Judgments are usually decided within three days; minor cases may be decided within a few hours; while major cases may last longer, but no longer than one week.²⁹¹

Punishments

Little information was available regarding the types of punishments imposed by either the UWSP or through typical village justice practices. However, it is clear that capital punishment is used at the central and possibly other levels, and is usually carried out by firing squad as part of a policy of public executions.²⁹² Furthermore, The UWSA has two jails in its area; one jail is at Pangsang, and the other is at Ban Yang. Collectively there are about 800 prisoners.

²⁸⁶ Interview with former CPB and UWSP official, 2016.

²⁸⁷ Interview with former CPB and UWSP official, 2016.

²⁸⁸ Interview with former CPB and UWSP official, 2016.

²⁸⁹ Interview with former CPB and UWSP official, 2016.

²⁹⁰ Interview with Shan businessman connected to EAOs in Shan State, 2016.

²⁹¹ Interview with Shan businessman connected to EAOs in Shan State, 2016.

²⁹² Interview with former CPB and UWSP official, 2016; interview with Shan businessman connected to EAOs in Shan State, 2016.

6.2 Kachin Independence Organization / Kachin Independence Army

The governance structures of the Kachin Independence Organization (KIO) consist of 11 departments that fall under the control of the Kachin Independence Commission, which is separate from the party and also oversees the armed wing, the Kachin Independence Army (KIA). The most important of these departments is the Department of General Administration (DGA), which forms the backbone of its government system and exists alongside the military at all levels. The KIO divides its areas of influence into six divisions (four in Kachin State and two in northern Shan State), which are then divided into districts, then townships, and then various subunits including *ninghtaw*, which are just two or three villages that are territorially linked.²⁹³

The research conducted here into the KIO's justice system is particularly limited. It is based on interviews with a senior member of the DGA who has served in multiple divisions in his career, and on less formal discussions with younger officials, so there are significant gaps.

Institutions and structures

Justice was administered directly by the DGA until around 2006, when the organization formed a separate justice department. It also established its first central court at that time, and then established courts at the division and district levels around 2010. Due to a seeming lack of robust procedures, it is possible that the justice department has been hindered in fully developing its processes since renewed conflict broke out in 2011 between the KIO and the Tatmadaw.

The KIO has police forces in its two towns, Laiza and Mai Ja Yang, which have the power to make arrests.²⁹⁴ In rural areas, arrests are handled by the DGA, but it may call on the local village defense and guerrilla forces for help in arresting suspects. Where there are no village defense forces or local guerrilla units, the KIA is called on to make arrests.

The administration of justice

According to the KIO, the majority of cases are typically handled at the village or ninghtaw levels, but are referred to higher levels if they cannot be solved.²⁹⁵ In some cases, civilians may appeal their cases up to the township level, where they may then be referred to the district, division, or central courts.²⁹⁶ There appear to be few clear rules for determining what types of cases should be dealt with at which levels, based on an interview with one senior official.

The KIO does not have a reference penal code, which gives officials a lot of power to make decisions based on their own judgment of a case. At the township level and below, the KIO does not have sitting judges, so committees are formed, comprising KIO and KIA members and other influential people, to collectively decide specific cases when they arise. The local DGA officer used to automatically chair these committees, but now local officials select the chair based on the particulars of the case.²⁹⁷ A KIA official is often selected as chair or cochair. Information on the judicial processes utilized at the district, division, and central courts were not collected for this study.

Similarly, little is known about punishments imposed by the KIO. The organization operates a drug detention center that functions as a rehabilitation center. Detainees perform hard labor, with the idea that changing a person's behavior requires practical methods.²⁹⁸

²⁹³ The sixth division, and second in northern Shan, was created in 2016.

²⁹⁴ Interview with KIO official, 2016.

²⁹⁵ Interview with KIO official, 2016.

²⁹⁶ Interview with KIO official, 2016.

²⁹⁷ Interview with KIO official, 2016.

²⁹⁸ Interview with Shan businessman connected to EAOs in Shan State, 2016.

Section SEVEN: Findings and Implications

This section provides crosscutting analysis of the EAA justice systems surveyed in Section 4, focusing on four themes that provide a basis for considering the key challenges and opportunities associated with EAA justice systems. These themes are the role of village justice, the practice of shopping around for justice, the strengths of EAA justice and prospects for reform, and the shortcomings of effective EAO justice administration.

7.1 Village justice

Analysis of the actual justice practices in place in EAA areas clearly demonstrates the importance of village-level justice mechanisms, particularly the continued use of customary justice practices. Anecdotal evidence from justice-focused organizations with experience in both ethnic and Bamar areas of Myanmar suggests that customary justice practices are commonly used throughout the country, particularly in rural areas, but also in some urban areas.²⁹⁹

Customary laws and practices at the village level differ from ethnic group to ethnic group, and often from village to village. A detailed study of such practices is beyond the scope of this report, but some conclusions can be drawn from how EAA and village-level justice mechanisms interact.

Seemingly, none of the EAAs surveyed in this report have sought to replace customary village justice practices with a more comprehensive justice system. Rather, they have typically grafted their justice systems onto existing procedures. Villages are typically allowed to continue customary practices to adjudicate civil disputes and the majority of minor crimes, with the option to appeal to EAA justice systems if people are unhappy with the outcome. All of the EAAs in this report had stipulations that certain cases, particularly serious crimes such as rape, murder, and narcotics trafficking, go directly to the EAO justice system. This follows the practice of the British in the colonial period, as well as the parliamentary government of U Nu and the military governments of the BSPP, SLORC, and SPDC.

Therefore, the village continues to be the scene of most judicial decisions in EAO-controlled areas. Civil disputes and petty crimes are usually left up to village leaders, village elders, and village committees, or sometimes to specific justice or security representatives at that level. Religious figures, women's representatives, or other influential community members may exert various forms of influence. Most decisions at this level appear to be based on what is considered best for the stability and harmony of the village, and often involve arbitrated compensation. By allowing these practices to continue, EAAs provide a sense of continuity and "normality" that likely enhances their legitimacy among the local population.

According to a Shan community leader, since the Shan sawbwas relinquished power in 1959, no other authority has been able to establish a respected justice system, least of all the Myanmar state. Rather, the village head has become the primary authority that most local people respect. He explained:

Until 1959, the Shan states were ruled through a feudal system with a prince, or sawbwa, at the top, and ministers and police under him. Shans lived in the valleys, and others were the real mountain people. If people didn't like the sawbwa, they moved to another state. After 1959, the [sawbwa's] police became part of the central [Union-level] police. The exception was Kengtung, because of its large size and its international borders with three countries. It was left to police itself. When the various revolutionary groups organized in Shan State in the

²⁹⁹ Interview with Shan elder and historian, 2016; interview with Pa-O businessmen, 2016; presentation by the "Everyday Justice and Security in Myanmar's Transition" project, 2016. Several contacts in Shan State suggested that they should not be considered "customary laws" so much as "customary rules" in EAO areas. A Danu businessman interviewed in 2016 claimed that in the Danu SAZ, where there has never been an armed uprising, minor criminal cases and civil cases are handled by village heads, as villagers are often afraid to go to the government judicial offices. More serious cases, such as murder, rape, and drugs, are referred to the MPF.

1960s, they set up judicial departments, but they were not as effective. They could not change the legal situation at the village level. There was also no real need for a stricter justice system. After 1959, the villagers only trusted the village head.³⁰⁰

However, the customary village system is also open to abuse, since there are few checks and balances. As one interviewee commented, “It is as though our own ethnic people oppress us through traditional ways.”³⁰¹ Furthermore, if the emphasis is on perceived stability in the village, individuals may be treated unfairly, particularly if their influence over village affairs is seen to be of less significance than that of their adversary. In particular, as village authorities tend to be predominantly men, crimes against women – including gender-based crimes – may not be handled in a manner that is best for the individual victim. Young people are also likely vulnerable to worse treatment, as age is central to status in most rural Myanmar communities.

Dissatisfied villagers may be able to appeal to a higher authority, but many do not have the connections to do so in practice. The emphasis on compensation also makes it possible for people with money to pay to get out of problems while those without money find it difficult to win. Even with these problems, village justice systems appear to be the preferred justice mechanism in villages in EAA areas, and that is likely often due to collective memories of consistently worse experiences with external authorities of various kinds.

7.2 Shopping for justice

Civilians in areas of mixed control can essentially have access to two or more judicial systems. A number of interviewees from Mon, Karenni, and Shan states reported that some people are able to use this circumstance to their advantage, by choosing which authority to take their case to or even trying their luck with both.³⁰² In some cases, this allows individuals to shop around and choose the legal system that best suits them. Most decisions of this kind seem to be based on the individual’s personal connections, anticipated costs in time and money, and the prediction of which system will provide the most favorable outcome.

Sometimes, when the decision of an EAO judge is not to a party’s liking, that individual may take the case to the government system, rather than – or in addition to – appealing the case within the EAO system. Shopping for justice is likely only possible in civil cases or those involving petty crimes, however. Cases deemed more serious by an EAA are often moved to higher levels, and often involve imprisonment, making it difficult to take the case elsewhere. Senior NMSP officials indicated that once an NMSP or government court has ruled on a case, the other will refuse to try the case again.

7.3 The strengths of EAA justice and prospects for reform

As noted in the introduction, the scope of this research does not allow for an evaluation of how well EAA justice systems achieve their own aims or how they are viewed by individuals who come into contact with them. Nonetheless, some observations can be made regarding their overall contribution.

A first observation is that the systems contribute to a certain degree of stability and order that often exists in areas controlled by EAAs. This is likely achieved by allowing many issues to be handled at the local level. This degree of order and stability may fluctuate due to the ebb and flow of armed conflict in an area, but once military activity ceases, order and stability quickly return. This is in no small part because of the resilience of EAO governance structures, including their security apparatuses, and the continuity of institutions of justice at the village and EAO levels.

Particularly in areas where EAAs are well established and are recognized as the local authority, it is

³⁰⁰ Interview with Shan elder and historian, 2016.

³⁰¹ Interview with senior member of a Pa-O political party, 2016.

³⁰² Interview with KHRG monitors, 2016 (2).

significantly more difficult for purely criminal organizations and actors to become established, and this order provides a foundation for other EAA governance institutions such as education and healthcare, and sanctuary for displaced persons.

Secondly, although no survey was conducted to properly assess the views of local people, numerous independent sources such as civil society leaders, businesspeople, and cultural leaders indicated that ethnic populations often have a preference for EAA justice systems over that of government. This may simply be because they are the only justice systems deemed available, or because of the relatively higher costs of going to the government. For better or worse, EAA systems are often the primary organs of justice that people in these areas recognize and understand.

According to several CBO representatives and community activists, this is partly because the EAO personnel, including justice officials, come from the same ethnic group as most of the communities they govern. This makes them easier for local people to contact and communicate with, and means they are often seen as more legitimate than government representatives (see Box 2).³⁰³ For an overview of the relative difficulties in accessing the government justice system faced by rural ethnic communities, see Box 2. As mentioned earlier, the “normality” provided by the continuity of village justice mechanisms also appears to help legitimize EAA governance among the local population.

Box 2: Difficulties in accessing the government justice system in rural ethnic areas

In addition to the general deficiencies of Myanmar’s justice system that are experienced in even the most developed urban areas, there are a number of particular hindrances facing rural ethnic communities when they seek justice from the government.

Firstly, the effective reach of the government’s police and legal system in most current and former conflict areas is limited to the cities and towns. For many people in ethnic areas, going to the government justice system to plead a case may involve the cost and inconvenience of a long journey to a town with an MPF station and government authorities, the cost of accommodations in a strange town and bribes for police and government officials, and a long wait for the case to proceed.

Additionally, there are significant language barriers for people with poor Myanmar language skills. Many rural ethnic people are unable to speak the Myanmar language confidently enough to discuss sensitive and legal matters. Meanwhile, most police and government officials, Bamar or otherwise, lack fluency in local languages, which can vary greatly even within single townships. Furthermore, all written government materials are in the Myanmar language, and many rural ethnic people lack Myanmar literacy. Additionally, language barriers were said to increase mistrust of the police, as people have been mistreated by government officials specifically for not being able to speak the Myanmar language. According to a Shan interviewee, people in some Shan areas have been arrested by the MPF as a result of misunderstandings arising from their inability to speak the Myanmar language.³⁰⁴

The high financial costs, the inability to explain one’s case, and the long time required to use the government’s justice system make customary village justice and EAO justice systems more attractive. In Shan State, even communities on the outskirts of the state capital, Taunggyi, continue to use customary law.

³⁰³ Interviews and discussions with various Karen, Mon, and Shan activists and CBO representatives, as well as foreign observers with many years of experience working with ethnic communities in Myanmar. Interestingly, this preference seems to be undergoing something of a shift in areas where the PNA operates in Shan State (South). CBO workers there claim that an increasing number of people are going to the MPF and government courts.

³⁰⁴ Interview with Shan elder and historian, 2016.

Envisioning the ideal process of reform for EAA justice systems is complicated significantly by the uncertainty surrounding the peace process and the potential for political settlements to bring a lasting end to conflict. At present, the peace process explicitly provides for discussions of “security reintegration”,³⁰⁵ which EAOs envision as a process for forming a “federal union army,”³⁰⁶ with their forces somehow integrated with the Tatmadaw on equal terms. Meanwhile, the Tatmadaw remains focused on arrangements to disarm EAOs, or to subordinate them as state-backed paramilitary organizations. Nonetheless, very tentative progress towards a middle ground has been made by some negotiators.

In the meantime, maintaining order and stability, and ensuring that nongovernment-controlled areas do not fall into the hands of criminal organizations, will continue to depend on the systems and institutions created by EAAs. The more these existing systems can be reformed, to protect the rights of local people and to develop more complementary relationships with the Myanmar state in the area of justice, the better. Attempts by the government to simply undermine them are likely to create greater instability without a clearly negotiated transition process. Even prior to the achievement of a political settlement, there may be reform efforts that EAAs could undertake to improve their current systems, and areas where cooperation and coordination between the government and EAA systems could be enhanced.

If the peace process continues to progress as it has in recent years, some EAAs will likely aim to strengthen their governance structures, including their justice systems, to make the most of increased stability. Some groups have seen their justice procedures and regulations stifled and eroded by decades of conflict. Even where an EAA genuinely aims to protect its community, military activities become the principal security imperative in wartime. For other groups, an ideological focus on military activities has meant that their justice systems were never intended to be complex, but ceasefires have led to the emergence of increasingly civilian-focused practices.

Furthermore, some EAOs involved in the peace process have indicated an eagerness to demonstrate that they are not simply guerrillas, but serious actors who are capable of governing the populace under their control. Central to this aim is the maintenance and improvement of order within their areas. This may be seen as providing them with some symbolic leverage when the peace process reaches the level of negotiations for a federal state. Demonstrating an ability to police the population, resolve disputes, defeat criminality, and exercise legitimate authority is central to proving that EAAs or their ethnic group in general are capable of self-governance.

The KNU has already made tentative moves towards reform since its 2012 ceasefire, by recruiting hundreds of new officers for the KNPF, setting quotas for female officers, and securing international assistance for training. Additionally, the KNU has embarked on programs to increase popular awareness of complaint mechanisms, the justice system, and the law. The RCSS could move in a similar direction as part of its attempt to create more civilianized governance structures through its development of a “ceasefire constitution.”³⁰⁷

EAOs and the government should also recognize the need for increased cooperation on justice affairs. The great overlap of their authority is an unavoidable reality that will not go away anytime soon, even if the peace process gains pace under the NLD government. For many ethnic citizens, peace of mind and stability will only become a reality if authorities in their area are able to cooperate and provide some consistency and reliability in the way that justice is administered.

³⁰⁵ This is provided for in the Nationwide Ceasefire Agreement and in the Political Dialogue Framework. Although the latter is under review at the time of writing it will certainly include space for negotiations around the security sector, and is unlikely to contradict the NCA.

³⁰⁶ EAOs have been using this term increasingly frequently since 2013 and envision significant reform of the national armed forces to make it more representative of all ethnic groups at all ranks.

³⁰⁷ Jolliffe, *Ethnic Armed Conflict*, 66. This is in contrast to the military-focused “wartime constitution” that the RCSS currently uses. The “ceasefire constitution” has yet to be published.

Naturally, the primary examples of cooperation between the government and EAA justice systems are between state-backed paramilitary organizations and the MPF, as the former have already been somewhat integrated into the formal government security structure. For example, the PNA sometimes hands individuals arrested for certain crimes over to the police for trial in the government system, and the two forces also cooperate on narcotics cases at the community level. None of the EAOs surveyed reported any substantive coordination as yet with the government's justice system as far as judicial inquiry, trials, or other judicial processes, except for the NMSP, which reported occasional cooperation on narcotics issues.³⁰⁸ In addition to the vast political complications, the various systems are substantially divergent in laws, procedures, penalties, and punishments.

Cooperation between EAOs is more common in some areas. In overlapping zones of control in southeast Myanmar, the KNU, DKBA, and NMSP are able to cooperate to handle criminal cases. When the KNU arrests Mon individuals, they send them to the NMSP, and vice versa.³⁰⁹ If a case involves two people of different ethnicities, decisions about jurisdiction depend on the area. For minor cases, judicial decisions are handled at the village level in NMSP areas, even if they involve individuals of different ethnicities.³¹⁰ These cooperative arrangements are often based on agreements forged between township or district officials of each group, and not on any more comprehensive, EAO-to-EAO agreement.³¹¹

Whatever the EAOs do, their justice systems will operate as the law-enforcement and dispute-resolution institutions in their areas of control, or as parallel systems in mixed-control areas, for some years to come. This has significant implications for government attempts to reform its own system in ways that are effective in ethnic areas, and also greatly influences the kinds of international interventions that can be both effective and conflict sensitive. Some suggestions for further research that would help to guide reform efforts and the roles of international actors are provided in the conclusion in Section 6.

7.4 The shortcomings of EAO justice

To build on the opportunities discussed in Section 4, this section looks at some of the most prominent shortcomings of current EAA systems. These are all problems that need to be addressed by these organizations in the interest of improving their provision of justice. They include the typical lack of dedicated police forces trained in effective investigative procedures; deficiencies in access to justice beyond the village level for many people; and abuse and misuse of the justice systems by EAAs.

Policing

Most EAAs assign responsibility for internal security to regular military units, military units with specific administrative functions (as in the RCSS and KNPP),³¹² or to local militia units that are typically subordinate to their armed wings. Only the KNU, UWSP, and KIO have standing police forces, and only the KNU's KNPF operates in rural areas.

Effective maintenance of order and security requires policing that goes beyond simple arrest and detainment of suspected criminals or breaking up fights at large public gatherings. With exception of the KNU's KNPF, little evidence was found in this research that security forces tasked with policing have received dedicated training in investigative skills, follow established rules of evidence, or have more than a passing knowledge of the EAA's laws. Most often, investigations are carried out by administrative officials of the organization, who are also unlikely to have these skills.

³⁰⁸ Interview with senior NMSP official and former Justice Department head, 2016.

³⁰⁹ Interview with senior NMSP official and former Justice Department head, 2016.

³¹⁰ Interview with senior NMSP official and former Justice Department head, 2016.

³¹¹ Interview with senior KNU Justice Department official, 2016.

³¹² The Pa-O National Liberation Organization also has special administrative units within its military that deal with justice affairs.

Furthermore, even the KNPF receives very limited regular training other than military training from the KNLA and instruction on a few basic procedures. As KNU officials noted, the force is deficient in investigative and other capacities. The ethics and principles that should be instilled in a modern police force are probably largely absent from most EAA security forces, following decades of conflict during which defense against the enemy has been the highest priority.

Access to Justice

Above the village level, many civilians in EAA areas have a limited understanding of who exactly to go to with justice-related issues. Ordinary civilians are often reticent to seek action, because they have few influential connections. In areas of mixed control, where several EAAs and the government may be present, communities are unsure who is the supreme authority. Access to justice above the village level often hinges on whether a person has a connection to members of the EAA in the area.³¹³

Access to EAA justice systems is also limited by the constraints on communications and transportation due to armed conflict and poor development. Authority figures tend to be more mobile during periods of conflict, making it difficult for civilians to communicate with them. Conflict makes it difficult for disputants to travel to township or district courts or EAA offices for hearings, or for security personnel to take suspects to court. Cases that depend on judicial officials visiting villages become difficult. The result of these impediments can be that cases are dealt with extrajudicially, either by local officials without authority to handle severe crimes, or by higher officials who impose punishment based on a report from their subordinates rather than a properly conducted trial. This leads to summary judgments, sometimes to extrajudicial executions by local authorities, and to other disproportionate punishments.

In some areas, new ceasefires have allowed rural people to travel, without fear of military patrols, to bring cases to the attention of EAA police and judicial authorities.³¹⁴

Abuse of EAA justice systems

The costs associated with EAA justice systems were not surveyed, and likely vary greatly. In the cases of the KNU and NMSP systems, sources said they were generally considered to cost little or no money and to take comparatively little time compared to the government system.³¹⁵ Even these systems, however, are likely open to abuse by the wealthier individuals in a community, who are able to pay their way out of disputes and sometimes even criminal charges.³¹⁶ There is also a problem with soldiers and officials paying money to silence disputes that occur between themselves and the civilian population, including when they directly abuse local people. Since EAA personnel are the ones holding weapons, their victims are also subject to an implied, and sometimes explicit, threat if they take a case to the legal system. This is a problem that can apply to both the EAA justice systems and justice at the village level, particularly where village authorities also have direct coercive power through local militias.

³¹³ Interview with KHRG monitors, 2016 (2).

³¹⁴ Interview with KHRG monitors, 2016 (2).

³¹⁵ Under the KNU system, a nominal judicial process fee is paid if a case lasts longer than a prescribed length of time. One international researcher claimed that "donations" are paid to EAO courts, but only after a judicial decision has been made, to avoid accusations of favoritism or corruption.

³¹⁶ Interview with KHRG monitors, 2016 (2).

Section EIGHT: Conclusion

Going forward, and as the peace process evolves, more research is needed to understand how justice is administered by EAAs and to find workable policies and programs to increase access to justice for people in their areas. It is unreasonable to apply blanket assumptions about EAA justice systems. Each one is a product of that ethnic group's social and political culture, the particular EAA's organizational agenda and approach, and the historical ebb and flow of conflict in that organization's area. Instead, each system should be considered individually, and assessed for its legitimacy among the local population and its impact and efficiency in providing justice and stability to that region.

Unilaterally strengthening and applying the government's justice system in ethnic areas may lead only to misunderstandings and further grievances if it is not done sensitively and in concert with genuine political changes that reconfigure people's relationship with the state. There is already a profound lack of trust in government institutions in many ethnic communities, particularly those who have long lived under EAA control or had bad experiences with the Tatmadaw or other state authorities. Trust in these institutions needs to be built before these populations will accept them as anything other than tools of oppression (as is likely also the case in other areas with regard to people's feelings about EAA authorities).

A great deal needs to be done by government and EAAs to ensure law enforcement and judicial processes are just, equitable, and legitimate. Government and EAA actors should see such reforms within EAA systems as crucial to this aim, and should explore options for increased cooperation and coordination where possible. This could help improve access to justice overall, advance efforts to tackle crime, and go a long way in building trust in the peace process and hope for peace in the future. International actors looking to help the country in these endeavors should recognize the need to work with EAA as well as government justice structures, to ensure that reforms are reaching the most vulnerable populations, and to ensure conflict sensitivity.

Research is particularly necessary to understand how village-based justice works. This is the most basic foundation of all justice practices in EAA areas, and likely in most areas of rural Myanmar. The use of conflict resolution through negotiation and compromise rather than the letter of the law is the hallmark of civil and criminal disputes at the village level, and has been since before colonialism. Much could be done by government, EAAs, and international actors to engage with existing practices at this level, and rather than marginalize or usurp them, find ways to develop and improve them for the good of local populations.

Among the EAAs, only the KNU, the KIO, and the UWSP have dedicated police units, and only the KNPF is active in rural areas. For most EAAs, their armed wing and village level militias are responsible for providing internal security, arresting alleged criminals, and keeping order. Seemingly, only the KNU's KNPF has even basic investigative skills. There needs to be more research on how policing is carried out by EAAs. In addition, efforts should be made to improve policing in EAO areas, particularly by creating dedicated police forces and providing training in police procedure, investigative skills, and professional conduct. Such responsibilities naturally fall on EAAs, but in the context of ceasefires, cooperation between the MPF and EAAs to improve these capacities could be of great practical value, and would represent a critical area of peacebuilding and a possible stepping stone towards future integration. International actors, too, should support EAAs in this endeavor, and recognize that EAA justice authorities will remain the only recourse for many vulnerable communities for years to come.

In particular, further research should be done to understand how justice is administered by state-backed paramilitary organizations, as they often arrest accused criminals and operate detention centers. As integral parts of the Tatmadaw, PMFs and BGFs are meant to be defensive and counterinsurgency forces, not police forces. The actual mandate of PMFs and BGFs as state law

enforcement actors is unclear, and provides little basis for imagining how EAOs might be integrated in the future, or how local, legitimate, and recognized authorities can be established to serve ethnic communities. Special attention should be paid to the dual role of paramilitary organizations as both lawbreakers – particularly in terms of the narcotics trade – and law enforcement. This is particularly important as discussions get underway regarding the future of EAO forces being integrated as formal security forces, as lessons will need to be learned from the successes and failures of the BGF and PMF models.

As can be seen in this survey, EAA justice has been little studied, and there are a number of gaps in the research. In order to move the peace process forward and establish equitable rule of law in ethnic minority areas, it will be essential to come to terms with the various justice systems that exist among EAAs, and to envision how they can become more integrated and effective security actors within the Union.

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