

State-Making and Dispute Resolution in Karen 'frontier' areas

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Abstract

This article explores the constitution of authority in 'frontier areas' of Karen State following the ceasefire agreements in 2012 and 2015 between the Karen National Union (KNU) and the Myanmar government. Based on empirical research of village level governance and dispute resolution in 2 villages, 1 in central Karen State, and 1 in Northern Karen State and Bago Region, we show how the ceasefires are giving way to a dual-process of state-making. Both the KNU and the Myanmar government are expanding their civilian forms of governance to the 'frontier' villages, which were battle zones before the ceasefires. This takes place against the background of unsettled peace negotiations, which still have not clarified the future political set-up with regards to federalism and power-sharing. We argue that dual ceasefire state-making is giving way to plural authorities. This creates frictions in village governance and but also new opportunities. By comparing the 2 villages, we show that where KNU state-making is more consolidated, village leadership is more stable and able to enforce decisions in dispute resolution. In addition, we show that villagers prefer the KNU justice system to the Myanmar system when disputes cannot be resolved inside the village.

Introduction

This article explores the constitution of authority in 'frontier areas' of Myanmar from the perspective of village-level governance and dispute resolution within the wider context of ceasefire state-making. We draw on empirical research in 2 Karen villages: a Buddhist Sgaw Karen village located in central Karen

State, which we call Wah Thel Palay Thewall, and a Christian Paku Karen village, located in Bago Region on the border to northern Karen State, which we call Htee Ka Lay.¹ Today both villages are situated on a blurry boundary between areas *de facto* administered by the main Karen ethnic armed organisation (EAO), the Karen National Union (KNU), and the Myanmar state-administered areas. Drawing on Eilenberg (2014, 4), we understand these villages as ‘frontier areas’ in a territorial-physical sense as well as in an imaginary sense. Although they are located in the lowlands inside Myanmar and far from the Thai-Myanmar national border, they constitute territorial frontiers in the sense of being historically ‘the outer limits’ of both KNU and Myanmar state control. The KNU headquarters are located in the hills on the border to Thailand, whereas the Myanmar government only exerts direct civilian governance over villages 10 to 20 kilometres away. Until the ceasefire in 2012, the villages studied in this article were battle zones and subject to violent forms of external territorialisation, extraction and forced relocations by the Myanmar military, the Tatmadaw, combined with secret KNU alliances and recruitments. This is gradually changing, as civilian forms of governance and develop-

¹We have made up these village names to ensure anonymity. The research was conducted as part of the EverJust project and we are indebted to the researchers, Lue Htar and Saw Hay Htoo for their committed data-collection and analysis, and to Saw Htoo Wah and Saw Eeh Htoo for their assistance. In the northern Karen village, fieldwork was conducted in 17 days over 3 periods in May and September 2016 and January 2017. It included 36 interviews, distributed as follows: KNU administrative persons and judges (7); Village elites (14), religious leaders (2), women’s group members (3), ordinary villagers (6 men and 14 women). In the central Karen village, we conducted fieldwork over 2 periods only, as the security situation did not permit more visits due to nearby armed clashes. It covered 30 interviews, distributed as follows: KNLA commander (1); KNU township judge (1); village elite (8); monk (1), ordinary villagers (11 women and 8 men). The shorter-term stays were not ideal for anthropological research, but were necessary due to limited accessibility to the EAO areas, which requires the renegotiation of permission from higher-ranking EAO members each time. Case study areas were not systematically selected by the research team, but were the result of accessibility criteria, including security concerns. We went to the villages that the KNU allowed us to visit. Therefore, we cannot say that the villages are representative of the whole of Karen state, nor even KNU administered areas.

ment interventions are expanding as part of a dual process of ceasefire state-making, one by the KNU and one by the Myanmar state.

In this dual-process of ceasefire state-making, we argue, the villages constitute imaginary frontiers in the sense of being seen by the 2 'centres', the KNU and the Myanmar state, not only as underdeveloped and untamed, but also as potentialities or 'moving zones' for civilian forms of territorial expansion, governance, extraction and development (Eilenberg 2014, 5-6). Dual ceasefire state-making is a contested process with competing centres of authority and unclear jurisdictional boundaries,² which from the perspective of the villagers and their leaders creates both opportunities and frictions. This takes place within a wider context of unsettled peace negotiations, which still has not clarified the future political set-up and division of power between the central Myanmar state and the EAOs, like the KNU.

The main argument of the article is that dual ceasefire state-making in the 'frontier areas' is giving way to a pluralisation of authority. We explore this from the perspective of village level governance and in particular dispute resolution and justice provision, as two fields of action where authority is (re)constituted and claimed. Drawing on political and legal anthropology, we use the concept of 'plural authorities' to describe the co-existence of different actors who *de facto* enforce decisions, regulate social behaviour and control people and territories. The word plural also refers to the variety of norms, practices and alliances that inform how authority is (re)constituted and practiced. These have different historical and contemporary origins. In our study norms and practices derive from the KNU, the Myanmar state, military logics, religion, customary rules, and new moral codes.

Christian Lund's (2006) understanding of authority as something that needs to be continuously enacted, reenacted and confirmed in practice, rather than a pre-given or fixed attribute of a person or office, informs this article. This means going beyond

²The ceasefires made with other ethnic armed organizations in the 1990s included demarcations of territorial control to the ethnic groups, but this did not happen in 2012 when the KNU signed its first bilateral ceasefire.

viewing authority, including forms of state-making, as confined to *de jure* or formally recognised institutions and laws. Authority does not exist unless it is effectively executed, but depends on the willingness of *others* to grant recognition and legitimacy. This definition means that authority should be confused neither with pure coercion, nor with mere persuasion, but be seen as the capacity to enforce collectively binding decisions on the members of a given locality. Pluralism adds here a focus on the variety of norms and sources of legitimacy, local as well as extra-local, that actors who vie for authority draw on (Merry 1988).

In this article, we show that village leaders exert significant *de facto* authority within the village, but that the constitution of village authority is both shaped by external state interventions as well as shapes the way that the ‘exterior’ states are made effective in the ‘frontier’. The exterior ‘state’ is not here a singular actor or system that is already established. ‘States’ or forms of stateness are in the process of becoming (Bertelsen 2016) and comprise a plurality of authorities, including the Myanmar state administration, the KNU civilian administration and the armed actors of the Tatmadaw and the KNLA.

The wider repercussion of plural authorities and dual ceasefire state making is that village leaders find themselves in a ‘betwixt and between’ position. They have different ‘masters’. This creates frictions and insecurities with respect to village leadership. By comparing the 2 villages, we also show that where KNU state-making is more consolidated, village leadership is more stable and able to enforce decisions in dispute resolution. In addition, we show that while villagers prefer to have their disputes resolved inside their village, the KNU justice system is the preferred ‘back-up’, rather than the formal Myanmar state institutions.

In what follows, we first outline the landscape of authority in the two villages, including its history and the most recent ceasefire state-making processes. We then turn to everyday dispute resolution and discuss the impact of different forms of ceasefire state-making on village authority. In the conclusion, we discuss our findings in relation to the wider peace process in Myanmar.

The *de facto* landscape of plural authorities

Being subject to shifting military incursions, rather than any form of stable civilian governance, the 2 Karen villages have had a long history of dual, split and rotating village leadership. In some periods, the villages had 1 leader who dealt with both the Tatmadaw and the KNU, and in others, they had 2 leaders, 1 for each side. Village leadership connected to the KNU was secretly managed, and those who took up the position were at constant risk of Tatmadaw torture and capture, as village leaders were seen as instrumental in supplying food and recruits to the KNU. Due to the risks, there was no desire to become a village leader, and both villages had a rotation system. Sometimes leaders only served 1 month at a time, and sometimes the elders gave the position to women. Some believed that women would be less at risk of Tatmadaw torture, but it was also because many men fled the village. For both villages, the worst period remembered by the villagers was the 1990s when the military government operated under the name of SLORC (State Law and Order Restoration Council) and later the SPDC (State Peace and Development Council). During this period, the village leaders could not effectively resolve disputes, because their position was severely challenged.

Prior to the 1990s, the elders of Wah Thel Palay Thewall village told us, there was a shorter period of more or less stable village governance under the KNU. They had an operational village development committee that was also in charge of issues like health, road repairs, and dispute resolution. During that time, they had 2 village leaders, 1 who also dealt with the socialist Myanmar government. This changed with the SLORC government, which more directly attempted to cut off villages fully from the KNU. Villagers were forced to select a government village administrator, and the villagers themselves dismantled the KNU committees due to fear of the Tatmadaw. From that time, they only had 1 leader. He continued, but very secretly, to respond to the KNU.

In the northern Karen village, Htee Ka Lay, there was only 1 village leader prior to the 1990s, who was in theory recognised by the Myanmar state, but linkages to the state were weak, and the

leaders always had some connections to the KNU in the hills. During the 1990s, the village became subject to forced relocations to SLORC-controlled areas 5 times, and during that period, the elders introduced a dual-leadership system to try to minimise the risks: 1 leader dealt with the Tatmadaw and another with the KNU. In the mid-2000s and until the ceasefire in 2012 the village was under direct Tatmadaw control, including the imposition of curfews and forced taxation. Many villagers fled to Thailand during this period, and attacks on village leaders were fierce.

In 2016, 4 years after the KNU signed a ceasefire, the villagers described the 2 villages as 'mixed' governed areas, by the KNU and the Myanmar state respectively. However, the village leaders in both villages support the KNU. In Htee Ka Lay, we were repeatedly told that in reality 'this is a KNU village'. Although the dual-leadership system continues, both leaders pledge allegiance to the KNU. In Wah Thel Palay Thewall, people were more insecure about KNU's position. There was a stronger feeling of split external influences, which also underscored internal leadership disputes. This reflected a difference in ceasefire state-making trajectories and in the degree of pluralism of authorities between the 2 villages, as discussed in the next 2 sections.

Although both villages were 'frontier' areas in the sense of having long histories of being distant from both the KNU and the Myanmar centres of control, the current localisations of the 2 villages also influence current village leadership. Htee Ka Lay is located a good drive off a gravel road that connects a government township village to the mountains where the KNU has its district headquarters. Although the Tatmadaw still had a camp with some 30 soldiers near the village, the soldiers no longer came into the village and there were no other ethnic armed groups, besides the KNU/KNLA. Since 2014, Wah Thel Palay Thewall has been located right on the new Asia Highway, which connects the Karen State capital, Hpa-An, with Thailand, and is part of a major foreign investment project that has also prompted other businesses along the road. A KNLA camp was located on the entrance to Wah Thel Palay Thewall, which marked the connection between the Asia Highway and the gravel road to the areas under full KNU control.

Along the Asia Highway, there were Tatmadaw camps and several other ethnic armed groups, like the Democratic Karen Benevolent Army (DKBA) and the Border Guard Force (BGF).³ In 2017 armed clashes between these splinter groups occurred close to the Asia Highway. Some people still had trenches under their houses, because they were not sure that peace was stable. This insecurity about peace was also reflected in the insecurity of village leadership.

Dual mastership and contested village leadership in Wah Thel Palay Thewall village

Shortly after the 2012 ceasefire, the KNU could more openly establish a village leadership structure in Wah Thel Palay Thewall and surrounding villages, but this was soon interlinked with Myanmar civilian government connections. The KNU selected a village tract leader, who holds authority over 9 villages, each with a village leader elected by popular vote each year.⁴ In Wah Thel Palay Thewall, the village leader became formally part of the KNU system, but shortly after that, he was also recognised by the nearest Myanmar township administration. After the nationwide elections for Ward and Village Tract Administrators took place in February 2016, the village leader told us, “Now my name is registered both in Nay Pyi Taw [the capital of Myanmar] and by the KNU”.⁵ Although he sees himself as a KNU village leader, he also believes that the central Myanmar government, led by the National League for Democracy (NLD) since April 2016, now officially recognised him. He has 2 masters, he told us.

This situation was the result of the dual-process of ceasefire state-making whereby both the KNU and the Myanmar state attempted to bring village leadership in the frontier areas under civilian administration, rather than purely military control. This was also reflected in a number of other fields. Earlier, people only

³ The DKBA was formed in 1995 as a splinter of the KNU, and signed a ceasefire with the military government. On this split and the BGF initiative see Kyed and Gravers (2015).

⁴ On the KNU administrative system see Jolliffe (2015).

⁵ Interview, village leader, March 2016. On the Ward and Village Tract Administrator Elections in 2016 see Kyed et. al (2016).

had land-tax receipts from the KNU, but at the time of writing, they were both registering land with the KNU and trying to get Myanmar land certificates to safeguard ownership in the future. Many were also in the process of applying for Myanmar identification cards. When walking around in the village, the visible signboards of the KNU with rules, for instance, prohibiting the killing of wild animals and warning against fire risks, signal the presence of the KNU state. Conversely, the village has a Myanmar government school with a Myanmar flag in front of it, and yet 1 of the Karen teachers' salaries is covered by the Karen Education Department (KED) under the KNU. In November 2015, the villagers could also cast their vote for the Myanmar national elections at the school.

Along with the civilian administrations, the armed actors still play a shadowy power role. The KNLA camp was located next to the school, and was the first thing a visitor saw when entering the village, with its armed guards and army tents. It had been there only since early 2015, facilitated by the ceasefire and prompted by the highway. In 2017 it symbolically marked the village as simultaneously a KNLA territory. Apart from taxing traders entering the gravel road, the captain in charge exerted considerable influence over the village, which paralleled the civilian administration. Villagers proclaimed that the captain prevented thieves and strangers from entering the village, and he was generous, helping to rehabilitate the road and the school. Although he was Christian, he donated to pagoda festivals. Conversely, some villagers were also suspicious, because he had been instrumental in giving concessions to outside Bamar investors who had a timber business on the outskirts of the village, and employed Bamar migrants. A few of the villagers, including native KNLA soldiers, were partners in this business and the captain extracted fees from them. The village leader did not dare to make decisions independently of the captain. The village was split in 2 when the Asia Highway was made. When outside visitors came, the village leader simultaneously had to respond to the Tatmadaw, which still had a camp on the other side of the road, very close to the village's main monastery in the second part of the village. Finally, although the BGF

and the DKBA did not exert direct control over the village, they did come to the village from time to time, as some of their members were native to the village. In fact, very recently new young villagers joined the BGF because it provided them with a salary. The KNLA still conscripted men over 18 years old, but many tried to avoid joining, because KNU paid no salary.

This situation made the village leadership a precarious authority betwixt and between multiple masters. As the village leader described it, 'We have a lot of teachers (superiors). There cannot be more than one tiger in a cage, but our village has a lot of tigers.'⁶ One elderly man similarly said, 'Our village is not a single governed village. The Cow and the animal govern the village. The cow is the KNU and the animal is the government. The villagers are feeling the bad effect of both.'⁷ Concretely, it meant the village leader was insecure about making public decisions. It also resulted in an internal, yet covert, leadership dispute. Secretly we were told that there were 2 power groups in the village, 1 led by the village leader currently in power during our research, and 1 by the former. Each side had the allegiance of different elders, while others tried to remain neutral. Elders were very important in village leadership, as they provided advice and had the *de facto* power to select candidates and remove leaders. Those elders who supported the former leader did not follow the decisions of the current leader, and they encouraged villagers to take their matters to the former leader, like resolving disputes and handling identification cards. The supporters of the current leader accused the former of taking bribes when applying for documents, and said that he was closer to the Myanmar government, because he used to be a Myanmar state official. They said that this was why the KNU prevented his re-election in 2015. The current village leader also told us that the previous leader took a Myanmar government salary, although we were not sure how this could be so, given that village leaders received no formal salary from the government. Some believed that it was an informal subsidy so that

⁶Interview, village leader, February 2016.

⁷Interview, male elder, February 2016.

the government could ‘buy’ the allegiance of KNU village leaders. Even though the current leader received no salary from the KNU, he told us that he refused to receive any from the Myanmar state, because this would place an extra burden on him. This underscored how he had to balance his position within the dual process of ceasefire state-making. In the Northern Karen State village, the situation is quite different, due to a stronger KNU connection.

KNU consolidation and shared leadership in Htee Ka Lay

To enter Htee Ka Lay village you passed a large KED boarding school which opened in 2015, and which received Karen students from surrounding lowland villages and hillside areas, where the KNU and KNLA headquarters were located. The KNU district chairman *de facto* operated from this school, which he called a ‘peace project’, because it was partly funded by International Peace Fund, and, he told us, “Because it is right on the boundary between Myanmar and KNU areas.”⁸ For larger events, the chairman invited official persons from both sides, such as on 21 September 2016, when he celebrated the International Day of Peace. Along with this spirit of reconciliation, the school symbolically marked the expansion of KNU ceasefire state-making into a frontier area where the KNU only had underground connections to villages until 2013. Several KNLA and KNU forestry department ‘outposts’ have been set up in the lowlands, and the KNU has openly institutionalised village leadership as well as Development and Dispute Resolution Committees. This began in 2013 with ‘mass meetings’ inside the villages where a civilian-dressed KNLA commander came to speak about peace and KNU laws.⁹

In Htee Ka Lay, a dual village-leadership system still prevailed, but in contrast to the period before the 2012 ceasefire, the KNU village chairman could work openly. He headed a 5-member committee that dealt with development matters, security, and disputes. He also collaborated with the other village leader, who was chosen by the elders to deal with matters emanating from the

⁸Interview, KNU district chairman, May 2016.

⁹Interview, village leader of Karen Women Organization (KWO), September 2016.

Myanmar side, because he knew Burmese well. Both leaders were closely connected to the KNU. In fact, the wife of the government village leader was the sister of the KNU district chairman, who was from the village. He was not sure if he was registered with the Myanmar government, because he never received any training or directives. He had only accompanied the Village Tract Administrator (VTA) from the neighbouring village to the township office a few times to discuss flooding problems. He also dealt with an NGO that came from the Myanmar side to help elderly villagers. Although the VTA was registered with the Myanmar government, there were no VTA elections for 10 years.

Overall, these matters reflected that the village was subject to very weak efforts by the Myanmar state to expand civilian administration. The only Myanmar state presence in Htee Ka Lay was the village school. Few people voted during the 2015 national elections, because hardly anyone was on the official state registers and no one actively tried to register. Although in the past, the Tatmadaw taxed the villagers, this stopped after the 2012 cease-fire, and since then villagers paid tax to the KNU only. Most villagers had KNU land grants. Fewer were trying to register land with the Myanmar government, mainly due to fear of land confiscations by the Myanmar side. Such fears were based on previous experiences during military rule when approximately 300 acres of land close to the village were taken by the Tatmadaw and sold off to Bamar farmers. The Karen owners cannot legally reclaim that land, because the Myanmar Land Law (2012) granted land ownership to people who have used the land for 4 years (see Lue Htar's contribution to this volume). Some Karen villagers now rent their own land from the new Bamar owners. Against this background, villagers predominantly perceive the Myanmar state as extractive and something to avoid. The villagers' interaction with the Myanmar side is through trade, education, and Karen Baptist religious networks. They very seldom engage with the Myanmar administration.

Unlike in Wah Thel Palay Thewall village, we found no evidence of leadership disputes in Htee Ka Lay: the 2 leaders collaborated, and when 1 was absent, the other filled the role. The

closeness of the KNU district chairman to Htee Ka Lay, and the fact that village leadership did not draw status simultaneously from the Myanmar state had a bearing on this stability, we suggest. The powerful elders indirectly ensured this. The strongest of the elders was the oldest brother of the KNU district chairman, who himself was village leader on and off from 1973 to 1992. In practice, he was the one who backed all decisions, including on village leadership. Being a brother of the KNU district chairman, he ensured KNU allegiance externally. The power exercised by this elder created stability, but the village leaders also saw it as a burden. Especially the leader who dealt with Myanmar government affairs was dissatisfied with his position, because it remained unattractive and associated with high workloads. He tried to convince the elders to let him go several times, but when an election was finally arranged in 2015, the newly elected candidate ran away from the village to avoid taking up the post. This reluctance to assume village leadership underlined the deeper fragility of ceasefire state-making in frontier areas, where territorial boundaries and external mastership remains unclear, despite the consolidation of KNU influence in Htee Ka Lay. This is further underlined by the fact that a Tatmadaw camp remains present just ten minutes' walk from the village. Although soldiers had not been seen inside Wah Thel Palay Thewall since 2013, the fear of their return remained present.

Village dispute resolution and the KNU justice system

Inside both villages, there is a very low level of fear of crime and it is rare that land disputes occur. They feel safe among their fellow villagers, we were told, because “we are all Karen, and many of us are relatives”. Insecurity is associated with external threats, namely the Tatmadaw, potential thieves from the Bamar-side and land confiscations. The village leaders fear to deal with these matters and thus their authority to deal with disputes is confined to internal village matters like family disputes (including divorce, domestic violence and adultery), and to regulating morally inappropriate behavior (like public disturbances, petty thefts and alcohol abuse by villagers). In this situation the KNU justice system, and sometimes KNLA armed actors constitute the exterior

'back-up' for village leaders when cases are too risky or too difficult to handle.¹⁰ In addition, there are no prisons in the villages where dangerous criminals can be kept, but the KNU has cells and prisons.

Conversely, the villagers do not regard the Myanmar courts and police stations as options. They are feared and regarded as places to avoid. Despite this similarity, we also found significant differences between the two villages in how disputes were handled and in the degree to which people reported cases to the village leaders. This reflected back on the *de facto* authority of the village leaders. In Htee Ka Lay more cases, including domestic violence, were reported to the village leaders than in Wah Thel Palay Thewall, and there was a much more institutionalized way of resolving disputes, including the use of written rules and punishments. Overall we relate the difference not to dissimilarities in justice preferences, but to the contours of ceasefire state-making and the relative stability of village leadership. The close proximity of the KNU chairman to Htee Ka Lay also played a role in making village leadership stronger in dispute resolution in Htee Ka Lay than in Wah Thel Palay Thewall.

In both villages, villagers clearly preferred to resolve disputes by themselves or within their family. Making disputes public is associated with feelings of shame and the escalation of problems. In the Christian Htee Ka Lay village there was a preference for forgiveness over seeking a remedy, and in the Buddhist Wah Thel Palay Thewall village, the internalisation of problems was related

¹⁰The KNU justice system has existed since the 1970s-1980s, and is a 3-tiered system of justice committees (township, district and central) with independent judges and committee members who act as advisors. There are no lawyers. The jurisdictions of each court-level follows the degree of the offence and penalties: for instance the township level can maximum issue a 3-year imprisonment and a 50,000 kyat (US\$35) fine. Higher levels also function as institutions of appeal. It has 3 written laws covering criminal, civil and witchcraft cases as well as a legal procedure code that were drafted by KNU members with a legal background. The laws are formalistic legal instruments, drawing on Western jurisprudence. There is supposed to be prisons at each level, and the Karen Police Force is charged with the task of investigations and arrests (see McCartan and Jolliffe 2016; Harrisson and Kyed 2017; Kyed 2017 forthcoming).

to dealing with individuals' past life deeds. Prayers and advice from pastors, monks or astrologers constitute often-significant substitutes for seeking third party solutions that would make problems public and shameful. This regards all kinds of cases, except when problems escalate. Culturally and religiously informed notions of justice are also significant outside conflict and frontier areas, where there is also a tendency for underreporting.¹¹ However, in the frontier areas where village leadership is subject to dual mastership, as particularly prevalent in Wah Thel Palay Thewall village, there is a higher level of fear of engaging leaders in resolving disputes and leaders are more reluctant to make decisions. Prior to the ceasefire, this situation was worse due to constant risk of Tatmadaw attacks and thus we were told that in the past it was more difficult for village leaders to resolve disputes. In the following, we compare dispute resolution in the 2 villages, by firstly looking at the diffuseness of village dispute resolution in Wah Thel Palay Thewall. We then show how a more consolidated KNU ceasefire state-making process in Htee Ka Lay has strengthened village dispute resolution.

Wah Thel Palay Thewall – split resolutions and informality

In Wah Thel Palay Thewall village the local power dispute effects village dispute resolution. Few cases are reported and when villagers do report they do so to different persons: some go to the current village leader, some to the former leader, some to the KNLA captain, and some go the elders on either side of the power divide. In fact, the current village leader had only resolved 3 cases in his time as leader, 2 marriage disputes, which ended with reconciliation in the village and 1 arson case, which was sent to the KNU. He resolve these cases on his own, rather than with the elders, as was otherwise the practice in the past. This reflected his insecure leadership position. We also heard that the KNLA captain sometimes gets involved. For instance in a motorbike theft case, the victim first reported the incidence to the KNLA captain, before the village leader was involved. The perpetrator was never found,

¹¹This is confirmed in our own studies in Yangon, Hpa-An and Moulmein (Kyed 2017), and by another study conducted by the ODI in Yangon and Mon State (Denney et. al 2016).

however. The KNLA captain did not forward the case to the KNU justice system, and also the victim did not want to go to the Myanmar police, because she believed it was too costly.

In Wah Thel Palay Thewall, it was apparent that the village leader had very little power to enforce decisions. Resolutions were done in *ad hoc*, informal ways with little reference to or guidance from laws. There was no system of fines and other punishments. The village leader said that he used whatever law, from the KNU or the government, that he deemed most relevant to the individual case, and yet he had no law books to show. He said that the KNU never gave him a village law book, although a former village leader showed us the one that he used in the past. Our impression was that even if the village leader had a KNU law book he would not tell us. Despite the ceasefire, there is likely still a fear that it is dangerous to have KNU documents. In the past, the Tatmadaw would punish village leaders if they found such KNU documents. Nevertheless, the villager leader did recognize the KNU justice system as a significant back up. He told us that when he cannot resolve a case successfully, he will forward it to the KNU judge at township level, not to the Myanmar government. Only traffic accidents, he said, would be reported to the Myanmar police, but so far, he had never done so. During his time as a village leader, there had been 1 case of arson, which ended in the KNU justice system. The perpetrator appealed the case to the KNU, because he did not agree with the decision of the village leader, who had negotiated a compensation to the victim. The KNU township judge heard the case with the presence of the parties and the village leader. The judge decided in favour of the village leader's decision. In general, there was a sense and understanding that the KNU backs the village leader's role in dispute resolution. However, the connection was not strong, and although the village leader was aware of how to forward cases to the KNU, he did not want to say where the judge was located. The insecurity of the village leader's position due to the local power dispute likely influences this situation. When we later spoke with the KNU township judge, it also became apparent that the KNU justice system in this area was in flux and was only just being re-asserted: only in 2016

was the district court re-established, and the township judge operated from a forestry department compound where there was no prison or dedicated court space. In addition, there was a sense of split views of what cases the village leader should take to the KNU and what matters he should send to the Myanmar government. This insecurity reflects the precarious situation of dual, yet also partial mastership, which in addition is influenced by the influence of the armed actors, like the KNLA captain.

Htee Ka Lay – consolidated village rules and KNU empowerment

In Htee Ka Lay we found a much more institutionalised system of village dispute resolution than in Wah Thel PalayThewall, which was directly associated with much stronger KNU engagements in Htee Ka Lay since 2013. Although, we did find that villagers reported disputes to different people they felt most comfortable with, like the elders, a KWO member, or 1 of the 2 village leaders, the actual hearings and decisions were made collectively by the village leaders and a minimum of 5 committee members. This group used a 3-step warning system, which was embedded in a set of village rules and punishments, but which was ultimately linked to the KNU justice system. For a first offence, the parties received a warning and signed a form promising not to repeat the offence. Secondly, if the promise was broken, a village punishment was issued, which could be a fine or community labour, such as road repair. For instance, a group of young men who had twice made public noise were given 24 hours of labour, and a man who beat his wife after a warning was made to work for 3 days. If the perpetrator committed an offence a third time, the case was transferred to the KNU. Cases that could be heard first at village level and then transferred to the KNU did not include murder cases, which were directly transferred to the KNU. However, it included offences defined as civil and criminal cases in the KNU laws, such as inheritance disputes, theft, adultery and physical assault. At the same time, village leaders could send cases involving breakin of village morals and norms to the KNU. This included for instance, the selling of alcohol in the village.

Selling alcohol was not a crime under KNU law, but was considered a breach of the village rules in Htee Ka Lay. These rules

included prohibitions on the selling of alcohol, driving motorbikes on Sundays and after 9pm, drinking in groups, humiliating others, and men touching women with whom they were not married. Breaking these rules could result in fines of up to 50,000 Kyat (US\$35) or a punishment of communal labour. The rules were posted in Sgaw Karen at the Baptist church and at the entrance to the village. Whereas couple fights and disputes over inheritance required that a complaint is made, violations of the village rules were treated as public offences against the village, which the village leaders pro-actively enforced. This also extended to adultery cases, which were considered a crime in KNU (as well as Myanmar) law.¹² For instance, in 1 adultery case, the victim – the wife – did not make a complaint and neither did the other woman, who was pregnant with the man being the father. However, when 1 of the elders heard that the unmarried woman was pregnant, he got furious at the offence against the village, and informed the KWO leader and the other village leaders. The case was heard, and it was decided that the man should pay the pregnant woman a 300,000 Kyat (US\$215) as compensation. It took a lot of negotiation to get the pregnant woman to agree to receive the money: she believed that the incident was her fate, so that receiving the money would keep her in debt to the perpetrator, and she would lose her dignity. However, the village leaders insisted, because not only was adultery a crime and against their Christian faith, but sexual intercourse outside marriage was also believed to dirty the village as a whole, according to Karen customs. A village cleansing ritual was performed: the man donated a pig, which was slaughtered and consumed, and he and the pregnant woman then apologised to the village.

This case not only reflected the overlap of different sources of norms, emanating from Christianity, particularly Baptism, KNU law and customary beliefs, but also a pro-active enforcement of norms and regulation of behaviour that we did not encounter in Wah Thel Palay Thewall. When we dwelled into the origin of the village rules and the 3-tiered warning system, we were told that

¹²In the past adultery could lead to the death penalty in the KNU justice system, but now the punishment is up to 8 years prison.

they had been around for a long time, but they were only written down and actively enforced since 2013. Before that, the village leaders would only decide cases when complaints were raised, and would do so cautiously. When we asked why there was this difference we were told that it was because the KNU since 2013, not long after the ceasefire, had given the village leaders the authority to make and use village rules and made it easier for the villagers to send cases to the KNU justice system. This was because of the ceasefire, which meant that the KNU could operate more openly and with stronger authority. When village leaders faced severe cases, like murder or assault, or could not resolve a smaller case, they could now more safely send them to the KNU. The village representative for the Karen Women Organization (KWO), in addition told us that the KNU since 2013 had given the women the authority and skills to participate in resolving cases which involve women.¹³ This was a significant development, because marriage disputes, including adultery, quarrels, and domestic violence, were the most common type of dispute that the village committee dealt with. After training in women's rights and dispute resolution, the village level KWO women were now in charge of all case recordings, and they were the only ones in the village who kept the written version of the village rules. The village leader of the KWO, a strong, articulate woman, told us that more women were now reporting domestic violence cases. Before, women rarely made complaints. In August and September 2016, the KWO also played an active role in investigating motorbike use on Sundays and alcohol consumption. This empowerment of the KWO by the KNU created a new layer of authority in the village, especially when it came to moral and social regulation. This existed in addition to the male-dominated village elders and leaders.

KNU intervention in the village since the ceasefire was clearly part KNU's expansionary state-making efforts in the frontier areas, but such intervention also empowered village leaders, including women, to resolve disputes and to regulate behaviour. Central to this empowerment was the active role performed by the KNU (and the KNLA) as a source of authority and as a sovereign

¹³Interview, 27 September, 2016.

power with the capacity to make final decisions not only in matters related to official KNU law, but also with respect to particular village norms. This was underscored by the way that the KNU backed decisions to punish alcohol sellers, although this was not a crime in the legal code. The form that KNU ceasefire state-making took in this context was not a straightforward, from-the-centre-and-out process. The KNU state did not here perform as a singular, monolithic entity. This was reflected in how the KNU law was conceived and effectuated, and in how the KNU justice system *de facto* worked and evolved.

KNU law and justice system in practice

When we asked the village leaders in Htee Ka Lay ‘What law do you use?’ they both immediately replied: ‘We use KNU law.’ However, no one could present us with a KNU village law book. The village chairman searched tirelessly in his home, but then concluded that he must have lost the book. Our impression was that the references to ‘KNU law’ should not be understood as adhering to a written legal code, but more non-figuratively as implying the identification with and belonging to a KNU state that is in the making. The government village leader told us, after underlining that no one in the village would ever want to seek justice from the Myanmar courts:

We see ourselves as the children of the KNU. When we have a case that we cannot resolve we hand it over to the KNU. It is easy to deal with the KNU, because of the language and also because they are Karen. They do not give big punishments if the case is not serious. It is simple.¹⁴

The village leader’s emphasis on the KNU system as ‘simple’ is important to note here, as it reflects how the KNU is indeed a state in-the-making. What we found in practice was a flexible, mobile and network-like justice system that was gradually and cautiously

¹⁴Interview, government village leader, May 2016.

being expanded into the lowland frontier areas, where jurisdictional and territorial boundaries are blurred.

The Supreme Court and the justice department of the KNU was still in 'exile' in Mae Sot in Thailand, and had no physical location inside Karen State. However, we learnt that Supreme Court judges from time to time travelled not only to KNU headquarters, but also to the frontier areas. In August 2016, for instance, the female supreme court judge came to a lowland location near Htee Ka Lay to help the district judge to decide 2 drug-dealing cases, following a new anti-drugs law that was passed shortly before. The judge fined the dealers, who were non-Karen caught dealing in KNU areas, and they were given prison sentences. They were not imprisoned in the hillside headquarters, as was the official norm, but kept at 1 of the lowland KNLA outposts.

The use of such 'mobile courts' and 'outpost prisons' was very much characteristic of KNU's gradual expansion into the frontier areas. When a case was transferred from the lowland villages to the KNU, the hearings were set up in localities most convenient for the parties at a given time. The judges lived in the headquarters, far up in the hills, and committee members, who also had other functions in the KNU, lived dispersed in other KNU or KNLA headquarters or in the low-land outposts. When there was a case, they travelled to meet each other in a selected hearing space in the lowland, put up a Karen flag on the wall and set up chairs. This also made it easier for the villagers to convene, because it took 2 days to reach the hillside headquarters. It was not always possible for the judge to summon the committee members, and we did encounter a case where a judge had to go ahead with a judgement with assistance only from a KNLA soldier. In general, there was a lack of KNU staff, and there was no salary or compensation.

Even though the judges used the KNU laws, they also allowed for flexibility and negotiation with the parties. The judges also considered the economic and family situation of the perpetrators when they decided on punishments. For instance, in 1 case the sentence for adultery was reduced for a woman whose parents were old and needed her care. Such considerations were based on advice from village elders and leaders. In general, the KNU

supported an extensive jurisdiction to the village level, with the exception of murder and drug trafficking, and most of the cases resolved in the KNU courts derived from that level. In fact, the KNU encouraged the village leaders to resolve as many of the local disputes as possible.

Although there was an institutionalised link between the village level and the KNU system, there was no fixed transfer system in practice. Cases traveled different routes before a hearing was made. According to the district judge, the village leaders did not report to any specific person or office. Instead, they used a network of KNU and KNLA contact persons who were scattered in the lowlands at outposts, at the KED School, and inside the villages. Sometimes the village leaders reported to a KNLA soldier, sometimes a forestry department police, and at other times to KNU area leaders, who then contacted the judges. In practice, these 'contact persons' also acted as a kind of judge by pre-hearing the cases and finding resolutions. In principle, the village leaders must send case reports to the KNU judges explaining prior hearings, but some were illiterate and therefore instead gave oral accounts during the KNU court hearings. Victims also sometimes addressed the KNU or the KNLA directly, and then only later were the village leaders addressed as witnesses or advisors. The following case from Htee Ka Lay is illustrative of this mobile, networked system, and simultaneously illustrates how the KNU/KNLA performs a 'back-up' state performance when village leaders cannot control the conduct of villagers.

Land dispute and violent threats to the KNLA and the KNU

In 2014, the son of the former Anglican pastor in Htee Ka Lay, a local businessman known to drink to excess, was reported to village leaders. Under the influence of alcohol he had frequently threatened and verbally abused the current Anglican pastor. He wanted to get back the church land that his late father had donated. Initially the Anglican pastor did not want to report the case, because, he told us, it was shameful to bring cases to public authorities and a pastor should be able to keep peace in his church community. However, in the end he felt forced to report the case to the village leaders. The KNU village chairman tried first to

reconcile the parties at a meeting where also the Anglican church committee was present. The chairman also scolded the perpetrator for abusing others under the influence of alcohol, which was a violation of the village rules. After the hearing, the perpetrator continued to verbally abuse the pastor. Instead of waiting for another village leader hearing, the pastor sent a letter to a KNLA captain at the lowland outpost. The captain came to the village to investigate the case and also held a meeting with the church committee. The captain then ordered the village leaders and the parties in the case to attend a KNU mobile court hearing convened by the KNLA captain. Here the captain told the perpetrator, 'We are all Christians so you should not do this. The land was a donation by your father so you cannot take it back.' The perpetrator signed a letter promising to refrain from making further threats. Therefore, the KNU/KNLA gave the perpetrator a chance to improve his behaviour without being punished.

However, in late 2015, the perpetrator, again drunk, came to the church during preparation for a Christmas celebration. He cursed the church members and slapped some of them. However, according to the pastor, they did not report the case because they respected the perpetrator's father, who had been a good pastor in the community. One month later the perpetrator came back and threatened the pastor with a knife. The pastor ran for his life, hiding in different houses. The KNU village chairman reacted, and called the KNLA captain from the previous hearing. The captain came to the village to arrest the perpetrator and took him to the KNLA headquarters in the hills where the perpetrator spent 2 months in prison. After these 2 months, a hearing was staged at the KNLA outpost at the foot of the hills. The district judge and 1 justice committee member heard the case. The perpetrator promised not to repeat the offence and went back to the village. The pastor had not spoken with the perpetrator since. He felt shame because the case reaching higher authorities. Yet the KNU punishment has meant that the perpetrator no longer made threats. The pastor saw this as a very last resort. The same he suffered from the the case made him want to leave his position as pastor.

This case illustrates how cases that go to the KNU travel through different actors, instead of through fixed institutionalised procedures. Such procedures are still in the making after the end of armed conflict. Importantly, it also shows that the KNU/KNLA actors try first to reconcile the parties and give perpetrators a second chance, rather than sentencing them to prison the first time. We suggest that this emphasis on reconciliation is embedded in a shared understanding among the KNU and Karen villagers. Imprisonment denotes an escalation of a case, and was a last resort. The failure to make peace between villagers was associated with shame, also for the victims, as we saw with the Anglican pastor. For this reason the KNU's authority as a state in-the-making has to rely on careful balancing of enforcement of laws and punishments with a recognition of village level preferences for reconciliation and for keeping problems *inside* the village. The mobility of court hearings to temporary outposts and locations reflects both the adaptability of the system to village access and the gradual territorial expansion into the lowlands. Because this expansion is not officially recognised by the Myanmar government, the KNU justice system must operate in an underground fashion. Flexibility and mobility co-exist with the circulation of law and bureaucratic procedures, such as the regular reporting of case-registers to the Central justice department in Thailand and the dissemination of new laws and regulations. These different aspects underscore a cautious ceasefire state-making process, which needs to be situated within a wider context of fragile peace, where plural authorities, contested legitimacies, and unclear territorial boundaries prevail.

Conclusion

In-depth empirical understandings of how authority operates in frontier areas after the ceasefire agreements is of crucial importance to any debate about sustainable peace in Myanmar. Such understandings should inform the ongoing political dialogue about federalism, which commenced after the signing of the October 2015 National Ceasefire Agreement (NCA). While larger questions of national power-sharing, territorial state-boundaries

and the position of military forces are extremely significant to address, it is important not to forget the level of local governance. Ultimately, the consolidation of federalism, will also depend on how services are delivered, taxes are collected, authority is recognised, and disputes are resolved at the most local level. There is also an element of timing to our argument. It is apparent that the political dialogue about federalism in Myanmar will take several years, and this opens the question of the interim phase in frontier areas.

By particularly exploring justice provision and dispute resolution in Karen frontier areas, this article shows that a lot has happened at the level of local governance since the 2012 bilateral ceasefire. We have argued that, a dual-process of state making is taking place: 1 by the KNU and 1 by the Myanmar state. This is not an uncontested or smooth process, and the balance between Myanmar state and KNU efforts vary across the 2 frontier areas that we have explored. This produces different results, and given the wide contextual differences, it can be expected that even greater variety can be found among other villages across Karen State. Here we have only been able to give insights about 2 particular villages.

In the Northern Karen village, the KNU has managed to consolidate village structures to a higher degree than in the Central Karen village. Since the ceasefire, the KNU has implemented laws as well as empowered village leaders and the Karen Women Organization to resolve disputes and regulate social behaviour. A justice system of appeals and transfers is still in the making, but it nonetheless functions in a mobile and flexible way that the villagers recognize. In the Central Karen village, the village leaders also see the KNU as a 'back up', as *the* external authority, but the village is affected by multiple masters, including not only the Myanmar state, but also KNLA soldiers and other armed actors. The dual-process of state making produces plural authorities, all the way down to the village level, and situates village leaders in an often precarious and contested 'betwixt and between' position. In some situations, this gives way to local power disputes, in others it

means that persons reluctantly take leadership. The fragility of the situation is still apparent.

On both sides, there is a cautious state-making process going on in the frontier areas, which is not surprising given that so much is unclear about the future political settlement. However, we argue that in the interim phase there is a need to begin to discuss ways to recognise local arrangements. This means allowing locally legitimate service delivery, including justice provision, to operate openly and with formalized support from not only the KNU, but also the Myanmar state. Such a recognition will reduce the insecurity felt by village leaders in carrying out their tasks. It can also open up ways to improve service delivery, making procedures and mechanisms more transparent and predictable. The same point goes for the KNU justice committees, which would function better if they did not have to be partly hidden and mobile, leading sometimes to incarceration without court judgments. In this process, it will be important to ensure that the rights and preferences of local villagers are included and respected. As argued in this article, villagers prefer to have disputes resolved inside their village, through reconciliation and lighter punishments. Therefore a top-down rule of law approach may not be the most appropriate. The KNU judges already have a strong recognition of this in their ways of operating, and lessons can be drawn from these ways.

There is opening in the NCA for interim arrangements around development and service delivery. The NCA recognises that the EAOs 'have been responsible for development and security in their respective areas' and stipulates that signatory EAOs and the Myanmar state coordinate 'matters regarding peace and stability and the maintenance of the rule of law' and the 'eradication of illicit drugs' (NCA quoted in McCartan and Jolliffe 2016, 22-3). However, the NCA does not provide a plan for how such arrangements could be implemented. This needs to be decided among the stakeholders in the political dialogue (Cathcart 2016). In addition, the NCA emphasises coordination between EAOs and the Myanmar state rather than vesting total authority in the EAOs to perform governance functions. This leaves ambiguity given the reality of

parallel systems, and it could also underscore existing fears among EAO actors that their state-formations are challenged by Myanmar state expansion, even if this is through collaboration. What is important to recognise in this debate is that state-making does not only emerge from the centre of the Myanmar state, Nay Pyi Taw, but is also an ongoing process from the hillside areas by EAOs like the KNU.

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