

# Everyday Justice and Plural Authorities: insights from Karen State about Land Disputes

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## **Introduction**

In 2016 Myanmar there were many land disputes, which took on different shapes and were resolved in various and often complicated ways. This happened against the background of a long history of military rule and armed conflict. Previously, the military government confiscated large tracts of land that had been occupied by civilians. Since the ceasefires with the Karen ethnic armed organizations (EAOs) in 2012 and the opening up of the country and the economy, land was also allocated to large businesses. In addition to these larger land issues numerous smaller land disputes arose due to population movement and lack of land documentation. Difficulties in resolving land problems came up because local state officials and ordinary citizens lacked general knowledge of the new land laws, and because these laws were often inappropriate for

the situation, confused with older laws and misused by higher-level officials. One core problem was that the 2012 land laws did not recognise customary land use and ownership. The situation was very complex. Ordinary citizens were not sure who was responsible for resolving the land issues. At the same time, there was an increase in land claims, because people were now more courageous in making land complaints, based on awareness raising by national and international non-governmental organisations (NGOs), civil society organisations (CSOs) and political parties. However, in practice, many land confiscation issues remained unresolved or only partly resolved.

In this complex situation, how did ordinary citizens address the land disputes that they faced? Where did they go, and how were the cases dealt with and by whom? This article explores these questions, focusing on 1 rural village and 1 urban ward in Karen/Kayin State. Both areas were under Myanmar government control, but people also had links to the Karen EAOs. While there were differences between rural and urban areas, this article highlights the similar patterns of land dispute resolution that occur across these contexts.

The main argument of the article is that although the 2012 land law established land management committees from local to central levels to resolve land issues, ordinary people often used alternative pathways to the formal procedures, including customary rules. In smaller land disputes between villagers as well as in inheritance cases, it was usually the village and ward leaders who resolved the disputes. However, for large land confiscation cases, the land management committees and the local leaders were not strong enough to resolve the issues. People were unsure how and by whom such cases could be resolved. Consequently, they approached a mixture of actors who they believed may be knowledgeable and powerful enough to help them claim their land back. These included religious

leaders, especially monks, members of EAOs, the military, judges, educated persons, local administrators and informal village leaders. People often used a plurality of authorities, linking up with different ones at the same time to resolve disputes informally as well as within the Myanmar state system. This gave rise to a hybridity of dispute resolution methods and actors. Hybridity in this article refers to the use of plural authorities and the use of a mixture of rules and laws in land dispute settlements. The notion of *plural* authorities means that more than one authority exists in a given region or territorial space. In using these concepts of plurality and hybridity, the article theoretically draws on and contributes to a wider debate within legal anthropology (Griffith 1986; Merry 1988; Luckham and Kirk 2013) as well as within peace and conflict studies (Boege et al. 2009; Albrecht and Moe 2014). The concept of hybridity adds to the perspective on legal pluralism a focus on how elements from different legal systems – rules, norms and resolution practices – mix or even merge during dispute resolution processes (Merry 1988, 870). Boege et al. (2009, 18) define states coming out of conflict as ‘hybrid political orders’, meaning that governance is carried out by more than one set of actors, including state and non-state. I find this concept of ‘hybrid political orders’ useful for understanding the current situation of plural authority in Karen state. As Boege et al. (2009, 16) argue for Pacific societies, chiefs or clan elders usually order and apply customary and traditional ways because state law is weak, difficult to understand, and hard to access by local people. Simultaneously, I agree with Luckham and Kirk (2013, 9) that it is problematic to use hybridity as a pleasing theory of the traditional. Rather than substituting a critique of state law for a celebration of the traditional or informal, the hybridity concept should be used as an analytical lens that ‘explicitly challenges reductionist positions by

focusing on the interactions that make talking of, let alone reverting to, supposedly traditional governance arrangements impossible' (Ibid., 9). What I show for Karen State is that people simultaneously addressed state and non-state actors, but that they did so in informal ways. This article adds new empirical insights to the wider literature on hybridity by focusing on Karen State. For instance my empirical research shows how hybridity occurred when the Buddhist monk organisation Ma Ba Tha supported people to resolve land disputes by connecting the victim of land disputes to an upper-level authority or when they helped resolve the case through informal sources.

The insight of this article draws on ethnographic fieldwork between February and October 2016. I used qualitative interviews, case tracing and participant observation to understand how ordinary citizens perceive and act when they face disputes and crimes. I also interviewed numerous actors engaged in resolving land disputes, and observed how they resolved such disputes. These included ward administrators, elders, religious leaders, village leaders, EAO members, and police. The 2 fieldwork settings were chosen as part of the EverJust research project where the aim was to cover both rural and urban areas, as well as areas controlled by the Myanmar government, the EAOs and by a mixture of the 2. We did not systematically select the areas, but chose areas that were accessible and where the local leaders gave permission. For this article, I chose the 2 settings to compare urban and rural land issues in 2 predominantly government-controlled areas, yet within a wider setting of previous armed conflict. These particular locations are not representative of land dispute settlements in Myanmar, but they are fairly representative of what was happening in the central part of Karen State where there was Myanmar government control.

In the article, I first provide a background to the land disputes in Karen State, giving an overview of the history and the current laws. I then present 2 extended case studies, 1 from each of the settings, which reflect how land confiscation cases were dealt with in hybrid ways. In the conclusion, I reflect on how the research can inform improvements of the land laws and their implementation in Myanmar. I argue that there is a need to amend the 2012 land law, to decentralise decision-making to the local level, and to specify the roles of the various authorities in handling land disputes.

### **The Karen State context and the land laws**

In Karen State, civil war from 1948 to 2012 contributed to a situation of legal pluralism which complicates current land disputes. Over 20 years ago, the rural Karen people mainly stayed in KNU controlled areas or in areas where also the Burmese army, the Tatmadaw, intervened in the everyday life of rural villagers. The Tatmadaw cheated villagers by forcing them to sell their farm products for low prices, and collected many taxes. These practices were related to the land law that was passed in 1978 under the General Ne Win regime. If people did not follow the government's orders to give paddy, the government confiscated their land and gave it to people who would. This was called *Dar Won Kya Sapar*, which in English means dutiful paddy (U Zaw Min 2016, 73). In the KNU land law from 2010 it is mentioned that during the Na Ah Pha (U Than Shwe government) period, Karen people moved to many different places because of the civil war. Consequently, they could not focus on farming as required by the military government (KNU 2010, 10-11). Displacement due to the conflict also meant that Karen people were away from their land over very long periods. Traditionally, the land ownership system of the Karen people is based on inheritance from generation to gener-

ation, which means that many did not have any land certificate. When the Karen were displaced, the Tatmadaw confiscated their lands and gave them to the Burmese people who lived in neighbouring villages. This was supported by the government land laws, which allow persons who have continuously used the same farmland for 4 years to own that land. For this reason, many displaced Karen people lost a lot of their land to those who used it while they were displaced.

The land of Karen villagers was also lost during the 1990s when those Karen ethnic armed groups that split from the KNU, agreed on ceasefires with the military government. As part of these deals, the government confiscated many acres of land from Karen people and gave it to the ceasefire EAOs (Kyed and Gravers 2014). Because the Karen have not traditionally used land certificates, it was very difficult for them to prove land ownership of confiscated land.

This history of land confiscations has contributed significantly to the Karen people losing trust in the Myanmar government. In 2016, despite ceasefire and the change in government, it was hard for the state to gain the trust of local Karen and other ethnic groups. Local people in Karen state were not used to go to the state justice system due to the contested history.

In 2011, the U Thein Sein reform-friendly government embarked on a wide-ranging transformation that also prioritized a national ceasefire with the EAOs. In 2012 the main Karen organisation, the Karen National Union (KNU) signed a bilateral ceasefire with the government. In 2015, the KNU was also among the eight EAOs that signed the Nationwide Ceasefire Agreement (NCA) (Kyed and Gravers 2015). This has stabilised Karen State, but many issues remain unclear and unresolved, as a wider political settlement still depends on the outcomes of a political dialogue process. One of the existing contentious issues is that of land and land ownership (Mark 2016). The land

laws of the KNU, which is applied in some areas of Karen State, differs for instance from the land laws of the Myanmar government. The KNU already had their own land law for many years and it has been amended several times, including in 2010 (KNU 2010, 1). The latest English version is from 2015 (KNU 2015). The land laws recognise customary land and inherited land in line with Karen traditions.

After the KNU signed the NCA, their territorial jurisdictions became more complicated. To firmly secure one's land ownership in government controlled or mixed controlled areas people need a government land certificate. However, according to my research local people were not familiar with and lacked knowledge of the Myanmar government's land law. Moreover, these land laws are not in tune with local realities and customs regarding inherited land.

In 2012 the Myanmar government passed two new land laws: the Farmland Law, and the Vacant, Virgin and Fallow Land Law. According to the Farmland Law, farmers can get land use rights and apply for the Form 7 land certificate, which is like a farmland work permit. These land certificates give the right to pawn and sell land. It can also give access to Myanmar Agriculture Bank credit. However, the land law does not recognise shifting cultivation land or ownership based on inheritance, both of which are common in rural Karen areas. The land law's Article 9, states that one needs to work the land for 3 years to get a land certificate. U Zaw Min (2016, 80) argues that the 2012 land law is like a private bill, because it was passed without listening to public voices. Advice was not solicited from land scholars, advocates or local community leaders. Consequently, the new land law has many aspects which are not suitable for local communities.

In addition, local people's lack of knowledge of the new land laws was exploited. I found instances where government

staff and military personnel coordinated with business people to take over and encroach on communal land. The system for land dispute resolution that the 2012 land law provides for is also not functioning well in practice. The law establishes land management committees down to the ward and village tract levels, chaired by the ward or village tract administrators. A township-level Land Records Department staff (TLRD) must be a secretary. Two elder people, 2 farmer representatives and 1 or 2 business people must also be involved in the land committee. The chairman, the secretary and at least 2 committee members must be involved in solving a land dispute. However, according to my research findings, the local land management committee very rarely resolved land cases. One of the reasons was that Land Records Department staff were based in the township office and in many instances did not appear when cases were heard in the ward or the village. Other members also found it difficult to attend, as they the villages where they lived were dispersed within the village tract. In addition, these members were not paid, working for the committees as volunteers. When there was a case in a neighbouring village, members had to pay for transportation themselves, which they not afford this for every case resolution. These factors meant that the formal land dispute resolution procedure was less used in reality, as I address in the next section.

Simultaneously, the political transformation meant that Karen people became more aware that they could claim back their unfairly occupied land. This was partly facilitated by the awareness raising that INGOs, NGOs and local civil society actors gave on land ownership rights. According to my research, when people knew about their rights, some mobilised to reclaim their land. This led to various kinds of land cases. Because the land law grants the right of land ownership to



farmers who are using the land, many disputes between current and former landowners were between different ethnic and religious groups. This is apparent in my rural as well as urban research areas.

The urban ward that I cover in this article is in Hpa-An, the capital of Karen state. The majority of ward residents were Buddhist Phlong Karen; there were a few Christian Karen, Bamar and Hindu households. The ward has always been fully under Myanmar government control, but prior to 1992 it was a farmland area. In 1992, the government changed the land use to residential, and gave a large group of people smaller household plots. The farmers who had owned the farmland were deprived of their ownership, fully or partly. In the research period, this history was giving rise to various land claims by the old farmland owners. Lack of proper land certificates made these cases particularly complicated, and the owners from the 1992 relocations also felt they had ownership rights.

In the rural village Kone Tan, in a neighbouring township to Hpa-An, about an hour's drive away, the villagers are also Buddhist Phlong Karen. They mainly depended on agriculture, so land was vital, though farming earnings were supplemented with income from labour migration to Thailand. Earlier, several battles between the KNU and the Tatmadaw were fought close to the village. Though the village was officially under Myanmar government control, villagers had to pay taxes and extortion money to both sides until the 2015 ceasefire. A number of the villagers were deprived of their farmland in 1997 when the government gave 500 acres of land to an armed splinter group of the KNU when this group concluded a ceasefire agreement. This led to many land problems and every season, the villagers had to contribute with labour on the confiscated land for the armed splinter group. Now they are trying to get the land back, as I discuss in the next section.

### **Resolving and addressing land issues in practice**

When I asked rural and urban respondents what they would do if they faced a land dispute, they typically replied that they would use the 'step by step' procedure, as officially required. This procedure means that people follow the steps in the administrative system, from ward or village tract level to the central state level in Nay Pyi Taw. However, when I observed and spoke to people about actual land disputes it was clear that resolutions of disputes seldom followed the official procedure in any straightforward manner. In fact, people preferred to get resolution at village or ward level and they tried to avoid the formal justice system. First people tried to resolve the dispute themselves, and only if this was unsuccessful did they go to the village or ward leaders. It was rare to find that the land management committees resolved the cases. Even though the law does not give authority to the ward (urban) and the village leader (rural) to resolve land disputes, they still do it in informal ways by using negotiation and mediation between the contending parties. They also consider customary notions of land and dispute resolution, which they combine with references to some articles in the land law. If the case has a criminal element, like trespassing on other people's land, the leaders sometimes forward the case to the formal system. In general, however, when land disputes cannot be resolved at village or ward level, people used a network of contact persons or justice facilitators, rather than following the formal procedure. Below I first address how this takes place in the urban ward and then in the rural village.

#### **Urban land dispute resolutions**

The ward administrator in the Hpa-an ward of my study dealt with land cases in inherently hybrid ways. Although he mainly used mediation and negotiation in an informal way, he also frequently referred to the land law, as well as relying on

official land registers and demarcations made by the Land Records Departments. The land law is not used in a literal sense to determine decisions, but applied more as a kind of threat and resource to enforce informal decisions. For instance, in a divorce case that I observed at the ward office, the couple could not agree on the sharing of the property (house and household plot). During the resolution the ward administrator said to the wife, 'According to the land law you have no right to win this case because your husband has been living there for 15 years. This reason alone is enough for him to win.' The land law does not address inheritance, but it holds that if someone has lived in a place over 3 years, that person automatically owns the land plot. The ward administrator threatened the wife with this article in order to get the couple to agree on sharing the property. However, when it came to actually deciding the case, the ward administrator did not use the land law, but decided that the man would only get one-fourth of the property, because according to the inheritance norms in the ward the children and the wife must each get an equal part.

The majority of land disputes, including over inheritance and household plots, are resolved in this informal way, where the law is not literally applied, but is used as a resource to get the parties to agree. This results in a mixture of informal and formal procedures.

Besides going to the ward administration, some people in the ward also address spiritual actors, like astrologers, fortune-tellers and monks when they face land disputes. Here they pay for *yadayar*, which is a kind of spiritual protection that can impede misfortune and help to fulfil wishes, such as winning a land case or getting a good land sale. Monks are also addressed in larger land disputes, including confiscation cases. In Hpa-An we particularly found that the influential monk organisation *Ma Ba Tha* was increasingly engaged in resolving land disputes.

The organisation even had a particular monk who specialised in land. Sometimes he helped people in court cases, but this was not formalised.

In the following case study I will illustrate how people in larger land confiscation cases draw on monks as well as a range of other actors to resolve the dispute, rather than following formal procedures. These include political party members, state-level ministers, monks, and educated persons. Along with the involvement of multiple actors, the case illustrates the difficulties of resolving land disputes due to confusion around land documentation and laws, which especially has implications for illiterate persons like the old woman, Daw Ni Ni, who is the victim in this case.

*Urban Case: land confiscation and monks*

When Ward A was changed from farmland to household plots in 1992, the government confiscated a lot of farmland. Daw Ni Ni had 4 out of 5 acres confiscated. She was compensated with a household plot measuring 50 by 75 square feet. When I met her, Daw Ni Ni was living on 1 house plot with her grandson. Her 4 children are married and work in Thailand. She was an illiterate, older person. Before her husband passed away, they lived at the Ma Har monastery, and they had a good relationship with the abbot. When the U Thein Sein government came into power, some people in Ward A began to make complaints to claim back their confiscated land.

In 2012, Daw Ni Ni and her husband got help from the Ma Har abbot to ask the then Karen Chief minister to get some acres of land back. The minister often went to the monastery, and finally he gave Daw Ni Ni 1 acre of land. However, this was only verbally, and Daw Ni Ni got no land certificate. The problem was that there were now 8 families living on the land plot. So when Daw Ni Ni's husband died, and she wanted to use the land, she faced a land case with the new owners. First they

negotiated at the ward office. Daw Ni Ni wanted 5,000,000 kyat (US\$4,000) in compensation from each of the new owners. A businessman wanted to give only 1,500,000, because he had built a house on the land. The remaining 7 families did not agree to give any compensation, because, the ward administrator explained, they already had a land certificate which they had been given by the former ward administrator (who we heard from other respondents had been accused of illegally selling land).

In March 2015 Daw Ni Ni brought up the case again. This time the hearing took place at the Ma Har monastery where our research team observed it. The ward administrator did not want to resolve the case at the ward office again because the parties were very upset with Daw Ni Ni. He felt that hearing the case at the monastery would calm the parties because people respected the monk. The abbot just listened as the ward administrator and two elders mediated between the parties. All the parties agreed to pay Daw Ni Ni compensation, but they did not accept the amount of 5,000,000. After some negotiations, Daw Ni Ni reluctantly accepted the 100,000 per household. The ward administrator said to her that she should accept this amount, because if she went the legal or formal way it would take a long time and she may not get anything at all. Daw Ni Ni was not satisfied after the hearing and she again complained to the ward administrator who gave her a new piece of land near a stream. However, she also wanted compensation for the remaining 4 acres taken by government.

After she got the land at the stream, the case took another turn. Her neighbour advised her to block more land around the new plot, perhaps because the neighbour's boss wanted to buy the land. Daw Ni Ni subsequently made a fence around a piece of land that was not hers, as a way to give herself more land. She felt she deserved this and told us that the Land Records

Department had given her permission because the land had no owner. This was strongly disputed by the ward administrator, who told her that the land had an owner, a military person who lived in Yangon. He told Daw Ni Ni that what she was doing was a crime of trespassing, and he warned her, saying, 'Stop Grandma. If you do this you may go to jail. This [land] has an owner and they can make complaint.' Daw Ni Ni cried and cried.

By October 2016, Daw Ni Ni had still not removed the fence. She felt that the ward administrator was cheating her. She did not know what to do and she did not want to go to court. She said that it was very confusing. Daw Ni Ni had lost her NRC, which she would need to make a police report. She could not read a map. I got copies of many of Daw Ni Ni's documents, also of what looked like certificates for land. It was confusing, because in Myanmar there are no clear certificates for land from before 2012. Daw Ni Ni also said that in 2015, the township level land department told her that she should not go to the chief minister to tell him that she had been given the land by the stream in the ward. The officials at lower levels did not like that Daw Ni Ni had a good connection with the minister through the monk and they did not like that higher levels get involved. They wanted to just resolve the matters locally.

Daw Ni Ni continued to get help from the Ma Har monastery abbot regarding the confiscated land after the hearing in March 2015. This abbot did not want to get directly involved himself, but contacted a monk who is a land specialist in the Ma Ba Tha organisation. This monk was helping Daw Ni Ni with her case. The monk took action only after the NLD government took office, because he wanted to wait for the political transition. He contacted the new NLD Chief Minister on behalf of Daw Ni Ni, and advised her how to help Daw Ni Ni with her case.

The new minister told the monk to present the Daw Ni Ni land case in a written letter to the Land Records Department. The monk instructed someone at the Ma Har monastery to help Daw Ni Ni write a letter and to send it to him. However, the Ma Ba Tha Monk worried about the case because he did not believe that the Chief Minister and the NLD officials knew much about the land law. They had the experience to check and give the right decision if the Land Records Department office implemented certain activities. The monk thought that the Land Record Department officer was very dirty, because he did not want the Ma Ba Tha to support Daw Ni Ni.

In October 2016 a Land Records Department officer measured Daw Ni Ni's land, and gave her a certificate for the acre by the stream, but not for all the land that she claimed as hers. She told me that in the past, she had told the Land Records Department that she wanted to resolve her land case according to the formal procedure. However, the ward administrator had told her she could but that the legal procedure could take a long time, and she may get no result. The administrator assured her that they were doing the best for her. This was the advice that Daw Ni Ni had been given ever since the case was heard at the monastery in March 2015. Ma Ba Tha does not know how the case will end, and Daw Ni Ni does not know how to proceed.

In this case, legal hybridity is evident in how the actor tried to solve the case by going to different persons and institutions. Even the government staff did not want the client to solve the case according to the formal procedure. They used the government land law but use it according to their own perception of the situation on the ground. Also, the way that land cases are resolved is influenced by the fact that many urban residents, like Daw Ni Ni, do not understand the current land law and they do not know clearly how and where they can

make complaints. People instead approach a network of persons that they have connections to like the monk and the former chief minister in the above case.

The case also shows that less-advantaged and illiterate people are even worse off when it comes to navigating this field of land dispute resolutions. Daw Ni Ni clearly felt that she was being cheated by the ward and township authorities, so she relied on powerful monks, and state-level people to assist her case. In the beginning of the case, Daw Ni Ni preferred to resolve the case in locally but when the case proved difficult to resolve at the local level, she wanted to use high-level authorities.

### **Rural area land disputes**

As in the urban ward, the villagers in Kone Tan also preferred to have land disputes resolved at the village level, and here there was even less use of Land Records Departments and committees. The villagers lacked knowledge of the land law and were not familiar with the formal procedure. They felt that the formal system was very complex and associated it with costs, time consumption, and language barriers. According to my empirical findings, even the village leader did not understand the land law. Only the village-tract level administrator had knowledge of government law, but even he rarely used the formal procedures. Like the village leader, he mainly used negotiation and customary ways. Previously, village leaders and villagers frequently consulted the ethnic armed actors if they could not resolve the cases within the village. This had decreased, but still happened in larger and more complicated cases.

Villagers told me that in the past they approached the ethnic armed actors because they made quicker decisions and were less costly than the Myanmar government system. Sometimes it was also because villagers had relatives in the



ethnic armed groups. They also felt the armed actors gave fairer resolutions. After the 2012 ceasefire agreement, the roles of ethnic armed groups decreased and villagers went less to them. One of my respondents said, 'Now armed groups have less authority and case solving is not their concern.' The village leader has become the main responsible person in dispute resolution. However, some respondents felt that the ethnic armed groups are still more efficient than the formal state institutions, despite the decreasing authority. Regarding this issue, I encountered the following case, which was explained by U Ne Kyaw.

I bought one land plot from my brother-in-law's mother-in-law. Three years ago, my brother-in-law passed away and his mother-in-law wanted to take back the land. We had a local contract letter. It is not official, just local. So I went to my village leader (100 HH leader). The village leader negotiated between us and said that if the mother-in-law wanted to get back the land she had to pay the current land price. But she did not listen and she tried to get land again. So the village leader and I went to the tract leader. The tract leader said the same as the village leader. But the mother-in-law did not listen to him and the tract leader had no idea what he should do. So he went to an armed actor who stayed in the neighbouring village. The armed actor (a splinter group of the KNU) went with him to the Village Tract Administrator's house, and explained about the case. The armed actor phoned the tract police and the village tract administrator. He did not resolve the case himself, but advised on how they should resolve it. Finally the tract leader decided that the woman should pay twice the price of the ordinary price, namely

800,000 Kyat [US\$580]. The tract leader used the armed actor's power when he made the decision.

In cases that are too large and complicated to resolve by the village leaders various actors also get involved, like in the urban areas. However in the village, ethnic armed actors get more involved. This especially regards cases related to land confiscations. The following case illustrates this. It also emphasizes how the current transformation complicates land resolutions.

*Rural case: land confiscation and armed actors*

In and around Kone Tan village, 500 acres of farmland were confiscated by the military government in 1997. The government gave that land to a smaller splinter group of the KNU led by P'Dho Aung Khine, who signed a ceasefire with the military government. The village landowners were 135 people from 9 villages. Ten of them were from Kone Tan village. At that time the farmers did not dare to make a complaint anywhere. They were even compelled to contribute free labour to Aung Khine's farming activities on the confiscated land. After the U Thein Sein government came into power, people's bargaining power increased and they wanted to try to get back their land. As a first step, in 2013, they did not go to the formal land committee or Land Records Department, but raised their complaint to a former village schoolteacher, Saw Win. He was the most educated person in Kone Tan, and later worked as a translator for the Myanmar Mirror News. He was 45 years old and a Buddhist Phlong Karen like the other villagers.

In 2013 Saw Win took up the case to get back the farmland, but the farmers were afraid to follow his instructions to demonstrate and give complaint letters to the armed group. They were afraid of Aung Khine and his armed group. Saw Win called some brave farmers and they demonstrated on the confiscated land with banners that said that Aung Khine should

give them back their land. When they first demonstrated, Aung Khine's group was waiting on the land, holding guns. So, the farmers left the site. The second time they went to the field to demonstrate, Saw Win went to shake hands with Aung Khine's soldiers. He negotiated with them in a calm way, and told them that they should give the land back to the farmers. He also promised that if they gave back the land to the farmers, they would share the harvest with the armed group.

After the Saw Win and Aung Khine groups met, P'Doh Aung Khine made a complaint at the township court because his group got the land legally when they signed the ceasefire. He hired a lawyer from Yangon as well as a famous local Karen lawyer, Mahn Lay Myat Kyaw. According to my respondents, Aung Khine bribed both lawyers with cars. They did not call it bribes, but a service fee. However, Saw Win made a secret connection to Mahn Lay, as they already had a close relationship. Saw Win explained everything to Mahn Lay, and then Mahn Lay shifted sides, now supporting the farmers. The case never went to court. According to Saw Win the court did not take any action because land confiscation cases are related to politics and therefore too dangerous and difficult to resolve for the court. When he heard this, Saw Win secretly approached the previous state-level military officer from the Tatmadaw and asked him how to make a complaint to the Nay Pyi Taw level. The officer gave him some suggestions, and Saw Win sent a complaint letter to the President's Office. He got a response that the President's Office would consider how to resolve the case, but nothing happened.

Consequently, in 2014 Saw Win decided to go to the Tatmadaw Battalion 202, under Brigade 22 to request some help with the case. He told me that he approached the army officers in a very clever way, using wisdom and diplomacy. He explained about the case very peacefully, saying, "This is the

farmers' land and if they do not have the land they have no food, so we want to negotiate with the Aung Khine group.' Two battalion commanders came to the farmers' fields and all sides met: 2 Tatmadaw commanders, the village tract leader, the village leaders and elders, some farmers, Saw Win, and Aung Khine's people. A military court was set up in the open field. This was in 2014. Firstly, 1 Tatmadaw commander listened to the story of the farmers. He decided that the farmers should be given back 250 acres, but Saw Win, the village leader and the farmers did not agree. Saw Win said, 'You have to give back all acres of land otherwise we will not accept.' So the commander decided verbally that the Aung Khine group would give back the land. However, the Aung Khine group did not move from the land and no one dared to cultivate the 250 acres, neither the Aung Khine group nor the villagers. In the beginning Saw Win informed the Tamataw that the Aung Khine group still did not give back the land to the villagers.

According to Saw Win, they sent a complaint letter to the NLD land resolving group in the beginning of 2015, but the NLD said they could not resolve the problem before they took over the government. They did not get any other response from the NLD. Then Saw Win and the farmers went back to Tatmadaw Battalion 202. In July 2015 the battalion commander again ordered the Aung Khine group to give all the land back to the farmers, but the farmers still did not get it back. In 2015, the Tatmadaw commander promised that the problem would be resolved during the new NLD government. When the NLD took office in April 2016, it announced in the newspapers that the NLD would resolve the land problems in Myanmar, and said they would visit all the villages. When Saw Win read this, he again a complaint letter to NLD. The farmers believed that they would get the land back because of the political transition.

Saw Win said to me that to resolve a land case like this one, you must be very brave and go to different institutions. He also said:

We need to know how to approach and who we can approach. And you need to have knowledge of the village and people's mindsets in the village. You need to have negotiation skills. And you also need to know the lawyer who represents the other side. And then you need to have knowledge of the different organisations like the army, the ethnic armed groups, the government and other organisations.

In October 2016, Saw Win told me that the NLD government had not solved any land issues yet. The NLD party members came only to collect data about the confiscated land, but there had been no action. Saw Win was contemplating which newspaper he should write an article about the land confiscation case for. He did not want to resolve it in a violent way, so he thought about what else he should do. He did not want to allow the case to end without the farmers getting back their land. He said that he and the farmers had hoped that when NLD got into power, a lot of land confiscation cases would be resolved, but he has still not heard of this happening. In the area around Kone Tan there were 5 large land confiscation cases related to the Tatmadaw, the previous military government, and the ethnic armed groups, but none of them had been resolved.

Saw Win thought that the land confiscation cases would only be resolved after the Second Panglong Peace Conference, which is the name that Aung San Suu Kyi has given the peace negotiation and political dialogue meetings that involve the EAOs which have signed the NCA, the government, and the

Tatmadaw. He therefore saw the land confiscation as a political problem that could best be resolved as part of the peace negotiations. He was very skeptical towards those in power. He told me that he thought that the people who were governing were very clever and knew how to protect themselves. The leaders feared that if they could not resolve a land case they would lose face and it would harm their reputation. This was one of the reasons why the leaders were reluctant to handle land confiscation cases. Saw Win believed that the leaders know about all the land confiscation cases and they already have lists of them. However, land confiscation cases are very complex, because most of them include the involvement of people in high positions, like ministers, generals and armed groups. Saw Win experienced the complexity of land issues at a meeting in 2015, held at a Hpa-An monastery. The topic was the peace process. In the meeting he told the participants about his land confiscation case and shared a written copy of the case document with both the different armed groups, including the Tatmadaw, the KNU, DKBA and other groups. However, none of these groups wanted to deal with the land case. He doubted whether there was anyone at all who would take responsibility for land cases in Karen State.

In this case we see how the villagers went to an educated person in the village, Saw Win, when they faced a major and complicated land case. They do not approach the land committees or the formal court system. Even the educated person did not engage with the land law or the formal procedures, but tried to negotiate first with the ethnic armed group, which owned the land. When that failed he went to the Tatmadaw officer, who also did not use the formal procedure, but instead set up a 'court' in the open field. The actors involved did not think with the land law in mind, but tried to make a negotiation with the involved actors. Simultaneously, we saw that the

ethnic armed group tried to make use of lawyers, and thus engaged with the formal system to negotiate the case, but the official court did not want to deal with the case. The case was seen as a political case, and thus Saw Win tried to also engage the NLD party and the different parties to the peace process. Here we see clearly a legally hybrid way of trying to resolve the case. In reality, people believe that the hybrid way is the most useful and thus they prefer it when they resolve cases. However, the cases I have shown here are very complicated and political so they are hard to resolve.

Even the judge in the official court has no idea how he should solve the case. This points to weaknesses in the land laws. It also illustrates that when higher-level people are implicated in a case, the judge is reluctant to get involved. In the case above we can also see that the majority of the actors involved in trying to resolve the case are not formal justice actors. In the perception of the villagers, it may be anyone who has *de facto* authority who can make a resolution.

## **Discussion**

The case studies clearly show that formal procedures and institutions for resolving disputes were not used in practice. Either people tried to resolve the cases at the village or ward level in informal ways, or if the case was complicated they drew on a range of actors, many of whom did not have formal authority to deal with land cases. Instead, they were persons who people believed to have power and authority to ensure that land disputes are resolved, including monks, educated persons and armed actors. What is apparent is that case resolutions become especially hybrid, when cases are complicated and big. Overall this reflects that the formal system was not operating to the advantage of the ordinary people, so instead they seek plural authorities to help their case. In this section I want to discuss

why people did not use the formal procedure, not even actors who are local administrators, like the ward and village administrators.

According to my empirical research, most of the ward and village residents did not know that there are land management committees in Myanmar. If we asked about the formal system, they just understood that we are referring to the courts at township, district and central level. In addition, people had other reasons for not wanting to use the formal procedures. These included: expense, loss of time, language barrier, mistrust, inadequacy of the law, formality-phobia – people fear authority and formality – and the use of powerful people outside the system is seen as more effective.

Most frequently, my respondents expressed that the formal justice system was too time consuming and expensive. One woman from Ward A in Hpa-An who is facing a land case said about this issue:

For 3 years I have faced a land case. I want to finish this case very quickly. I cannot do the other work freely. I never expected it would take this long. Once every 15 days I have the court hearing day and there is no quick decision. Now I know that I will lose the case, because the judge says that at the Nay Pyi Taw level the other party already won, so the judge here [township level] does not dare to let me win the case. The lawyer advised me to bribe the judge at every court level. The lawyer told me, 'If you do not bribe, you will lose.' But I cannot afford it and I already sold half of my land for this case with 11,000,000 (US\$7,500) spent over 3 years to pay the judge.

Language barriers, low knowledge of the law and mistrust in the formal system are other core reasons why people do not



want to go to the formal way. One of my respondents in Kone Tan village, who is facing a land dispute said:

I do not know the government procedure and I cannot speak Burmese. We are not used to go to the government office so if the other party will appeal to the township level, we will give up on the case. We will not leave the village level. We do not have connection with other ethnic groups so we just want to solve in the village level or tract administrator level.

A fourth reason is the inadequacy of the law for lived realities. I already discussed how this related to the current land law. On the one hand the law did not fit with the real situation, and on the other hand people did not understand the law. In addition, the criminal code is outdated. For instance if you trespass on someone's land you can chose to pay a 500 kyat (US\$0.36) fine or go to prison for 1 month. Because of the low amount everyone choses to give money as compensation. This is only one example. Many articles are inappropriate in the current situation, for example, as mentioned, the 2012 land law does not recognise shifting cultivation, which is practiced by many ethnic people. Also, people do not get equal rights in the land registration processes. The registration process was not systematic, not well prepared and not explicit about how to resolve complaints. Therefore people do not follow the formal procedure. In my study this even included the local administrators.

A fifth reason for not using the formal system is phobia in relation to formality. Especially the ethnic people fear authority and formality. If someone faces the formal system, they feel shamed. So they do everything that they can to avoid resolving their cases in the formal system.

A final reason for not using the formal procedure, according to my research, is that people believed that they had a better chance to resolve a case by using networks or contacts of powerful people outside the formal system. These are people who do not have the formal authority to resolve land disputes and who operate informally. People thought these powerful people could give authority to the lower level. At a very general level, the political transformation in Myanmar created an environment of insecurity about who is in power and who can make decisions in land disputes, and this contributed to informality and hybridity. People also felt more insecure when they did not have certificates, because they were not sure who would be in power and govern. This reflects how there are plural authorities in Myanmar.

In order to describe this situation analytically, I find the concept of 'hybrid political orders' useful (Boege et al. 2009, 13-21). This concept describes post-conflict and transitional situations where there are plural authorities and many power holders, rather than 1 law and 1 clear authority. Boege et al. (2009, 13-21) use hybridity to describe how there are different laws, rules and ways of resolving cases. Even when people like Daw Ni Ni want to go the formal way, in the process there is a lot of informality and different actors involved. These case studies moreover show how informal procedures are used as part of accessing formal certificates or getting back confiscated land. Therefore, informality also becomes a means to access the formal. In this way the formal and the informal are not separated, but part of hybrid practices.

### **Conclusion**

This article explored legal hybridity in land disputes in Karen State. Four key steps were proposed: 1) understand the history of the research areas and the land law; 2) understand the justice actors who resolve land disputes; 3) explore empirically

how land disputes are actually resolved in practice in different ways and; 4) analyse the hybridity of land dispute resolution processes. In order to understand the resolution of land disputes in the urban ward and the rural village, I first discussed in general how smaller land disputes are resolved. It was clear that those cases were resolved at the village and ward level using informal procedures, with some reference to the land law, but not with the use of the formal mechanisms. Secondly, I showed what happens when land disputes are so large and complicated that they cannot be resolved at the local level. Here it was clear that people did not go straight to the formal system, instead drawing on a network of people seen as powerful in getting resolutions.

My study shows that there is a clear need to amend the 2012 land law and to make the laws and the procedures easier to understand for the people who face land disputes and for the local leaders who resolve most of them. Until now, the Myanmar government tried to control all the land issues with official land procedures, without consulting the people on the ground. Because the law is not appropriate in practice, people resolve disputes on their own and usually in hybrid ways. Therefore, the government should include the local ways and views when they amend the land laws. Inclusion of customary and ethnic land use and resolution procedures can also support peace building. Boege et al. (2009) argue that in fragile states, if only state law is used, it is not possible to build peace. They suggest to use conflict resolution in hybrid ways. Similarly, Hussain (2011), argues that in countries with different people and cultures, it is not sufficient and effective to use only one law, but rather it is important to recognise legal pluralism. Against this background, the Myanmar government should think about ethnic people's customary land practices and recognise these when they amend the land law. In addition, the

Myanmar government should discuss with KNU leaders, local leaders and land scholars about land issues and try to find appropriate ways of dealing with land on the ground. The KNU already has a land law which includes land ownership and transfer rights, agriculture policy, and land rights. KNU law also recognizes shifting cultivation and considers land types in hilly regions. The Myanmar government may consider these forms of recognition of ethnic land use.

Finally, the Myanmar government should provide land rights awareness training to the local people. According to our research findings, there are barriers to understanding complex texts, so it is necessary to write the laws and procedures in easy language. Managing land issues should be described very clearly, because as of 2016, land management procedure is not appropriate for the local people on the ground. For this reason it takes a lot of time to resolve the cases.

However, it is not enough to change the law and create legal awareness. Political changes at the higher level is also necessary. I showed this with the 2 land confiscation cases in this article. Although the dispossessed landowners had the courage to claim back their land after the political transition, their cases remained unresolved, because they were seen as political. The victims tried their best to get help from powerful people like monks, Chief Ministers and armed actors, but they still did not get all their land back. A core problem was that the higher-level officials from the previous military government were still very much in power, despite the change of government. This meant that large land confiscation cases from the past were very dangerous to resolve by the new government officials.

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