



# Case Study on Food Security, Livelihoods and Customary Tenure Recognition in Myanmar

Strengthening regional mechanisms and capacities in engaging, implementing, and adopting customary tenure (CT) recognition and free, prior and informed consent (FPIC) as safeguards in the Mekong region



Supported by:





# Case Study on Food Security, Livelihoods and Customary Tenure Recognition in Myanmar

Strengthening regional mechanisms and capacities in engaging, implementing,  
and adopting customary tenure recognition and free, prior, and informed consent  
as safeguards in the Mekong region





Funded by



MRLG is a project funded by



In partnership with



**ISBN: 978-971-94060-7-5**

## Case Study on Food Security, Livelihoods and Customary Tenure Recognition in Vietnam

Strengthening Regional Mechanisms and Capacities in Engaging, Implementing, and Adopting Customary Tenure Recognition (CT) and Free, Prior and Informed Consent (FPIC) as Safeguards in the Mekong Region

Reproduction of this publication for educational or other non-commercial purposes is authorized without prior written permission from the copyright holders provided the source is fully acknowledged. Reproduction of this publication for resale or other commercial purposes is prohibited without written permission of the copyright holder.

Published by Asian Farmers' Association for Sustainable Rural Development (AFA) and Non-Timber Forest Products - Exchange Programme (NTFP-EP)  
©AFA;NTFP-EP December 2022  
Quezon City, Philippines

The views presented here are those of the authors and are not necessarily shared by AFA or NT-FP-EP or any of the agencies that support the organizations.

Suggested citation: AFA and NTFP-EP. 2022. Strengthening Regional Mechanisms and Capacities in Engaging, Implementing, and Adopting Customary Tenure Recognition (CT) and Free, Prior and Informed Consent (FPIC) as Safeguards in the Mekong Region. Quezon City, AFA, NTFP-EP and MRLG.





# Table of Contents

<b>List of Figures</b>	... i
<b>List of Tables</b>	... ii
<b>Acronyms and Abbreviations</b>	... iii

---

<b>01</b>	<b>BACKGROUND</b>	... 1
-----------	-------------------	-------

---

<b>02</b>	<b>OBJECTIVES</b>	... 2
-----------	-------------------	-------

---

<b>03</b>	<b>PROBLEM STATEMENT</b>	... 2
-----------	--------------------------	-------

---

<b>04</b>	<b>METHODOLOGY</b>	... 3
	4.1. Desk research	... 3
	4.2. Communities Case Studies	... 4
	4.3 Key Informant Interview (KII)	... 5

---

<b>05</b>	<b>FINDINGS AND DISCUSSION</b>	... 6
	5. 1. Desk research (Overview of the country situation)	... 6
	5.1.1 National situation regarding livelihoods, food security and CT recognition	... 9
	5.1.2 National policies on livelihoods, food security and CT recognition	... 10
	5.1.3 National commitments/ declarations relating to VGGT, RAI, and SDGs with respect to livelihood and food security and CT recognition	... 10
	5.2 Community Case Studies	...12
	5.2.1 CT norms in communities	... 17
	5.2.2 Livelihoods and food security situation in selected communities (situation, opportunities, threats)	...22
	5.2.3 Decision-making and governance structures	... 32

---

<b>06</b>	<b>RECOMMENDATION</b>	... 40
-----------	-----------------------	--------

---

<b>07</b>	<b>CONCLUSION</b>	... 42
-----------	-------------------	--------

---



# List Figures

<b>Figure 1:</b> Location and brief profiles of selected communities (villages) for the case study	... 3
<b>Figure 2:</b> Screenshot of Zoom meeting with the interviewees	... 4
<b>Figure 3a:</b> Resource map of Nankone village (Case Study 1) of Pidaya township, Shan State	... 12
<b>Figure 3b:</b> Focus Group Discussion for Village Resource Mapping (Nankone Village, Shan State)	... 12
<b>Figure 4a:</b> Resource map of Kyaukkulay village (Case Study 2) of Ywangan township, Shan State	... 13
<b>Figure 4b:</b> Resource mapping by the participants in Kyaukkulay village (Case Study 2) of Ywangan township, Shan State	... 13
<b>Figure 5a:</b> Resource map of Kade Katut village (Case Study 3) of Kyunsu township, Tanintharyi Region	... 14
<b>Figure 5b:</b> Focus Group Discussion for Village Resource Mapping (Kade Katut Village, Tanintharyi Region)	... 14
<b>Figure 6.</b> Permanent Forest Estate (Green Line) of Myeik Forest District around Kade-kadut village	... 19
<b>Figure 7.</b> Climatogram of Myeik town	... 22
<b>Figure 8:</b> Comparison of the profit of rice production in some countries in ASIA	... 26



# List Tables

<b>Table 1.</b> Brief profiles of the selected communities	... 11
<b>Table 2.</b> Rights of local communities	... 16
<b>Table 3.</b> Land Rights of local communities in terms of gender and age	... 17
<b>Table 4.</b> Main Livelihood Activities and its corresponding areas	... 20
<b>Table 5.</b> Food security status	... 20
<b>Table 6:</b> Elevation (m), temperature and rainfall of the Case Study Townships	... 21
<b>Table 7:</b> Noticeable food shortage years/season	... 21
<b>Table 8:</b> Family member that are primarily involved in the activities	... 23
<b>Table 8a:</b> Overall workforce ratio of man and women in Case study 1, Nankone Village	... 24
<b>Table 8b:</b> Overall workforce ratio of man and women in Case study 2, Kyaukkulay Village	... 24
<b>Table 8c:</b> Overall workforce ratio of man and women in Case study 3, Kade-katut Village	... 26
<b>Table 9:</b> Overall work force ratio of man and women in all case study areas	... 27
<b>Table 9a:</b> Source of Livelihoods, Domain aspects and its contribution to total household income and food security and primarily responsible person	... 29
<b>Table 10:</b> Source of Livelihoods and its corresponding income	... 30
<b>Table 11:</b> Size of land allocated per family and type of economic activity	... 31
<b>Table 12:</b> Monthly average income and expenditures	... 32





# Acronyms and Abbreviations

BCPA	Biodiversity Conservation and Protected Area
CCA	Community Conserved Area
CFC	Community Forestry Certificate
CFI	Community Forestry Instruction
DALMS	Department of Agricultural Land Management and Statistics
DFO	District Forest Officer
FUG	Forest User Group
ICCA	Indigenous Community Conserved Area
LTP	Land Tenure Project
NDC	Nationally Determined Contribution
NLUP	National Land Use Policy
PFE	Permanent Forest Estates
PPF	Protected Public Forest
RAI	Responsible Agricultural Investment
TFO	Township Forest Officer
VFV	Vacant, Fallow and Virgin Land Management Law



# Acknowledgement

This research is a product of the Regional Customary Tenure Alliance, a partnership funded by the Mekong Region Land Governance (MRLG) Project.

MERN would like to express special thanks to AFA, NTFP-EP, and MRLG who helped facilitate and fund this publication.

MERN would like to thank the many people who contributed to this report: Kyaw Win Naing, the Organizer and facilitator for the Ywangan township and the respondents, Khin Maung Oo, the organizer and facilitator for the Pwehla township and the respondents, and My Oo, the organizer and facilitator for the Kyunsu township and the respondents. MERN would also like to acknowledge Prof. Ohn Lwin, Dr. Toe Aung, Nhkum Brang Awng, Myo Oo, and Yan Aung Tun for their valuable contribution in focus group discussion. Aung Thant Zin, Than Soe Oo, Tun Tun Zaw and Kyaw Kyaw Myo provided the technical inputs and managed the project. Than Soe Oo and Tun Tun Zaw review the responses from the three region and Than Soe Oo prepared the report. MERN staff provided administrative support by Pyae Phyoe Kywe and financial management support by Cherry Thein Swe.

Finally, MERN would like to thank all the survey respondents from three regions for sharing their time and providing valuable information.



## Background

Over the past few years, there has been progress in tenure and safeguards at the ASEAN level, particularly in the Mekong region. Both customary tenure (CT) and free prior informed consent (FPIC) have been recognized as key indicators in an important guideline for responsible investment in food agriculture and forestry.

However, despite these developments, several challenges remain. For customary forest tenure, access and ownership are still conditional and restricted in several cases. Land conflicts remain high—customary land and forests encroachments threaten customary rights and impede traditional livelihood and conservation and resource management practices.

Building on these gains and recognizing existing challenges, it is vital to continue amplifying the work towards the development, adoption and implementation of CT recognition and safeguards such as FPIC in securing rights over customary forest tenure in the Mekong region. To address the issues on the CT based on current situations, Asian Farmers' Association is preparing a regional paper to investigate the status of CT recognition and implementation in the context of livelihoods and food security, particularly in Mekong countries. It is envisioned to generate information and lessons learned that will serve as input in developing ASEAN guidelines and policy on CT recognition to support the region's commitment to delivering on livelihoods and food security goals.

To apply the intended regional paper and the development of ASEAN guidelines and policy on CT recognition, Asian Farmers' Association for Sustainable Rural Development, Inc. (AFA) and Myanmar Environmental Rehabilitation-Conservation Network (MERN) partnered on 8th September 2021. Following the orientation/training from AFA on the project, MERN conducted desk research and online key informant interviews (KIIs) with relevant CT stakeholders, and organized three personal focus group discussions (FGD) with the help of two MERN's member organizations and a partner CSO in the respective villages in line with the questionnaire on CT prepared by the AFA. This report captures the findings of the FGDs together with recommendations.





## Objectives

The case studies were conducted under the project entitled “Strengthening regional mechanisms and capacities in engaging, implementing, and adopting customary tenure (CT) recognition and free, prior and informed consent (FPIC) as safeguards in the Mekong region” which is executed by the Asian Farmers Association for Sustainable Rural Development. Under the guidance of AFA, the FGD was organized with the following objectives.

1. To examine CT recognition to improve and enhance livelihoods and food security of communities in Myanmar
2. To document the importance of traditional livelihoods and consideration for food security to support formal CT recognition
3. To find out possible means and ways for the set-up of forms or mechanisms for recognizing CT best to support communities’ livelihoods and food security

## Problem Statement

Myanmar is home to more than 100 ethnic groups, and within each of them, communities have their own distinct identities, cultures, and livelihoods. Customary tenure systems are equally diverse, and a single legal mechanism for their recognition might not address their specificities and needs.<sup>1</sup> Vast amounts of land in Myanmar are not titled. The deployment of land administration services and, consequently, the registration of land (use) rights under colonial law and currently the Farmland Law (2012), was and is mainly confined to central Myanmar and the Delta region. Cadastral maps (Kwin maps) do not exist for many upland areas. All unregistered land is considered at the disposal of the Government of Myanmar (GoM), although communities claim it legitimately as customary land. In the absence of specific legal measures to recognize and protect the community and/or village lands, these systems are under threat of alienation, confiscation, and acquisition.

<sup>1</sup> FAO and MRLG. 2019. Challenges and opportunities of recognizing and protecting customary tenure systems in Myanmar. Bangkok, 12 pp. Licence: CC BY-NC-SA 3.0 IGO.



Moreover, communities living in the areas where many different forms of customary tenure systems are being practiced are under the threat of land confiscation. This is because 30 percent and 5 percent of the country's areas are to be designated as reserved forest and protected areas by Myanmar Forest Policy (1995) and its policy statement (1996). At present, 25.49 percent and 5.85 percent of the country's area are already classified as permanent forest estate. To meet the policy target, it still requires more than 7.5 million acres, meaning that customary lands are under serious threat of confiscation due to expansion of forest area by the government or under the administration of the Ministry of Natural Resources and Environmental Conservation (MoNREC).

Apart from that, dispossession through laws like the Vacant, Fallow and Virgin (VfV) Land Management Law, and the allocation of land to private companies is a significant cause of land loss among farmers in the country. Land dispossession by the State for agricultural development has a long history in Myanmar. Christian (2021)<sup>2</sup> also pointed out that the Forest Law (2018) allows private sector investment for concessions and extractive industries to invest in the forest areas, adding another risk for local communities who depend on the forests for their livelihoods. Much of rural Myanmar remains under local Customary Tenure Systems (CTS), particularly in upland ethnic areas. Yet CTS lack legal recognition and are increasingly vulnerable to appropriation.

## Methodology

For the CT recognition in Myanmar, the methodology included the following:

- 1) Desk research,
- 2) Online key informant interview (KII) with relevant and available CT stakeholders, and
- 3) Focus Group Discussion with three communities

### 4.1. Desk research

The desk research reviewed relevant literature and policies on livelihoods, food security, and CT recognition. It included National Constitution (2008), Farmland Law (2012), Vacant, Fallow and Virgin Land Management Law (2012), Forest Law (1992), Forest Rules (1995) and Forest Strategy (2001), National Land Use Policy (2016), FAO, AFA and MRLG publications related to land issues mainly focus on CTS in Myanmar.

---

<sup>2</sup> Erni, Christian (2021). Persistence and Change in Customary Tenure Systems in Myanmar. MRLG Thematic Study Series #11. Yangon: POINT, MRLG.



## 4.2. Communities Case Studies

Focus Group Discussion was conducted in three villages/communities for the community's case studies. In line with AFA's guidance, community case studies were conducted in three selected areas, as shown in the picture below, two in Danu Self-Administrative Zone of the Shan State and one in the Tanintharyi Region. Brief profiles of the selected communities are also given in the corresponding boxes.

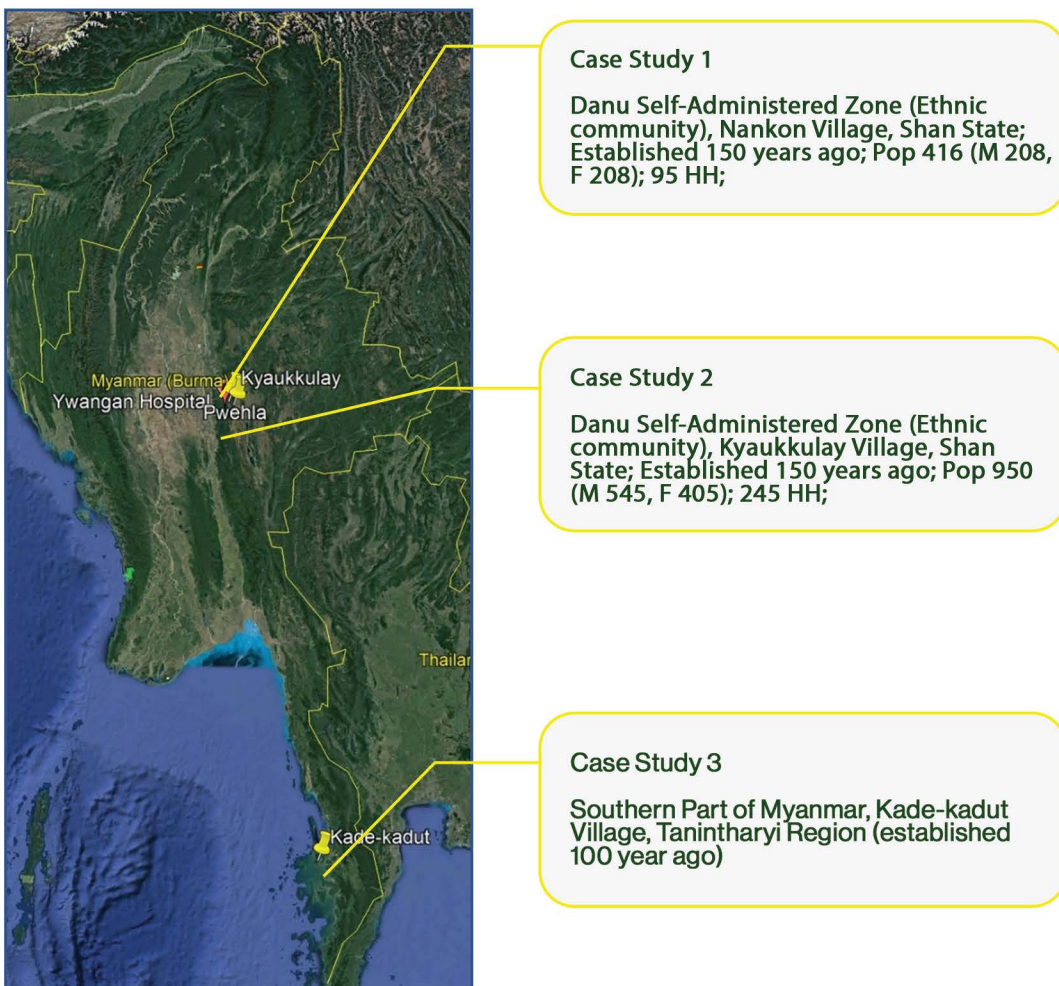


Figure 1: Location and brief profiles of selected communities (villages) for the case study



### 4.3 Key Informant Interview (KII)

Based on the questionnaire prepared by the AFFM, online KII was done on November 30, 2021, with available CSOs and freelancers involved in land issues in Myanmar. Due to political turbulence and Covid-19 situations, field trips could not be made for individual interviews. So respondents were interviewed collectively on the link between recognition of customary tenure system, food security, and livelihood improvement of local communities practicing CTS. Other CSO working in land-related fields could not be contacted due to political turbulence, and telephone and internet disconnection in some ethnic areas. A list of participants involved in the interview is given in Annex I.

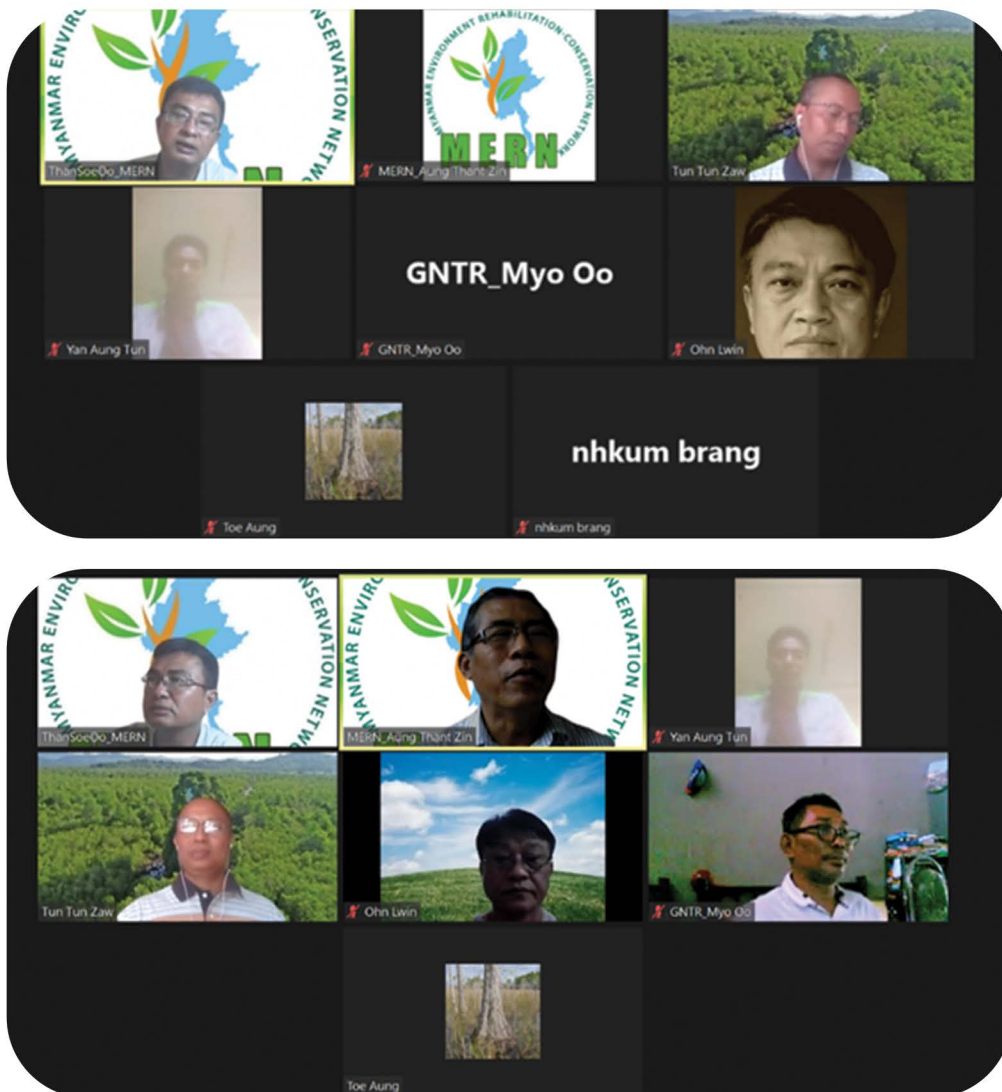


Figure 2. Screenshot of Zoom meeting with the interviewees

# Findings and Discussion

## 5. 1. Desk research (Overview of the country situation)

### 5.1.1 National situation regarding livelihoods, food security and CT recognition

The Constitution (2008) states that the Government of Myanmar “is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union” (art. 3), but recognizes private property rights. The Constitution does not exclude recognizing, protecting, and registering rights in customary tenure as land use rights.

The Farmland Law (2012) gives farmers land tenure rights for cultivation through land use certificates (LUCs), and individuals can buy, sell and transfer land with these certificates. This law is adapted to lowland cultivation practices or permanently cultivated cropping fields. There are no specific provisions for land allocation to individuals or communities with customary tenure systems. Farmland Law includes a “farmers’ organization” as a potential right-holder. This was used to define procedures for land registration in the name of the community as a legally incorporated entity or an association. The Farmland Law is currently under revision.

The Vacant, Fallow, and Virgin Land Management Law (2012) puts customary land, particularly shifting cultivation land, at high risk of appropriation due to its definition of “vacant” and “fallow” land. Under this law, active fallow land under rotational cycles can be legally transferred to private ownership because fallow lands are regarded as “vacant” and unused. This law is mainly designed to allocate land to private interests. This, however, causes problems for IDPs who may return to their land in the future to find it has been declared vacant and allocated to someone else. If local people's land is mistakenly included in VFV lands, there is no formal independent mechanism to address grievances or resolve conflicts between companies and local people. The Vacant, Fallow, and Virgin Land Management Law is being revised, and amendments were proposed in late 2017.

Under the Vacant, Fallow and Virgin Land Management Law (VFV Law), the lands on which shifting cultivation is practiced are considered as fallow or vacant (lands that are not visibly used or abandoned) or virgin (reserved lands still to be allocated for first clearance or older secondary forest) and can be distributed to smallholder households or agrobusinesses<sup>3</sup>.

The Forest Law (1992), Forest Rules (1995), and Forest Strategy (2001) all consider forest land as part of the permanent forest estate (PFE), which is classified as either reserved forest, protected public forest, or protected areas. Lands held under customary tenure can be found within the PFE, especially shifting cultivation land, sacred forests, and community-managed forests.

<sup>3</sup> FAO and MRLG. 2019. Challenges and opportunities of recognizing and protecting customary tenure systems in Myanmar. Bangkok, 12 pp. License: CC BY-NC-SA 3.0 IGO





Since an Executive Order in 2013, villages with over 50 households and a history of living in the area can have their village and permanent farmland removed from the PFE to receive LUCs. But this has not been implemented in practice to any considerable extent. Shifting cultivation land usually remains within the PFE, and the government recommends that it should become agroforest and recognized by a community forestry certificate. According to the Land Tenure Project (LTP) <sup>4</sup>, LTP pilot activities identified community forestry as a potential means to secure community tenure under the existing legal framework in Let Maung Kway village tract, Nyaung Shwe Township, Southern Shan State (the second pilot site).

Rights of the Forest User Group (FUG) as specified in the Community Forestry Instruction (CFI) 2019 is given in the box below.

**Box: 1 Right of CFC according to Section 23 of Community Forestry Instruction (2019)**

- a) Right of permitting his/her legitimate heir (s) to inherit his/her own assets related to Community Forestry;
- b) Right of the MC to change user group member list with the consent of the majority of the CFUG members;
- c) Right to change the members of the MC with the consent of the majority of the CFUG members;
- d) Right to enjoy exemption of land-lease fee for those community forests established in the forest land;
- e) Right to accept techniques, equipment, and financial supports from local and international organizations;
- f) Right to apply any agroforestry system (s) that is suitable for local conditions, in implementing community forestry;
- g) Right to harvest and utilize wood and other forest products systematically from natural forest in accordance with the MP without negatively impacting the original objective to sustain the CF;
- h) Right to form independent legal enterprises which can harvest and commercialize wood and non-wood forest products;
- i) Right to claim compensations for loss of forest trees, crops and other damages due to implementation of other projects in the Community Forest.



<sup>4</sup>Kyaw Tint, Oliver Springate-Baginski and Mehm Ko Ko Gyi (2011): Community Forestry in Myanmar: Progress & Potentials



As specified in the CFI (2019), Myanmar Community Forest model is as follows. (Adapted from Kyaw Tint, Oliver Springgate-Baginski, and Mehm Ko Ko Gyi)<sup>5</sup>

- A group of interested local people (although not necessarily all village households) together form a Forest User Group (FUG) and select a Management Committee (MC) by consensus.
- The Management Committee then applies to the District Forest Officer (DFO) via the Township Forest Officer (TFO) for permission to establish a Community Forest.
- The TFO assesses the suitability and availability of the area, and submits the application to the DFO with the map and recommendations. (For land at the disposal of the State, if it is not forest land, the TFO must also get the approval of the concerned State/Region authority)
- On getting DFO's permission to establish the Community Forest, the Management Committee draws up a Management Plan (MP) with assistance from the FD, and submits the plan to the DFO.
- After confirmation of the Management Plan, the DFO issues a Community Forestry Certificate (CFC) with the relevant rules, and other considerations attached. The land lease is 30 years initially, extendable and inheritable. However, selling, renting, mortgaging, handing over, or donating the Community Forest is prohibited by CFI 39 (b). [Parentheses: Land Use Certificate (LUC), also known as Form 7 confers various property rights over the farmland, including the rights of possession, use, benefit, sale, mortgage, lease, exchange, inheritance, and gift.]
- The FUG Management Committee then established the Community Forest. According to management plan provisions, the FUG can harvest timber, fuelwood, and NTFPs and sell surplus products to village needs. The FUG must follow the Management Plan. If they deviate from it, DFO can revoke the certificate.
- If the CFUG wishes to revise the management plan, it can do so with the advice of the Forest Department and shall submit the revised MP to the DFO for confirmation.
- The Forest Department must provide, free of charge, seeds and seedlings for the first rotation, and necessary technical support.



---

<sup>5</sup> Kyaw Tint, Oliver Springgate-Baginski and Mehm Ko Ko Gyi (2011): Community Forestry in Myanmar: Progress & Potentials

However, key informants see that community forestry cannot represent a whole community. Instead, the establishment of an indigenous community conserved area (ICCA) or community conserved area (CCA) would be more appropriate for them under the existing legal framework, particularly in compliance with Biodiversity Conservation and Protected Area (BCPA) Law (2019).

In the absence of appropriate mechanisms, community forestry is one alternative measure by which legitimate customary land resource tenure claims could be recognized and protected. Mark (2017) quoted in FAO and MRLG (2019)<sup>6</sup> stated that community forestry can, in some circumstances, be a good interim measure to establish some customary land tenure security but fails as a long-term and more comprehensive measure for recognizing customary tenure systems more broadly. Some people currently consider the establishment of community forest rights as the only practical and legal tool to secure some customary rights. Community forestry is a collective tenure arrangement for a village group or association that applies for a certificate. It is a form of delegated management for a time-bound period only and not a permanent right. Many community forestry areas include individual household plots, such as rattan plots, and communal areas, such as water sources and firewood collection areas.

### 5.1.2 National policies on livelihoods, food security and CT recognition

The National Land Use Policy (NLUP) is a response to strengthen tenure governance, especially of vulnerable communities. The NLUP, which was adopted in January 2016, includes provisions for recognizing customary tenure, thus indicating a constructive development in the acknowledgement of such rights. NULP (2016) clearly states its objective on the CT as follows:

*(a) To recognize and protect customary land tenure rights and procedures of the ethnic nationalities;*

In paragraph 29 of NULP (2016), it also states, “to protect existing land users in the local communities from negative impacts of proposed individual land use changes, the following shall be done:

*(b) Protecting lands that are under rotating and shifting cultivation and customary cultivation practices;*



<sup>6</sup> FAO and MRLG. 2019. Challenges and opportunities of recognizing and protecting customary tenure systems in Myanmar. Bangkok, 12 pp. License: CC BY-NC-SA 3.0 IGO.



In case of Land Disputes Resolution, it clearly states in Part VI, Chapter (I)(b) to allow local farmers organizations to resolve land disputes arising between their members, using local customary dispute resolution mechanisms, if they choose to do so;

Part (VIII) of NULP (2016) is Land Use Rights of the Ethnic Nationalities. It mainly concerns the CT recognition. In paragraph 64, it clearly states that “customary land use tenure systems shall be recognized in the National Land Law in order to ensure awareness, compliance, and application of traditional land use practices of ethnic nationalities, formal recognition of customary land use rights, protection of these rights and application of readily available impartial dispute resolution mechanisms.

National Land Resource Management Central Committee (2016) expressed that “in order to fulfill the mandate that is to develop and implement national land use policy, the National Land Use Policy has been successfully developed with the active participation of Union Ministries and organizations, UN and international organizations, civil society organizations (CSOs), NGOs, and other stakeholders including rural communities. There are various suggestions and recommendations received from local, national and international expert individual and groups during the 8 months consultation process. The internal and external experts reviewed and incorporated them in the draft policy in the expert roundtable process and national workshop.” Detailed process of NULP development can be available at the link referred to in the footnote<sup>8</sup>. However, the revision of land laws to reflect the recognition of CT is still weak.



### 5.1.3 National commitments/ declarations relating to VGGT, RAI, and SDGs with respect to livelihood and food security and CT recognition

The relevance of applying the VGGT principles in respecting and protecting all legitimate tenure rights is critical. According to the country evaluation series of FAO (2016)<sup>9</sup>.

<sup>7</sup> National Land Use Policy (2016)

<sup>8</sup> [https://www.land-links.org/wp-content/uploads/2017/12/USAID\\_Land\\_Tenure\\_LTP\\_Toolkit\\_2.6\\_Developing\\_the\\_NLUP-World-Bank-Paper.pdf](https://www.land-links.org/wp-content/uploads/2017/12/USAID_Land_Tenure_LTP_Toolkit_2.6_Developing_the_NLUP-World-Bank-Paper.pdf)

<sup>9</sup> FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, OFFICE OF EVALUATION, November 2016: Case Study: Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) in Myanmar



*a comparison of the VGGT and the adopted national Land Use Policy reveals the extent to which the principles of the VGGT are more or less reflected in the LUP. This comparison is instructive in assessing how the VGGT has influenced the new NLUP and will potentially influence the new land related laws. It is also instructive considering that before 2011 the land policy and land laws were quite restrictive on farmers' rights in particular.*

Implementing responsible agricultural investment (RAI) is still one of the critical issues in Myanmar. San Thein et al., (2018)<sup>10</sup> pointed out that a historical review of land acquisition processes has revealed that large tracts of land for agricultural development were granted in the distant past by various authorities and through several mechanisms that persist to this day. The current legal framework that governs large-scale agricultural land transactions is a complex triad of laws, statutory authorities, and land [use] categories dating back to the colonial era.

San Thein et al., (2018) clearly expressed complex land issues as follows:

*“Unfortunately, there is no clear alignment between the land categories, the laws that shape the management of these categories, and the statutory authorities in charge of their management. The land literature on Myanmar consistently highlights areas of tension and mismatch between the elements of the triad, which create or exacerbate insecurity of tenure and land conflicts. The issues are made even more complex as the patron-client relationships articulated around those who hold State power have opened opportunities for the arbitrary application of land-related laws (Scurrah, Hirsch and Woods, 2015)“.*

Vicky Bowman, director at Myanmar Centre for Responsible Business,<sup>11</sup> presented the current situation on RAI in Myanmar at the panel discussion of MRLG and Land Portal (2021). Bowman claims that *work on influencing regulatory frameworks in Myanmar has sought to engage international standards, including environmental impact assessments and FPIC. The challenge is to align the standards with legal provisions. She added that there is a reluctance to invest in agriculture, despite the sector employing the majority of the population, which means that the country loses out on the improved practices needed to join global supply chains. Instead, Myanmar is very much part of what Stefano referred to as ‘leakage markets’, or untraceable export commodities such as rubber and maize going to Thailand and China. The result is a lack of help for farmers to improve the sustainability of their practices, or accountability along supply chains to meet international standards, including ASEAN-RAI.*

<sup>10</sup>San Thein, Hlwan Moe, Diepart J.-C. and C. Allaverdian (2018). Large-Scale Land Acquisitions for Agricultural Development in Myanmar: A Review of Past and Current Processes. MRLG Thematic Study Series #9. Vientiane: MRLG.

<sup>11</sup>MRLG and Land Portal (2021). Mekong Regional Land Forum 2021: Land tenure in Mekong forest landscapes: Advancing the recognition of customary rights and responsible investment practices. Summary Report. Vientiane: Mekong Region Land Governance.



Myanmar Sustainable Development Plan (MSDP\_2018-2030) clearly defines Strategy 3.1 of Pillar 2 (Prosperity & Partnership) prescribing to “create an enabling environment which supports a diverse and productive economy through inclusive agricultural, aquacultural and polycultural practices as a foundation for poverty reduction in rural areas. Under Strategy 3.1, actions on land tenure and RAI are as follow:

**Action 3.1.3:** Create market conditions to enable greater investment in agriculture, aquaculture and polyculture and mechanization (3.1.3)

**Action 3.1.4:** Strengthen rural households' land tenure, property rights, and related enforcement capacities

**Action 3.1.7:** Improve investment regulations for agri-investors, and facilitate foreign investor access to the agriculture, aquaculture, and polyculture sectors

Under the MSDP, Strategy 5.5 aims to improve land governance and sustainable management of resource-based industries, ensuring natural resources benefit the public. Under the Strategy 5.5, the action plan highly concerning CT recognition, livelihood, and food security is as follows:

**Action 5.5.1:** Establish a comprehensive, clear, and coherent regulatory framework that informs sustainable management, exploitation, and trade of natural resources supported by appropriate enforcement mechanisms

Generally, it can be said that the existing legal framework and its provisions cannot support CT recognition and its fruitful outcomes of livelihood improvement and food security for local communities living in the rural area, particularly in areas where different forms of CT systems are being practiced. However, it is deemed that NULP is very important basis for addressing land use issues and land-related conflicts. At present, national land law in accord with NULP is under development. When it is endorsed and takes in effect, it hopes to resolve some complex land issues and recognize customary lands, resulting in improved livelihood and food security of local communities.

## 5.2 Community Case Studies

Due to Covid-19 and political turbulences, site selections for the case study could not be done properly. But FGDs were able to be carried out in collaboration with MERN's member organizations; Pwe Hla Environment Conservation and Development Organization facilitated the FGD for the first case study in Pindaya township, Shan State, and Green Network for the third case study in Kyunsu township, Tanintharyi Region.



MERN's partner CSO named Myitphyar Panlaung Forest and Environment Lovers Association conducted the FGD for the second case study in Ywangan township, Shan State. Facilitators of the FGDs explained the project, its objective, and activities to be done in the FGD through an online orientation meeting. The survey questionnaire prepared by the AFA was translated into Myanmar language and adapted to the country's context.

Table 1. Brief profiles of the selected communities

	Case Study 1	Case Study 2	Case Study 3
Region/State	Shan State	Shan State	Tanintharyi Region
District	Taunggyi	Taunggyi	Myeik
Township	Pindaya	Ywangan	Kyun-su
Village Name	Nankone	Kyaukkulay	Kade-kadut
Region/State	Shan State	Shan State	Tanintharyi Region
District	Taunggyi	Taunggyi	Myeik
Township	Pindaya	Ywangan	Kyun-su
Village Name	Nankone	Kyaukkulay	Kade-kadut
Population	416 (M 208, F 208)	950 (M 545, F 405)	512 (M 240, F 272)
Household No.	95	245	120
Avg. household size	4.5	3.9	4.3
Major Agri Crop	Rice, Potato, Maize, Pulses and beans, Sesame, Wheat, Vegetable	Rice, Pulses and beans, Sesame, Coffee, Avocado, Vegetable	Rubber, Betel Nut,
Village area (estimated)			1700 acres (687.97 ha)
Agriculture area (Est.)	470 acres (190.2 ha)	1230 acres (497.7 ha)	1000 acres (404.68 ha)
Pasture area (Est.)	100 acres (40.5 ha)	240 acres (97.12 ha)	
Livestock breeding area (Estimated)		80 acres (32.4 ha)	
Shifting cultivation area (Estimated)		910 acres (368.2 ha)	
Fishing ground (Est.)			372 acres (150.5 ha)
Education	1 Post primary school 1 Primary school	1 Middle School	
Natural Resources	3 springs	2 Small dams (weirs), Springs	Waterfall, man-forests
Community Forest	121 acres (48.96 ha)	1315 acres (532.16 ha)	
Village own forest (formally recognized)		650 acres (263.05 ha)	





Data obtained from the FGDs were validated with the facilitator concerned since the local community is unfamiliar with the metric system, though conversion values were provided. Village resource maps prepared by the participants are given below.

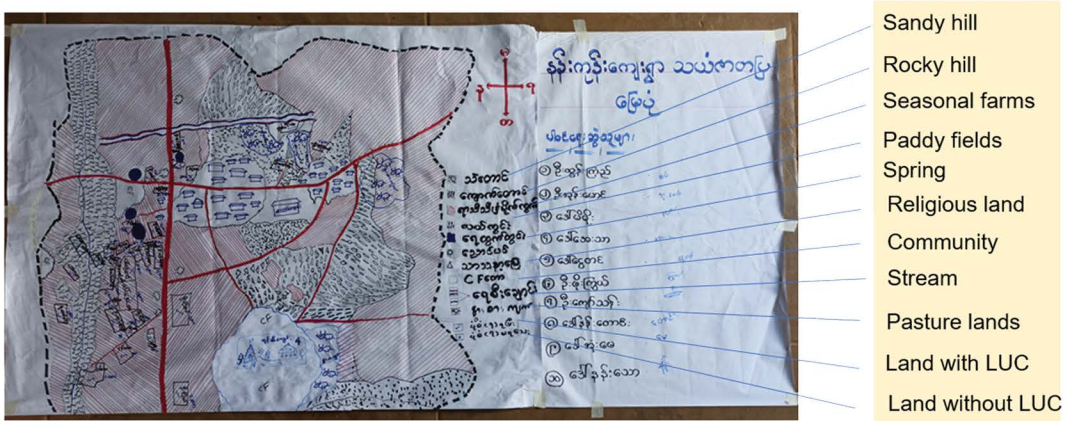


Figure 3a: Resource map of Nankone village (Case Study 1) of Pidaya township, Shan State



Figure 3b: Focus Group Discussion for Village Resource Mapping (Nankone Village, Shan State)

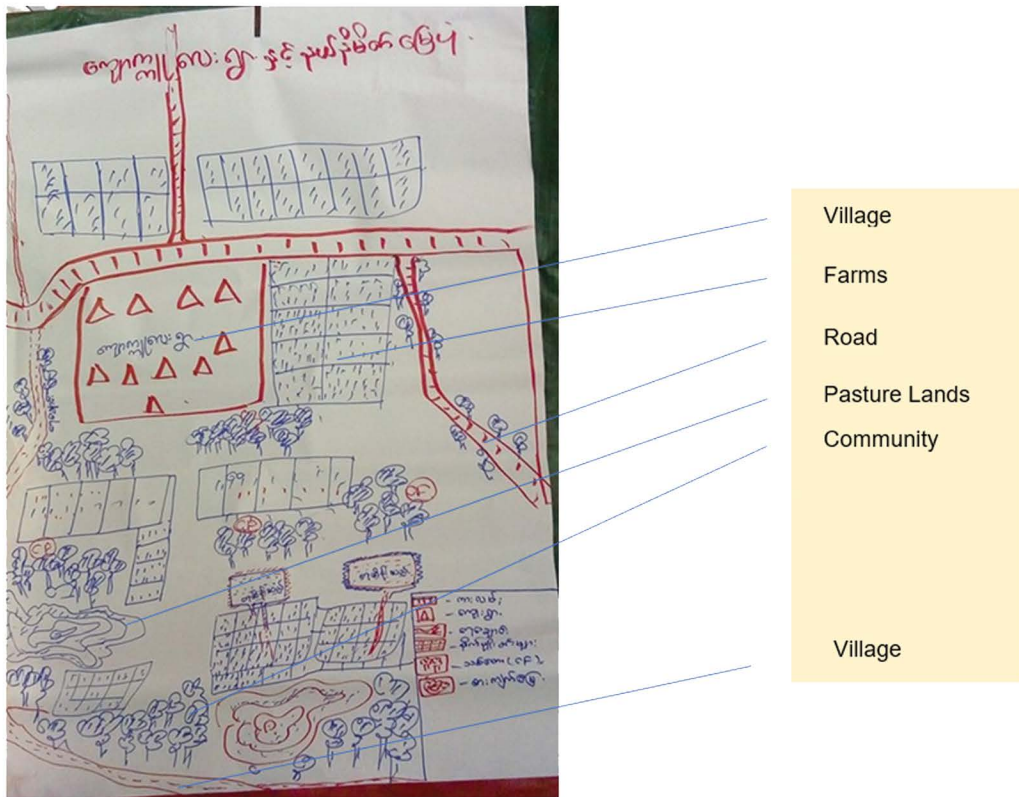


Figure 4a: Resource map of Kyaukkulay village (Case Study 2) of Ywangan township, Shan State



Figure 4b: Resource mapping by the participants in Kyaukkulay village (Case Study 2) of Ywangan township, Shan State



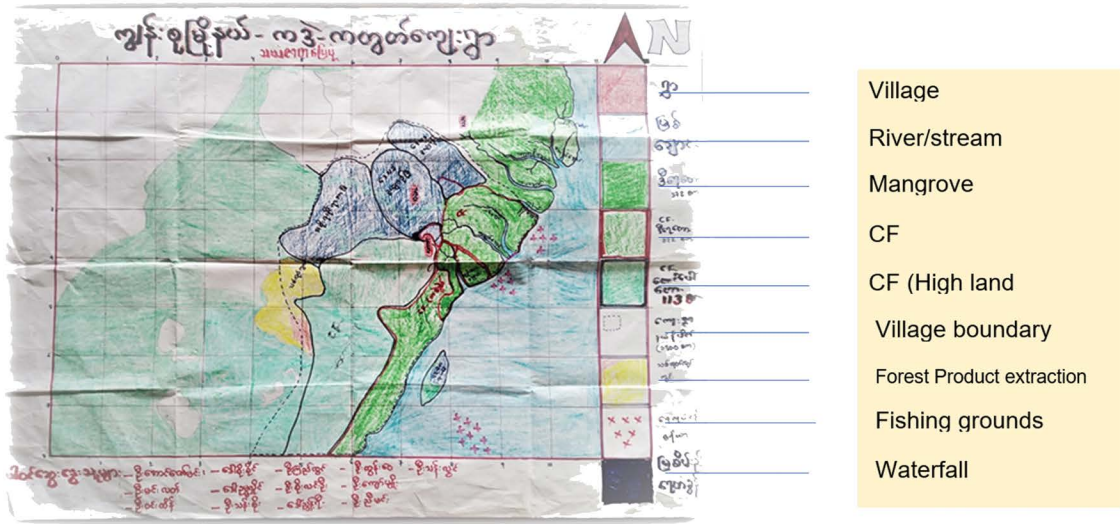


Figure 5a: Resource map of Kade Katut village (Case Study 3) of Kyunsu township, Tanintharyi Region



Figure 5b: Focus Group Discussion for Village Resource Mapping (Kade Katut Village, Tanintharyi Region)



## 5.2.1 CT norms in communities

### 5.2.1.1 Case Study 1 & 2 (Danu Self-Administrative Zone) in Shan State

Shan State is Myanmar's largest administrative state, at 155,800 km<sup>2</sup>, comprising almost a quarter of its total area. Shan State's own physical, social, and governance diversity. CTs are flexible, dynamic, resilient, and adaptive to change. This area is characterized by high ethnic diversity and complexity of historical conflict (both armed and unarmed) exacerbated by accelerating political-economic change marked by a combination of expanding capitalist social relations in agriculture, natural resource extraction (e.g. logging, mining), and increasing large infrastructure and development projects (Oliver Springgate-Baginski & Mi Kamoon, 2021) .<sup>12</sup>

In Nankon village (Case Study 1), Pa-O, Danu, Taungyo, and Bamar ethnics live. Customary tenure systems (CTS) found in the community are common property or communal land (pasture) and private property (farm lands), and community forest. Monastery forest is transformed into a community forest with 30 years land lease of the Forest Department. The main objectives of community forest application are micro climate regulation, natural water springs preservation, and protecting land acquisition. Some farmers have agricultural land use certificates (Form-7), and others do not. The village was established 150 years ago.

In Kyaukkulay village (Case Study 2), CTs are more diverse than the former. Ethnics living in the village are Danu and Bamar. Communal lands in the community include shifting cultivation areas, village-owned forests, private property, and community forests. The village-owned forest is for climate and water regulation, especially for their natural water springs. There is a specific forest area for the spirits (cultural belief) and regions for three cemeteries in the village-owned forest. They alternatively grow rice and *Jatropha curcas* for fuel oil in shifting cultivation areas. It is also known that one species only cannot be produced for two successive years due to poor soil conditions. Fallow periods vary from 2 to 5 years. Some farmers do not continue shifting cultivation and establish private forests (maximum 20 acres) to produce poles, posts, and fuelwood. The village was established 150 years ago.

### 5.2.1.2 Case Study 3, Kade-kadut Village, Kyunsu township, Tanintharyi Region

In Kade Katut village (Case Study 3) of Tanintharyi Region, the southern part of Myanmar, CTs include agricultural lands mainly of rubber plantations and betel nut (areca nuts) gardens, communal fishing grounds, and community forests. They also have a mangrove forest of about 100 acres as common property. Paddy fields are not typical, and it exists sparsely. Most of the labor is concentrated in the rubber plantations and betel nut gardens. The village was established 100 years ago.

<sup>12</sup> Oliver Springgate-Baginski & Mi Kamoon (2021) Defending Shan State's customary tenure systems from below through collective action research, *The Journal of Peasant Studies*, 48:3, 541-559, DOI: 10.1080/03066150.2021.1887145



Results of the FGDs on the rights of CT revealed the customary norms are very similar, reflecting a bundle of rights, namely access, withdrawal, management, exclusion, and alienation. However, people in Case Study 3 lost their rights after their land (Katan island) was designated as a protected public forest (PPF) in 2001 under the administration of the Forest Department, as shown in the table below. The community there enjoyed a bundle of rights to land in their CT system as in Case studies 1 and 2 (Danu Ethnic Self-Administration Zone).

Table 2. Rights of local communities

Rights	Case Study 1	Case Study 2	Case Study 3
To live or reside within the area	Yes	Yes	Yes (limited) (Exclusive area) ***
To gather and collect food and other items as part of your livelihoods	Yes	Yes	Yes (limited)
To enter into agreements with entities related to the use of lands within the ancestral domain	Yes	Yes	No
Rights of trespassing into the CT	Yes	Yes	No
Right of extraction of forest products from the ancestor domain	Yes	Yes	No
Right to sell the lands to the villagers of the same village	Yes	Yes	No
Right to sell the lands to the outsiders	Yes	Yes	No
Right to inherit land	Yes	Yes	No

\*\*\* Village residential area was excluded from the PPF, but almost of the customary lands of the local community were classified as PPF area and local people lost their rights after the designation.

Regarding gender and age, the first two rights, rights of residing or living in the CT area, gathering and collecting food and other items as part of their livelihoods, are similar in the first and second case studies. However, the rights for the relationship with other entities are still restricted to both young males and females. At the village level, a village land management committee has already been formed, and the members are generally adults, village authorities, and influential ones.



Rights	Case Study 1				Case Study 2				Case Study 3			
	Adult Male	Adult Female	Young Male	Young Female	Adult Male	Adult Female	Young Male	Young Female	Adult Female	Adult Female	Young Male	Young Female
To live or reside within the area	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (Limited)	Yes (Limited)	Yes (Limited)	Yes (Limited)
To gather and collect food and other items as part of your livelihoods	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (Limited)	Yes (Limited)	Yes (Limited)	Yes (Limited)
To enter into agreements with entities related to the use of lands within the ancestral domain	Yes	Yes			Yes	Yes			No	No	No	No

Table 3: Land Rights of local communities in terms of gender and age

Likewise, local people of the third case study also enjoyed these rights before 2001 before the declaration of the CT as PPF. The results of respective FGDs are given in the table above. As in Table 3, all people, regardless of gender or age, only have limited rights to residing and collecting foods within the PPF. These limited rights are not real and are not in line with the Forest Law (2018) and the Forest Rule (1995).

### 5.2.1.2 Case Study 3, Kade-kadut Village, Kyunsu township, Tanintharyi

Although the communities in Case Study 1 and 2 have enjoyed their CT rights and norms, they are under threat of land losses as most CT areas are not legally recognized by the government. Kyaukkulay village already experienced land acquisition 20 years ago for a coffee plantation by a private company.

People of the Kade Katut village suffered a land loss since their customary lands of rubber plantations and betel nut gardens were confiscated and acquired by the Forest Department for the designation of Katan Protected Public Forest in 2001. Section 6 (a) of the Forest Rules (1995) of the FD prescribes that the forest settlement officer shall, within (30) days after his appointment, issue a declaration to claim if there are any grievances in the extraction right of forest-produce and land use right of the local people of the area where the reserved forest will be constituted. The persons desirous of claiming right shall submit, claim within (90) days after the issue of the declaration.





The Forest Department then failed to inform the local communities prior to their grievances and was unable to practice Free, Prior, Informed and Consent (FPIC). In fact, there have been clear instructions and procedures for the Constitution of Reserved Forest and Declaration of Protected Public Forest since the colonial period. Local communities were sadly aware that their lands were then under the administration of the FD after the declaration of Katan PPF.

*Forest Rule (1995), Rule 19: Any person shall not, without the permission of the Director General or of a forest officer empowered by him, carry out any of the followings in the protected **public forest**:*

- a) felling, cutting, girdling, marking, lopping, perforating or injuring by fire or by any other means of the categories of tree stipulated by the Forest Department;*
- b) trespassing and encroaching;*
- c) pasturing domestic animals;*
- d) digging or clearing land for agriculture;*
- e) poisoning, using chemical or explosive substances in water;*
- f) arresting or hunting wildlife;*
- g) kindling fire, setting fire and carrying fire*

Therefore, local people practicing CTs became encroachers, and their long lasting daily activities for livelihoods became illegal after the PPF declaration. They are still working and doing their livelihood activities in their rubber plantations and betel nut gardens unofficially. The officials concerned are neglecting these activities. Anyway, they can be evicted at any time by the FD. This is their great concern for the future.

According to personal communication with the FGD facilitator as well as the chairman of Myitphyar Panlaung Forest and Environment Lovers Association, it is known that land transaction is widespread in Ywangan township. He said the buyers prefer customary lands to registered lands and don't buy the latter since changing the land owner's name is more complicated. They can deal more efficiently with government officials and the Department of Agricultural Land Management and Statistics (DALMS) staff to register their names to the customary lands they bought.



In Kyaukkulay (Case Study 2) of Ywangan township, selling customary lands to the outsiders is in line with CT norms they practice (See table 3). But it is critical to review and impose restrictions while the existing legal framework and land related laws do not recognize the CTS. Otherwise, customary lands will gradually fade out and be in the hands of outsiders. Oliver Springgate-Baginski & Mi Kamoon (2021) already pointed out that CTs are subject to legal ambiguity as they are rarely recognized in statutory law and are vulnerable to erosion in terms of territory, community and power<sup>13</sup>.

While the youths' interests in CT are getting low due to the aforementioned factors, customary lands are considered a source of capital for youths to go abroad for employment opportunities. The problem is younger generation shows less tolerance and patience for chronic poverty. This issue is not only in Myanmar but also among the LDCs. Myanmar's labor productivity is undergoing a familiar pattern among LDCs of structural change, that is, productivity growth has slowed down significantly over the years as labor shifted from agriculture to other sectors, mainly services (UNCTAD, 2021).<sup>14</sup>

#### 5.2.1.4 Threat to customary lands Case Study 3 (Kade-kadut village, Tanintharyi Region)

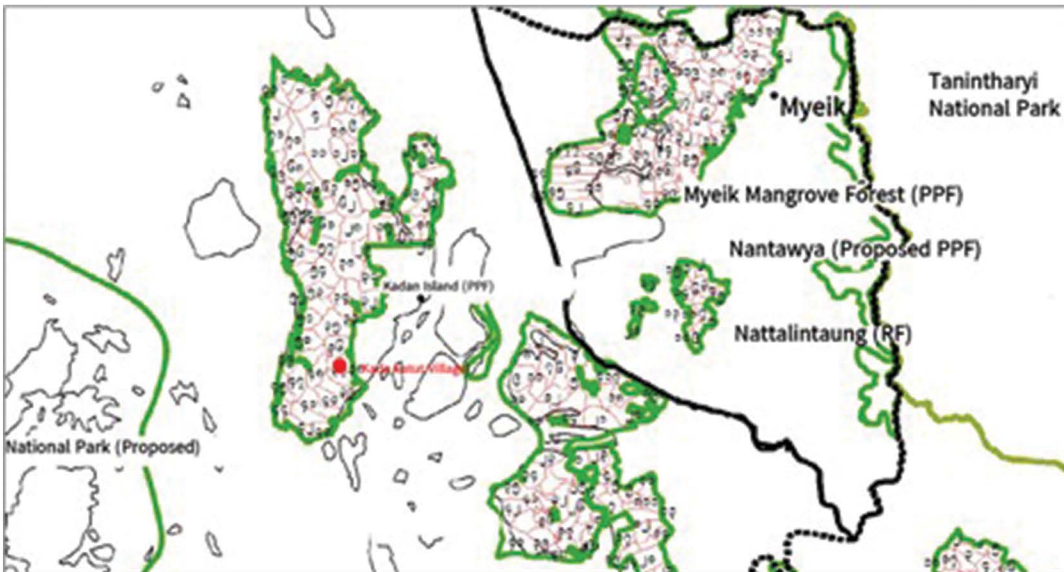


Figure 6. Permanent Forest Estate (Green Line) of Myeik Forest District around Kade-kadut village

<sup>13</sup> Oliver Springgate-Baginski & Mi Kamoon (2021) Defending Shan State's customary tenure systems from below through collective action research, *The Journal of Peasant Studies*, 48:3, 541-559, DOI: 10.1080/03066150.2021.1887145

<sup>14</sup> UNCTAD (2021): Vulnerability Profile of Myanmar

In the figure, one can discern how much the livelihood and food security of local people practicing CTS in Case Study 3 will be affected. All areas delineated by the green lines in the figure are permanent forest estates (PFE) such as Reserved Forest (RF) and Protected Public Forest (PPF). Before Kadan PPF, the whole Kadan island (in the red line shape) was the customary land of the people living on and around the island. According to personal communication with U Zaw Thura (Tanintharyi Region Representative of FLEGT Myanmar Program), it is also known that it houses 26 villages, including six Kayin ethnic villages in the Kadan PPF. They also lost their agricultural lands except for their existing residential areas.

### 5.2.2 Livelihoods and food security situation in selected communities (situation, opportunities, threats)

The main livelihood in all areas studied is agriculture, including planting rice, pulses and beans, and sesame for the first and second case study, and rubber and betel nut planting in the third case study (see table 4). Fishery is the second most important livelihood activity in Case 3 (see Table 4).

Table 4. Main Livelihood Activities and its corresponding areas

Man Livelihood Activities	Case Study 1	Case Study 2	Case Study 3
Farming/Agriculture (ha)	202	404	
Foraging/Gathering (ha)	20	81	
Livestock and poultry raising (ha)	40	8.1	
Rubber tapping (ha)			222.5
Gardening (betel nut)			182
Fishing ground (ha)			150
Extraction of forest products (ha)			40.5

#### 5.2.2.1 Food security status of the study areas

Typical diets of subjects in all study areas include rice, meat/fish, vegetable, and chicken/duck eggs. Participants in Case Study 1 and 2 are found to be able to produce their staple food, rice, from their customary lands of permanent paddy fields and shifting cultivation areas. But the results show the amount of rice they produce is not sufficient for the whole year. So, they are relying on markets for rice. Similarly, they can get some amount of meat, fish, vegetable, and eggs (sometimes seasonal mushroom) from their lands, home compounds, and forests. However, these are still insufficient to cover their needs.





Table 5. Food security status

Food Item	Source		
	CS 1	CS 2	CS 3
Rice	C/M	C/M	M
Meat and fish	L/M	F/M	M
Vegetable	C/M	F/M/L	M
Egg	L/M	L/M	L/M

**M** - if you buy it from the market  
**F** - if you gather or collect it from the forest  
**C** - if you source it from your own crops  
**L** - if you source it from animals that you raise (for example chicken, cows, goats etc)  
**O** - if it came from other sources; in this case, please indicate actual source

### 5.2.2.2 Noticeable food shortage years/season

In the Nankone (CS1) and Kyaukkulay (CS2) of the Shan State, the food shortage season identified within the months of March, April, and May. These months are the pre-monsoon period. They are also the hottest months of the year. March and April are harvesting times for winter crops such as ground nut, pulses and beans, chickpea, etc. Amidst climate-change-induced problems, drought occurrences are one of the decisive factors that can bring food shortages in the area. Due to climate change’s impact, high rainfall intensity within a short rainy time will create less soil moisture content, resulting in unfavorable conditions for winter crops.

Myanmar is an agricultural country that relies on monsoon rainfall. The Department of Meteorology and Hydrology stated monsoon duration decreased since 1976. Average rainfall was almost the same for 30 years from 1985 to 2014, but the number of rainy days decreased, yet its impact intensified. Food shortage months reported by the participants of the Nankone (CS1) and Kyaukkulay (CS2) are very reasonable. The average rainfall and temperature of all case study areas and their respective elevations are given in the table below.

Table 6: Elevation (m), temperature and rainfall of the Case Study Townships

Township	Above sea level (m)	Rainfall Condition		Temperature (°C)		Remark
		Raining Days	Rainfall (mm)	Max.	Min.	
Pindaya	1182.6	96	1127.7	30.5	13.3	Avg. data between 2016 to 2019
Ywangan	1098-1534	121.25	1823.7	32.8	7.8	Avg. data between 2016 to 2019
Kyunsu	3-140.2	150.8	5676.9	34.6	22.8	Avg. data between 2015 to 2019



Temperature and rainfall are critical elements in determining when and how often crops can be sown. While some Asian countries can harvest three times in a single year, food production nearly halts during dry seasons in many tropical zones and winter cold in temperate areas. Seasonality means there may be food shortages, particularly in places where total annual production appears to be more than sufficient to meet nutritional needs<sup>18</sup>.

Table 7: Noticeable food shortage years/season

Study Area	Food Shortage Period	Eating Time/Day	Average Family Size
Case study 1	March, April, May	3	4
Case study 2	March, April, May	3	4-5
Case study 3	September, October (Rainy season)	3 (2)	4

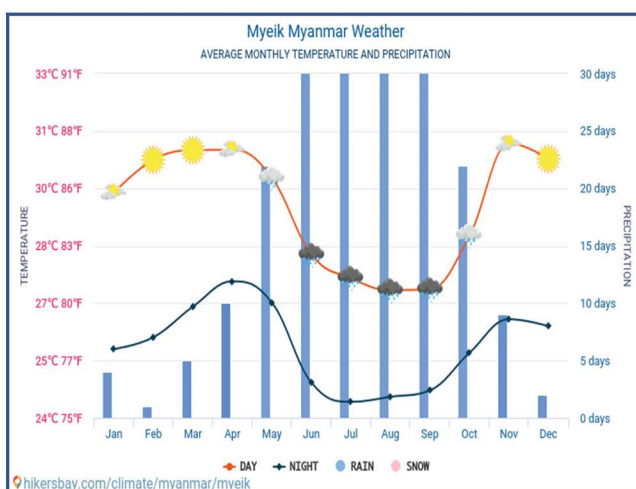


Figure 7. Climatogram of Myeik town

In contrast to the Nankone (CS1) and Kyaukkulay (CS2), food shortage months of the Kade Katut (CS3) occur during the rainy season of September and October. Since the Kade Katut (CS3) village is situated in the coastal areas with very high rainfall, people cannot afford to produce sufficiently. The village suffers food shortage in the late rainy season. Continuous downpour causes transportation cut-off and food inaccessibility from outside. Though the villagers could stand the first four months of the rainy season, they usually suffer food shortages in the last part of the month. Climatogram<sup>19</sup> of the nearest town, Myeik, is given in the picture right. It is very similar to the climate condition of Kyunsu township.

<sup>13</sup>[http://themimu.info/sites/themimu.info/files/documents/TspProfiles\\_GAD\\_Pindaya\\_2019\\_MMR.pdf](http://themimu.info/sites/themimu.info/files/documents/TspProfiles_GAD_Pindaya_2019_MMR.pdf)

<sup>14</sup>[http://themimu.info/sites/themimu.info/files/documents/TspProfiles\\_GAD\\_Ywangan\\_2019\\_MMR.pdf](http://themimu.info/sites/themimu.info/files/documents/TspProfiles_GAD_Ywangan_2019_MMR.pdf)

<sup>17</sup>[http://themimu.info/sites/themimu.info/files/documents/TspProfiles\\_GAD\\_Kyunsu\\_2019\\_MMR.pdf](http://themimu.info/sites/themimu.info/files/documents/TspProfiles_GAD_Kyunsu_2019_MMR.pdf)

<sup>18</sup><https://archive.unu.edu/unupress/unupbooks/uu22we/uu22we0a.htm>

<sup>19</sup> <http://hikersbay.com/climate/myanmar/myeik?lang=en>

## 5.2.2.2 Noticeable food shortage years/season

The crop planting activities need to consider pre-planting operations, planting operations, and post-planting operations. The case study applied DOP's population census and UNFPA's definition of youth as those between 15 and 24 years.

### Different youth definitions in Myanmar

- ✓ Young people include adolescents (aged 10-19) and youth (aged 15-24)<sup>20</sup>
- ✓ The 2014 Myanmar Population and Housing Census enumerated 14.4 million children aged 0 to 14 years (29 per cent of the total population) and 9 million youth aged 15 to 24 years (18 per cent of the total population). The total population of children and youth combined was recorded at 23.4 million persons or 46.5 per cent of the total 50.3 million people enumerated in the 2014 Census<sup>21</sup>
- ✓ The Child Right Law (2019) defines youth as those between 16-18 years. However, no definition of youth is applied consistently.

### Pre-planting operation

There are farming activities before planting is done. These activities are carried out to prepare and make the soil conducive for planting. Pre-planting operations for shifting cultivation (Taungya) generally include selecting the site, surveying the soil and land measurement, clearing, stumping, burning, and reburning unburnt materials. For regular farm, activities include field plotting or farm layout, tilling or ridging, ploughing, harrowing, and nursery practices.

### Planting Operations

Planting operations consist of (1) seed treatment, (2) determination of planting distance/spacing, and (3) determination of seed rate, planting date, planting depth, and methods of planting.

### Post planting operations

These are the operations carried out after planting. They include thinning, supplying, mulching, manure/ fertilizer application, weeding, control of pests and diseases, harvesting, processing, storing, and marketing.

The results of all FGDs revealed that women's involvement and workforces are higher than that of men on average in all activities identified in the three case studies. In terms of percentage, 55.4% are women and 44.6% are men. When the roles of women are examined, the results show a similar trend in the work ratio of man and woman with 50:50 in Nankone (CS1), 35.3% and 64.7% in Kyaukkulay (CS2) and 45.0% and 55.0% in Kade Katut (CS3) respectively as shown in Table 8.

<sup>20</sup> <https://myanmar.unfpa.org/en/node/15283>

<sup>21</sup> Department of Population, Ministry of Labour, Immigration and Population With technical assistance from UNFPA (2014)





Activities	Adult Male			Adult Female			Young Male			Young Female			
	Case Study			Case Study			Case Study			Case Study			
	1	2	3	1	2	3	1	2	3	1	2	3	
Planting crops	M M	M W	M M	W	M W	W	M		M	W		W	M = 8 W = 6
Gathering/Harvesting of food For Kade Katut (CS3) Rubber tapping, Collection of betel nuts, Fishing	M M	M	M M	W	W	W	M M		M	W			M = 8 W = 4
Taking care of the animals	M M	M		W	W		M	M		W			M = 5 W = 3
Going to the market to buy food	M			W W	W W	W W	M			W	W	W	M = 2 W = 9
Preparing and cooking food				W W	W W	W W				W	W	W	M = 0 W = 9
Fuelwood collection	M	M	M M	W	W	W	M		M	W		W	M = 6 W = 5
Overall work force ratio of man and women									M = 29 (44.6%), W = 36 (55.4%)				

Case study 1, Nankone Village, Pindaya Township, Shan State					
Activities	Adult Male	Adult Female	Young Male	Young Female	Total
Planting crops	MM	W	M	W	M = 3 W = 2
Gathering/Harvesting of food	MM	W	MM	W	M = 4 W = 2
Taking care of the animals	MM	W	M	W	M = 3 W = 2
Going to the market to buy food	M	WW	M	W	M = 2 W = 3
Preparing and cooking food		WW		W	M = 0 W = 3
Fuelwood collection	M	W	M	W	M = 2 W = 2
Overall work force ratio of man and women			M = 14 (50.0%), W = 14 (50.0%)		

Table 8a: Overall workforce ratio of man and women in Case study 1, Nankone Village

In Nankone village, the involvement of family members in the activities is more or less equal as compared to the rest, except for cooking food which women in Myanmar usually do.

Table 8b: Overall workforce ratio of man and women in Case study 2, Kyaukkulay Village

Case study 2, Kyaukkulay Village, Ywangan Township, Shan State					
Activities	Adult Male	Adult Female	Young Male	Young Female	Total
Planting crops	MW	MW			M = 2 W = 2
Gathering/Harvesting of food	M	W			M = 1 W = 1
Taking care of the animals	M	W	M		M = 2 W = 1
Going to the market to buy food		WW		W	M = 0 W = 3
Preparing and cooking food		WW		W	M = 0 W = 3
Fuelwood collection	M	W			M = 1 W = 1
Overall work force ratio of man and women			M = 6 (35.3%), W = 11 (64.7%)		

Youth's involved in agricultural production remains unsatisfactory. However, it noteworthy that the FGD results were obtained through the active participation of youths in the Kyaukkulay (CS2). Youth's interests in CT recognition are critical as they are the successors. The youth expressed disappointment and frustration over the continuation of agricultural activities in their customary lands from their ancestors due to lack of recognition of customary tenure, complicated departmental rules and procedures for the application of official land use certificate (LUC-Form 7) to the government, crop failure, and brutal nature of agricultural works.

According to the results, women are significantly involved in the informal works of a family business and in farming activities. Traditionally, going to the market to buy food, washing, preparing and cooking food, and child care are regular activities for women. The results reveal that 90% of women's work forces are concentrated in these activities and 10% are men. But women are also contributing to hard work such as planting crops, gathering/harvesting of foods, rubber tapping, collecting betel nuts and fuelwood, fishing, and taking care of the animals. Overall results of three studies reveal that 40% of the women workforce works in these activities.





Figure 7: Youth participating in the FGD of Kyaukkulay Village

Myanmar's farming systems are well diversified. Agricultural productivity is low. Farm profits in Myanmar are among the lowest in Asia. World Bank and Bordey et al. (2014) pointed out that farm profits in Myanmar are among the lowest in Asia. This is a direct result of low productivity of land and labor. In 2013 to 2014, the net profit from producing monsoon paddy averaged \$114/hectare. This is ten times smaller than those in China, for example. A similar picture arises from producing other crops. According to the study, farm profits, in general, are not sufficient to raise households' per capita income above the regional rural poverty line. This indicates that the agriculture sector's potential has not yet been realized when it comes to poverty reduction. Myanmar has the lowest profits from rice production, as shown in the picture below<sup>22</sup>.

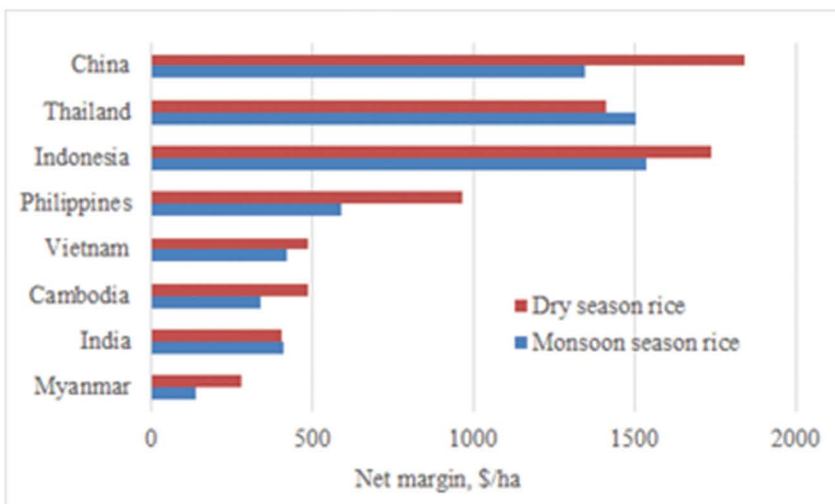


Figure 8: Comparison of the profit of rice production in some countries in ASIA (Source: World Bank, and Bordey et al. 2014)

<sup>22</sup> <https://blogs.worldbank.org/eastasiapacific/unleashing-myanmar-agricultural-potential>



Table 8c: Overall workforce ratio of man and women in Case study 3, Kade-katut Village

Case study 3, Kade Katut Village, Kyunsu Township, Tanintharyi					
Activities	Adult Male	Adult Female	Young Male	Young Female	Total
Planting crops	MM	W	M	W	M = 3 W = 2
Gathering/Harvesting of food	MM	W	M		M = 3 W = 1
Taking care of the animals					M = 0 W = 0
Going to the market to buy food		WW		W	M = 0 W = 3
Preparing and cooking food		WW		W	M = 0 W = 3
Fuelwood collection	MM	W	M	W	M = 3 W = 2
Overall work force ratio of man and women			M = 9 (45.0%), W = 11 (55.0%)		

In Kade Katut (CS3), the overall workforce ratio of men to women is 45.0% and 55.0%. Though both adult and young males are only working in hard work such as planting crops, rubber tapping, collection of betel nuts, and fuelwood collection, women of both adult and young ones are involved in all activities as shown in the table above. More than that, women are taking 100% responsibility of going to the market to buy food and prepare and cook food for the family. Women contribute to the household income while taking care of household business, which is regarded as unpaid jobs. They are faced with the “double labor burden” where they take on two jobs, one outside of their home and the other within.

In all case study villages, women take up nearly 50% of the total population. It is critical to conduct a capacity need assessment for women to improve the livelihood and food security of the respective local communities. Women have limited access to education and jobs, which leave them poorly informed and lagging behind in skills. It is also prioritized to empower and build the capacity of economically active poor women and youth by providing them with training in business and management skills and adequate financial support .

Involvement of youth in the activities showed relatively low. It requires investigating the root causes of low involvement. Raising awareness of the customary tenure system and its related laws at the regional level to youths is also crucial to protect and defend their lands from dispossession, land grabs, acquisitions, appropriation, and arbitrary land confiscation. If youth don't have the right capacity to find good jobs and to address the land issues properly, their assets (lands) might gradually be stripped off under ambiguous legal framework for lands and lack of recognition on the CT.



## Women and youth participation in overall workforce

To run daily household activities smoothly, women and youth participation are also pivotal according to the finding of the overall workforce ratio as shown in the table below.

Table 9: Overall work force ratio of man and women in all case study areas

Overall work force ratio of man and women in the case study areas													TOTAL
Activities	Case study 1				Case study 2				Case study 3				
	Adult Male	Adult Female	Young Male	Young Female	Adult Male	Adult Female	Young Male	Young Female	Adult Female	Adult Female	Young Male	Young Female	
Planting crops	MM	W	M	W	MW	MW			MM	W	M	W	M = 8 W = 6
Gathering/Harvesting of food	MM	W	MM	W	M	W			MM	W	M		M = 8 W = 4
Taking care of the animals	MM	W	M	W	M	W	M						M = 5 W = 3
Going to the market to buy food	M	WW	M	W		WW		W		WW		W	M = 2 W = 9
Preparing and cooking food		WW		W		WW		W		WW		W	M = 0 W = 9
Fuelwood collection	M	W	M	W	M	W			MM	W	M	W	M = 6 W = 5
Overall workforce ratio of man and women					M = 29 (45.0%), W = 36 (55.0%)								
Women and youth participation ration					M = 19 (29%), Women & youth = 46 (71%)								

Although most of the household activities contributed by the women and youth are unpaid works, it is found that a large proportion of rural adult and young women (43%) are employed in agriculture either in household agricultural activities or as agricultural wage workers as described in Table 9. Participation of youth in both sexes in agricultural activities is low at 29%. When considering agricultural activities alone, adult men only represent 43% while women and youth make up 57%. However, women's and youth's roles in agriculture may vary across contexts and over time throughout the country. So, for agricultural policies or interventions to be effective, both men and women and youths will need to be consulted and taken into account. The results from the case study suggest that including men, women, and youth equally in agricultural projects and policy making is critical to advancing equity and achieving development goals.

### 5.2.3 Decision-making and governance structures

Decision-making and governance structures on land issues are combined in all CS areas. It means decisions come from the village administrators upon the approval of village elders.



## 5.2 Community Case Studies

Livelihood refers to their "means of securing life's basic necessities (food, water, shelter and clothing)". Livelihood is defined as a set of activities essential to everyday life conducted over one's life span. Such activities could include securing water, food, fodder, medicine, shelter, and clothing. An individual's livelihood involves the capacity to acquire the necessities mentioned above to satisfy their basic needs. The activities are usually carried out repeatedly and sustainably and with dignity. For instance, a fisherman's livelihood depends on the availability and accessibility of fish<sup>23</sup>. It is also defined as (the way someone earns) the money people need to pay for food, a place to live, clothing, etc.<sup>24</sup>

Given the definition of livelihood, local communities living in the customary lands in their respective areas are under unsecure livelihood and food security conditions. It is more severe in the Kade Katut (CS3) as all of their lands are now under the administration of the Forest Department as protected public forest (PPF). They could turn into landless families at any time. In the same way, unregistered CT lands of Nankone (CS1) and Kyaukkulay (CS2) are also under the threats of land acquisition, land confiscation, and land grab.

Community land assets are stripped off extensively in the Kyaukkulay (CS2) Nankone (CS1). This is also similar to Pindaya township but not as big as the previous locales, as per personal communication with FGD facilitator, Mr. Khin Maung Oo, chairman of Pwe Hla Environment Conservation and Development Organization. This is due to the intent of land buying among wealthy persons as forms of investments. While buying the lands, they are focusing on unregistered ethnic customary lands as land registrations can be easily done at the government department for them. Similar cases have already happened in the northern Shan State. Corruption, lack of political representation, and the weak rule of law have been key facilitators of land grabbing. It is easier for foreign investors, state-owned enterprises, and other actors to buy large swatches of land in poorer countries if they are dealing with weak and corrupt, autocratic governments (Danny Marks et. al, 2015) . Danny Marks et al. (2015)<sup>25</sup> stated that creating free land markets and converting collective and customary land rights into formal, individual titles have also played a large role fueling global land grabbing.

Woods (2019)<sup>26</sup> already stated that the limited research available for Myanmar indicates that these smaller-scale dynamics are severe (Byerlee et. al. 2014, MSU and MDRI 2013, World Bank 2014) and expected to worsen as the country's agricultural sector continues to commercialize.

<sup>23</sup><https://en.wikipedia.org/wiki/Livelihood>

<sup>24</sup><https://dictionary.cambridge.org/dictionary/english/livelihood>

<sup>25</sup>Danny Marks et. al, 2015: Land Grabbing and Impacts to Small Scale Farmers in Southeast Asia Sub-Region

<sup>26</sup> Kevin M. Woods, 2019: Smaller-scale land grabs and accumulation from below: Violence, coercion and consent in spatially uneven agrarian change in Shan State, Myanmar





### 5.2.3 Decision-making and governance structures

The major livelihood source of the studied villages is agriculture or farming, followed by livestock breeding in the Nankone (CS1) and Kyaukkulay (CS2) and fishery in the Kade Katut (CS3). Therefore, it is evident that land is a necessity. In Nankone (CS1) and Kyaukkulay (CS2), major agricultural crops include rice, potato, maize, pulses and beans, sesame, wheat, vegetable, coffee, avocado, rubber, and betel nut as shown in the Table 9. According to FGD facilitators, some farmers have land-use certificate (LUC – Form 7) for some parts of their owned lands. But some do not have any certifications yet in the Nankone (CS1) and Kyaukkulay (CS2). For Kade Katut (CS3), there is no way to get LUC for the farmers since their lands are already classified as protected public forest (PPF). It is observed that farmers in all CS areas expect to receive LUC from the government for the CT since there is no legal framework for CT recognition. LUC is very important for their livelihoods and food security because it will allow them the legitimacy to use their land as collateral to access credit, to sell or transfer land, or conduct other land related transactions.

Table 9a: Source of Livelihoods, Domain aspects and its contribution to total household income and food security and primarily responsible person

Source of Livelihoods and Income (10.1)	Domain aspects (10.2)			Ranking of activities based on their contribution to total household income and food security (from 1 to 5, with 1 being the highest) (10.3)			Which family members are primarily responsible for these activities? (10.4)		
	CS1	CS2	CS3	CS1	CS2	CS3	CS1	CS2	CS3
Agriculture	L	L	L	1	1	1	P+C	P	F
Livestock breeding	L	L		3	3		P+C	P+C	
Fishery									F
Odd job labor	IK	IK	IK	4	4	4			

**P = Parent, C = Children, F = Father**

**L = Locale (L) of the ancestral domain/areas covered by CT**

**IK = Use of local or indigenous knowledge and practices (IK) and/or through**

**R = Using the resources from these areas (for instance, sale of medicinal herbs from the forest in ancestral domain, or the manufacture and sale of handicrafts using materials from the same).**

Table 10: Source of Livelihoods and its corresponding income (minimum and maximum)

Source of Livelihoods and Income (10.1)	Domain aspects (10.2)			Ranking of activities based on their contribution to total household income and food security (from 1 to 5, with 1 being the highest) (10.3)			Which family members are primarily responsible for these activities? (10.4)		
	CS1	CS2	CS3	CS1	CS2	CS3	CS1	CS2	CS3
Agriculture	L	L	L	1	1	1	P+C	P	F
Livestock breeding	L	L		3	3		P+C	P+C	
Fishery									F
Odd job labor	IK	IK	IK	4	4	4			

Sources of livelihoods and the farmers' corresponding family estimated income in the respective areas are given in Table 10. But to calculate the average monthly income of a household, it is very risky to apply this data. These data represent only the average monthly income for each activity in the respective areas. Not all household activities are mentioned.

The amount of land allocated per family and the type of economic activity per landholding are given in Table 11. In Shan State, in Nankone (CS1) and Kyaukkulay (CS2), no more communal lands exist. The remaining CTs being practiced include traditional inheritance practices. In other words, CT lands are privately owned. These two villages already received Community Forestry Certificate (CFC) from the Forest Department to protect some portions of their customary forests from land acquisition or confiscation.

Sadly, local communities in Kade katut lost their land assets due to the Forest Department's expansion of permanent forest estates in accord with the Forest Policy (1995) and its policy measures (1996). As per personal communication with the FGD facilitator Mr. Myo Oo, Chairman of Green Network, MERN's member organization based in Kyunsu township, there were 26 villages affected by the Kadan PPF constitution. He added that through the support of CSOs of the Tanintharyi Region, a regional parliament representative, communities' grievances and complaints were submitted to the Regional Hluttaw (Parliament) for restitution but failed. The then regional forestry minister rejected the proposal.



After including all CTs in the Kadan PPF by the FD, all residential areas falling in the PPF were excluded. There have been clear instructions regarding the constitution of reserved and protected public forests in the FD's Forest Rules (1995) and SOPs. Step-by-step procedures for the constitution is still coherent with today's FPIC practices. But the FD failed to practice its own rules and procedures. FPIC quickly delineated PPF boundary line on the google map. At present, local people can access their rubber plantation and betel nut gardens existing in the PPF as the FD officials are still disregarding the activities being done by the local people in the PPF. No notice signboards are set up in the PPF though these activities are not in line with the Forest Law, Rules and departmental instructions.

Table 11: Size of land allocated per family and type of economic activity

Case Study	Size of land allocated per family (10.7)	Type of economic activity per landholding (10.8)
1 (Nankone, Shan State)	Total = 5 – 6 ac. (2.02 - 2.43) ha LUC = 3 – 4 ac (1.22 – 1.62) ha	Rice, Potato, Vegetable, Beans and pulses
2 (Kyaukkulay, Shan State)	Total = 10.0 – 15 ac (4.05-6.07) ha LUC = 4 – 5 ac (1.62 – 2.02) ha	Rice, Potato, Vegetable
3 (Kade katut, Tanintharyi Region)	Total = 5 – 7 ac. (2.02 - 2.84) ha <b>No LUC (Form 7) is allowed within PPF</b>	Rubber, Betel nut

Within Shan State, rice is the main crop grown for household use. During the eight to nine months of the wet monsoon with rotations, double cropping is practiced extensively in southern Shan State, where rice is often followed by potato, tomato or chickpea in flat areas. Different rotations are seen in sloping hill areas<sup>27</sup>. Table 12 shows that communities in the Nankone (C.S1) and Kyaukkulay (CS2) of Shan State (South) are trying to get formal LUCs that are transferable, mortgageable, and heritable. The average land size owned by individual households seems to be relatively small to provide sufficient food from their farms. It can be termed “subsistence farming” (for some farmers, maybe semi-subsistence farming). In Nankone (CS1) and Kyaukkulay (CS2), lands of formal LUCs per household in average is found to be lower than the country’s average, which is about 2.5 ha for an average farm holder. It could lead to detrimental effects on the farmer in terms of social, environmental, and economic aspects. NAPA (2016) stated:

In Myanmar, an average farm holder has about **2.5 ha of land**. This can generate only about half the minimum income required for the average farm household (of six persons) to lead a life of sufficiency, if current levels of farm productivity and price structures remain constant.

<sup>27</sup>Baver J., Jonveaux B., Ju R., Kitamura K., Sharma P., Wade L., Yasui S. (2013), Securing Livelihoods and Land Tenure in Rural Myanmar: UN-Habitat and Columbia University, School of International and Public Affairs.





Such farmers have little or no surplus for investment and input purchase. The increasing decline of farm sizes also leads to a reduction in fallowing, or shortening of fallow cycles, and rotation. As a result, soil quality and fertility in some highland areas is declining. Many consider the average farm size too small to allow sustainable intensification of smallholder agriculture. The probability of adopting fertilizer and better-quality seeds decreases with declines in farm size. Households with smaller farm sizes have lower cash income, less access to agricultural inputs and credit, reduced ability to deal with drought, and less profitable technologies given the higher transaction costs of acquisition and application of fertilizer per unit of operated land<sup>28</sup>.

Farmers in the study areas are experiencing all of the difficulties and constraints stated above. When looking into their expenditures against items, purchasing food is highest in their expenses with 40%, 54% and 77% in the Nankone (CS1), Kyaukkulay (CS2) and Kade Katut (CS3), respectively.

Table 12: Monthly average income and expenditures

Items of expenditure	Share in monthly income, in percent (to be computed by the researcher)			Who makes the decision about the management of the funds for this expense item?		
	CS1	CS2	CS3	CS1	CS2	CS3
Food	40%	54%	77%	MW	MW	M
Clothes	10%	6%	3%	MW	MW	M
Education	10%	9%	7%	MW	MW	M
Medicine	10%	7%	5%	MW	MW	MW
Leisure Activities	5%	5%	1%		MW	M
Capital for Business	20%	15%	4%	MW	MW	MW
Other Investments - house, vehicle, etc.	5%	4%	3%	MW	MW	MW

The results on the expenditures are consistent with the data described in Table 2 of food security status since local communities of Nankone (CS1) and Kyaukkulay (CS2) are getting food from both their farms and markets, while food in the Kade Katut (CS3) is sourced from the market. They produce rubber and betel nut for their family income and buy food from the market. This is why 77% of income is concentrated in food. The report of Kyunsu township General Administration Department GAD (2019)<sup>29</sup> stated that rice production in the township only covered 35.56% of the total need.

<sup>28</sup> GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR (2016): National Action Plan for Agriculture (NAPA), Working Paper 10: Land Tenure and Administration

<sup>29</sup> TspProfiles\_GAD\_Kyunsu\_2019\_MMR: <https://themimu.info/node/87762>

The results on the expenditures are consistent with the data described in Table 2 of food security status since local communities of Nankone (CS1) and Kyaukkulay (CS2) are getting food from both their farms and markets, while food in the Kade Katut (CS3) is sourced from the market. They produce rubber and betel nut for their family income and buy food from the market. This is why 77% of income is concentrated in food. The report of Kyunsu township General Administration Department GAD (2019)<sup>29</sup> stated that rice production in the township only covered 35.56% of the total need.

It is also indicated that Kade Katut (CS3) has the most severe case of food insecurity and hardships in livelihood conditions as compared to that of Nankone (CS1) and Kyaukkulay (CS2). KAP survey is required to conduct in advance there, and tailored training should be provided. As mentioned before, the community in Kade-kadut is not used to livestock breeding and backyard farming in their compounds. KAP survey results identified the needed behavioral changes among community members for the purposes of livelihoods and food security.

For the Nankone (CS1) and Kyaukkulay (CS2), these are the areas where land administration is in a mixed structure of the CTs and formally registered lands. They have no communal lands but private properties inherited from their ancestors. Therefore, it is clear that land possession of individual households will decrease in time. Consequently, agricultural production per household will also decrease unless they can adapt to changing environments and apply modern agricultural practices. For that, they require access to Myanmar Agricultural Development Bank (MADB) to procure improved seeds, labor, and fertilizers as necessary. As long as the government does not recognize CT, they cannot access credit or agricultural loans of the government. This is the main reason CT practitioners register their lands with the government. Without credit, smallholders cannot make necessary investments to increase the productivity of their land or business.

For these two villages, and almost all villages in Pindaya and Ywangan townships, there is an urgent need to conduct economic intervention for livelihood improvement and food security through agricultural extension, proper sustainable agricultural practices, and subsistence livestock breeding techniques.

Evidences of success are necessary among smallholder farms to avail local farmers' active participation and catch more attention from the potential farmers. Excellent agroforestry model and agrosilvopastoral or polycultural models well-fitted to a particular site or village are also needed. Kyunsu township (Kade Katut (CS3) area) is critical to redirect current insufficient livelihood direction to the secured ones. For that, it is required to establish demonstration plots to catch the eyes of the local community.





For these two villages, and almost all villages in Pindaya and Ywangan townships, there is an urgent need to conduct economic intervention for livelihood improvement and food security through agricultural extension, proper sustainable agricultural practices, and subsistence livestock breeding techniques.

Evidences of success are necessary among smallholder farms to avail local farmers' active participation and catch more attention from the potential farmers. Excellent agroforestry model and agrosilvopastoral or polycultural models well-fitted to a particular site or village are also needed. Kyunsu township (Kade Katut (CS3) area) is critical to redirect current insufficient livelihood direction to the secured ones. For that, it is required to establish demonstration plots to catch the eyes of the local community.

For livelihood and food security, it does require to create enabling environment by the government in the following areas:

- 1) *Information access to remedy knowledge gaps and inform citizenry;*
- 2) *Economic interventions to alleviate livelihood security issues that can force farmers off their land; and*
- 3) *Institutional development and capacity building to ensure effective government implementation and address mistrust between government ministries and farmers.*

The respondents in all case study areas confirmed strong links between CT norms and livelihoods and food security. In Nankone (CS1) & Kyaukkulay (CS2), peoples are deeply concerned about losing their lands with time. Their concerns are not only for livelihood and food security but also for erosion of CTS leading to evaporation. UN-HABITAT (2013)<sup>30</sup> stated the attitude of the farmers of Shan State as follows:

*“Despite migration and land pressure placing strains on community cohesion, community ties appear strong. This appears to be the case given that many farmers still strongly valued their link to their land and its traditional symbolism as a conduit of their heritage. Land is also viewed as important to preserving community structure. This relevance of tradition is evident in the fact that farmers, even after receiving offers to sell, largely rejected the idea of selling their land. All farmer groups said they would prefer to keep their land to farm and pass to their children, specifically citing reasons like attachment to the community and the importance of land inherited from ancestors.”*

<sup>30</sup> Bayer J., Jonveaux B., Ju R., Kitamura K., Sharma P., Wade L., Yasui S. (2013), Securing Livelihoods and Land Tenure in Rural Myanmar: UN-Habitat and Columbia University, School of International and Public Affairs.





Respondents of Nankone (CS1) & Kyaukkulay (CS2) realize that productions of both customary tenure and registered lands cannot provide sufficient food for them for the whole year as they buy their staple foods from the markets though their highest income is coming from farming/agricultural sectors. The question is what will happen to their livelihoods, and food security with less land holds holds. One critical issue of landloss is alienation. This refers to the point of losing their customary lands due to their customary norms. Poorer farmers in the area are losing more customary lands.

For the Kade Katut (CS3) including others villages in the Kadan island, it is clear that “Land is Life for them.” If their lands within the PPF are not allowed to be accessed by the FD one day, that day will be catastrophic. They have limited mobility given that they reside within an island area encircled by water. To other islands or somewhere else in Myanmar, it is sure that human settlements and land ownerships are already there. Chances for them to work in the PPF are bleak due to weak law enforcement and law rules in Myanmar.

### 5.3.2.1 Reflections of FGDs on the links between CT, livelihood and food security

All of the communities that participated in the FGD recognized the strong links between customary tenure, livelihood, and food security despite the geographical differences between upper and lower Myanmar. Agriculture is the backbone of the livelihood of all case study areas. Consequently, local communities have a strong desire to recognize their lands by the government. In other words, the land is a big part of their lives, food supply, and their hopes. Difference between upper and lower Myanmar, i.e., between CS1&CS2 and CS3 is land insecurity due to land grabbing by the wealthy men in the former and land confiscation by the Forest Department in the latter.

FGD results on the link between CT, livelihood and food security in the **Nankone (CS1)** are:

- ✓ Recognition on CT is critical for land security. If it is not feasible, issues of land use certificate (Form 7) should be paid a special emphasis
- ✓ Form-7 can be used as collateral for agricultural loans from the MADB
- ✓ Some farmers have no LUC Form -7 land
- ✓ Agricultural farms is inconsistent and uncertain for livelihood and food security, so fish breeding is desirable
- ✓ Subsistence livestock rearing and home gardens are of great potential and good alternatives for the farmers to meet livelihood and food security objectives



FGD results on the link between CT, livelihood and food security in the **Kyaukkulay (CS2)** are:

- ✓ Farmlands, fallows, forest lands are vulnerable to land acquisition and confiscation due to lack of CT recognition
- ✓ Fluctuation of the product price and speculation
- ✓ Price of agricultural inputs are getting higher
- ✓ LUC (Form – 7) should be issued to every farmer
- ✓ Necessary measures for access to agricultural and livestock breeding techniques and access to government agricultural loans

FGD results on the link between CT, livelihood and food security in the **Kade Katut (CS3)** are:

- ✓ Official landuse right for farms, gardens and plantations
- ✓ Subsistence livestock breeding to be introduced
- ✓ Techniques for mix planting of annual, biennial and perennial crops to be provided
- ✓ Feeling unhappy as existing landuse rights can be revoked at any time by the FD
- ✓ Market access to be created.

In general, all FGD results reveal that local communities want to receive LUC Form-7 because of investments in their farms. They all wish to initiate livestock breeding to save food expenses and earn more income. They all suffer land insecurity. It is also found that they are not sticking to customary land rights, flexible to adapt to existing formal conditions. It can be considered erosion in the customary land tenure system. Still, it would be a reasonable shift in livelihood and food security as only registered lands can access loans and other government subsidies for their farm investments.



# Recommendations

Based on the findings of three FGDs, the following points for action are highly recommended. However, Myanmar is currently facing a political turbulence followed by people resistance movements against the military junta. Recommendations can only be translated in action when the country enjoys peace and tranquility, and democratic federalism is properly practiced. Civil society groups would have a voice to advocate recognition of the customary tenure system in the country. All recommendations below are critical and cornerstone for the CTS and livelihood improvement of ethnic communities living in rural areas, particularly remote areas. Although customary tenure is widely practiced across the country, there are numerous legal challenges to recognizing customary resource rights. The National Land Use Policy (NLUP) supports recognizing customary tenure. Still, existing laws would have to be amended to be consistent with the policy, particularly the Farmland Law, the Vacant, Fallow, and Virgin Land Management Law, the Forest Law, the Land acquisition law<sup>31</sup>. It is also crucial to amend corresponding rules and departmental procedures and standing orders for consistency which are great hindrances and barriers for ethnic rural communities to recognize their customary lands.

- National Land Use Policy (2016) is pivotal for developing National Land Law. This National Land Use Policy aims to implement, manage and carry out land use and tenure rights in the country systematically and successfully, including both urban and rural areas, in accordance with the objectives of the Policy and shall be the guide for the development and enactment of a National Land Law, including harmonization and implementation of the existing laws related to land, and issues to be decided by all relevant departments and organizations relating to land use and tenure rights (NULP, 2016). There will be a lot of consultation processes to reach the enactment of National Land Law. For CT recognition, AFA should support Myanmar CSOs and NGOs technically and financially as well.
- Myanmar Forest Policy (1995) is outdated. Its policy target (1996) of 30% of the country's total land area as reserve forest and 5% under protected area system threatens remaining customary lands. Myanmar's Nationally Determined Contribution (NDC) target of 30% PFE and 10% Protected Area (PA) of the total land area is also a big threat to customary land. *To protect customary land tenure system and rights of ethnic local community, avoid land flicts, and build peace and prosperity, the government should prepare a new forest policy with multi-stakeholder participation.*

<sup>31</sup> Allaverdian, C., Fogerite, J. Scurrah N. and Si Thu Htike San (2017). Documenting Customary Tenure in Myanmar. A guidebook. MRLG guidebook #1. Vientiane & Yangon: Mekong Region Land Governance.





- Technical and financial assistance should be supportive of farmers to initiate new modernized agricultural practices such as good agricultural practices (GAP) and livestock breeding, fishery such as mud crab fattening, blood cockle, and black cockle breeding in mangrove-dominant areas
- Awareness on land related laws, particularly on newly enacted Land Acquisition, Resettlement and Rehabilitation Law (2019) should be raised in collaboration with CSOs and NGOs which are working in the land related field.
- Awareness raising on Climate Change and its impacts to local farmers, and providing drought tolerance varieties of staple crops to the areas like Nankone (CS1) and Kyaukkulay (CS2) to secure livelihood and food for the local community.
- Create market access for the farmers and find means for the CT farmers to access credits or agricultural loans by the government.
- Government should take measures on information access to remedy knowledge gaps and inform citizenry;
- Proper and well-organized economic interventions to alleviate livelihood security issues that can force farmers off their land; and
- Institutional development and capacity building to ensure effective government implementation and address mistrust between government ministries and farmers.

Mr. Ohn Lwin, one of the key informants, gave his view on the NULP (2016) that though it is quite comprehensive, it is also complicated in the other. NULP (2016) fails to provide clear guidance to formulate national land law, which will serve as an umbrella for the development of Region/State land law. It is now a question of how NULP provisions will be translated into the upcoming national land law.



## Conclusion

Under the current political and Covid-19 situation, Myanmar is not in the state to implement recognition processes on CTs. It demands policy reform and amendments to the Constitution (2008) through a series of public consultations. Meanwhile, customary lands are under serious threats of acquisitions and confiscation, as farmers face many constraints and barriers to survival. A quote from Roman philosopher Seneca states “Luck Is What Happens When Preparation Meets Opportunity,” which can be applicable in this situation. In Myanmar, many smallholders are trapped in semi-subsistence agriculture, disconnected from markets, and also face limitations in the arena of policy, technology and natural resource conservation. There will be a lot of public consultations for policy reform. After the policy reform and enactment of national land law, many opportunities will come to farmers. It is critical to build farmers’ capacity through the provision of technical trainings in their related fields. To advance from semi-subsistence agriculture to commercial one, what can be done today is “capacity building”. This is preparation for them to meet opportunities to improve their livelihood standards and food security.



## References

Allaverdian, C., Fogerite, J. Scurrah N. and Si Thu Htike San (2017). Documenting Customary Tenure in Myanmar. A guidebook. MRLG guidebook #1. Vientiane & Yangon: Mekong Region Land Governance.

Baver J., Jonveaux B., Ju R., Kitamura K., Sharma P., Wade L., Yasui S. (2013), *Securing Livelihoods and Land Tenure in Rural Myanmar*: UN-Habitat and Columbia University, School of International and Public Affairs.

Danny Marks et. al, 2015: *Land Grabbing and Impacts to Small Scale Farmers in Southeast Asia Sub-Region*

Erni, Christian (2021). *Persistence and Change in Customary Tenure Systems in Myanmar*. MRLG

FAO and MRLG. 2019. *Challenges and opportunities of recognizing and protecting customary tenure systems in Myanmar*. Bangkok, 12 pp. Licence: CC BY-NC-SA 3.0 IGO.

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, OFFICE OF EVALUATION, November 2016: *Case Study: Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) in Myanmar*

GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR (2016): *National Action Plan for Agriculture (NAPA), Working Paper 10: Land Tenure and Administration*

Guthe, E. (2018). *Burma Land Tenure Project final report*. Washington, DC: USAID Tenure and Global Climate Change Program.

<https://blogs.worldbank.org/eastasiapacific/unleashing-myanmar-agricultural-potential>

Kevin M. Woods, 2019: *Smaller-scale land grabs and accumulation from below: Violence, coercion and consent in spatially uneven agrarian change in Shan State, Myanmar*





Kyaw Tint, Oliver Springate-Baginski and Mehm Ko Ko Gyi (2011): Community Forestry in Myanmar: Progress & Potentials

MRLG and Land Portal (2021). Mekong Regional Land Forum 2021: Land tenure in Mekong forest landscapes: Advancing the recognition of customary rights and responsible investment practices. Summary Report. Vientiane: Mekong Region Land Governance.

National Land Use Policy (2016) [https://www.land-links.org/wp-content/uploads/2017/12/USAID\\_-Land\\_Tenure\\_LTP\\_Toolkit\\_2.6\\_Developing\\_the\\_NLUP-World-Bank-Paper.pdf](https://www.land-links.org/wp-content/uploads/2017/12/USAID_-Land_Tenure_LTP_Toolkit_2.6_Developing_the_NLUP-World-Bank-Paper.pdf)  
Oliver Springate-Baginski & Mi Kamoon (2021) Defending Shan State's customary tenure systems from below through collective action research, *The Journal of Peasant Studies*, 48:3, 541-559, DOI: 10.1080/03066150.2021.1887145

San Thein, Hlwan Moe, Diepart J.-C. and C. Allaverdian (2018). Large-Scale Land Acquisitions for Agricultural Development in Myanmar: A Review of Past and Current Processes. MRLG Thematic Study Series #9. Vientiane: MRLG.

The program was directed by the Communist Party's Resolution 30/NQ-TW issued on 12 March 2014 (Resolution 30), the National Assembly's Resolution 112/NQ-QH issued on 27 November 2015 (Resolution 112), and followed by the Government's Decree 118/2014/ND-CP issued on 17 December 2014 (Decree 118).

Thematic Study Series #11. Yangon: POINT, MRLG.





