



Our Customary Land Use Management System



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Kayah Earthrights Action Network

October 25, 2016

Organisational Executive Summary



Kayah Earthrights Action Network was founded on 15th January 2012 to initiate activities on human rights and environmental rights in Kayah State. Since its founding, Kayah Earthrights Action Network has worked to provide knowledge to local people about the environment, land rights and the impact of development projects. Currently, Kayah Earthrights Action Network is working in collaboration with other local community-based organisations and the region's indigenous people on the following four issues: land rights, mining rights, natural resource (forest) rights and the impacts of mega development projects. Kayah Earthrights Action Network is working on rights related to these four issues using the methods of education, documentation and advocacy.

Vision

For the local people in Kayah (Karenni) State to live with dignity, human rights and social justice in their natural environment.

Mission

Kayah Earthrights Action Network is a nonprofits organization supporting communities for human rights improvement, social justice, and sustainable environments through working on human rights and environmental issues. To achieve this, Kayah Earthrights Action Network empowers local communities to defend their rights, conducts documentation and fact finding on earth rights abuses, and advocates in collaboration with local communities for improving local people's access to rights.

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1 Smaller groups within villages and ethnic groups, typically comprising at least 5 households.

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- (b) Information Collected Concerning Farmland within Village Boundaries form
- (c) Village land ownership form

Acronyms

- 1. UNDRIP (United Nations Declaration on the Rights of Indigenous People)
- 2. ILO-C.169 (International Labour Organization Convention concerning Indigenous and Tribal Peoples)
- 3. VGGT (Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest)
- 4. Customary Land Use Management System
- 5. FPIC (Free, Prior and Informed Consent)

UNDRIP and ILO-C.169 are the main international mechanisms concerning indigenous peoples' ownership of their land, territories and natural resources. In 2007, most countries agreed to the UNDRIP in the United Nation's General Assembly. Myanmar has a responsibility to practice the UNDRIP as a member of the United Nations. The International Labour Organization approved ILO-C.169 at a meeting in 1989 and 22 countries agreed and signed. However, Myanmar did not sign and agree to implement ILO-C.169. The Food and Agriculture Organization's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest were approved in 2012 for each country to refer to these guidelines concerning food security.

Executive summary

“Our Customary Land Use Management Systems” report addresses the customary land use management system of indigenous people in Kayah (Karenni) State that they have been using since their ancestral period. It explains how these groups’ uses of land is interrelated with their culture, traditional customs, politics, socio-economic patterns, food sovereignty and environmental management. The research reveals the multiple ways in which these customary land use systems are under threat. By this report, we can know that customary land use management systems are important not only for Kayah (Karenni) State but for every ethnic group’s sustainability, each region’s development, peaceful democracy and the establishment of a federal state.

In the compilation of this report, Kayah Earthrights Action Network (KEAN) conducted research and documentation based on 52 villages within 15 village tracts from three townships in Kayah (Karenni) State. Throughout the research process, KEAN documented, with the collaboration of local indigenous people and discussions with target communities, indigenous people’s customary land use management systems and the threats and challenges facing them.

Despite changes in the political system, for many centuries indigenous people have practiced customs appropriate to their lives. Even though indigenous people still use and practice customary land use management systems appropriate to their lives, it can be seen that successive, oppressive dictators have used many methods to end indigenous people’s customary land use management systems by practices unbefitting of indigenous people’s lifestyles. In the past, their power was used to grab indigenous people’s land but later it can be seen that they used a new method. Significantly for indigenous people, in 2012 the government enacted new land laws and policies which can be seen as legalising confiscation of indigenous people’s land. These new laws and policies conceal themselves by masquerading as protections of indigenous people’s land but in reality these laws and policies do not provide indigenous people: enough protection for their land tenure security; enough mechanisms for indigenous people to easily understand the laws, policy and regulations; or enough human resources to implement the mechanisms. Moreover, it can be seen that these laws and policies are not appropriate with the customary land use management systems that indigenous people have been using for generations and are only leading indigenous people towards ending their customary land use management systems. Myanmar’s path to a market-based economy is leading towards more rights for indigenous people but on the other hand, it is fraught with threats.

The 2008 Constitution, the highest law of Myanmar, states that ‘the union is the ultimate owner of all lands, all natural resources above and below the ground, above and beneath the water, and in the atmosphere in the state’. In addition, the union government’s land laws and policies are too weak to protect indigenous people’s land tenure security and the signing and implementation of international treaties, agreements and conventions protecting indigenous people’s rights is too weak. Therefore, indigenous people are facing many threats to lose the land, forest and natural resources that they have maintained from generation to generation.

Although the customary land use management system of local indigenous people differs according to their ethnicity, tribe and region, they are still practicing it based on traditions and customs appropriate to their lives that have existed for generations. These customary land use management systems include the features of; classification of land, administration of land, defined ownership, dispute resolution, defined boundaries, defined fines and compensation, and defined rules and regulations. Although these above features are still practiced today, they are without formal documentation. Moreover, despite the government’s administrative mechanisms continuing to affect indigenous people’s regions, indigenous people continue to practice and develop the customary land use management system that they have used for generations.

Therefore, the government is neglecting and extinguishing the delicate nature of indigenous people and the customary land use management systems that have managed their; human rights; social justice; human dignity; mutual trust and respect; and customary decision making rights. This not only belittles the indigenous people but also inhibits the whole country's society, development, peace and environmental sustainability.

Therefore, this report advises protection of indigenous people's customary land use management systems not only by recognising their customary land use management systems but also by legally recognising their working lives and their land ownership to progress towards a better future society.

*"Customary land use management systems are
essential for every ethnic group's sustainability,
each region's development and the establishment of
a peaceful federal state. "*



Background Information

The customary land use management systems of indigenous people are not recognised and the land they own is grabbed by various methods. Therefore, the indigenous people of Kayah (Karenni) State lose the land that they have maintained and owned for generations and further they also face threats to the practices of their customary land use management systems. Kayah (Karenni) State is located in the east of Myanmar. Shan State is located to the north. Karen State is located to the north west. Mae Hong Son Province, Thailand is located to the east. 75% of the population in Kayah (Karenni) State live in rural areas with agriculture as their main livelihood activity. In the plains regions, agriculture is mainly implemented by irrigation. In the mountainous regions, their livelihood is mainly reliant on the rainfall.

Indigenous people have independently managed ownership of the land and natural resources passed down from their ancestors by using their own administrative rights in line with their customary land use management systems. By examining the existing dynamics of indigenous people's customary land use management systems and their accompanying practices, it can be shown that indigenous people's customary land use management systems are highly sophisticated. It further shows that customary land use management systems fit harmoniously with indigenous people's society and their beliefs, traditions, common understandings, human dignity, freedom of management and collective ownership. These customary land management systems show that indigenous people not only live in more peaceful political societies but also are able to protect their territory's natural resources for future generations through their systems.

On the other hand, indigenous people's customary land use management systems are facing threats such as a lack of recognition and the influence and colonization of other people. For reasons of national security and globalization, outside groups are suppressing indigenous people's politics, culture and economics, forcing them in to submission. Current law and policy designates indigenous peoples' land, that is maintained by customary practice, for use as; forest land, protected forest, agricultural land, government land, military land or for outside investment. In addition, these current laws, policies are centralised regulations and lead to the neglect of indigenous people's territorial and customary ownership as well as increased conflict within their regions. Therefore for indigenous people to have land tenure security and be able to progress towards a peaceful society, our objectives are:

“For the law to recognise the customary land use management systems collectively practiced by indigenous people for generations and provide protection that reflects these customary land use management systems, supports incidences of strong sustainable practices and creates special rights”



(1) What is the meaning of Customary Land Use Management system?

A customary land use management system means a regionally applicable, traditional knowledge system practiced by indigenous people over centuries based on independence, understanding, reciprocal recognition, respect and social justice. Indigenous people use a customary land use management system's knowledge to maintain their delicate environments and ecosystems leading to public benefits over individual private economic benefits. Until today, their land management is still practiced based on the customary land use management systems of their ancestors.

Indigenous people continue to practice these customary land use management systems used by their ancestors in spite of criticisms and misjudgements by those not accustomed with indigenous people's customary land use management systems who attest that indigenous people are unable to manage their own land, use outdated systems and are without the correct long-term documents. Despite customary land use management systems differing based on region and ethnicity, these systems are generally based on independent management, regional applicability and social justice.

(2) Our Customary Land Use Management systems

Since settling in Myanmar, indigenous people have managed their land and natural resources with customs in accordance with their lifestyle. In Kayah (Karenni) State, each ethnic group is still practicing the customary land use management system of their ancestors within their region. Indigenous people's customary land use management systems are harmonious with their lifestyle even though they differ according to ethnicity and region. By their customary land use management systems, indigenous people look after and defend their ownership of land and natural resources to be independent of outside influence. Within indigenous people's customary land use management systems, indigenous people manage all of the land collectively but ownership is concerned either with private persons, villages or ethnic groups.

Indigenous people's customary land use management systems include the following characteristics; land classification, land ownership rights, land use rights, rights of land users, rules regulating land users, land management, dispute resolution, defining compensation and fines (remedies), criminal punishments, inheritance distribution and boundary defining. Indigenous people implement their customary land use management systems on all of their land, independently managing their land based on tradition, culture and social justice. There is further information about how indigenous people in Kayah (Karenni) State use their customary land use management systems to manage their land and natural resources in the next sections.



2.1 Customary Land Classification

Indigenous people in Kayah (Karenni) state have classified their land appropriately with their region according to their customary land use management systems. Although there are regional differences in customs and traditions, generally the land classifications are as below:

- Agricultural land
- Religious land
- Sacred land
- Cemetery land
- pastoral land
- Woodland
- Protected forest
- Public or collective land
- Village land
- Tribe land
- Mining land (Limestone, sand etc)

2.1.1 *Agricultural land*

Agricultural land means paddy land, farmland, land used for shifting cultivation, gardens and orchards.

(a) *Paddy land*

Paddy land means land that is used mostly for planting rice. This land can also be used for planting other crops such as onions, garlic, beans and corn.

(b) *Farmland*

Farmland means various types of lowland or mountainous land used for planting and seasonally harvesting crops.

(c) *Land used for shifting cultivation*

Land used for shifting cultivation means various types of land that are used for planting seasonal crops by shifting cultivation, a land use system based on rotating the use and resting of land in accordance with the natural cycle.

(d) *Long-term plantation*

Long-term plantation means land where various types of trees are planted once for the long-term benefit of collecting fruit for many years.

(e) *Orchard*

Orchard means land used either for mono-crop cultivation or multi-crop cultivation where the crops can be regularly harvested until the end of their lifespan without the need to replant.

2.1.2 Religious Land

Religious land means the land that is preserved and valued for any of the indigenous people's beliefs. This can be either religious buildings or places for conducting religious ceremonies.

2.1.3 Sacred Land

Sacred land means types of land that, since the time of their ancestors, villagers have continued to preserve and value for religious, social, cultural and political importance. Within sacred land, there is merit land, oath giving land and protected heritage land.

(a) Merit land

Merit land means land that, according to tradition, is used for holding hunting festivals and giving merit to the land, forest and mountain nats before starting any work within the village. Kindness is devoted to the merit land to protect from various dangers, to avoid disasters and for the village's economic and social success.

(b) Oath giving land

Oath giving land means land within the village that is used by villagers either for giving oaths to follow customary rules and regulations or between husbands and wives

(c) Protected heritage land

Protected heritage land means land for buildings, stone pillars or forests related with the religion, culture, politics or society of their ancestral time that gives merit to future generations.

2.1.4 Cemetery land

Cemetery land means land allocated for burying dead people and burning the property that is with them when they die. Within cemetery land, there are further areas divided according to tradition.

(a) Common death burial land

Common death burial land means land allocated to bury children, youth and adults who die of common illnesses.

(b) Green death burial land

Green death burial land means land allocated to bury people who die because of some form of accident or suicide.

(c) Unborn baby burial land

Unborn baby burial land means land allocated for babies that pass away in the pre or post natal phases.

(d) Visitors Burial Land

Visitors burial land means land allocated for burying anyone from another region who dies for any reason.

(e) Tribe burial land

Tribe burial land means land allocated for burying members of a tribe that die for any reason.

2.1.5 Pastoral Land

pastoral land means land used for grazing animals such as cows and buffalo with or without designation.

2.1.6 Wood Land

Forest land means land including forest, mountains and trees that is protected within the village.

2.1.7 Protected Forest Land

Protected forest land means land that is protected and designated either for preserving water sources, valuable trees, medicinal plants or wild animals.

2.1.8 Public or Collective Land

Public or collective land means land that all of the village citizens collectively maintain and use. Public land does not only include one type of land. It can include land that is connected with forest and water resources, respectively.

2.1.9 Village Land

Village land means land where the villagers' houses and other buildings are located.

2.1.10 Tribe Owned Land

Tribe owned land means land within the village where the concerned tribe has absolute ownership of the land and authority over its management. Tribes do not only own the land, they also own forest and water resources.

2.1.11 Mining Land

Mining land means land classified to be used for mining within the village.

2.2 Customary Land Ownership

According to indigenous people's customary land use management systems, indigenous people have the right to own and freely manage the use of their land. Indigenous people have the right to own their land either privately, by tribe or by village. There is further information about how indigenous people's customary land ownership rights operate in the following sections.

(1) Private Land Ownership

Private land ownership means each person owns their land either through; inheritance, buying from their tribe or another tribe in the village; compensation; or the slashing out of clearances.

(2) Tribe Land Ownership

In Kayah (Karenni) State, indigenous people have different tribes even within their villages and these tribes can own land. Tribes can own land in other regions where their tribe resides, in addition to land within their village area. Tribes can own and classify their own land as the original owner or through acquiring or buying another tribe's land.

(3) Village Land Ownership

Each village of indigenous people own the designated land boundaries created at the founding of each of their villages. For these villages, the neighbouring villages preserve the recognition of the ancestral village land.

2.3 Customary Land Use Rights

According to the traditions and customs of their land use rights, every indigenous person in Kayah (Karenni) State has the right to freely manage and use their own land. The land owner does not need to make a request to any other people to use their land and has the right to freely manage their own land.

If someone wants to work on or use tribe owned land, they must request permission and give notice to the tribal head or the land manager. The tribal head or land manager must check carefully whether other people are using that land and whether there are any conflicts before granting permission to use the land. After permission is granted, the grantee can freely work on that tribe owned land. If some people from another tribe want to use a different tribe's land, they need to ask permission from the other tribe's leader. If the tribe's leader agrees, they must follow a timeframe as well as the other tribe's cultures and traditions. They must also adhere to the traditional rules defined by that group.

If someone wants to use the public land or village land, they must ask permission from the responsible person for the village's land management and the village leader. If they agree, then that person can use the land and implement their work according to the defined rules.

2.4 Customary Land Owner's Rights.

According to custom and tradition, each land owner has the right to freely manage the land that they possess or use for other purposes including but not limited to preserving, selling, adding to, leasing, resting (leaving vacant), bequeathing, exchanging or freely cultivating. Land owner's right to sell or add to the land freely is limited to when all parties are within their tribe or village. These rights afford each land owner the right to rest their land and the right to freely plant native trees on any land they own. If any person wants to use the land for another purpose, they must provide notice to either the village head or the tribal leader. The general classifications of the rights of customary land owners are listed below:

- Rights to Preserve/ Maintain
- Rights to Vacate | Rest
- Rights to Sell
- Rights to Bequest
- Rights to Other Methods
- Rights to Add
- Rights to Exchange
- Rights to Lease
- Rights to Cultivate Freely
- Rights to Manage Freely

After the land use requestor is granted permission to use the land by the land owner, the land use requestor can benefit from working on the land according to the land owner's agreement. However, the land use requestor does not have any ownership rights to that land and when the agreement with the land owner comes to an end they will no longer have rights to continue to work on that land. The land owner has the right to freely manage their land according to the above rights in line with the basic customary land use rules defined by the village.

2.5 Rules and Regulations Governing the Use and Ownership of Customary Farmland

Customary farmland owners and users must follow the rules and regulations recognised by the village. They are not allowed to sell, lease or exchange tribe farmland, village territory farmland or private farmland to outsiders. Both villagers and outsiders are also not allowed to trespass on land defined as either village common land or sacred land. Within the village land defined as protected forest areas, logging; cultivation; trespassing; and destruction of private agricultural gardens by people or animals is prohibited. According to customary and traditional rules, trespassing is prohibited within the defined village area. If for any reason a villager wants to move to another region, they must sell or give their land only to the tribe. The indigenous ethnic groups living within Kayah (Karenni) State agree not to disregard their customary land use management systems and respect and follow the rules and regulations recognised by the villagers and the committee, absolutely. Up to the present day, these rules have remained active. If someone breaks one of these defined rules, effective action will be taken based on those defined rules. In some villages, at the beginning of the year they review all of the rules for land and village matters then they analyse these rules at the end of the year. Although, there are minor differences in these rules according to region and tribe, some general features are listed below:

- Entering to work on prohibited areas within public land is not allowed.
- Entering to live as a trespasser on public land is not allowed.

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- Chopping firewood in forest defined as prohibited is not allowed
- Selling land to outsiders is not allowed.
- Within traditional sacred forest and mountainous areas, chopping firewood, hunting and living as a trespasser are not allowed.
- Within the water catchment area and depository, logging; chopping firewood; and cultivation are not allowed.
- Destruction of another person's cultivated garden's harvest by animals or people is not allowed.
- As a boundary trespasser, cultivating in forest owned by another tribe or paddy fields; staying in fields; or chopping firewood are not allowed.
- Provide the tax or fee defined with land or other social matters.

All of the villagers within the village must also follow a defined rule to help each other. If villagers do not abide or take absence from these rules, action can be taken. For example, if there are disputes between either individuals or tribes, they solve these disputes according to custom by eating earth, eating tree bark, or washing their face with water mixed with chilli. The local people respect and follow these rules and regulations and they continue to practice them to the present day.

2.6 Customary Land Use Management Groups

According to Kayah (Karenni) State's indigenous peoples' customary land use management systems, indigenous people manage their land through groups with the inclusion of the following people from their villages; relevant village leaders, village heads, village advisors and village elders. Each tribe should be allocated the choice of one person to be included in the group managing land. In some villages, indigenous people consider and choose a customary land use management group every five years. However, most villages do not choose regularly, they merely consult with each other when a land matter arises.

Villagers choose a special day that the village acknowledges for selecting the committee members and then they choose the people who will truly take responsibility for the benefit of the village by consensus. For each elected person, they must drink holy water and make a solemn oath to the grandparents of the village to take responsibility in good faith.

The members included in that land use management group check and enhance their own village's or tribe's definitions of land territory and define the limits of their boundaries, once every three or five years depending on tribe. The land management use system includes people from each tribe within the village so that every decision is accepted, followed and practiced.

2.7 Customary Land Dispute Resolution

If there is a land dispute among or within villages, village advisors; the land use management group; witnesses and the village governors will meet, consult and solve the dispute based on their customs and traditions. Each person related with the land dispute must work together to solve the dispute including witnesses to the dispute, village advisors, and village elders. When farmland disputes arise, for each tribe or ethnic group, the tribal head or village advisors will solve them in line with the village's customs and traditions.

When two sides to a dispute are not satisfied with the solution, the tribal head, village leader and customary land committee work together to provide solutions until both sides are satisfied. There are many methods to resolve the disputes including the examples of: eating earth, swearing, washing the parties' face with chillies, submerging in water with a stone or weight around the parties' necks, putting the parties' hands in either boiling oil or water, lighting a candle or cooking two spoonfuls of rice. To solve the dispute according to custom and tradition, both sides to the dispute need to follow the method that is chosen. Therefore, the problem or dispute that has emerged can even be solved satisfactorily for both sides at the village level.

2.8 Classifications of Customary Land Compensation and Remedies

According to custom, in the interest of the village's benefit, before any privately owned land, tribe owned land or public land is used, the related land owner must firstly be consulted. If the landowner agrees to the request for land use, then the two sides can consider and define appropriate compensation as value for the land. These include providing another kind of land, money, other property or animals such as buffalo or cows.

If any person has used land such as; tribal land; village land; prohibited land; or privately owned land without requesting a right of way, that person must return the land as well as wash and pay tribute to it according to custom and tradition. For the prior use of that land, they will need to pay a fine that can remedy the value of the land alongside the return of land. This can be either harvest, pigs, chickens, buffalo or cows.

If the village need to use land for the benefit of the village, then the village must provide the person that loses their land with replacement land and take responsibility to move their belongings. The fines trespassing workers and those who make illegal boundary changes must pay are defined according to custom and tradition.

2.9 Use of Customary Land

Indigenous peoples' customary land use management systems are in line with their traditions and region making them fit appropriately with indigenous peoples' uses of land for the purposes of cultivation and other work. According to indigenous peoples' customs and traditions, each land owner has the right to cultivate freely on their land and has the right to freely change between ordinary cultivation and cultivation of various other crops.

Besides their own land, on the village public land, villagers have the right to freely cultivate trees as they wish (Except hardwoods) by rotation. In some villages, the cultivator of hardwood trees on public land owns those trees, though the land is owned by the village. Some people are allowed the right to work on tribe owned land by leasehold. In the mountainous regions, on tribe owned land, there is a right to rotate work by shifting cultivation.

If tribes or individuals can show evidence that they own the land, then they have the right to freely cultivate, manage and use seasonal crops on that land. In addition to this, on the land that they primarily cultivate and own, they have the right to freely use it for living, constructing buildings or any other work that is without negative impacts to the village's traditions, environment or other villagers' work.

2.10 Customary Farmland Management

According to custom and tradition, landowners have the right to freely manage their land in accordance with their own wishes. Tribes have the right to freely cultivate their ancestral land and additionally to lease, sell, add to and bequest. Furthermore, each individual owner of ancestral land has the right to freely and independently govern and manage their customary paddy land and hillside farmland.

According to tradition, the village customary land use management group or committee, tribe head or village administrator together with the village advisors manage all of the defined public land, village land, woodland, protected forest land, cemetery land and sacred land within the village based on agreement. Within the village, for the management of building schools, sports fields, clinics, and other necessary buildings, the village customary land use management committee and tribal head consult with the respective land owner.

2.11 Crimes and Punishments Concerning Customary Land

Within the practices of customary land use management systems, to solve land disputes and conflict, there are defined crimes with punishments decided based on these crimes before any action is taken. According to custom and tradition, village advisors and customary land management right holders can take action when there is trespassing on defined places or prohibited places including for religious reasons in the village. Thus, if anyone arrives on, cultivates or harvests another person's land, they must provide an explanation to the land owner, elders or customary land rights holder.

After that, the village elders will call the trespasser and allow them to provide compensation equivalent to the value of the land case. If the land owner's trees, garden tools or other items on the land have been destroyed then the trespasser must also compensate equivalent to the value of this damage. If the perpetrator is well-known for causing crime, action can be taken against them in the village based on the crime by using methods such as warning, allowing to apologise, providing compensation, providing replacement land, fining or removing from the village. If the perpetrator

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does not follow the decision, the last step is for them to be taken out of the village or turned away from being a member of their tribe.

If there is a boundary dispute concerned with the land ownership of either individuals, tribes or villages within the respective boundaries, the boundaries must be investigated by the customary land use committee with the inclusion of either the village advisors, customary land management rights holders, village leaders (Current village administrator) or the two sides that should be involved. After the boundaries have been investigated, they must decide and take action on the matter.

2.12 Bequeathing Customary Land

Indigenous customary land use management systems provide different methods of bequeathing land depending on tribe and region. For the Kayan ethnic group's practices of bequeathing land, they give priority to sons without normally passing down to women. When bequeathing, usually the rice bank is given to the oldest son while the house and the farmland is usually given to the youngest son. For the women's inheritance, it is received as a result of entering into marriage with a man. Through the marriage, they will receive anything that is bequeathed to their husband. Although, in some tribes, sons and daughters have equal inheritance rights.

For families without sons, an adopted male child of a relative can receive the inheritance. With regards to the inheritance passed down by husbands and wives without sons or daughters, it will be managed by the male relatives. Despite these practices discriminating between men and women, they are still practiced today. Within some tribes, when women marry and move to their husband's home, they must also join as a member of his tribe. Furthermore in some tribes, married women can receive inheritance. These inheritance practices concerning land continue to be practiced until today and differ based on region and tribe.

2.13 Defining Customary Land Boundaries

Concerning the defining of territorial boundaries based on custom and tradition, indigenous people's ancestors implemented defined boundaries using methods such as planting trees, marking trees, piling stones, marking crags, using mountains and drawing maps within indigenous people's territorial boundaries. Further related to defining the boundaries, the boundaries are confirmed by reciprocal recognition between individuals, tribes and villages. Therefore, according to custom and tradition, to investigate boundary ownership, boundary marks must be enhanced and checked for whether or not there is trespassing. The practices for defining territory in customary land use management systems can be found below:

Defining Boundaries of Privately Owned Individual Land

The village advisors, elders, land use management right holders and neighbouring land owners will be called to confirm the defined territorial boundaries of privately owned individual land,

Defining Boundaries of Tribe Land

The relevant tribal heads, village leaders, village members that have expertise in customary knowledge, and land use management right holders should all be involved in defining the territorial boundaries of tribe land.

Defining Boundaries of Village Land

Either the relevant village head and surrounding village heads and leaders, or relevant tribal heads, or relevant administrative leaders are included in decision making process to confirm and define the territorial boundaries of village land.

နေ့စွဲ - ၁၃.၆.၂၀၁၆ ခုနှစ်




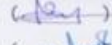

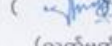





ဝါဘန်းဘလီနှင့်လိန်စုမန်ပယွန်းနယ်မြေနယ်နိမိတ်ဖွဲ့စည်းစာချုပ်

ရည်ညွှန်းချက် - * နောင်လာမည့်ပြဿနာကိုတာဝန်ယူဆောင်ရွက်ရန်အားဖြင့် မန်ပယွန်းနယ်
 မြေနယ်နိမိတ်ကိုဖွဲ့စည်းဆောင်ရွက်ပေးပါသည်။

ဆုံးဖြတ်ချက်(၁) - မန်ပယွန်းနယ်မြေကိုဝါဘန်းဘလီနှင့်လိန်စုမန်ပယွန်းနယ်တို့အတွက်
 ဆွေးနွေးချက်(၂) - နယ်မြေဖွဲ့စည်းမှုအတွက်ဆုံးဖြတ်ချက်ချမှတ်ပြီးနောက်
 ဆုံးဖြတ်ချက်(၂) - နယ်မြေဖွဲ့စည်းမှုအတွက်ဆုံးဖြတ်ချက်ချမှတ်ပြီးနောက်
 ဆုံးဖြတ်ချက်(၃) - နယ်မြေဖွဲ့စည်းမှုအတွက်ဆုံးဖြတ်ချက်ချမှတ်ပြီးနောက်
 ဆုံးဖြတ်ချက်(၃) - သတ်မှတ်သည့်နယ်မြေအတွင်းနယ်နိမိတ်အခြေအနေအထားအရ
 ဆုံးဖြတ်ချက်(၄) - နယ်မြေဖွဲ့စည်းမှုအတွက်ဆုံးဖြတ်ချက်ချမှတ်ပြီးနောက်
 ဆုံးဖြတ်ချက်(၄-က) - ငှားရမ်းသတ်မှတ်သောနယ်မြေအတွင်းရှိအခြေအနေအထားအရ
 ဆုံးဖြတ်ချက်(၄-ခ) - ငှားရမ်းသတ်မှတ်သောနယ်မြေအတွင်းရှိအခြေအနေအထားအရ

ငှားရမ်းသတ်မှတ်သောနယ်မြေအတွင်းရှိအခြေအနေအထားအရ
 နယ်မြေဖွဲ့စည်းမှုအတွက်ဆုံးဖြတ်ချက်ချမှတ်ပြီးနောက်
 နယ်မြေဖွဲ့စည်းမှုအတွက်ဆုံးဖြတ်ချက်ချမှတ်ပြီးနောက်

အထက်ပါစာချုပ်အတိုင်းကျင့်ကျင့်စေရန်အတွက်

ဝါဘန်းဘလီ ကိုယ်စား	(လက်မှတ်)	လိန်စုမန်ပယွန်း ကိုယ်စား	(လက်မှတ်)
(၁)ဦးစောထွေး	()	(၁)ဦးတီရီ	()
(၂)ဦးထွေးစော	()	(၂)ဦးစန်းစော	()
(၃)ဦးသုတလီ	()	(၃)ဦးစွေဘ	()
စာချုပ်ချုပ်ဆိုရာ၌	(လက်မှတ်)	အသိသက်သေ	(လက်မှတ်)
(၁)သဘာပတိ	- ဦးကောင်းရီ (လွှဲကထိ) ()	(၁)ဦးသတ်စု (ဒေါ်တီ) ()	
(၂)မှတ်တမ်းတင်သူ	- ဦးလွန်းဆွေ (ဝါဘန်းဘလီ) ()	(၂)ဦးစန်းစု (ဒေါ်တီ) ()	
(၃)နေရာ	- ဦးနိုင်ဦးနေအိမ် (ဝါဘန်းဘလီ) ()		

(Contractual agreement concerning land between WaBanBalo village and PaHseLar village)



“ Nan San Puu Kyo Pyin Protected Forest

Do not trespass. Do not extract stones. Do not cut down trees.”

3. Threats to Customary Land Use Management Systems

Indigenous people have managed their land and natural resources using their customary land use management systems, however currently external factors and changes in indigenous people's lifestyle mean indigenous people's customary land use management systems are facing many threats and challenges. Indigenous people face challenges that could cause them to lose the land and natural resources, that they have used since their ancestors, as a result of external factors such as the government law and policy concerning land, the effect of globalisation, outside investment, various forms of land grabbing, industrial zones, development projects, mass-agricultural projects and government protected forests. Moreover, government mechanisms concerned with land and natural resources are not appropriate with indigenous peoples' customary land use management systems and it is effecting the continuing practices of indigenous people's customary land use management systems in many ways. Thus, the current situation is that within the research area of indigenous people's regions in Kayah (Karenni) State, indigenous people are facing many threats to their customary land use management systems.

The current Myanmar land laws, the 2012 Farmland Management Law; and the vacant, virgin and fallow land acts do not reflect indigenous people's customary land use management systems and provide and enable outsiders to legally grab land from indigenous people. Although laws for the protection of the rights of indigenous ethnic groups were confirmed in February 2015, these protections in reality neglected to recognise and afford protection of indigenous people's land, territory and natural resource ownership. In January 2016, the confirmed national land use policy included recognition of indigenous people's customary land ownership, so future land law must be monitored for legal recognition and legal protections for indigenous people's land and natural resource security.

Currently external factors mean the continued practice of indigenous people's customary land use management systems is in doubt, even though amongst indigenous people, they continue to use customary land use management systems based on their traditions. According to the 2008 Myanmar constitution, section (37 – A) states that 'the union is the ultimate owner of all lands, all natural resources above and below the ground, above and beneath the water, and in the atmosphere in the state'. This means that indigenous people not only cannot get recognition for ownership of all of their ancestral land, territory and natural resources but are also being led towards losing it. Moreover although the state level parliament is able to pass regional law, action must be taken and confirmed by a decision made based on the union parliament's laws when a dispute meets with the union law. This causes indigenous people to lose their rights concerning land, territory and natural resources.

According to the 2012 farmland laws, for the right to work on land, a farmland document (Application Form 7) is required. However, indigenous people's customary land use management systems are without not only recognition but also by this law, in reality they will be unable or face many difficulties when registering the land and natural resources that they own. As a consequence, indigenous people worry not just for their customs and traditions but also for the registration of their land. In line with generational changes in the villages, young people have become weak in customary knowledge and emphasising their customary land use management systems and only old people still have knowledge. Moreover, the decrease in valuing and using the customary land use amongst the young people is a challenge to the sustaining of the practices of the customary land use management systems.

“We have managed our land according to our customs for centuries. Although we have managed our land and natural resources by these systems, without legal recognition and the neglect of our land ownership rights; we face threats to our and long-term existence.”

A WaBanBaLo villager

4 The recognition of Indigenous Peoples' Customary Land Use Management Systems in the current land laws and international mechanisms concerning indigenous people.

Under customary land use management systems, indigenous people have the highest decision making and management authority on their own land. The customs and practices concerned with their land have been used and enhanced by each generation for many years. Indigenous people and their land are interrelated and as such indistinguishable. In this way, indigenous people's relationship with their land is more intricate and complex than outsiders can easily understand.

According to customary land use management systems, indigenous people have the complete right to freely manage their land. Indigenous people's have more land rights under their customary land use management systems than under the statutory law. Under indigenous people's customary land use management systems, indigenous people have the right to freely manage and own their land according to customs and traditions. They also have the right to freely manage their village customs, social economics, politics and their environmental protection according to their customs and traditions.

Indigenous people manage their land according to their intricate customs and traditions despite differing according to their region, tribe or culture. The land in the mountainous regions is mostly freely managed by shifting cultivation either for the work of cart agriculture or vegetable gardens. Other land is used for rice paddies, vegetable farming or for other purposes.

The Myanmar government has signed several international mechanisms, agreements and declarations concerning the protection and preservation of indigenous people's land and natural resources. The main international agreements protecting and recognising indigenous people's ownership of land and natural resources are the United Nations Declaration on the Rights of Indigenous People (UNDRIP), the International Labour Organization Convention concerning Indigenous and Tribal Peoples (ILO-C.169) and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest (VGGT). However, the union government have not protected indigenous people's customary land and natural resource rights in law and have been weak at implementing the international mechanisms concerned with indigenous people. Within the international mechanisms concerning indigenous people, there is a requirement for the state government to recognise indigenous people's individual and collective rights to land and territorial ownership.

The United Nations General Assembly agreed on the United Nations Declaration on the Rights of Indigenous People (UNDRIP) in 2007 and the International Labour Organization Convention concerning Indigenous and Tribal Peoples (ILO-C.169) was declared in 1989. Under the above two international mechanisms, the state government needs to recognise indigenous people's inherent rights, to fulfil these rights, to overcome historical injustices and to take responsibility for current discrimination that indigenous people are facing.

Under the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and the International Labour Organization Convention concerning Indigenous and Tribal Peoples (ILO-C.169), it is stated that indigenous people's distinct cultural knowledge and values are fundamentally connected to their land and territory and overcome any monetary interest or product. The above two mechanisms recognise that indigenous people have the right to govern their land, territory and natural resources, to develop their customs and culture, to strengthen their community

and to elevate their situation based on their needs. Moreover, by the use of their land and natural resources, indigenous people have the right to implement and prioritise by importance their development. In general, indigenous people's land, territory and natural resource ownership is theorised based on the right to self-administration, right to property, right to equality, right to promote culture and tradition and right to development.

It can be seen that the 2012 farmland laws and vacant, fallow and virgin land management acts that as well as other laws concerning land that effect indigenous people's land and natural resources are not appropriate with indigenous people's customary land use management systems. Based on customary land use management systems, indigenous people have managed the various types of land within their region practicing separation of ownership between private persons, tribes and villages. However, according to the 2012 Virgin, Vacant and Fallow land management act, the definitions of vacant, virgin and fallow land and land use rights not only threaten indigenous people's customary land ownership but also support outsiders to appropriate their land. Moreover, the national land use policy of January 2016 does not include the shifting cultivation practices of resting hillside land in line with indigenous people's customary land use management systems. In general, the law and policy related to land imitates protection of local people and indigenous people's customary land ownership and management. However, in reality these laws and policy not only protect the rights of outside investors but also do not give indigenous people protection for their land ownership and their rights concerning land. This forces their politics, social economics and culture to be dominated by other groups.

The current centralised land laws and land policy not only neglect the indigenous people's customary land use management systems but also cause indigenous people's land ownership to become government forests, military territory and project land. This inflicts disunity and conflict related with land ownership among indigenous people. Therefore the following sections compare the differences between sections of the current farmland laws and international mechanisms concerning indigenous people related to indigenous peoples customary land use management systems.

Our Customary Land Use Management System

Description	Ownership
According to Customary land management systems	Indigenous people own their farm land, paddy land, forest land and mountain based on original inhabitation, inheritance from parents and purchase.
According to Statutory land laws and policies	<p>2008 constitution: The Union,</p> <ul style="list-style-type: none"> (a) 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; (b) shall enact necessary law to supervise extraction and utilization State-owned natural resources by economic forces; (c) shall permit citizens rights of private property, right of inheritance, rights of private initiative and patent in accord with the law.
According to International mechanism concerning to indigenous people	<p>UNDRIP Art: 26</p> <ol style="list-style-type: none"> 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. <p>UNDRIP Art: 27</p> <p>States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.</p> <p>ILO 169 Art.14(1)</p> <p>The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised.</p> <p>ILO 169 Art.14(1)</p> <p>Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.</p>

Our Customary Land Use Management System

	<p>ILO 169 Art 17(1) Procedures established by the peoples concerned for the transmission of land rights among members of these people shall be respected.</p> <p>VGGT Art 9(1) State and non-state actors should acknowledge that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with customary tenure systems.</p>
	Land Types and Land Classifications
<p>According to Customary land management system</p>	<p>Generally the land classifications are as below:</p> <ul style="list-style-type: none"> ▪ Agricultural land ▪ Religious land ▪ Sacred land ▪ Cemetery land ▪ Pastoral land ▪ Forest land ▪ Protected forest ▪ Public or collective land ▪ Village land ▪ Tribal land ▪ Mining land (Limestone, sand etc)
<p>According to Statutory land laws and policies</p>	<p>2012 Farmland Law Art. 3</p> <p>Farmland means land defined as low land (paddy land), upland(Ya) silty land (Kaing Kyun), hill side cultivation land (Taungyar), perennial crops land, nipa palm land (Dhani), garden land or horticultural land and alluvial land.</p> <p>2012 Vacant, Fallow and Virgin Land Management Law Art. 2 (e and f)</p> <p>(e) Vacant Land, Fallow Land means the land on which agriculture or livestock breeding business can be carried out and which was tenanted in the past and abandoned for various reasons and without any tenant cultivation on it and the lands which are specially reserved by the State.</p> <p>(f) Virgin Land means wild land and wild forest land whether on which there are trees, bamboo plants or bushes growing or not, or whether geographically (surface) topography of the land is even or not and being the new land on which cultivation has never been done, not even once. The said expression shall include the lands of forest reserve, grazing ground and fishery which have been legally nullified for the purpose of doing business of agriculture, livestock breeding, mineral production and other business permitted by the Government</p>

Our Customary Land Use Management System

	<p>2016 National Land Use Policy's Art.13 Based on the following general land types, various land classifications may be determined:</p> <ul style="list-style-type: none"> (a) Agricultural land (all land used primarily for agriculture production purposes, including growing or perennial crops, growing industrial crops, animal husbandry activities, land based aquaculture activities, and any agriculture activities, and any agriculture production focused support facilities, and any agriculture production lands that are either currently cultivated or follow): (b) Forest land (intended to capture those areas of the country that will be determined to be part of the Permanent Forest Estate): (c) Other land (Urban land, village land, religious land, public land, government administrated vacant, fallow, virgin land and wasteland that are not classified as forestland or agriculture land, etc.)
<p>According to International mechanism concerning to indigenous people</p>	<p>UNDRIP Art.27 States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.</p> <p>ILO 169 Art 14(2) Government shall take steps as necessary to identify the lands which the people concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.</p>

Our Customary Land Use Management System

	Ownership Types
According to Customary land management system	<p>The land ownership types of indigenous people are as below:</p> <ol style="list-style-type: none"> 1. Privately Owned Individual Land 2. Tribe Owned Land 3. Village Owned Land
According to Statutory land laws and policies	<p>No ownership types.</p> <p>2012 Farmland Law Art.14(a) The person who has the rights to use the farmland shall not sell, mortgage, lease, exchange or gift on the whole or part of the rights to use the farmland without permission of the Government to any foreigner or any organization in which the foreigner is included.</p>
According to International mechanism concerning to indigenous people	<p>VGGT Art 8(2)</p> <p>Where States own or control land, fisheries and forests, the legitimate tenure rights of individuals and communities, including where applicable those with customary tenure systems, should be recognized, respected and protected, consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. To this end, categories of legitimate tenure rights should be clearly defined and publicized, through a transparent process, and in accordance with national law.</p> <p>VGGT Art 8(3)</p> <p>Noting that there are publicly-owned land, fisheries and forests that are collectively used and managed (in some national contexts referred to as commons), States should, where applicable, recognize and protect such publicly-owned land, fisheries and forests and their related systems of collective use and management, including in processes of allocation by the State.</p>

Our Customary Land Use Management System

	Land uses
According to Customary land management system	Indigenous people have the right to freely use the land that they own or hold land use rights for crop rotation or for other purposes.
According to Statutory land laws and policies	<p>2012 Farmland Laws Art:28</p> <p>In respect of application to alter originally cultivated crops to others:</p> <p>(a) The Central Administrative Body of the Farmland may permit to cultivate other crops in low land (paddy land) after scrutinizing in accord with the stipulations so as not to affect the sufficiency of rice which the staple crop of the State;</p> <p>(b) The relevant Region or State Administrative Body of the Farmland may, if it is to alter crops in the farmland except low land (paddy land), permit after scrutinizing in accord with the stipulations.</p> <p>2012 Farmland Laws Art:30</p> <p>In respect of application to use the farmland by other means for the interests of the public:</p> <p>(a) the Central Administrative Body of the Farmland may permit to use the low land (paddy land) by other means with the recommendation of the Region or State Administrative Body of the Region or State Administrative Body of the Farmland;</p> <p>(b) The relevant Region or State Government Organization may permit to use the farmland by other means excepts low land (paddy land) with the recommendation of the Region or State Administrative Body of the Farmland.</p>
According to International mechanism concerning to indigenous people	<p>UNDRIP Art:32(b)</p> <p>States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or their resources.</p> <p>UNDRIP Art:26(b)</p> <p>States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.</p>
	Allowing to use land
According to Customary land management system	Indigenous people do not need to ask permission to work on their own land but permission is required to work on land that is owned by another person or on common land.

Our Customary Land Use Management System

2012 Farmland Law Art:4,5,6,7

According to
Statutory land
laws and policies

4. The person who has the rights to use the farmland shall apply for the rights to use the farmland to the Township Department via the relevant ward or village tract Administrative Body of the Farmland in accord with the stipulations.

5. Township Department shall scrutinize the application of the rights to use the farmland under Section 4 in accord with the stipulations and submit it to the relevant Township Administrative Body of the Farmland.

6. Relating to the farmlands existed on the date on which this Law come into force, Township Administrative Body of the Farmland shall, with the approval of the relevant District Administrative Body of the Farmland, issue the certificate to use the farmland to the following person or organization after registration by paying registration fees to the Township Department in accord with the stipulations:

(a) if it is a person,

(i) the household which has the rights to use the farmland shall be the household of the farmer or the member of the household;

(ii) the head of the household or the member of that household or the guardian of that household who has the right to use the farmland shall be the one who legally carrying out the Land, at present, in accordance with laws in force before this law comes into force;

(iii) he shall be the legal beneficiary in accord with this Law or in accord with the provisions of the rule carried out under this Law after enacting this law;

(iv) he shall attain the age of 18 years;

(v) he shall be a citizen, an associate citizen or a naturalized citizen;

(b) If it is an organization, it shall be the government department, governmental organization, nongovernmental organization, company or association which has the rights to use the farmland.

Our Customary Land Use Management System

	<p>7. Township Administrative Body of the Farmland shall, with the approval of the District Administrative Body of the Farmland, issue the certificate to use the farmland to the following person or organization after registration by paying the registration fees to the Township Department in accord with the stipulations relating to the farmland on which rights to use is confiscated and the farmland reclaimed by the State from time to time after enforcement of this law:</p> <p>(a) if it is a person:</p> <ul style="list-style-type: none"> (i) he shall carry out the agriculture by using the farmland; (ii) he shall reside in the relevant ward or village tract if there is no special reason; (iii) he shall attain the age of 18 years; (iv) he shall be a citizen, an associate citizen or a naturalized citizen; <p>(b) if it is an organization, it shall be the government department, governmental organization, nongovernmental organization, company or association which is actually desirous to carry out agriculture in the farmland.</p> <p>2016 National Land Use Policy Art:30</p> <p>When granting or leasing of land at the disposal of government, the government shall provide prior notice, secure feedback from stakeholders, and conduct an ESIA in accordance with law, in order to not affect the public negatively.</p>
<p>According to International mechanism concerning to indigenous people</p>	<p>VGGT Art:9(4)</p> <p>States should provide appropriate recognition and protection of the legitimate tenure rights of indigenous peoples and other communities with customary tenure systems, consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. Such recognition should take into account the land, fisheries and forests that are used exclusively by a community and those that are shared, and respect the general principles of responsible governance. Information on any such recognition should be publicized in an accessible location, in an appropriate form which is understandable and in applicable languages.</p>
	<p>VGGT Art:9(8)</p> <p>States should protect indigenous peoples and other communities with customary tenure systems against the unauthorized use of their land, fisheries and forests by others. Where a community does not object, States should assist to formally document and publicize information on the nature and location of land, fisheries and forests used and controlled by the community. Where tenure rights of indigenous peoples and other communities with customary tenure systems are formally documented, they should be recorded with other public, private and communal tenure rights to prevent competing claims.</p>

Our Customary Land Use Management System

	Land Management
According to Customary land management system	When it is required to use privately owned individual land; tribe owned land or village owned land for the common interest or for the public interest (e.g clinics, schools, football playing fields), the village head leaders and those who have the right to manage the customary land must discuss with the land owner and make agreements for using the land or substituting land according with indigenous people's land management.
According to Statutory land laws and policies	<p>2012 Farmland Laws Art:32</p> <p>In confiscating the farmland for the projects of the State interests, only the required minimum area shall be confiscated. The project shall be implemented as soon as possible within the prescribed period and when the project is not carrying out; it shall be returned to the person or organization which has the original right to use the farmland.</p>
	<p>UNDRIP Art: 27</p> <p>States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.</p> <p>UNDRIP Art:30(b)</p> <p>States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.</p> <p>UNDRIP Art:30(a)</p> <p>Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.</p> <p>VGGT Art:9(5)</p> <p>Where indigenous peoples and other communities with customary tenure systems have legitimate tenure rights to the ancestral lands on which they live, States should recognize and protect these rights. Indigenous peoples and other communities with customary tenure systems should not be forcibly evicted from such ancestral lands.</p>

Our Customary Land Use Management System

<p>According to International mechanism concerning to indigenous people</p>	<p>UNDRIP Art:8(2(c)) States shall provide effective mechanisms for prevention of, and redress for: Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;</p> <p>ILO C.169 Art:16 1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.</p> <p>2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.</p> <p>3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.</p> <p>ILO C.169 Art:18 Adequate penalties shall be established by law for unauthorized intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.</p>
	<p>Forming land management groups</p>
<p>According to Customary land management system</p>	<p>According to the customary land use management system concerning land management and land disputes, indigenous people manage their land through groups with the inclusion of the following people; village elders, village heads and leaders and elected persons from each relevant tribe. Most of the villages don't have formal land use management groups but when cases arise these groups collaborate on the issue. In order to manage their land, they have organized customary land use management groups at village level and village tract level.</p>
<p>According to Statutory land laws and policies</p>	<p>2012 Farmland Law Art:15(a), 16(a) (i) Central Administrative Body of the Farmland (ii) Region of State Administrative Body of the Farmland; (iii) District Administrative Body of the Farmland; (iv) Township Administrative Body of the Farmland; (v) Ward or Village Tract Administrative Body of the Farmland;</p> <p>2012 Vacant, Fallow and Virgin Land Management Law Art:3 the Central Committee for the management of vacant, fallow and virgin lands;</p>

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According to International mechanism concerning to indigenous people	<p>UNDRIP Art:34</p> <p>Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.</p> <p>UNDRIP Art:33(b)</p> <p>Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.</p>
	Rights of land owner
According to Customary land management system	<ul style="list-style-type: none"> Rights to Sell Rights to Lease, Rights to mortgage, Rights to Bequest Rights to Cultivate Freely Rights to Other Uses Rights to Vacate Rest Rights to Manage Freely
According to Statutory land laws and policies	<p>2012 Farmland Law Art:9</p> <p>The person who has the right to use the farmland shall have;</p> <ul style="list-style-type: none"> right to have the farmland in possession right to use right to enjoy the benefit right to sell, mortgage, lease, exchange and gift in accord with the stipulated terms and conditions; right to accept the decision of the relevant court with the existing land if the dispute arise relating the inheritance of the right to use the farmland; right to use the farmland so long as there is no breach of the stipulated terms and conditions; right to use common interest with (foreigner or the organization in which the foreigner is included, village co-operative or with the private investors)

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<p>According to International mechanism concerning to indigenous people</p>	<p>UNDRIP Art:29(a) Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.</p> <p>UNDRIP Art:32(a) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.</p> <p>VGGT Art:9(2) Indigenous peoples and other communities with customary tenure systems that exercise self-governance of land, fisheries and forests should promote and provide equitable, secure and sustainable rights to those resources, with special attention to the provision of equitable access for women. Effective participation of all members, men, women and youth, in decisions regarding their tenure systems should be promoted through their local or traditional institutions, including in the case of collective tenure systems. Where necessary, communities should be assisted to increase the capacity of their members to participate fully in decision making and governance of their tenure systems.</p> <p>VGGT Art:15(1) Redistributive reforms can facilitate broad and equitable access to land and inclusive rural development. In this regard, where appropriate under national contexts, States may consider allocation of public land, voluntary and market based mechanisms as well as expropriation of private land, fisheries or forests for a public purpose.</p> <p>VGGT Art:15(2) States may consider land ceilings as a policy option in the context of implementing redistributive reforms.</p>
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Our Customary Land Use Management System

	Rules and Regulations of land owners
According to Customary land management system	<ul style="list-style-type: none"> • Selling land to outsiders is prohibited • Trespassing is prohibited • Destruction of another person's cultivated garden is prohibited • Destruction, removal and damaging boundary marks is prohibited
According to Statutory land laws and policies	<p>2012 Farmland Law Art: 12,14</p> <ul style="list-style-type: none"> • shall carry out the farmland as prescribed in this law; • shall pay land revenue and other taxes levied by the ministry; • shall register in the relevant Township Department by paying the stamp duty and registration fees for the contract stipulated by the Department in carrying out sale, mortgage, lease, exchange and gift of the right to use the farmland; • shall register in the relevant Township Department in accord with the stipulations when the right to use the farmland is obtained by inheritance in accord with the existing law; • shall have the right to mortgage the right to use the farmland only for the purpose of investment for cultivation; • shall mortgage it in the Government Bank or Bank recognized by the Government; • shall not trespass and carry out • shall not use the farmland by other means without permission; • shall not change the originally cultivated crop with other kind of crop, without permission; • shall not be fallow the farmland without sufficient reason; • shall not sell, mortgage, lease, exchange or gift the farmland during the period before having the rights to use the farmland or during the period the dispute arises relating to the right to use the farmland; • shall not sell, mortgage, lease, exchange or gift the right to use the farmland without permission of the Government to any foreigner or any organization in which the foreigner is included.
According to International mechanism concerning to indigenous people	<p>UNDRIP Art:29(b) States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.</p> <p>UNDRIP Art:29(c) States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.</p>

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	Land dispute resolving process
According to Customary land management system	For resolving land disputes; relevant tribe leaders, village elders, village leaders or representatives from both sides analyses the cases then resolve based on the case by methods such as warning, reconciling, giving compensation or substitution.
According to Statutory land laws and policies	<p>2016 National Land Use Policy Art: 41</p> <p>In order to hear and decide land disputes through the use of impartial land dispute resolution mechanisms across the whole country, the following shall be defined:</p> <ul style="list-style-type: none"> (a) Allowing representatives from local farmer organizations to participate at every level in order to protect and develop farmers' benefits; (b) Allowing local farmers organizations to resolve land disputes arising between their members, using local customary dispute resolution mechanisms, if they choose to do so; (c) Allowing the rights to make a complaint, defend oneself or with representation, and appeal for land disputes; (d) Allowing civil society to provide legal aid and acquire necessary information for use in land disputes; (e) Resolving land disputes in public, and use appropriate local language and translation as necessary; (f) Resolving land disputes transparently, fairly and free from corruption. <p>2016 National Land Use Policy Art: 65(c)</p> <p>Make correct decisions in accordance with law related to land use, settlement of disputes and encroachment.</p> <p>2016 National Land Use Policy Art: 67</p> <p>Ethnic leaders, elders and women shall be involved in decision making processes related to land tenure rights of individual stakeholders or groups practicing traditional cultivation methods on customary lands, monitoring, and dispute resolution mechanisms.</p> <p>2016 National Land Use Policy Art: 73</p> <p>In order to resolve disputes related to land use of ethnic groups, ethnic customary land dispute resolution procedures currently used shall be defined in the new National Land Law, and the respected influential representatives from the ethnic groups shall participate in dispute resolution decision making processes.</p>

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	<p>2012 Farmland Law Art:13</p> <p>If the dispute relating to the right to use the farmland arises after this law has come into force, it shall have the rights to settle legally only after registration in the Department</p> <p>2012 Farmland Law Art:22,23,24,25</p> <p>The Ward or Village Tract Administrative Body of the Farmland opens an original case of dispute in respect of the rights to use the farmland shall make examination, hearing and decision. The person who is dissatisfied with the order or the decision passed by the Ward of Village Tract Administrative Body he may appeal to the relevant Township, District, and State or Region Administrative Body of the Farmland. The decision of the Region or State Administrative Body of the Farmland shall be final and conclusive.</p>
<p>According to International mechanism concerning to indigenous people</p>	<p>UNDRIP Art:35</p> <p>Indigenous peoples have the right to determine the responsibilities of individuals to their communities.</p> <p>UNDRIP Art:40</p> <p>Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.</p> <p>ILO C.169 Art:14(3)</p> <p>Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.</p> <p>ILO C.169 Art:17(1)</p> <p>Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.</p> <p>VGGT Art:9(11)</p> <p>9.11 States should respect and promote customary approaches used by indigenous peoples and other communities with customary tenure systems to resolving tenure conflicts within communities consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. For land, fisheries and forests that are used by more than one community, means of resolving conflict between communities should be strengthened or developed.</p>

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	Land punitive process
According to Customary land management system	<p>There are three methods of punitive action:</p> <ul style="list-style-type: none"> • Conducting oblation or cleansing together • Swear allegiance on the land • Eating the earth, eating tree bark and washing the face with chilies.
According to Statutory land laws and policies	<p>2012 Farmland Law Art:19</p> <p>If it fail to comply with all or any of the terms and conditions;</p> <ul style="list-style-type: none"> • causing to pay the stipulated fine; • causing to carry out the farmland according to the stipulated means; • expelling the deserved person from the farmland; • removing the buildings constructed without permission on the farmland • direct complaint to the relevant court
According to International mechanism concerning to indigenous people	<p>UNDRIP Art:34</p> <p>Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.</p> <p>ILO C.169 Art:17(3)</p> <p>Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.</p>

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	Defining boundary
According to Customary land management system	<p>For defining boundaries, the group must include the land owner, relevant land owners, village heads and relevant tribe leaders then they must;</p> <ul style="list-style-type: none"> • Make marks by tree • Draw maps • Make marks by stone • Make marks by mountains, rivers and valleys • Approve, analyses and rebuild the ancestral boundary mark
According to Statutory land laws and policies	<p>Accord to the 1907 town and village land manual.</p>
According to International mechanism concerning to indigenous people	<p>UNDRIP Art:37(a)</p> <p>Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honor and respect such treaties, agreements and other constructive arrangements.</p>

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	Land Bequeathing
According to Customary land management system	For bequeathing of indigenous people's land, the Kayan ethnic give priority to their sons while for the Kayah ethnic, their sons and daughters have the same rights. To do this a father or a guardian manages this and their children and all of the community members agree with them. If the father passes away, a mother or the eldest brother or a relative from the father's side manages it.
According to Statutory land laws and policies	<p>2012 Farmland Laws Art:12(d)</p> <p>Whenever inheriting of completely handing over of lands is carried out in accordance with existing law, It is needed to register at related department in accord with prescribed conditions;</p> <p>2012 Farmland rule Art:29</p> <p>The inheritor of right to work on farm land shall apply to the township department office to change the name of the person who get the right to work on farm land with (form-9) by attaching the inheritance certificate and the certificate of the original right to work on farm land together with the application.</p>
According to International mechanism concerning to indigenous people	<p>UNDRIP Art:25</p> <p>Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.</p>
	Compensation and fines
According to Customary land management system	For customary land's compensation and fines, indigenous people define the appropriate compensation for the damaged crops or requisite the land for common use or exile the person who committed the case from the village.

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<p>According to Statutory land laws and policies</p>	<p>2012 Farmland Rules Art:65</p> <p>Any person who's right to use farmland is revoked or whose farmland is requisitioned shall not have the right to enjoy compensation.</p> <p>2012 Farmland Rules Art:67</p> <p>In confiscation of farmland for the state interest, compensation must be:</p> <ul style="list-style-type: none"> • Not less than the local price, three times the cost of the seasonal crop, three times the cost of long term plants, two times the cost of the developed building. <p>In confiscation of farmland for the public interest, compensation must be:</p> <ul style="list-style-type: none"> • According to the local price, three times the cost of seasonal crops, three times the cost of long term plants, two times the cost of the developed building.
<p>According to International mechanism concerning to indigenous people</p>	<p>UNDRIP Art:28(a)</p> <p>Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.</p> <p>UNDRIP Art:28(b)</p> <p>Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.</p>

5. The Important Types of Customary Land Use Management Systems

Indigenous people depend on their land, natural resources and territory by the use of their customary practices to flourish. Indigenous people's customary knowledge and practices show unique knowledge for both preserving their biodiversity and their sustainable environmental practices. This aids the sustenance of water resources and the livelihoods of both indigenous people's families and their wider society. Therefore, we can see internationally that there are sections recognising the importance of indigenous people's matters in the United Nations Declaration on the Rights of Indigenous People (UNDRIP), the International Labour Organization Convention concerning Indigenous and Tribal Peoples (ILO-C.169) and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest (VGGT).

Despite these recognitions, indigenous people's land ownership rights and their customary practices are neglected in many countries. Indigenous people's lives and customary land use management systems are interrelated and cannot be divided. These customary land use management systems are not only interrelated with indigenous people's society, culture, beliefs, free governance and human dignity but also human rights, economics and politics concerning land. To be recognised as indigenous people, there are traditional customs concerned with land including; economic customs concerned with land; political customs concerned with land; and social and religious customs concerned with land still being practiced today. Therefore, below is information that shows the importance of indigenous people's customary land use management systems for indigenous people's existence and ethnic identity to flourish.

“These are our customs. How can we omit them?
If they disappear, then so will our society.”
Villager from NaungPuLeh



Land is our life



(a) Land Is Indigenous People's Life

Today, indigenous ethnic groups in Kayah (Karenni) State each differing from other indigenous people in language, culture and customary organisations are still practicing their customary land use management systems and natural resource management systems. For the development of indigenous people's land management and livelihoods, those who have a strong understanding of their customary knowledge have passed their traditions and practices on from generation to generation. Although, their practices are undocumented and unable to access government recognition, they have managed their land by these customs. Their customary land use management knowledge progresses them towards sustainable development by its basic characteristics of managing the ecosystem, preserving biodiversity and mitigating climate change.

Indigenous people rely on their land for their everyday existence, food security, regular income, and peaceful socio-economics. Therefore, their land is everything for their lives. By their customary land use management systems, they have managed their communities according to their customs and traditions; allowing for customary land ownership, acceptable livelihoods for villagers within the village, public land users rights in the village to be governed by defined rules; recognition, preservation and protection of forest for a sustainable village environment and customary land dispute resolution.

Currently, it can be seen that the planet earth that humans live on is being gradually destroyed and we are facing factors such as global warming and climate change. In contrast, it can be seen that indigenous people's customary land practices are only progressing towards sustainable development; they do not destroy ecosystems and include systems of climate change mitigation. For example to regularly be able to get water, they recognise and protect the water springs and also protect and preserve the woodland through worship and developing village rules.

The use of land by the indigenous people of Kayah (Karenni) State concerns their beliefs, economics and culture so land is their life. Their uses are not only for private benefit but also for profiting their whole society. Therefore, through indigenous people's peaceful livelihoods, food security, progression towards sustainable development, sustainable environment, social justice and free management of their land, it can be said that land is indigenous people's essential vein for a flourishing existence.



Customary knowledge and sustainable practices.



(b) Customary and Traditional Knowledge and Sustainable Practices

Indigenous people's customary practices and customary land use management systems are founded based on their customary knowledge. This general knowledge has been practiced and modified in line with their environment and has been passed down from generation to generation. Because of this, to this day indigenous people continue to uphold beneficial land, territorial and natural resource ownership practices appropriate with their region and inclusive of their ecosystem and biodiversity.

For centuries biodiversity and ecosystems have flourished in an existence interrelated with indigenous people's customary practices based on their traditions and customary land use management system. However, the continued implementation of indigenous people's customary practices and customary land use management system are impeded by criticisms and misunderstandings of indigenous people's simple systems and practices being outdated and responsible for the destruction of forest and natural resources. This causes a threat to progression towards a sustainable environment and sustainable development. Recognition of indigenous people's customary general knowledge and practices is not only necessary for their existence to continue to flourish, but also important for managing the matters of a sustainable environment, ecosystem preservation and biodiversity sustainability.

(c) The aspects of rights to possess land, territory and natural resources

Within indigenous people's customary land use management systems, land ownership not only relates to their region and village's agricultural uses for the land but also for their own rights to own land, territory and natural resources within their territory. Land and natural resource ownership rights are connected with the right to choose and freely manage the priorities for development. Indigenous people's customary land use management systems, characterise land ownership as either collective (by tribe or village) or by private individuals. Indigenous people's land, territory and natural resource ownership based on the principle of collective ownership is implemented with; the right to free decision making by each ethnic group; non-discrimination; promotion of culture and traditions; and development,. Therefore, although indigenous people's land, territory and natural resource ownership and use are not legally recognised, tracing their origins shows their rights to free management and ownership of their land, territory and natural resources.

Indigenous people have the right to own, use, develop and govern the natural resources within their territory. Their fundamental natural resources include renewable and non-renewable natural resources such as meat, fish, water, wood and other minerals. Thus, when resources within indigenous people's territory are extracted or used, it must be done in agreement with the indigenous people including their rights of benefit. Indigenous people must further be paid compensation or remedies in the event of the damage of any property of indigenous people during the extraction of natural resources.



Aspects of rights to possess land, territory and natural resources



Other people within the village have the right to use land, territory and natural resources, despite land, territory and natural resources being owned according to indigenous people's customs. Thus, although every person does not own land and natural resources, every person has the right to use and the right to benefit from the land and natural resources owned by another. Within these rights, they have the rights to pastoral use, hunting, fishing and forest gathering in accordance with their needs. Therefore within indigenous people's customary land use management systems, not only does the land owner the right to freely manage the development of their land, but customary land use management systems also even have a basic principle of benefit sharing of natural resources with those lacking land ownership.

It can be seen that by strengthening the situation of land customs and practices, it can also be of some benefit to the political situation. The land customs and practices used by the indigenous people within Kayah (Karenni) State exhibit the benefits of; increased preservation of their land and territory, collective ownership, equality, ownership of decision making, reciprocal respect and values, patriotic lives, preservation of inherent ethnic values, soft dispute resolution and creating united communities. Due to indigenous people's ability to preserve their land and territory, this region shows that indigenous people have been able to more effectively maintain their natural resources up until the current day. It further shows that the customs preserving their land, territory and natural resources since the time of their ancestors are passed down from present to future generation to provide a place to live and a livelihood. Moreover, aspects of each indigenous ethnic group's lifestyle have existed until the current day as a result of the benefit of defining and preserving their village owned land, territory and tribe owned land.

"According to our customs, we have the right to govern our land,

In anyway, we are the masters"

(d) Appropriate Responses to Climate Change

Indigenous people, with their customary expertise, have their own appropriate responses to climate change. As a result of continually managing their land and the connected forest within their boundaries until the present day, indigenous people have extensive experience of protecting and managing forests. Furthermore, the ideological framework of indigenous people's customary land use management systems prevents impacts to their environment. This is a direct result of its formation from the origins of their knowledge; minimising the human impact upon the environment by maintaining customs that respond in line with changes to the climate.

Climate change effects indigenous people's social customs and economics. Indigenous people respond appropriately when the climate is changing based on their customary knowledge; they cultivate plants appropriately with the changing climate as necessary for their lives to flourish. Despite this, within the national climate response policy and strategy, there is no recognition or consideration of indigenous people's climate response knowledge, practical response and methods. Therefore, the drafting of the national climate response policy, strategy and plan must recognise indigenous people's climate response method, based on their customary knowledge and livelihood.



Appropriate responses to climate change



Social harmony and conflict-reduction



(e) Social Harmony and Conflict-reduction

Indigenous people's customary land use management not only ensure indigenous people's daily lives continue to flourish; it also enables them to pass down their experiences from generation to generation. Their practices featuring suitability with the environment, reciprocal understandings, basic justice, equitable natural resource distribution and free management not only allow indigenous people to have peaceful societies but also provide them with the mechanisms to solve difficult situations collectively resulting in increased harmony within their society.

Globally, Indigenous people's are losing land without agreements or consultation. This is occurring because of privatisation of land ownership and industrial development projects. Alongside land grabbing for the purposes of; industrial agricultural plantations, natural resource extraction projects, military uses and the defining of land as government forest. In spite of international mechanisms expressing the need for the recognition of indigenous people's rights, the above factors are causing indigenous people to become vulnerable groups without land, farms and security for their lives. These are the threats indigenous people in Kayah (Karenni) State are facing in the current day.

Since their ancestral period, indigenous ethnic groups have lived side by side. Their cooperative customs and practices, derived from their ancestors, still existed and are still invaluable for them up to the current day. Within Kayah (Karenni) State, indigenous people's customs even include the concept of each person's collective help with cultivation until the harvest is collected on farmland, hillside land and shifting cultivation land. Currently, it can be seen that their society operates as one family with every person helping one another. Thus, customary practices concerning unity of land use practices, cooperation and interdependence allow indigenous people's socio-economic situation to be more peaceful; supporting their communities progression towards peaceful and tranquil societies.

[“We have depended on our land, forest and mountains for a long time; we do not disturb other people; we help each other and we depend on each other”

Citizen of MyaLeh village]

6. Case Study

WaBanBaLo village is located in Demawso Township on the road between Loikaw and Taungoo, about 8 miles away from Demawso Town. WaBanBaLo has existed for over a century. It was founded in 1887 and its 125th jubilee was held in 2012. Currently the government administration defines this region as an area under its management. Moreover, based on the government forest law, the administration has defined this region as NanSanPuPyin protected forest area despite the village continuing to manage the land using the practices of their customary land use management system. Most of the 128 households in this village are Kayan ethnic people following Baptist-Christianity. Although the village is ethnically Kayan, the villagers separate into seven tribes for owning and managing their land.

WaBanBaLo village mostly use their customary land use management system to manage their land and have managed by it matters such as forest preservation, defining territorial boundaries and ownership, bequeathing, giving land ownership rights and land dispute resolution. Though in the past land management was without written evidence, nowadays written evidence, which is regularly enhanced, has documented their systems. Within this documentation process, one notable example is of contracts concerning territorial boundary disputes. WaBanBaLo village has boundaries with the neighbouring villages of PaHseLa, LwiKaHtee, DawTaWee and PanPet. Though these villages have had past boundary disputes, recently using the method of redefining their boundaries by the drawing of maps, all sides have agreed on a contract for their boundaries. In July 2016 related to the territorial boundaries, these villages' tribal leaders and witnesses from neighbouring villagers recognised their territorial boundaries by signing a contractual agreement in front of each of the villages' advisors.

WaBanBaLo village's indigenous people's customary land use managements system recognises and includes the following types and classifications of land; paddy land, farmland, hillside farmland, forest land, water spring land, protected forest land, religious land, cemetery land, pastoral land, village land; religious, sacred, traditional and cultural places; and mountains.

Based on WaBanBaLo's land ownership system, either tribes; villages; or private individuals own the land defined by their ancestors. Within this land ownership, WaBanBaLo's system recognises land title using the traditional method of the neighbours' recognition and the relevant tribal head's recognition. WaBanBaLo village has continued to recognise and implement this land ownership up to the present day. Moreover land owners have the right to freely manage their land, but they must follow the basic rules of the village. Based on their ancestor's rules, improvements and enhancements can be made if documented by agreement. WaBanBaLo's villagers' opinion on the rules concerning land is that their basic function is to preserve culture, values and reciprocal understanding rather than to rule by fear. The villager's opinion leads to the system even including a method to make decisions concerning land ownership based on their customs and rules.

Anyone in the village who is seeking to work or use any land concerned with the village must access a land use right by informing or requesting each person concerned with that land and the village head. This is dependent on that person following the rules of the customary land use management systems. When any case arises concerning any of the village's land alongside an accompanying request to return land, the land use right holder must return the relevant land. To do so, the customary land use management system requires preparation and implementation of compensation to that person either financially, by replacement land, or other methods.

WaBanBaLo village's customary practices for inheriting land continue to preference sons. The father or guardian manages bequeathing of land and if there is no father, then sometimes one of the

Our Customary Land Use Management System

father's relatives will manage for this. Following the confirmation of any person's will, the sons and daughters must accept it.

WaBanBaLo village manages land by allowing each person the right to freely and independently manage their individual land. Whilst the land concerned with; tribes; collective ownership; or the whole village is suitably managed by the relevant tribal leaders, village advisors and any other relevant leaders. Within this management system, the villagers they must follow some basic defined rules.

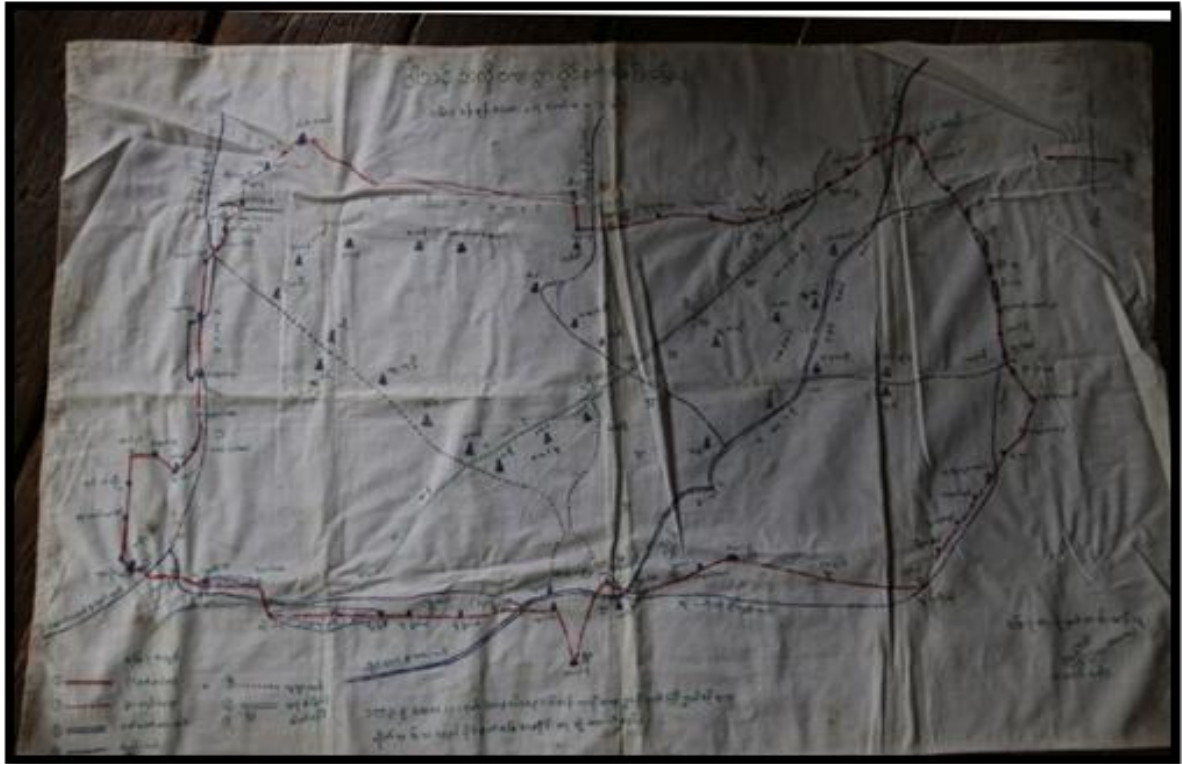
The indigenous people of WaBanBaLo village resolve land disputes by meeting and consulting with the two disputing sides. For matters concerning either individual land, tribal land or the village boundaries, they must meet with the representative people of the ethnic group and the village. The villagers solve the dispute using methods of arbitration such as warnings, giving compensation or making customary oaths as relevant to the characteristics of the dispute. Within this dispute resolution process, the many different village leaders, ethnic heads, elders knowledgeable in customary law and witnesses must cooperate to find a solution.

WaBanBaLo's customary land use management systems provides the villagers the right to freely manage the land that they own, but it also requires them to define and follow their own rules and regulations. All of the indigenous villagers must follow these rules and take action against any breaches. WaBanBaLo's indigenous people define the customary rules concerning land as below:

- Selling land to those outside of the village is prohibited
- Exchanging or using public or village land without rights is prohibited
- Damaging or impacting the public land or the land's natural resources is prohibited
- Removing or stealing defined land boundaries is prohibited
- Using the trees, collecting firewood or harvesting on another person's or tribe's land without the land owner's permission is prohibited
- Entering to work or destroying marks on another person's defined or marked land without the land owner's permission is prohibited.
- Breaking the village land use rules is prohibited.

For each person or tribe who own land, they have the right to both freely make decisions and manage that land. They have the rights to use to bequest, sell, exchange, rest, do agricultural work or other work. For these processes, you must inform and swear to each concerned land owner and each concerned tribe, village witnesses, customary land rights holders, the village administrative head and village advisors.

By studying **WaBanBaLo village's indigenous people's** customary land use management system, the basic features of the customary land use management systems that they manage their land and natural resources with are based on their culture, freedom, human rights, justice and reciprocal recognition of respect and understanding. Therefore, the recognition of their customary land use management systems is very important not only for their customary land use management systems but for the main basic reason of indigenous people's existence continuing to flourish.



[Map of WaBanBaLo's village boundaries redrawn on white cloth in 1993.]

7. Research Methodology

For developing this report at the start of 2015, Kayah Earthrights Action Network began documenting the customary land use management systems of the Kayah, Kayan and Kayaw ethnic groups in Kayah (Karenni) State. This documentation was collected by meeting with indigenous people about their customary land use management systems using the following methods; documenting information by discussions, interviews, village focus group discussions, questionnaires and meetings with leaders. Additionally, we documented about the current state of their customary land use management systems by taking pictures and videos of their customary land use systems and listening and taking notes on the current situation of their customary land use practices. The information about the research methodology and data collection methods used to collect information about indigenous people's customary land use management systems can be seen below.

7.1 Types of Questions Used in Data Collection

When collecting information, KEAN prepared these types of questions. For this research, KEAN used 13 main data collection questions based on the following topics; types and classifications of customary land, process to access land use rights, rules and regulations land use right holders must follow, forming Customary Land Management groups, process of taking action on rule-breaking, methods of dispute resolution, land compensation, defining remedies, customary land uses and threats to customary land use management systems.

7.2 Trainings and Workshops

Kayah Earthrights Action Network has also collected information on Indigenous people's customary land use management systems for this research by holding customary workshops and using trainings. In these trainings and workshops, there are discussions about indigenous people's rights, their customary land use management system and methods to both strengthen and get government recognition for their customary land use management systems.

7.3 Photographic and Video Documentation concerning customary land use management systems

In the process of documenting indigenous people's customary land use management systems, we used the methods of video and photography to document evidence of its existence. Within this, we collected documentation and this included documentation of their territorial boundary maps, evidence of contractual agreements between villages and dispute resolutions and evidence that which denotes their customary land use management.

7.4 Interviews

Kayah Earthrights Action Network met with and collected information from village advisors and elders knowledgeable about customary land use management, traditional leaders, village administrators, women groups and youth groups. We interviewed either individually or in focus groups and developed our research information on their customary land use management system, their opinion on land use, their values and the challenges they are facing.

7.5 Storytelling

Within our documentation about indigenous people's customary land use management systems, in our meetings and encounters with indigenous people, we used the method of listening to and documenting their stories about their village's customary land management. By this method, we were able to understand and document indigenous people's customary land use management systems, their traditions culture and challenges that they have overcome related to land and methods by which they preserved and passed down their systems.

7.6 Case Studies

We studied and researched a village case study on their current practices and maintenance of their customary land use management systems. By this method, we not only studied and documented their customary land use management system but also how they manage types of defined boundaries, types of rules defined by village agreements, requests for rights to use land according to tradition and bequeathing.

7.7 Maps

Within our studies of indigenous people's customary land use management systems' territorial boundaries, together with indigenous people using GPS, we measured and mapped the customary land that they owned including their significant places and existing natural resources. In order to do this, we shared how to use GPSs to representative people and they mapped by themselves. Moreover, drawing these maps also enabled indigenous people's territorial ownership and boundaries to be legally documented.

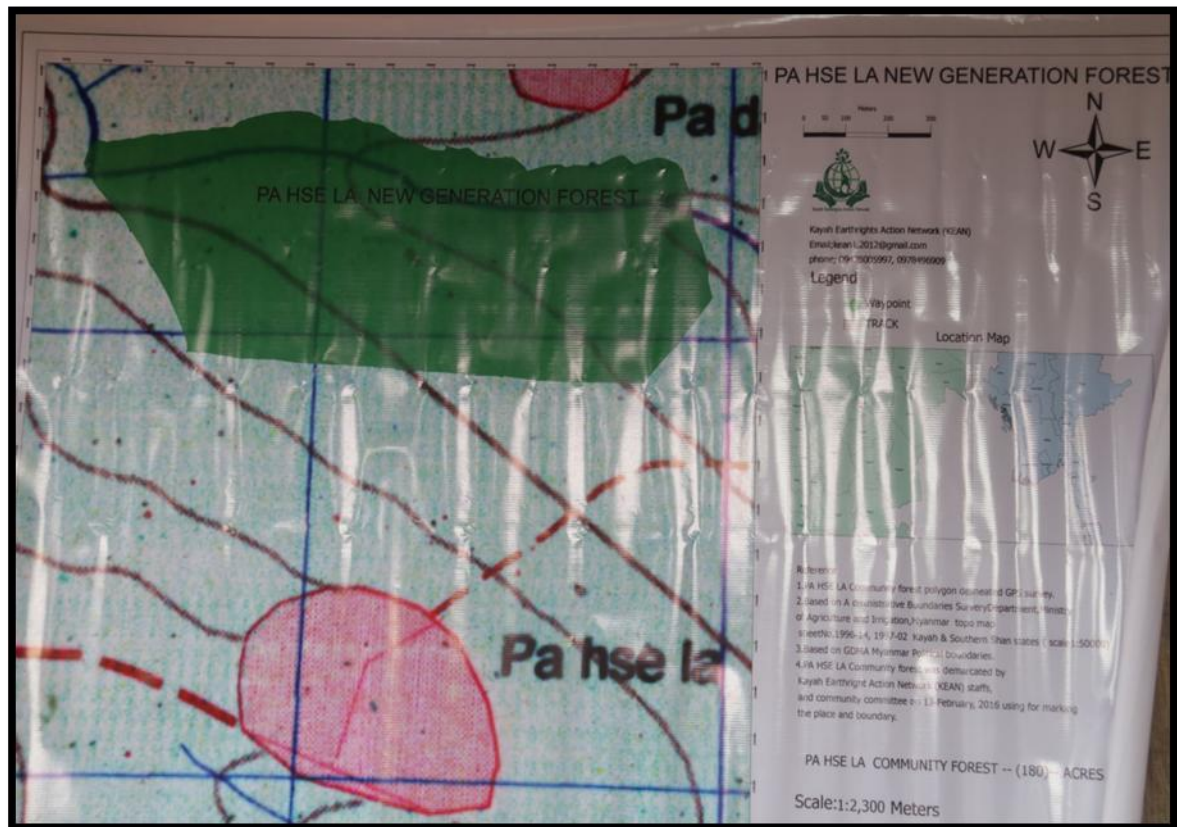
7.8 Analysis

For the information of customary land use management systems, we conducted an analysis of information as part of our initial research. The main purpose of this information analysis was to ensure the accuracy and correctness of the information that we collect. The first step was for research members to analyse existing information after that people with active understanding of customary land use management systems and civil society organisations in regional land case networks again further analysed the research. After the research, it was analysed again by village representatives. By inserting this information analysis, the accuracy of this research could be updated, enhanced and approved.



[Interviewing]

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Mapping and Case Study





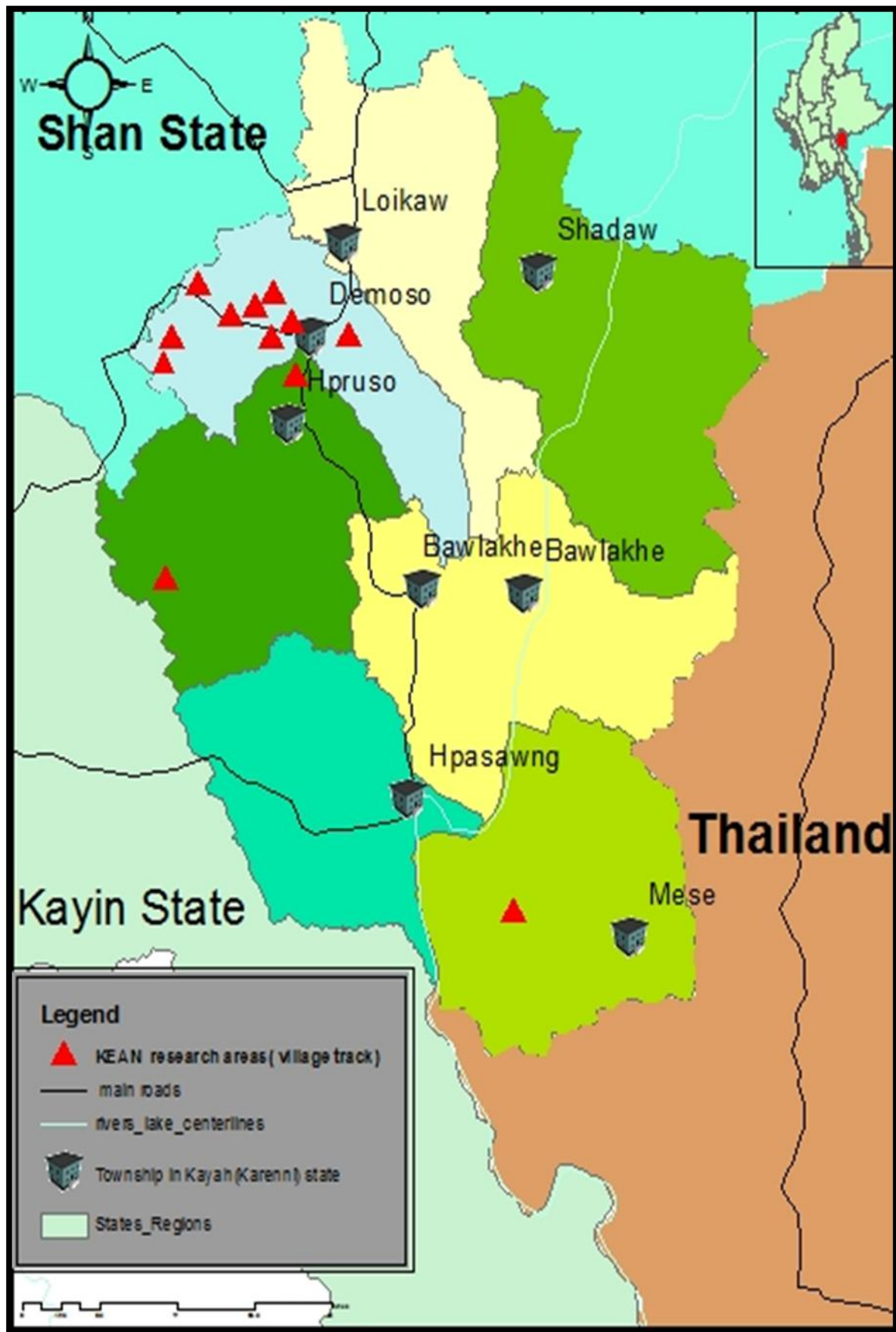
Storytelling and data collecting





Measuring and checking boundaries and collaborating in mapping





Map of Kean data collection areas

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Data Collection Regions

For this report, KEAN collected information and documented research about the customary land use management systems of the Kayah, Kayan and Kayaw ethnic groups, who are indigenous to Kayah (Karenni) State. This report does not include information for the entire Kayah (Karenni) State but there is information based on the 3 townships that includes 15 village tracts and 52 villages where most of the above three ethnic groups live.

No	Township	Village Tract	Villages	Inter-viewees	Religion	Village ethnicities
1	Mese	Mese	PanTein	12	Buddhist Baptist	Shan Kayan Kayah
			HoSwe	9	Buddhist Baptist	Shan Kayan Kayah
			KyaukSu	7	Catholic Buddhist Animist	Shan Kayan Kayah
2	Demawso	HsaungDuLa	NganYoe	9	Buddhist Animist	Kayan
			AyeNaungPule	12	Baptist	Kayan
			HsaungPaHtan	5	Animist	Kayan
			HsaungDula	10	Catholic	Kayan
3	Demawso	KhuPaya	DanToe	8	Byamasoe	Kayan
			ThaDeKo	15	Baptist	Kayan
			HsiPuPaLor	10	Byamasoe	Kayan
			KhuPaya	6	Baptist	Kayan
4	Demawso	HoWan	Lower Howan	10	Animist	Kayan
			Upper Howan	14	Animist	Kayan
5	Demawso	NaungPule	MyenniGone	10	Baptist	Kayan
			LawSi	10	Baptist	Kayan
			LeMileGaPu	5	Catholic	Kayan
			NaungPule	12	Baptist	Kayan
			SoBawThe	8	Baptist	Kayan
6	Demawso	MyaLe	MyaLe	10	Baptist	Kayan
			DawHsiEe	8	Baptist	Kayan
			HsiPuKon	10	Baptist	Kayan
			HsiMiSoDa	5	Baptist	Kayan
			HsiMiSoLa	7	Baptist	Kayan
			LaiNanPa	5	Baptist	Kayan
			HsorLaPeko	8	Baptist	Kayan
			LoBeKo	5	Baptist	Kayan
			LoKoTha	9	Baptist	Kayan
7	Pruso	GheGhor	GheGhor	15	Catholic	Kayaw
8	Pruso	HtiPawHso	DawKhuKu	15	Catholic	Kayah

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			New Ngwe Taung village	13	Buddhist Animist	Kayah
			HtiHtaWku	10	Catholic	Kayah
9	Pruso	YorDawKaw	YorDawKaw	10	Catholic	Kayaw
10	Pruso	ThoThiPho	Kheki	10	Catholic	Kayaw
11	Demawso	PanPet	YwanKhu	5	Buddhist-Animist	Kayan
			BanSa	7	Buddhist-Animist	Kayan
			KaTeKu	8	Catholic	Kayan
			DawKhi	5	Buddhist-Animist	Kayan
			ThanKu	4	Buddhist-Animist	Kayan
			PinMaHsaung	6	Buddhist-Animist	Kayan
12	Demawso	WaBanBaLo	LwiGaHti	12	Baptist	Kayan
			WaBanBaLo	18	Baptist	Kayan
			PaHseLa	8	Baptist	Kayan
			PaDanKho	13	Baptist	Kayan
			HtiLaThuKho	15	Baptist	Kayan
13	Demawso	LoBaKo	YahKhu	6	Baptist Animist	Kayan
			LoBaKo	5	Byamasoe	Kayan
			WhaHsiSaung	4	Baptist Buddhist-Animist	Kayan
14	Demawso	DawKaLaw Du	TaNhiLaLe	14	Buddhist-Animist	Kayah
			DawKaMyay	7	Buddhist-Animist	Kayah
			DawTaNgu	7	Buddhist-Animist	Kayah
			DawKaLawDu	10	Buddhist-Animist	Kayah
15	Demawso	NgweTaung	DawKaLawKhu	10	Buddhist-Animist	Kayah

9. Research Strengths and Limitations

The strength of this research is that it is able to collect and document information based on the situation of villages' customary land use management systems still used up to the present day. Moreover, this research includes the participation of indigenous people's village leaders, advisors, customary and traditional administrators, religious leaders, village youth groups and village women groups. As a result, this report includes and documents many different groups' customary land use management practices and their different ideas, opinions and suggestions.

One of the limitations of this research is that some of the information about customary land use management systems cannot be documented. In this research process, there are limitations in the information shown about customary land use management systems as although indigenous people can explain about their customary land use management systems, they are without documentation such as supporting evidence, maps and literature documents between villages and between tribes. Though Kayah Earthrights Action Network could collect the numerical information related to

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indigenous people's customary land use management systems, a limitation is that this report could not expose some quality information.

Therefore, through reading this report about indigenous people's customary land use management systems within the different villages in Kayah (Karenni) State, you will come to understand the importance of it for **making land policy, getting recognition and adapting laws including information that reflects the indigenous people's customary land use management systems.**

10. Recommendations

Customary land tenure security and customary land use management systems are vital for the continued existence of indigenous people and the protection of their fundamental rights. For the process of building a sustainable peaceful nation and a federal union in line with a democratic system, indigenous people's rights to possess and rights to manage their land, territories and natural resources is a crucial part. Therefore, Kayah Earthrights Action Network, based on the customary land management research collected from local people in 52 villages of Kayah (Karenni) State, representing indigenous people, provides the below recommendations to government and government organizations, policy makers, investors and civil society organizations to recognise indigenous people's customary land ownership and allow their land tenure security;

1. To commit to enact law protecting and recognising accurately indigenous peoples' customary land management, land ownership rights and territorial ownership rights.
2. To legally protect indigenous people's rights to possess and freely manage land, territory and natural resources by reforming or replacing existing policies, laws and constitutional provisions that restrict these rights.
3. To ensure that investments which potentially affect indigenous people's land and their livelihoods respect human rights as well as guarantee transparency and accountability.
4. To protect indigenous land rights by ratifying and implementing relevant international treaties, mechanisms and guidelines, including the UN Bill of International Human Rights, UNFAO volunteer guidelines on Governance of Land, Fisheries and Forests (VGGT), UN Declaration on the Rights of Indigenous People (UNDRIP) and ILO Convention 169.
5. To provide legal protection by adopting policy including implementation mechanisms concerning indigenous people, remedies for activities affecting indigenous people, directly or indirectly, and for allocation of compensation to be made in line with the best international standards.
6. To ensure strong action is taken for grabbing the nation's indigenous peoples' land and natural resources.
7. To support indigenous people's implementation of their customary land use management systems at the village and regional level and for investment and activities that can affect indigenous land, natural resources and livelihoods to comply with free, prior and informed consent (FPIC).
8. To respect and promote the human rights of indigenous people.
9. To provide legal security for indigenous people's land and natural resources and to build better practices and encourage positive inclusion

10. To guarantee the rights of indigenous people to make their own decisions, plans and implementation for their own development and sustainability.
11. To support and participate in the strengthening of indigenous people's customary land use management systems at the village, village tract, township, state and national levels.
12. To manage indigenous people's land and natural resources based on each separate area of indigenous people's rights rather than on the central administrative system.

11. Conclusions

This customary land use management system's report exposes that a lack of recognition and neglect is creating a challenge for the land ownership and land management of the indigenous people of Kayah (Karenni) State. The result is indigenous people lose not only their land but also their cultural practices, human rights, justice and the free management rights of their ancestors. Moreover, this restricts indigenous people's life security, social peace, food security, state peace and ultimately their establishment of a peaceful society. Therefore, indigenous people's customary land management systems are an important part of the process to ensure indigenous people's land tenure security, sustainable environment and establish a future peaceful and progressive federal union. The recognition of indigenous people's fundamental rights and allowing their participation will lead towards a better society.

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Appendix (a) Customary land use/ management assessment form

ဆောက်တင်ပုံ(က)

ခေလုထုံတမ်းထိုင်ရာမြေယာအသုံးပြုမှု/စီမံခန့်ခွဲမှုအကြောင်းဆန်းစစ်ခေလုလားခြင်းပုံစံ

အကြောင်းအရာ - ခေလုထုံတမ်းမြေယာအသုံးပြုမှု/စီမံခန့်ခွဲမှုအခြေအနေ စစ်တမ်းကောက်ယူခြင်း
 မေးရာ -
 ကျေခွာ - ကျေခွာသုင်ရာ ပြို့နယ်။

၁	ခေလုထုံတမ်းမြေယာအသုံးပြုမှုအရ သတ်မှတ်ထားသောမြေအမျိုးအစား နှင့် အဓိပ္ပါယ်သတ်မှတ်ချက်များ
၂	မိုးရာခေလုအရမြေပိုင်ဆိုင်ခွင့်ပြုခြင်းဖြစ်စဉ်
၃	မိုးရာခေလုအရမြေယာလုပ်ပိုင်ခွင့်ပြုခြင်း ဖြစ်စဉ်
၄	မိုးရာခေလုအရမြေယာအသုံးပြုခွင့်ရရှိသူ၏ အခွင့်အရေးများ
၅	မိုးရာခေလုအရမြေယာအသုံးပြုခွင့်ရသူများ လိုက်နာရသည့်စည်းမျဉ်းစည်းကမ်းများ
၆	မိုးရာခေလုအရမြေယာစီမံခန့်ခွဲမှုတွဲ ခွဲစည်းခြင်းဖြစ်စဉ်များ
၇	ခေလုထုံတမ်းမြေယာအသုံးပြုမှုအရ စည်းကမ်းချက်များလိုက်နာမှုများကွက်လွှဲ အခေလုပြင်းဖြစ်စဉ်
၈	မိုးရာခေလုအရမြေယာလုပ်ပိုင်ခွင့်အခြင်း ပွားများအတွက်ခြေခွင်မူပိုင်များ
၉	မိုးရာခေလုအရမြေယာနှင့်ပတ်သက်သော နယ်နားမြစ်၊ ကျော်ကြားများ
၁၀	မိုးရာခေလုအရမြေယာကိုအသုံးပြုခြင်း
၁၁	မိုးရာခေလုအရမြေယာကို စီမံခန့်ခွဲခြင်း
၁၂	ခေလုထုံတမ်းမြေယာအသုံးပြုမှုအရ သတ်မှတ်ထားသော ပြစ်မှုနှင့်ပြစ်ဒဏ်များ(ဗီရင်ထုံးများ)
၁၃	မိုးရာခေလုအရမြေယာအသုံးပြုမှု/စီမံခန့်ခွဲမှုဖြစ်စဉ်
၁၄	အထွေထွေ

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Appendix (b) Land data collecting form

Հայաստանի Հանրապետության Գյուղատնտեսության նախարարություն

Երևան : _____ Տարի : _____

Գյուղացի	Գյուղ	Գյուղացու հայրանունը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)					Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)
			Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)					
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												
16												
17												
18												
19												
20												

Գյուղացու ստորագրություն _____

Հայաստանի Հանրապետության Գյուղատնտեսության նախարարություն

Երևան : _____ Տարի : _____

Գյուղացի	Գյուղ	Գյուղացու հայրանունը (անուն)		Գյուղացու տնտեսության տեսակը (անուն)			Գյուղացու տնտեսության տեսակը (անուն)			Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)
		Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)	Գյուղացու տնտեսության տեսակը (անուն)					
1				✓	✓	✗					
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
13											
14											
15											
16											
17											
18											
19											
20											

Գյուղացու ստորագրություն _____

Appendix (c) Village's land possess status questionnaires form

[illegible][illegible]

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ကယားပြည်လူ့အခွင့်အရေးနှင့်သဘာဝဝန်းကျင်ဆိုင်ရာအခွင့်အရေး
လှုပ်ရှားဆောင်ရွက်မှုကွန်ယက်

Kayah Earthrights Action Network