



Indigenous Peoples' Views on

Customary Tenure and the Law in Myanmar

Results of a Preliminary Survey

Indigenous Peoples' Views on Customary Tenure and the Law in Myanmar

Results of a Preliminary Survey

Indigenous Peoples' Views on Customary Tenure and the Law in Myanmar : Results of a Preliminary Survey

POINT (Promotion of Indigenous and Nature Together), 2021

Permission to share

This document is published under a creative commons licence:

Attribution-NonCommercial-NoDerivs 2.0 UK

<http://creativecommons.org/licenses/by-nc-nd/2.0/uk>

Published by: POINT (Promotion of Indigenous and Nature Together)
<https://www.pointmyanmar.org>

Research team: Hla Doi, Thiri Thu, Pyae Phyo Maung, Saw Eh Khu Dah, Saw Kendy,
with support from Naw Ei Ei Min and Christian Erni

Layout and Cover Design: Saw Benhur

Photos: Volunteers from different study areas (Shan State, Kachin State, Karen State, Magway Region, Naga Self-administered Zone and POINT archive.
Front cover, Fig. 06, 07, 08 and 09 by Christian Erni

Map: Saw Yan Myo Aye

Printed in Yangon by MYINT colour offset

This publication has been produced with financial support from the Rainforest Foundation Norway (RFN).

Contents

Abbreviations	V
Glossary	V
Foreword	1
Background, purpose and methodology	2
Research purpose	4
Methodology	4
I. Customary Tenure among Indigenous Peoples in Myanmar: Current Status and Changes	9
Customary tenure and statutory systems are used side-by-side	9
Customary tenure systems have changed in recent years	11
There are changes toward more gender equality in land ownership	12
Some feel that further changes are needed	15
Women tend to be less satisfied with the current customary tenure systems	16
II. Awareness of Existing Laws and International Human Rights Instruments	18
There is little knowledge about laws in most communities	18
Existing laws are considered insufficient for protecting their rights	22
III. Drafting a New Land Law: Indigenous Peoples' Preferences	25
There is little knowledge of the National Land Use Policy and the drafting of a new land law	25
What should be included in the land law	25
Both communal and individual rights are considered important	26
IV. Conclusions	27
Appendix: List of volunteers participating in the research	29
Notes and References	30

Graphs, maps and tables

Graph 1. Women's responses on land ownership and inheritance by women	14
Graph 2. Level of awareness of existing laws related to land	20
Graph 3. Level of awareness of UNDRIP and ICESCR.	21
Graph 4. Reasons given in the multiple-states survey for why existing laws don't give enough protection for indigenous peoples' rights	23
Graph 5. Reasons given in the Northern Kachin State survey for why existing laws don't give enough protection for indigenous peoples' rights	24
Map 1. Townships included in the two surveys	7
Table 1. Number of respondents, areas and ethnic groups	5
Table 2. Reasons for changes in customary tenure systems	12
Table 3. Women's responses on land ownership and inheritance by women	14
Table 4. Awareness of existing laws related to land	19
Table 5. Awareness of the UNDRIP and ICESCR	21
Table 6. Reasons why existing laws don't give enough protection for indigenous peoples' rights	23

Abbreviations

CF	Community Forestry
CFC	Community Forestry Certificate
CSO	Civil Society Organization
CT	Customary tenure
ICESCR	International Covenant on Economic, Social and Cultural Rights
IP	Indigenous Peoples
LUC	Land Use Certificate
NGO	Non-governmental organization
NLL	National Land Law
NLUP	National Land Use Policy
POINT	Promotion of Indigenous and Nature Together
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VFV law	Vacant, Fallow and Virgin (Land Management) law

Glossary

Collective property	Ownership of property by a group of people (e.g. a clan, community, an association, or a cooperative)
Communal property	Ownership of property by a community
Customary	is usually understood being in accordance with a society's customs and traditions, i.e. what is common practice, corresponding to accepted standards or models of behavior
Customary tenure	Tenure generally means to hold or possess something, such as land. In this study it refers to the regulation of the way individuals and groups in a society gain access to and use land and natural resources. Customary tenure is a community-based system of rules, regulations and procedures which determine how land and other resources are used and shared, and which have their roots in and reflect a community's social organization, culture and value.
Property	An object or objects that belong to someone

Foreword

The research “Indigenous Peoples’ Views on Customary Tenure and the Law in Myanmar” was planned to be conducted in early 2020. It was supposed to contribute to the discussion on how to recognize and protect customary tenure in a new land law by showing to what extent customary tenure is still practiced by different ethnic groups in the country, by highlighting indigenous women’s views on customary tenure practiced in their communities and documenting the preferences of both men and women regarding the form of legal recognition of customary tenure. The results of the research were meant to help in advocacy in particular for the recognition of indigenous peoples’ rights to customary tenure.

The Covid-19 pandemic made conducting the research difficult. Several adjustments had to be made and the process got delayed. Then, on 1st February 2021, the military coup has shattered all hopes for the consolidation of democracy in the country, including the passing of a new land law that would correct past injustices with regards to people’s right to land and respect, among others, the right to customary tenure of indigenous peoples and other rural communities. Nevertheless, after discussions with the research team it was decided to go ahead with the publication of the report, since it is hoped that at some time in the future it may contribute to building a more just society for all people in Myanmar.

I would like to thank all the volunteers helping to conduct field surveys during in the tough Covid-19 pandemic and the community members for giving their time for the interviews. My appreciation also goes to Dr. Christian Erni for his guidance and patience, and all the other and POINT’s staff for their hard work and commitment to completing this research against all odds. Finally, I would like to express my sincerer appreciation to Rainforest Foundation Norway (RFN) for supporting this research.

Naw Ei Ei Min, Director

Background, purpose and methodology

In 17th January, 2018 the Myanmar Government formed the National Land Use Council which was given the responsibility to draft a National Land Law in accordance with the National Land Use Policy (NLUP) of 2016. Important for indigenous peoples is part 8 of the NLUP, on “Land Use Rights of Ethnic Nationalities”. Even though the chapter (and the NLUP as a whole) does not explicitly refer to indigenous peoples¹, and in its title only refers to “land use rights”, it also uses the terms “customary land tenure rights” and “customary tenure rights” (in articles 69 and 80 respectively).

Civil society organizations (CSOs) in Myanmar paid much attention to the development of the national land law after the adoption of the National Land Used Policy. Together with local and international NGOs, they were trying to clarify the concepts of customary tenure and customary land, among others in order to have a common understanding on the issues related to the land rights of indigenous peoples. Even though there are international legal instruments on the rights of indigenous peoples, like the United Nations Declaration on the Rights of Indigenous Peoples, the Myanmar government will have to adjust the language used in its laws referring to indigenous peoples and adapt it to the national context. In doing that, it is very important that the National Land Law not just clearly recognizes the customary land rights of indigenous peoples, but also clearly reflects the preferences of indigenous peoples regarding how their land rights are protected.

Therefore, POINT initiated a research with the aim to contribute to the current discussion among CSOs in Myanmar on how best to protect indigenous peoples’ rights by helping indigenous peoples to express their own views on customary tenure legal protection of their rights. It was hoped that the findings will feed into the national land law development and can also serve a reference for the discussion on land issues in connection with the restructuring of the state as a federal union, which many indigenous peoples in Myanmar are aspiring for.

However, the Corona virus pandemic made it impossible to conduct the research as planned. Field work as well as workshops and consultation meetings were not possible. Thus, it was decided to limit the research to a preliminary survey with the help of volunteers within POINT’s network of partners across the country. The survey is supposed to provide a broad picture of the presence or absence of customary tenure among indigenous peoples in Myanmar, and help identify key issues that need further research.



Figure 1. *Volunteers on the way to conduct research in Kone Hta Village, Khaung Lan Phoo Township in Northern Kachin State.*



Figure 2. *Volunteer conducting an interview in Shwe Taung Ngwe Taung Village, Pauk Khaung Township in Bago Region.*

Research purpose

The ultimate purpose of the research is to support advocacy work on indigenous peoples' land rights by helping to know how customary land tenure should be recognized and protected in the new national land law and in future federal state law through the voices of indigenous communities. In particular, the research seeks

1. To know the diversity of situations of customary tenure practices in the context of current changes in Myanmar
2. To know what form of protection of their land right is best suited to the situations of the communities involved (e.g., individual or collective rights);
3. To know indigenous women's perspectives on gender and land rights in today's changing world

The survey was meant to provide some preliminary answers to these research questions, based on which further, more in-depth studies can be conducted.

Methodology

The method used in this research was a survey based on individual interviews conducted by volunteers (local leaders, youth, activists and network members, both men and women) in their communities. Originally, it was agreed to complement the survey with field work in order to collect more in-depth qualitative data. However, these plans had to be canceled due to the Covid-19 outbreak in March. Therefore, it was decided to collect data with the help of volunteers from each of the chosen research areas. For that, a survey form was developed and four orientation videos were made in which the background and objective of the research are explained, and how to collect data for the survey, including the “dos and don'ts” in conducting an interview. A consent form and concept note for the agreements between POINT and volunteers were sent to them. They were also provided with stationary, refreshments and safety equipment like hand gel, mask and face shield via post offices and public transportations. POINT created a facebook and messenger group for information, experience and photo sharing, and to support and follow up on the work of the volunteers. POINT staff members also followed up with the volunteers by organizing online meetings and through phone contact. When the survey forms from each area was received, the responsible POINT research team member and externally hired people entered the data in a Microsoft Access database, which was combined with Microsoft Excel for the data analysis.

The survey consisted of two parts: A multi-states/regions survey was conducted with smaller samples of respondents in nine townships in seven States and Regions (Bago Region, Chin State, Kayah State, Kayin State, Magway Region, the Naga Self-administered Zone of Sagaing Region, and Southern Shan State; see table 1 and map 1). The respondents are from 57 villages and belong to 17 ethnic groups (for two of them the precise sub-group could not be determined). In addition, a survey was conducted with a larger sample in four townships

in the North of Kachin State only, an area predominantly inhabited by the Rawang people. However, like elsewhere in Myanmar, many communities there are of mixed ethnicity and it was hoped that the larger sample in this area would help take such intra-community ethnic diversity into account.

Table 1. Number of respondents, areas and ethnic groups

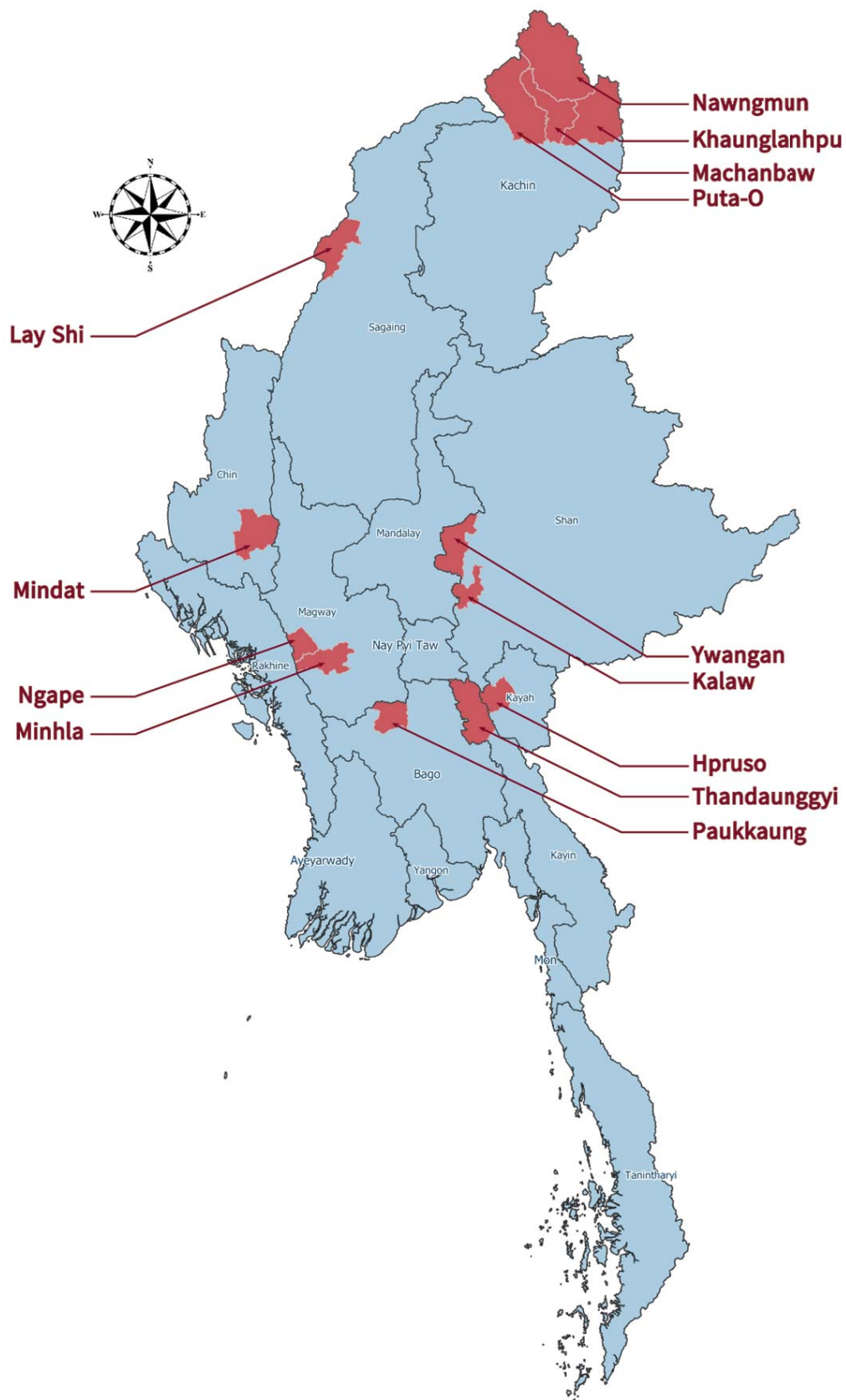
State/Region	Township	No of vil-lages	Ethnic group	No of respondents	Wom-en	Men
Survey 1						
Bago Region	Paukkhaung	2	Sgaw Karen	9	5	4
Chin State	Mindat	8	Cho Chin	40	18	22
Kayah	Hpruso	3	Kayah	5	1	4
			Kayaw	14	3	11
			Manaw	1	1	0
Kayin	Thandaunggyi	5	Gheba	14	5	9
Magway	Minhla	15	Asho Chin	38	10	28
	Ngape					
Sagaing (Naga SAZ)	Lay Shi	19	Tangkhul	23	7	16
			Koka	2	2	0
			Yay Nae Kon	1	0	1
			Makuri	5	1	4
			Jah Jar (Para)	6	4	2
			Other Naga	13	5	8
			Kuki Chin	3	2	1
			Chin	3	0	3
Southern Shan State	Kalaw	5	Danu	25	8	17
	Ywangan					
8	11	57	17	202	72	130
Survey 2						
Kachin State	Khaunglanhpu	63	Rawang	233	93	140
	Machanbaw		Lisu	16	5	11
	Nawngmun		Shan	10	2	8
	Put-a-O		Jinghpaw	9	2	7
1	5	63	4	268	102	166



Figure 3. The entrance of Nyi Wah village, Khaung Lan Phoo Township in Northern Kachin State.



Figure 4. Fields and forests of Ma Kal Hta Village, Khaung Lan Phoo Township in Northern Kachin State.



Map 1. Townships included in the two surveys



Figure 5. *Pyar Village in Layshi Township, Naga Self-administered Zone in Sagaing Region.*

I Customary Tenure among Indigenous Peoples in Myanmar: Current Status and Changes

A recent study on customary tenure systems in Myanmar² showed that some forms of customary tenure still exist all over the country, but that complete systems, i.e., customary tenure systems as comprehensive, community-based land and resource governance systems, are above all found among indigenous peoples in the uplands of the country. However, the report also shows that these systems too are undergoing rapid, often profound changes in response to a combination of various factors that are impacting on them. Some of the key factors shaping customary tenure systems that are identified in the report are: changes in land use, market integration, population growth, migration, social and cultural changes, state interference like land acquisition, forced displacement, laws and policies on land and forests, and armed conflicts. Case studies are included in the report to illustrate the different forms of customary tenure that have evolved in response to these and other factors, drawing on studies on customary tenure and related issues that have been conducted in Myanmar in recent years.

Despite an increasing body of literature on customary tenure in Myanmar, much more research is needed to capture the diversity and dynamics of change of these resource governance systems. This study does not look at specific cases and the intricacies of the interplay of factors, forces and people's responses on the ground, but, on the basis of the survey conducted for this study, tries to help gain a broad picture of the situation of customary tenure among indigenous peoples in Myanmar. In this chapter the main questions raised are simply whether customary tenure systems still exist in the communities which the respondents are part of, whether these systems have changed, what the main drivers of change are and whether, in the respondents' opinion, their customary tenure systems are good as they are or whether they feel changes are needed.

Customary tenure and statutory systems are used side-by-side

All of the 57 villages covered by the first survey still have customary tenure systems, and almost all of these customary tenure systems (51 of 57) have some form of collective ownership of land or forest. The same applies to the survey conducted in Northern Kachin state, where all of the 63 villages still have customary tenure systems and only 6 of them don't have any collective ownership of land. The form of collective ownership differs according to the social organization of the ethnic groups. While communal ownership of land or forest is found in all villages, communities with clan systems (like, for example, among the Chin, Naga or Lisu) also report clan ownership. Eight cases of land jointly owned by more than one village were reported among the Karen of Bago, the Naga in Sagaing, Chin of Chin State, Asho

Chin of Magway, and Kayah and Kayaw of Kayah State. In the survey in Kachin state, several respondents from five Rawang villages also referred to joint ownership of land by villages, and other responses indicate that this may be the case in other villages too. However, all the statements on joint ownership of land by more than one village need further clarifications regarding the nature of this “joint ownership” before it can be confirmed, which was not possible in this study.

While customary tenure systems are found in all villages, the statutory system is used parallel to the customary system by about half of all respondents in the multi-states/regions survey³. 90 of the 202 respondents in the multi-states survey (44.6%) stated that they use only the customary system for governing their land, 105 (52%) reported that they use both the customary and the government system. Only one person said that he uses only the government system. The frequency of use of both the customary and statutory tenure system differs between the areas. It is most common in the Naga areas of Sagaing Region (75%), the least common in Kayah (20%). However, while the overall picture is pretty clear, the small sample size in some of the areas may not adequately represent the actual situation in these communities.

The survey result in Northern Kachin State is fairly consistent with the multi-states survey. There, 64.2% of all respondents stated that they use both the customary and the government system; 34% use only the customary system and only two respondents said they use only the statutory system.



Figure 6. A volunteer conducting an interview in A sho Chin community in Ngape Township in Magway region.

The most common legal land right document obtained under the statutory system is the land use certificate (called Form 7), issued in accordance with the Farmland Law of 2012 (amended in 2020). Almost one in three respondents (30.7%) in the multi-states survey reported having a Form 7. About one in seven respondents (14.2%) have a Community Forest Certificate (CFC), issued to groups of forest users in accordance with the Community Forestry Instructions of 1995 (amended in 2016 and 2019). Only few (7.5%) have both a Form 7 and a CFC, and very few (only two respondents) reported having a form 105 or form 106, which are documents attached to Form 7.⁴ None has reported having obtained rights to land under the VFV law. In Northern Kachin State, an even larger number of respondents (62.3%) have obtained a Form 7, but only very few (5.2%) are part of a group who has a CFC.

Customary tenure systems have changed in recent years

With over 50% of the people interviewed using both the customary and the statutory tenure system, it does not come as a surprise that well over half of the respondents in the multi-states survey (58%) and in Northern Kachin State (59%) were of the opinion that their customary tenure system has changed in recent years, and that a majority of those who answered the question regarding the reason for change mentioned the “government system” (52% in the multi-states survey and 71.8% in Northern Kachin). The adoption of cash crops is the second most frequently mentioned reason for change in the multi-states survey (27.6%). In Northern Kachin it ranks third (with 7.1%), after relocation (9.6%). The reasons for change differ between regions, reflecting the particular situation and above all the kinds of external pressures experienced by the communities (see table 2). In Southern Shan State, for example, land grabbing is the main reason, while in Kayah state the most frequently mentioned reason is outmigration.

Almost all respondents were of the opinion that there have been changes in the natural environment in recent years (96.6% in the multi-states survey, 86.2% in Northern Kachin State). Deforestation and climate change are the most frequently reported changes. However, only very few said that environmental changes led to changes in the customary tenure system.

Generally, the changes the interviewees talked most about are changes in land use, like difficulties in practicing the traditional form of shifting cultivation due to population increase and climate change, adding to the general trend of replacing shifting cultivation with cash crops, which has been frequently mentioned. According to others, some people have abandoned farming altogether as they took up jobs in mining or migrated to cities and abroad in search of jobs, some of whom sold their land before leaving.

Some respondents referred to consequences of land use changes, like the disappearance of native seeds, dependence on agrochemicals, or the loss of communal land tenure. A “loss of interest in culture and traditions” is another observation repeatedly linked to changes in customary tenure systems. Reasons given were inter-ethnic marriage, population growth or the adoption of the “government system”, like obtaining Form 7.

Table 2. Reasons for changes in customary tenure systems

Reason for change	Bago Region	Chin State	Kayah State	Kayin State	Magway Region	Naga SAZ (Sagaing)	Southern Shan State	Total	%	Northern Kachin State	%
Business (commercialisation)				2				2	1.6		
Cash crops	2	8	4	3	9	4	3	34	27.6	11	7.1
Climate change			1				1	2	1.6		
Community Forestry										7	4.5
Protected Forest										9	3.2
Conflict						1		1	0.8		
Government system	4	22	3	1	23	2	2	64	52.0	112	71.8
Land grabbing	1						9	11	8.9	6	3.8
Outmigration			7					7	5.7		
Relocation		3	1				1	5	4.1	15	9.6
To improve/be "more systematic"						2		2	1.6		
	7	33	16	6	32	9	16	128	100		100

Since community mapping has been conducted by CSOs all over the country in recent years, the survey also wanted to find out whether in the eyes of community members this has led to any changes in the customary tenure system of the communities involved in such projects. 31 of the 57 villages covered in the multi-states survey were involved in community mapping, and 29 of the 63 villages in Northern Kachin State. None of the respondents found that community mapping changed their perception of land and most said that it did not lead to any changes in their customary tenure system. Those who did say so actually did not refer to changes in customary tenure but to other impacts. The two main impacts mentioned are: better knowledge of their village boundary and having evidence of their customary tenure.

There are changes toward more gender equality in land ownership

Customary tenure systems of the communities included in this study differ with respect to the rules of inheritance of land. While in the communities of some ethnic groups, like the Sgaw Karen, women inherit land equally, in other ethnic groups like the Chin, Asho Chin or Naga, land is traditionally passed on only to sons, or, if women do inherit land, they are

not given equal shares. These rules are closely linked to customary rules regarding residence after marriage. It is in the communities where women who are moving to the husband's village after marriage that land is given to sons only. Thus, reasons given for men getting all or a larger share of the land were: men are responsible for taking care of the family, or women get land through marriage. In communities where residence after marriage can be in either the husband's or the wife's village, land is given to both sons and daughters.

However, changes are happening in many communities. According to interviews with women in the multi-state survey, women own land in all communities included in the survey. Most respondents (73.1%) also said that women inherit land, but in most cases, they do not inherit the same amount of land. Table 3 shows the differences in responses by women from the different areas with regards to the questions whether women own land, whether they can inherit land and, if yes, whether they inherit the same amount of land as men. In some cases, the answers are unanimous, in other not all women gave the same answer, reflecting their personal situations and experiences. However, the pattern is pretty clear: with the exception of Northern Kachin State, in all communities, women now own land, in most they inherit some land, but, with the exception of the Sgaw Karen communities in Bago, they do not inherit the same amount of land.

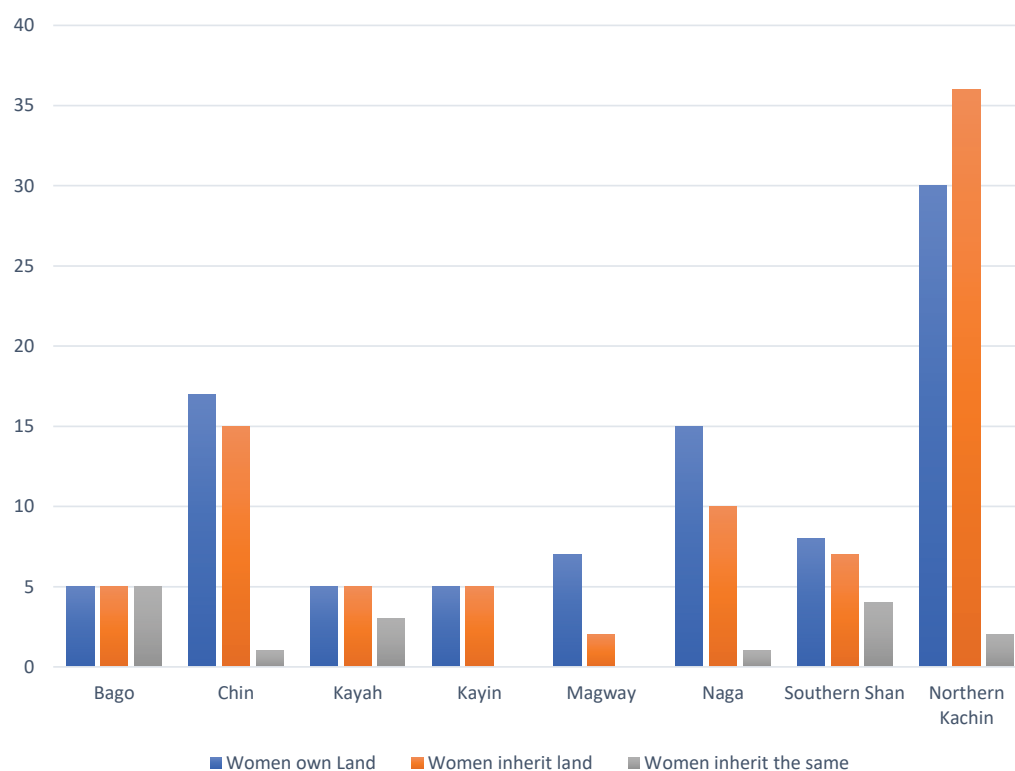


Figure 7. *Asho Chin woman harvesting rice in an upland field in Sar Pauk village, Ngape township. Among the Asho Chin, land is traditionally passed on only to sons.*

Table 3. Women's responses on land ownership and inheritance by women

State/Region	Women own land		Women inherit land		Women inherit the same		N
Bago	5	100.0%	5	100.0%	5	100.0%	5
Chin	17	100.0%	15	88.2%	1	5.9%	17
Kayah	5	100.0%	5	100.0%	3	60.0%	5
Kayin	5	100.0%	5	100.0%	0	0.0%	5
Magway	7	87.5%	2	25.0%	0	0.0%	8
Naga	15	78.9%	10	52.6%	1	5.3%	19
S Shan	8	100.0%	7	87.5%	4	50.0%	8
Total	62	92.5%	49	73.1%	14	20.9%	67

N Kachin	30	31.6%	36	37.9%	2	2.1%	95
-----------------	-----------	--------------	-----------	--------------	----------	-------------	-----------

**Graph 1. Women's responses on land ownership and inheritance by women**

The survey in Northern Kachin State reveals that a majority of women do not own or inherit land, and almost none of those who do will get the same amount of land as their brothers. Interesting is that the survey indicates that there are variations between communities of the same ethnic group, i.e., the Rawang.⁵ The 95 women who were interviewed are from 46 villages and two government quarters. Respondents from 28 of these villages said that women do not inherit and do not own land, while respondents from 18 villages said women inherit and own land. 14 of these 18 villages had more than one respondent, but only in 5 cases did all respondents say that women can inherit and own land. This means that the women interviewed from 9 villages gave different answers, which indicates not just that there are variations within villages but also that changes of customary tenure rules regarding ownership and inheritance of land may be initiated by individual households. This raises interesting questions regarding the trajectory of changes of customary tenure rules within communities, how changes become more widely accepted and eventually become part of a community's customary law.

Changes in customary tenure rules regarding women's ownership and inheritance of land were confirmed by most women interviewed from Chin state (88.2%), by about half of those from Bago and the Naga areas, but only by one in four or five of the women from Magway Region, Kayah, Kayin and Northern Kachin state, and by none of those from Shan state.

Since inheritance and ownership rules are closely linked to key aspects of the social organization of indigenous societies, above all post-marital residence, a key question that requires further research is what brings about the observable changes toward more gender equality in customary tenure systems.

Some feel that further changes are needed

Two-third of all respondents in the multi-states survey (67.8%) found that their current customary tenure system is good, while for about a third of them (28.7%⁶) there is a need for changes. The share of those who feel that changes are needed differs between the regions. With 55% it is highest in Chin state, followed by Kayah (30%). It is lowest among the Karen of Bago (12.5%), the Asho Chin of Magway Region (18.4%) and the Nagas (19.6%). However, as already mentioned earlier, due to the small sample in some of the regions these figures have to be taken with a grain of salt.

The data for Northern Kachin is pretty much in line with the findings of the multi-states survey. There also, almost two third (62.3%) of the respondents were of the opinion that the present system is good, while about a third (29.5%⁷) feel changes are needed.

There are no big differences in the answers when disaggregated according to occupations. In the multi-states survey, 70% of elected leaders in local government (village tract and village administrators, hundred-household and ten-household leaders) are happy with the current

CT system, as compared to only 50% in the North Kachin survey. Government employees (e.g., teachers, nurses) responded very similarly (62.9% and 46% respectively). And in the multi-states survey, half of all ordinary villagers (farmers and dependents) declared to be happy with the current CT system, while the other half think that changes are needed. In Northern Kachin two third (65.4%) of ordinary villagers found that their customary tenure system is good, and about a quarter (26.3%) think that changes are needed⁸.

In all regions of the multi-states survey as well as in Northern Kachin one of the most frequently mentioned changes that are needed is government recognition and the issuing of legal documents for land held under customary tenure. Other changes suggested by those who are not happy with their present system reflect local demographic and other conditions, like ethnicity, or, rather, the social organization and thus the nature of the customary tenure system in a particular community. For example, among the Chin of Mindat, who, like most Chin are a stratified society with noble clans and commoner clans, the need for a fairer distribution of land ownership was mentioned. Others suggested that there should be land rights for women. Respondents from the Naga self-administered Zone also mentioned the need to give equal land rights to women.

Equity issues were also a concern for Asho Chin respondents from Magway Region. Land scarcity as a result of population growth has led to encroachment and conflicts with those who own larger land areas. It was also suggested that “migrants” (i.e., people who moved into the area and thus do not have customary land ownership) should be given equal rights to land. Finally, one of the respondents feels that there should be individual instead of collective land ownership “in order to be able to work freely”.

Among respondents from Kayah State, governance issues were more prominent: Some feel that their customary tenure system should be “more systematic” and that there should be better enforcement of existing rules and regulations. Others from Kayah State also pointed at the need for the documentation, conservation and passing on to the younger generation of traditional knowledge related to customary tenure.

In Northern Kachin State, too, the most prominent concern of the respondents was the need for recognition of customary tenure by the government. With regards to changes of the customary tenure system itself, the most frequently mentioned change needed was the improvement of customary tenure governance. A few respondents pointed at the need for obtaining evidence for their customary land, and one person found that “each family” should own land certificates, allowing land to be sold.

Women tend to be less satisfied with the current customary tenure systems

Gender disaggregation of the multi-states survey data shows that women seem to be less satisfied with the present customary tenure system than men. Only a little over a third (38.4%) of the women interviewed are happy with the present system, a little less than a

third (30.3%) feel that there is a need for change, and another third (31.3%) said they are not sure what to answer, which can also be interpreted that they are probably not entirely happy with it either. Among the men, a majority is happy with the current system. Only one in four (26.2%) feel there is a need for change in their customary tenure system.

Among the communities covered in the multi-state survey, dissatisfaction with the present customary tenure system is most pronounced among women from Chin state, where 10 of the 17 women interviewed (58.8%) feel that there is a need for change. Half of the 10 Asho Chin women of Magway and 40% of the 20 Naga women interviewed also think that changes are needed. And the survey in Northern Kachin State revealed that even 76% of the 104 women who participated in the survey think that their CT system should be changed.



Figure 8. *Asho Chin woman of Myay Lat Village in Ngape Township. Half of the Asho Chin women interviewed feel that changes in customary tenure are needed.*

II Awareness of Existing Laws and International Human Rights Instruments

Since almost two-third of all respondents in both surveys said that they use both customary and statutory tenure systems and many have a Land Use Certificate (“Form 7”) it can be assumed that there is extensive awareness of and knowledge about existing laws related to land among the communities involved in the surveys. However, interviews revealed that this is not the case. Using the law, like by applying for a “Form 7”, does not imply that people are much aware of the law itself, or its implications.

There is little knowledge about laws in most communities

Overall, only about a quarter of all respondents in the multi-states survey know about the Farmland law, and about the same percentage know of the Forest law. Awareness on the VFV law is slightly higher (29.2%), while it is very low when it comes to the land acquisition law. Also, only one in six respondents are aware of the NLUP (see table 4).

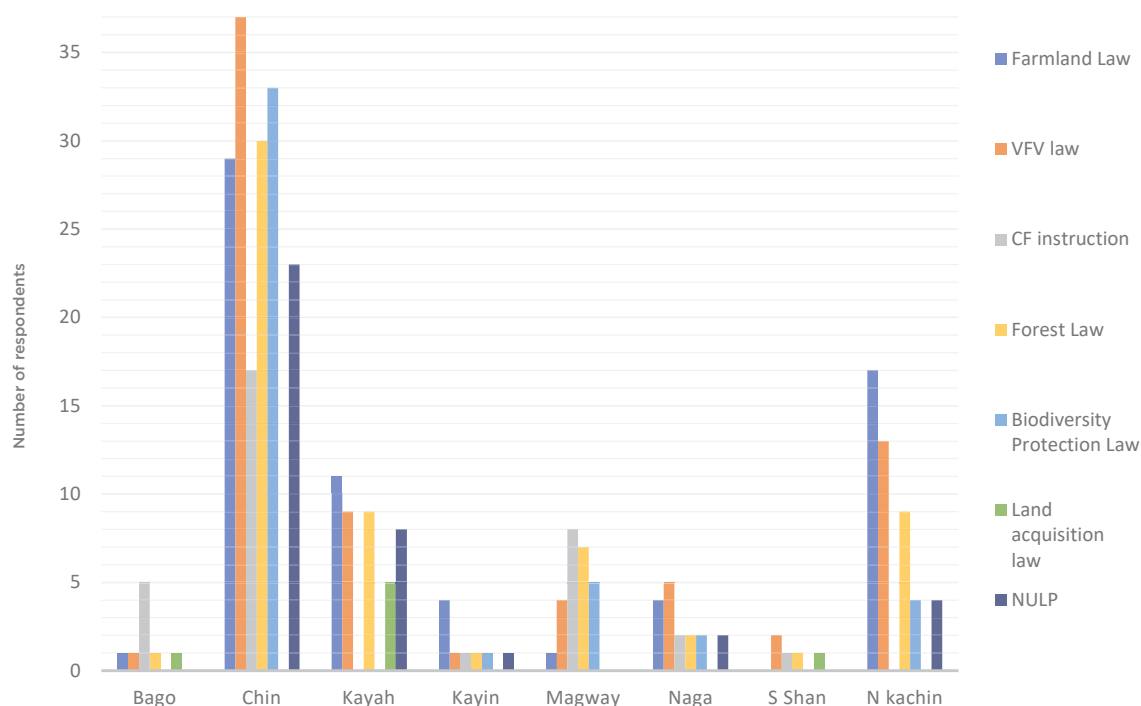
However, there are considerable differences between the communities of the different states and regions (see table 4). In the communities of Mindat township in Chin state, overall awareness of laws is much higher than elsewhere. There, 72.5% of all respondents know of the Farmland law, and even 92.5% have heard of the VFV law.⁹ In Bago, only one of the nine respondents knows about different laws and the NLUP, but five of them know the CF instructions, because their communities have been involved in community forestry since a couple of years and received CF certificates.¹⁰ In the communities from Kayah state again, many respondents know about the Farmland law, the VFV law and the Forest law, but few know about the CF instructions, reflecting their involvement with CSOs in activities like awareness raising and community mapping, while there hasn’t been much participation in community forestry. Among the respondents from the Naga areas and Southern Shan state, as well as among those interviewed in the survey in Northern Kachin the level of awareness on these laws is very low.

Table 4. Awareness of existing laws related to land

	Farmland law		VFV law		CF instructions		Forest law		Biodiversity protection Law		Land acquisition Law		NLUP		N
Bago	1	11.1%	1	11.1%	5	55.6%	1	11.1%	0	0.0%	1	11.1%	0	0%	9
Chin	29	72.5%	37	92.5%	17	42.5%	30	75.0%	33	82.5%	0	0.0%	23	57.5%	40
Kayah	11	55.0%	9	45.0%	0	0.0%	9	45.0%	0	0.0%	5	25.0%	8	40.0%	20
Kayin	4	28.6%	1	7.1%	1	7.1%	1	7.1%	1	7.1%	0	0.0%	1	7.1%	14
Magway	1	2.6%	4	10.5%	8	21.1%	7	18.4%	5	13.2%	0	0.0%	0	0.0%	38
Naga	4	7.1%	5	8.9%	2	3.6%	2	3.6%	2	3.6%	0	0.0%	2	3.6%	56
Southern Shan	0	0.0%	2	8.0%	1	4.0%	1	4.0%	0	0.0%	1	4.0%	0	0.0%	25
Total	50	24.8%	59	29.2%	34	16.8%	51	25.2%	41	20.3%	7	3.5%	34	16.8%	202
North Kachin	17	6.3%	13	4.9%	0	0.0%	9	3.4%	4	1.5%	0	0.0%	4	1.5%	268



Figure 9. Village in Leiktho Sub-township of Thandaunggyi Township in Kayin State. Communities here are much affected by the laws related to forest and land but like in other research areas awareness on these laws is fairly low.



Graph 2. *Level of awareness of existing laws related to land.*

In recent years, CSOs in Myanmar have increasingly used international legal instruments to support their advocacy work. For indigenous rights advocacy, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is the most important reference document. It was passed by the UN General Assembly in 1997, with a vast majority of states, including Myanmar, voting in favor of its adoption. In 2017, Myanmar ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). While the UNDRIP is not a treaty and thus only indirectly legally binding (many of its provisions are similar or identical to provisions found in other international legal instruments), by ratifying the ICESCR, Myanmar has the legal obligation to bring its domestic laws in line with the covenant. Many of its provisions are important for indigenous peoples and are also contained in the UNDRIP.

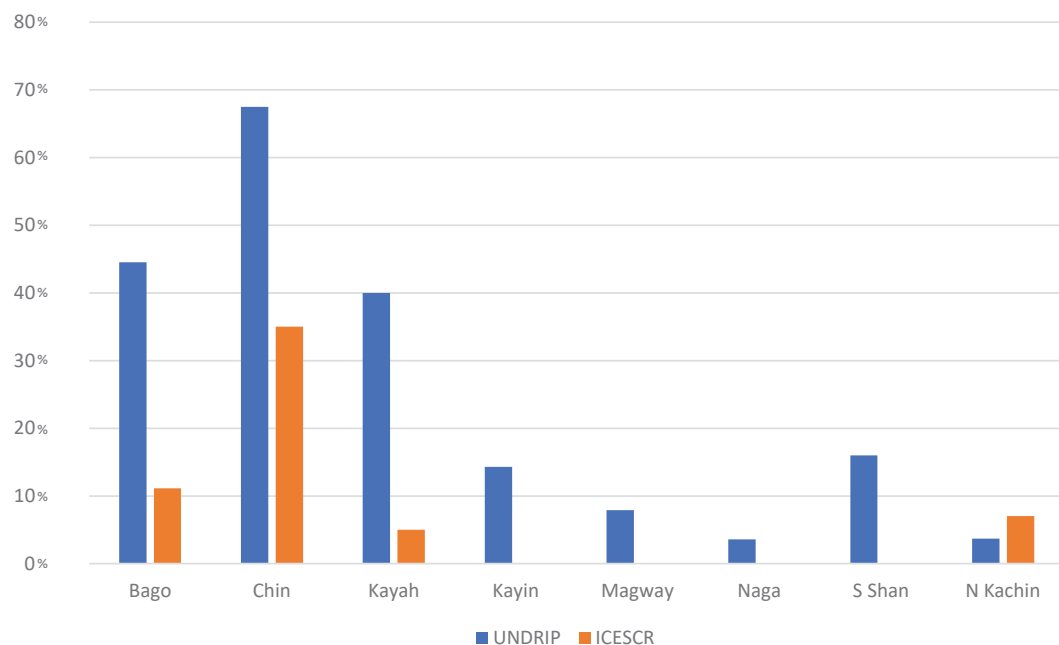
Thus, in the context of drafting a national land law, these two international legal instruments (among others) are important reference documents for indigenous peoples and their advocates. This study wanted to know to what extent members of indigenous communities are aware of these two instruments.

The surveys show that, overall, not many people have heard of the UNDRIP and the ICESCR. About a quarter of all respondents in the multi-state survey know of the UNDRIP and just about 8% know of the ICESCR. In Northern Kachin, only very few respondents know of the UNDRIP, and even fewer of the ICESCR (see table 5). And when these respondents were asked what they know, the answers show that their knowledge is very general at best, often rather vague.

Table 5 shows that awareness of these two international legal instruments also differs a lot between communities in different states and regions. It is again members of communities from Chin State that have more knowledge of these legal instruments, followed by those from Bago region and Kayah state. Knowledge of the UNDRIP is low, and knowledge of the ICESCR is completely absent among members of the communities from Kayin state, Magway region, the Naga Self-administered Zone of Sagaing region and Southern Shan state.

Table 5. Awareness of the UNDRIP and ICESCR

	UNDRIP				ICESCR			
	Yes		No		Yes		No	
Bago	4	44.4%	5	55.6%	1	11.1%	8	88.9%
Chin	27	67.5%	13	32.5%	14	35.0%	26	65.0%
Kayah	8	40.0%	12	60.0%	1	5.0%	19	95.0%
Kayin	2	14.3%	12	85.7%	0	0.0%	14	100.0%
Magway	3	7.9%	35	92.1%	0	0.0%	38	100.0%
Naga	2	3.6%	54	96.4%	0	0.0%	56	100.0%
S Shan	4	16.0%	21	84.0%	0	0.0%	25	100.0%
Total	50	24.8%	152	75.2%	16	7.9%	186	92.1%
N Kachin	10	3.7%	258	96.3%	7	2.6%	261	97.4%



Graph 3. Level of awareness of UNDRIP and ICESCR.



Figure 10. *Gheba elders in Leiktho sub-township of Thandaunggyi Township. Knowledge about the UNDRIP and ICESCR is low among Gheba villagers interviewed in Thandaunggyi Township.*

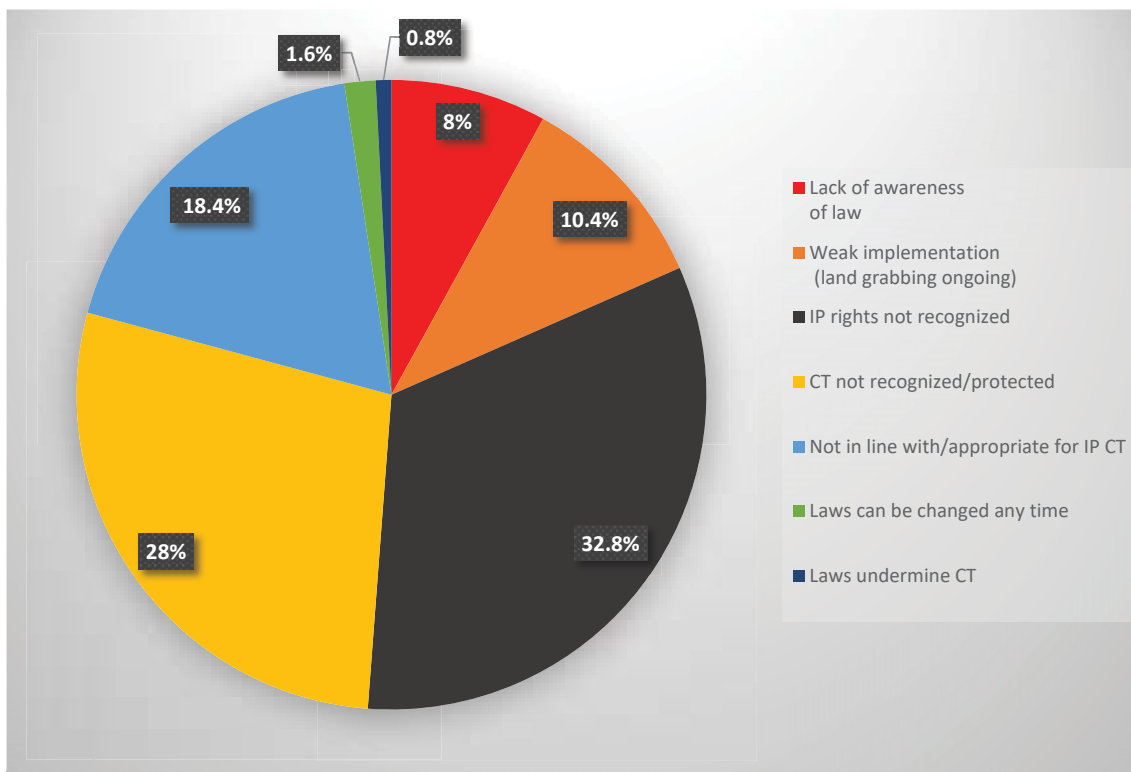
Existing laws are considered insufficient for protecting their rights

While overall awareness of laws and policies is fairly low in most communities involved in the two surveys, almost half of the respondents in the multi-states survey have either a Form 7 (30.7%) or are part of a forest user group possessing a CFC (14.2%). In Northern Kachin State even more than half (62.3%) have a Form 7. Yet, the vast majority of them (150 of 157, or 89.8%) believe that a Form 7 is not enough to protect their land rights. The same result was obtained when asking the question whether existing laws offer enough protection of their land rights. If those who do not have a Form 7 are included, even 92.2% of the respondents in Northern Kachin are of the opinion that the existing laws do not sufficiently protect their rights. The multi-states survey shows a similar picture: 89.1% of the 202 respondents think that the present laws are not enough to protect their rights.

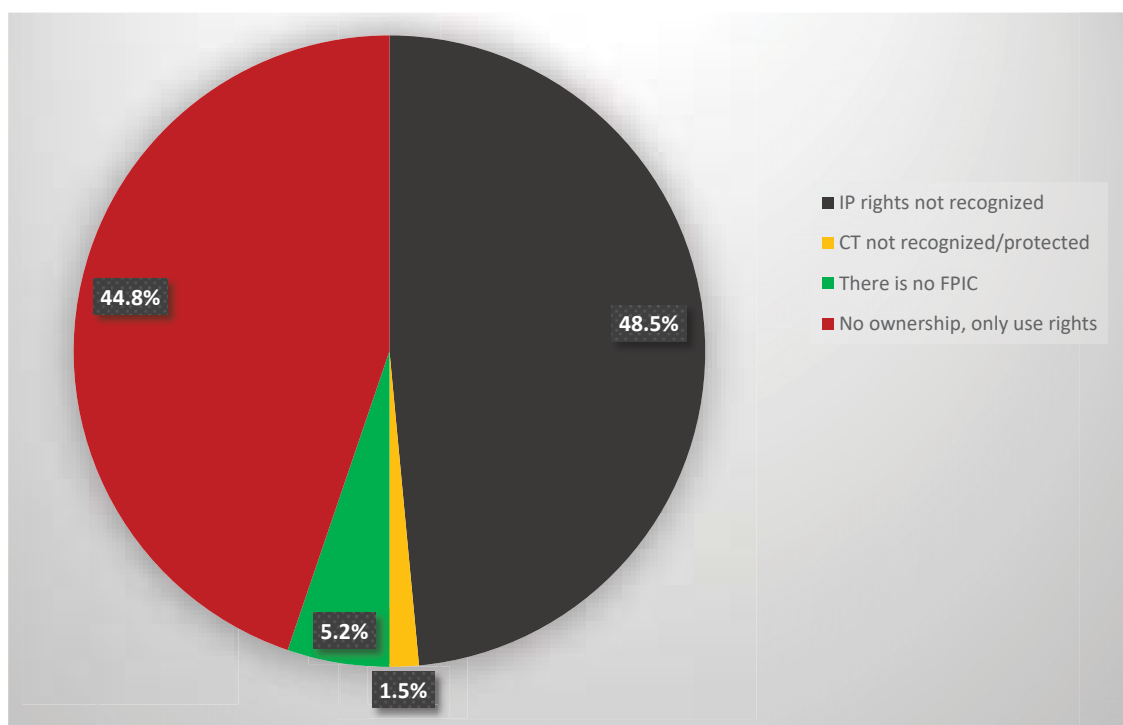
When asked why these laws are not enough to protect their rights, the most frequently given answer in both surveys was that indigenous peoples' rights are not recognized (see table 6). In the multi-states survey, the second most frequently given reason is the lack of recognition of customary tenure, while in the Northern Kachin survey it is that there are no ownership rights, only use rights.

Table 6. Reasons why existing laws don't give enough protection for indigenous peoples' rights

	Multi-states survey		Northern Kachin	
Lack of awareness of laws	10	8.0%		
Weak implementation (land grabbing ongoing)	13	10.4%		
IP rights not recognized	41	32.8%	65	48.5%
CT not recognized/protected	35	28.0%	2	1.5%
Not in line with/appropriate for IP CT	23	18.4%		
Laws can be changed any time	2	1.6%		
Laws undermine CT	1	0.8%		
There is no FPIC			7	5.2%
No ownership, only use rights			60	44.8%
	125		134	



Graph 4. Reasons given in the multiple-states survey for why existing laws don't give enough protection for indigenous peoples' rights.



Graph 5. *Reasons given in the Northern Kachin State survey for why existing laws don't give enough protection for indigenous peoples' rights.*

Given the fact that only few people know about the UNDRIP and ICESCR, the two international legal instruments included in this survey, and that their knowledge is in most cases only superficial, it does not come as a surprise that only few actually answered the question whether they think these instruments can help protect community land rights. Among the 50 respondents in the multi-state survey who said they know about the UNDRIP, 16 said yes, 10 said no and all the others did not give any answer. Of the 16 respondents who know about the ICESCR, 7 said yes, all others did not give any answer.

Awareness of these two legal instruments is highest among the communities from Chin state, and the answers given by some respondents from these communities also show that, at least with regards to the UNDRIP, their knowledge is more than superficial. Some of those who do believe that the UNDRIP can help protect their communities' land rights even referred to specific paragraphs in the UNDRIP.

III Drafting a New Land Law: Indigenous Peoples' Preferences

In 2016, the National Land Use Policy was adopted by Myanmar's parliament and in 2018, a National Land Use Council (NLUC) was formed and given the task of drafting a National Land Law that reflects the principles of the NLUP. Since the NLUP, in part 8, provides for the recognition and protection of "land use rights of ethnic nationalities", the new land law would have to address customary tenure rights of ethnic nationalities, i.e., indigenous peoples. Under the National Land Law Drafting and Land Laws Harmonization Working Committee set up by the NLUC, seven sub-working groups were created, one of them being the "Indigenous Peoples, Customary Land Tenure, Land Management Systems Sub-Working Group".

During the drafting of the NLUP, consultations with CSO were held and many of them have shared the draft and, after its adoption, the final text of the NLUP with the communities they were in touch and working with. Thus, the surveys wanted to find out how much awareness there exists among indigenous communities about the NLUP and the more recently initiated drafting of a National Land Law. They also sought to obtain the opinion of the respondents on what the National Land Law should contain.

There is little knowledge of the National Land Use Policy and the drafting of a new land law

The surveys revealed that, with the exception of the communities in Chin and Kayah state, there is a low level of awareness of the National Land Use Policy of 2016 (see table 4). And by far most people (93.1% in the multi-states survey and a full 100% in the Northern Kachin survey) did not know that the process of drafting a National Land Law had started under the previous government, a process now aborted as a result of the violent grabbing of power by the military. Again, it's the respondents from the communities in Chin state who are most aware of the NLUP and the drafting of a new land law (57.5% and 25% respectively).

What should be included in the land law

Many respondents were not sure what to suggest and did not answer this question. The answer of those who did was simple and straightforward: the new land law should include the recognition of customary tenure. Some mentioned that it should recognize indigenous peoples' rights to their land.

Both communal and individual rights are considered important

Overall, there is no clear preference for the inclusion of either individual or communal land rights in the land law among respondents in the multi-state survey. Preferences are equally divided: 68 (42.5%) of the 160 respondents think that rights should be protected by recognizing individual land rights, for 67 (41.9%) it should be through recognition of communal rights. 25 respondents (15.6%) think it should be done by including both individual and communal land rights. Communities in Northern Kachin tend to prefer the recognition of communal rights (59.3% of the 268 respondents) over individual rights (35.4%). 5.3% think it should be both.

Interesting is that over two-third (71.6%) of the women who were interviewed in the multi-state survey think that individual land rights are better for women, while in the survey in Northern Kachin state it's the opposite: 59% of the women feel communal land rights are better for women. Thus, their preference is pretty much in line with the overall preference among respondents from Northern Kachin.

Of course, these findings, like many others of this preliminary survey, raise a host of important questions regarding the reasons for the stated preferences and how these are connected to external and internal factors and forces of change. These factors differ according to the particular situation in each community, like, for example, the extent of privatization of land rights, the vibrancy of customary resource governance, i.e., how well tenure rules regarding communal land are enforced above all vis-à-vis outsiders and thus the prevention of land grabbing.

IV Conclusions

This study has confirmed that despite numerous forces that impact on and bring about changes, customary tenure systems are still important land and resource governance systems among Myanmar's indigenous communities. However, the statutory system is often used parallel to the customary system, and it has been identified as one of the main factors leading to changes in customary tenure systems. Other reasons for changes differ between the regions in which the survey was conducted, which again reflects the local situations, particularly the forms of external pressures experienced by the communities.

While this study was able to give a general picture of the forces of change, more in-depth research is needed on the actual trajectory of changes within communities, how initial changes of land use and governance practices in response to external and internal factors become more widely accepted and eventually are made part of a community's customary law.

One of the key aspects that requires further research is the question what factors bring about changes toward more gender equality in customary tenure systems. This study confirmed that there already is a trend toward more gender equality in customary tenure systems. However, these changes appear to be rather hesitant, and some respondents identified gender equality in customary tenure one of the changes that are needed.

Not surprisingly, women were found to be less satisfied with the current customary tenure system. But overall, a third of all respondents think that their customary tenure systems need to change. One of the most frequently mentioned changes is not a change within customary tenure systems, but government recognition and the issuing of legal documents for land held under customary tenure. Other changes suggested by those who are not happy with their present system reflect local demographic and other conditions, like social organization and thus the nature of the customary tenure system in a particular community. Respondents from communities belonging to stratified indigenous societies, where land ownership can be quite unequal, the need for a fairer distribution of land ownership was mentioned.

The improvement of governance in customary tenure systems, above all better enforcement of rules, is another change that some respondents found necessary. Others pointed at the need for the documentation, conservation and ensuring the intergenerational transfer of traditional knowledge related to customary tenure.

What the study clearly revealed is the low level of awareness of and knowledge about existing national laws and policies related to land and resource rights. This despite the fact that about half of all respondents make use of existing laws and have either a land use certificate (Form 7) or are part of a forest user group possessing a CFC. However, most of those who make use of these instruments don't think that they provide them with enough protection of their land rights. More generally, the existing laws were found to be insufficient, since they do not

recognize indigenous peoples' rights and customary tenure, and that existing rights are just use rights and not ownership rights.

The survey also revealed a very low level of awareness of international legal instruments that are relevant for indigenous peoples' rights, i.e., the UN Declaration on the Rights of Indigenous Peoples and the International Covenant on Economic, Social and Cultural Rights, which has been ratified by the Myanmar government.

The study also found a low level of awareness of the National Land Use Policy of 2016 and the initiation of the drafting of a new land law. Thus, it is not surprising that many respondents were not sure what to answer when asked for suggestions what the new land law should include. Those who did answer mentioned: the recognition of customary tenure and the recognition of indigenous peoples' rights to their land. The study revealed no clear preference among respondents for the inclusion of either individual or communal land rights in a new land law. It is obvious that preferences again reflect the local situation, thus more research is needed to identify factors that shape these preferences, among others, why women in the survey tend to prefer individual land rights.

As repeatedly implied, this study raises more question than answers it provides. More research into these and other questions will be needed when work on a new land law will resumed, under a future democratically elected government.

What the study also reveals is the need for more awareness raising on existing laws, international human rights instruments, the NLUP and, above all, in the future, the process of drafting a new land law. Only then will indigenous community members and leaders be able to genuinely engage and participate in discussions on what kind of law they need to address their needs for a better protection of their rights to their land and resources.

Appendix: List of volunteers participating in the research

No.	Name	Address	Ethnicity
1	Salai Yan Naung Tun	Gote Gyi Village, Ngape Township, Magway Region	Asho Chin
2	Salai La Min	Sin Yin Village, Min Hla Township, Magway Region	Asho Chin
3	Phyu Zin Thet	Yay Phyu Kan village, Bawsaing, Kalaw Township, Shan State	Danu
4	Lwin Mar Aye	Thein Kone village, Ywar Ngan Township, Shan State	Danu
5	Thein Than Htun	Kham Par Mu, Bawsaing, Kalaw Township, Shan State	Danu
6	Gitgu Mung Htoi	Myitkyina Township, Kachin State	Kachin
7	Naw Tracy Aung	Myat Thar Gone village, Than Daung Gyi Township, Kayin State	Gheba
8	Saw Aung Ku	Myat Thar Gone village, Than Daung Gyi Township, Kayin State	Gheba
9	Salai Mauk Mauk Kyaw	Myay Latt Village, Ngape Township, Magway Region	Asho Chin
10	Salai Han Nyunt	Pin Oo Village, Ngape Township, Magway Region	Asho Chin
11	Daw Mang Nghing	Mindat Township, Chin State	Chin
12	Salai Win Aung	Bone Baw village, Min Hla Township, Magway Region	Asho Chin
13	Elina	Loikaw Township, Kayah State	Kayah
14	Christina	Loikaw Township, Kayah State	Kayah
15	Ann Mary	Loikaw Township, Kayah State	Kayah
16	Theint Theint Nway	Myitkyina Township, Kachin State	Kachin
17	Mai Khin Win Yee	Mindat Township, Chin State	Chin
18	U San Naing Phung San	Putao Township, Kachin State	Rawang
19	Khin lay Yin Ram	Putao Township, Kachin State	Rawang
20	U MC Myo Latt	Putao Township, Kachin State	Rawang
21	U Hkaw Du Yung	Putao Township, Kachin State	Rawang
22	Daw Kai Dam Merry	Putao Township, Kachin State	Rawang
23	U Gam Ring Jung Lin	Putao Township, Kachin State	Rawang
24	Phung Roq Phi Nan	Putao Township, Kachin State	Rawang
25	Daw Dang Shin Zami Shar	Putao Township, Kachin State	Rawang
26	Saw Aye Saung	Paukkhaung Township, Bago Region	Karen
27	Saw Sein Myint Kyi	Paukkhaung Township, Bago Region	Karen
28	Hafi Tei	Layshi Township, Naga Self-Administered Zone, Sagaing Region	Naga

Notes and references

- 1_____ However, the recently adopted National Environmental Policy (2019) mentions that the policy's principles include in article (6) "The rights of indigenous peoples and ethnic nationalities to their lands, territories, resources and cultural heritage, and their roles in environmental conservation and natural resources management, are recognized and protected." Ethnic nationality parties have also recognized the customary land rights, such as the Karen National Union Land Policy and Karenni Land Policy.
- 2_____ Erni, Christian (2021). Persistence and Change in Customary Tenure Systems in Myanmar. MRLG Thematic Study Series #11. Yangon: POINT, MRLG
- 3_____ For simplicity, it will from now on be referred to just as "multi-states survey".
- 4_____ Form 105 contains the name of the "owner, grant holder, lessee" to whom the land use certificate has been issued, land identification (plot no., etc.), status of the land (e.g., "government land"), land type (e.g., "garden land"), and a map of the plot of land. Form 106 contains a history of land use and occupation, available from the Township Land Record Department and issued for both farmland and non-farmland.
- 5_____ 11 of the 95 women interviewed are not Rawang (2 Jinghpaw, 6 Lisu, 3 Shan). There are some communities with mixed ethnicity (Rawang and Lisu), but they are too few to allow drawing any conclusions. Also, the three Shan women among the respondents, each from a different village, all said that women do not own and cannot inherit land. Again, the sample is too small to allow any general conclusions.
- 6_____ The percentages don't add up to 100% because a few respondents did not answer the question.
- 7_____ Ibid.
- 8_____ The others did not give any answer or the data is incomplete.
- 9_____ Volunteers who conducted the survey think that the higher level of education of the respondents in Chin state could explain this. Since data on level of education of the respondents was not included this cannot be confirmed.
- 10_____ Ling Houn and Christian Erni 2018. How Can REDD+ Support Climate Change Adaptation of Indigenous Peoples? Lessons Learned from Community Forestry in Myanmar. Yangon: POINT (Promotion Of Indigenous and Nature Together)



POINT (Promotion Of Indigenous and Nature Together)

No. 687, Gyogone 8th street(south), East Gyogone, Insein Tsp, Yangon

Office Phone : 09-254 249 494

Facebook Address : [https://www.facebook.com/
PromotionOfIndigenousandNatureTogether](https://www.facebook.com/PromotionOfIndigenousandNatureTogether)

Email : point.org.mm@gmail.com

Website : www.pointmyanmar.org