



Indigenous peoples, land rights and forest conservation in Myanmar



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By Christian Erni
with contributions from Prawit Nikornuaychai
and Ling Houn

IWGIA
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International Work Group for Indigenous Affairs (IWGIA) and Promotion of Indigenous and Nature Together (POINT)

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Abbreviations and Acronyms

BRC	Burma Relief Centre
CF	Community forest
CFC	Community Forestry Certificate
CFI	Community Forestry Instruction
CHRO	Chin Human Rights Organization
CSO	Civil society organization
ECDF	Ethnic Community Development Forum
ERPL	Ethnic Rights Protection Law
FD	Forest Department
KNPP	Karenni National Progress Party
KWDC	Karenni Welfare and Development Center
LCG	Land Core Group
MIID	Myanmar Institute for Integrated Development
MoECaF	Ministry of Environmental Conservation and Forestry (until 2016)
MoNREC	Ministry of Natural Resources and Environmental Conservation, created in 2016 by merging the Ministry of Environmental Conservation and Forestry and the Ministry of Mines
NFPC	Natural Forest Protection Committee
NGO	Non-government organization
NLUP	National Land Use Policy
POINT	Promotion of Indigenous and Nature Together
REDD+	Reducing Emissions from Deforestation and Forest Degradation
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Introduction

In December 2011, the government of Myanmar formally joined the UN-REDD program, thus committing itself to addressing deforestation and forest degradation as a major source of greenhouse gas emissions in its country. In its Intended Nationally Determined Contribution (INDC) submitted to the United Nations Framework Convention on Climate Change's (UNFCCC) Conference of Parties in Paris in 2015,¹ forest conservation was also stated as one of its main intended measures by which to cut greenhouse gas emissions and it announced a target of designating 30% of the land area as Permanent Forest Estate and 10% as protected areas by the year 2030. Thus, officially, forest conservation is high on the agenda of the Myanmar government. And it is high time indeed; Myanmar currently has one of the highest deforestation rates in the world.²

As a major change of approach to forest governance, Myanmar adopted community forestry in 1995, when its Ministry of Environmental Conservation and Forestry (MoECaF)³ issued the Community Forestry Instructions. With this, the Myanmar government followed the example of other governments all over the world that had adopted this approach over the past 40 years.

Recently published regional and global assessments of the achievements of community forestry have generally come to very positive conclusions.⁴ Overall, community forestry is reported to have led to reduced deforestation and improved forest quality, improved livelihoods for the communities involved, and it has helped strengthen good governance and contributed to democratization.

At the same time that community forestry was evolving and gaining ground in forest governance across the world, another global movement was also contributing to profound changes in how the relationship between humans and the natural environment was viewed, as well as the interconnection between human rights and land and resources: the global indigenous peoples' rights movement. Indigenous peoples' organizations have emerged as a major force in national and global movements for social justice and environmental protection.

Culminating in the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), indigenous peoples have successfully claimed recognition and protection of their rights by the international community, along with participation in decision-making in all matters affecting them. At the national level, indigenous peoples have succeeded in gaining legal protection for their rights in several countries, including the right to land, territories and resources. Forest conservation and the right to own and manage their forests has been top of the agenda for indigenous communities and organizations and, in some cases, they have been successful, such as when the Forest Rights Act was passed in India in 2003, or when the Indonesian Constitutional Court issued its groundbreaking decision in 2012 ruling that customary forests were not state forests.

At both national and international level, indigenous peoples have actively and successfully engaged in advocacy related to climate change, REDD+ and the UN's Sustainable Development Agenda. Indigenous leaders and rights activists argue that respect for and protection of their rights to land and resources and their traditional knowledge is not just a question of basic human rights but can contribute to a more sustainable use and protection of the environment. Ample scientific evidence has emerged in recent years that supports their claim. Forest areas inhabited by indigenous peoples have been found to be better protected than other forests, including protected areas.⁵

One of the most recent studies comes to the following conclusion:

*The new study's findings offer the most compelling quantitative evidence to date of the unparalleled role that forest peoples have to play in climate change mitigation, reinforcing the critical importance of collective tenure security for the sustainable use and protection of the world's tropical forests and the carbon they sequester.*⁶

However, the study also found that, "In spite of clear linkages between community forest rights, forest conservation, and climate change mitigation, progress toward collective tenure security has declined in recent years, with fewer countries recognizing increasingly weaker rights since 2008."⁷

In Myanmar, the land rights of rural people, including indigenous peoples, are generally poorly protected, and there are no provisions for the recognition and protection of collective rights to land or forest in any law. In January 2016, however, the Myanmar government adopted a new National Land-Use Policy (NLUP), following extensive consultations with civil society. The NLUP is meant to be “the guide for the development and enactment of a National Land Law, including harmonization and implementation of the existing laws related to land”⁸. Part 8: Land Use Rights of Ethnic Nationalities is of particular relevance to indigenous peoples. This refers, among other things, to the traditional land use system of ethnic nationalities, traditional land use rights and “land tenure right” and provides for establishing a process that would recognize the rights of communities, i.e. collective rights. However, the Legal Affairs and Special Cases Assessment Commission, mandated by the new government to review the NLUP, came up with several recommendations for changes, among them to completely delete Part 8, raising concerns over the future of the policy and the legal reforms for which it is supposed to give guidance.

The communal land rights of indigenous peoples in Myanmar will remain insecure unless and until the new policy is put into practice and they are included in the revised land and forest law. The Community Forestry Instructions of the Ministry of Environmental Conservation and Forestry may thus, for some time to come, remain the only option for the protection of collective land rights.

In light of the urgency of both forest conservation and the recognition of indigenous communities’ rights to land and resources, along with the documented potential for creating conservation synergies through recognition of community rights, this study tries to look at the approaches to forest conservation taken in Myanmar so far, and to take stock of their achievements and impact with respect to both forest conservation and the rights and wellbeing of communities. By contributing to a better understanding of the strengths and weaknesses, potential and limitations of the approaches taken so far, this study hopes to contribute to finding new and more effective ways of conserving Myanmar’s forests and respecting and protecting the rights of its indigenous communities. The conclusions drawn and recommendations made based on the findings of this study are particularly aimed at providing inputs to the current drafting of a REDD+ Strategy for Myanmar.

I Indigenous Peoples, Forests, and Land Rights in Myanmar

1. Indigenous peoples in Myanmar

The government of Myanmar does not recognize indigenous peoples in its country, or rather, it argues that all its citizens are indigenous. This was clearly already expressed over 20 years ago, when the work on the UN Declaration on the Rights of Indigenous Peoples was still ongoing, in a statement made by Ambassador U Tin Kyaw Hlaing, permanent representative and leader of the observer delegation of the Union of Myanmar, at the 44th session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in Geneva on 26 August 1993:

Permit me to state at the outset that we in Myanmar (Burma) do not have any problems of indigenous populations. Neither there is discrimination against them. The reason for this fact is simple. All the 135 national races residing in Myanmar are indigenous national races in the true sense of that word. We have lived through weal and woe throughout the ages. There were no distinct early arrivals or late comers.

The position has not changed since then. In a recent policy dialogue in the State capital, Nay Pyi Taw, for example, the representative of the National Human Rights Commission declared that all Burmese were indigenous or that there were none.⁹

Clearly, the government's understanding of the term "indigenous" is not in line with the understanding as it has evolved over the past two decades. A recent assessment report by the Myanmar Center for Responsible Business (MCRB), Institute for Human Rights and Business (IHRB), and Danish Institute for Human Rights (DIHR)¹⁰ states that,

The recognition of certain groups living in Myanmar as "indigenous peoples" is unclear in law and contested in practice.

The Myanmar Constitution and most domestic laws are steadfast in not acknowledging any concept of special minority or indigenous groups who have additional or special rights.

However, with reference to a “standard working definition for qualification as an ‘indigenous people’,¹¹ the report concludes, ‘There are ethnic minority groups in the O&G [oil and gas, c.e.] development areas that meet the criteria of indigenous peoples’.”

Occasionally, the term has appeared in English versions of government policy documents, for example, in the English version of Myanmar’s draft safeguards for REDD+, even though “ethnic groups” is always added in brackets. Finally, the term in English has made it into and is defined in an official document. The Ministry of Environmental Conservation and Forestry’s 2016 Environmental Impact Assessment Procedure (EIA) defines indigenous people (not “peoples”)¹² as “people with a social or cultural identity distinct from the dominant or mainstream society, which makes them vulnerable to being disadvantaged in the processes of development”.¹³ While the English version uses “indigenous people” (note: without an s, as e.g. in the UNDRIP), the Burmese version uses a term that can be translated as “tribal” or “ethnic tribal”. The Myanmar government is rather inconsistent in its use of terminology in Burmese, which creates confusion and, for some, may be deliberate.

According to the Citizen Law of 1982 those “national races” or “ethnic groups” that have been present in the geographical area of current Myanmar since before 1823 (the beginning of the first British annexation) are considered taing yin thar (or taing yin tha), which is usually translated as “original” or “indigenous” people.¹⁴ The taing yin thar are those who qualify for full citizenship. Those who are not classified as taing yin thar – such as people of Indian or Chinese decent, or the Rohingya – can only apply for the status of “associate” or “naturalized” citizenship, not full citizenship.¹⁵

It is with reference to the recognition of these “national races” as taing yin thar, and thus as “native” or “indigenous” that the Myanmar government dismisses the applicability of the term to its country. The recently enacted Ethnic Rights Protection Law (ERPL) therefore applies to all people considered taing yin thar, and thus includes the socially, politically and economically dominant Burmans.

Clearly, if the Myanmar government considers “indigenous peoples” applicable to all the officially recognized native ethnic groups (taing yin thar), its understanding of the term “indigenous peoples” is not in line with the understanding as it has evolved over the past two decades in international law, nor does it comply with the definitions used in this context, such as that of Special Rapporteur¹⁶ José Martínez Cobo, in which one of the main criteria is non-dominance.

Consequently, indigenous CSOs in Myanmar insist on the use of a term for “indigenous peoples” that is different from the official government term (i.e. taing yin thar). The organization Promotion of Indigenous and Nature Together (POINT) and other indigenous CSOs are promoting hta nay taing yin thar (also written htar nay taing yin thar or thanintayinda). Adding htar nay stresses “indigeneity” (htar nay/hta nay means “place of origin”).

Actually, this term is used— albeit only once – in the Ethnic Rights Protection Law, in paragraph 5, chapter IV which provides, rather vaguely, for some form of right to consultation for htar nay taing yin thar. In the English version of the ERPL it is, however, translated as “local ethnic groups”.

While indigenous peoples’ organizations in Myanmar tend to agree on the use of this term, and it is clear that it does not apply to the dominant ethnic Burmans, there is no consensus on which groups are to be included in this category. After all, not all ethnic groups may feel comfortable with being identified as indigenous peoples. The majority of the non-Burman ethnic groups (ethnic nationalities) would, however, probably fall into this category given the extent of marginalization, dispossession and oppression they have experienced over past decades at the hands of the Burman-dominated State and its security forces. Some groups may, however, prefer not to be included.

It is consequently very difficult to give any figures for the total population of indigenous peoples in Myanmar. Based on the assumption that they comprise most of the non-Burman native ethnic groups and that the latter are between 30 and 40% of the population,¹⁷ the number may lie between 15 and 20 million.

Most of Myanmar’s indigenous peoples live in the forested uplands of the border areas in the west, north, east and south-east of the country, as well as the central Bago Yoma range, and there is a strong correlation between forest cover and indigenous peoples’ territories.

However, with reference to a “standard working definition for qualification as an ‘indigenous people’,¹¹ the report concludes, ‘There are ethnic minority groups in the O&G [oil and gas, c.e.] development areas that meet the criteria of indigenous peoples’.”

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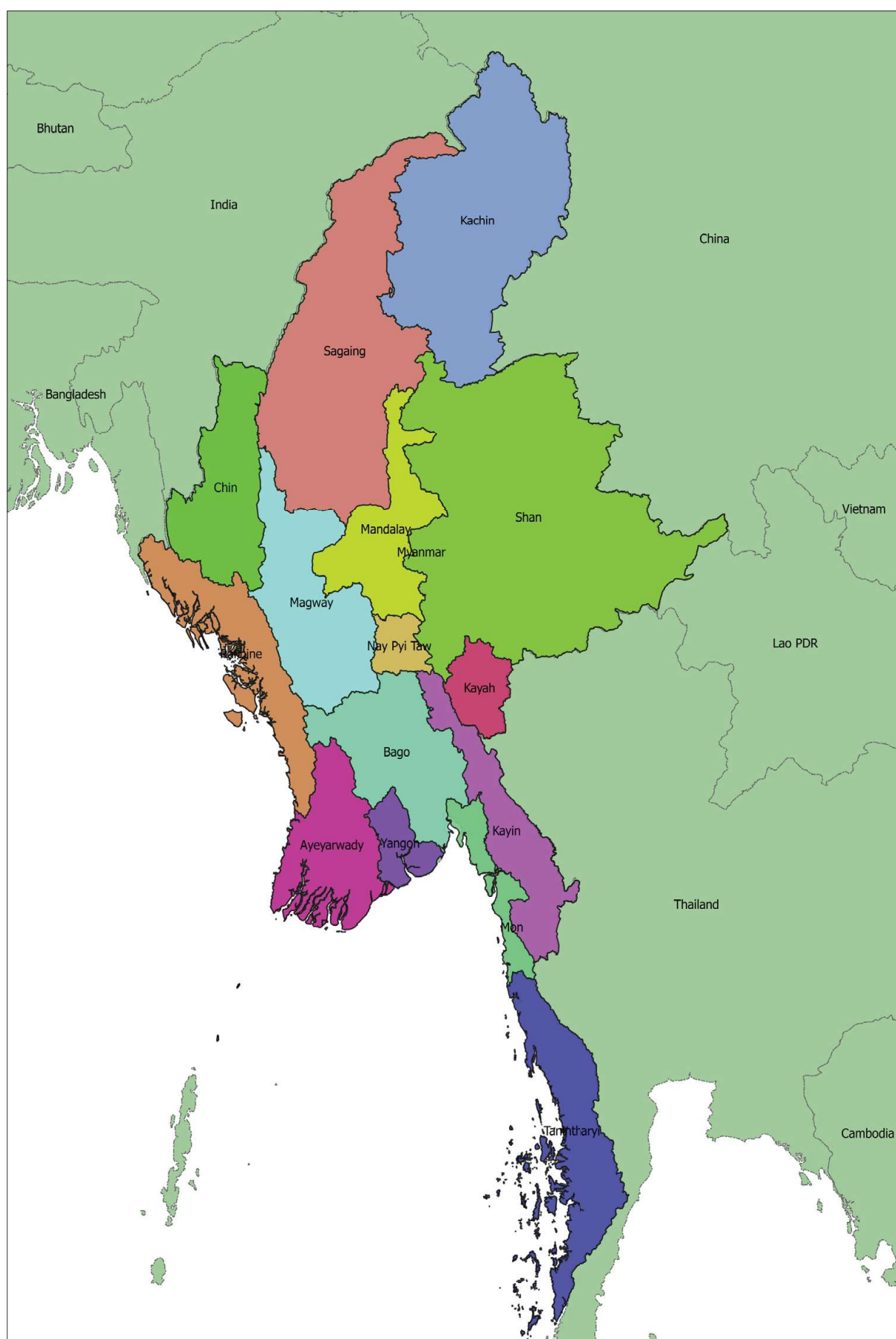


Fig. 1 Myanmar states and regions

2. Myanmar's Forests

2.1. Forest loss: Some facts and figures

With climatic conditions ranging from hot tropical at sea level in the south to subtropical and an alpine climate in the far north, where Hkakabo Razi, the highest mountain reaches up to 5,881 meters, plus dry central plains sheltered from the monsoon rains by surrounding mountains, Myanmar has a great diversity of forests: coastal mangrove, tropical evergreen and semi-evergreen forests, mixed deciduous forests, dry forests, hill tropical and subtropical evergreen, and alpine forests. With such diverse habitats, Myanmar is immensely rich in biodiversity and harbors many endemic and endangered species.

In 2016, Myanmar's forest cover was estimated to be 43% of the total land area.¹⁸ This means that Myanmar has lost some 34% of its forests since 1925, when they were estimated to cover 65.8% of the country.¹⁹ Furthermore, only 21.56% is considered undegraded, closed forest.²⁰ The decline of forest cover was particularly rapid after 1990, when it dropped by 15% over 25 years, compared to 7.83% over the previous 30 years.²¹

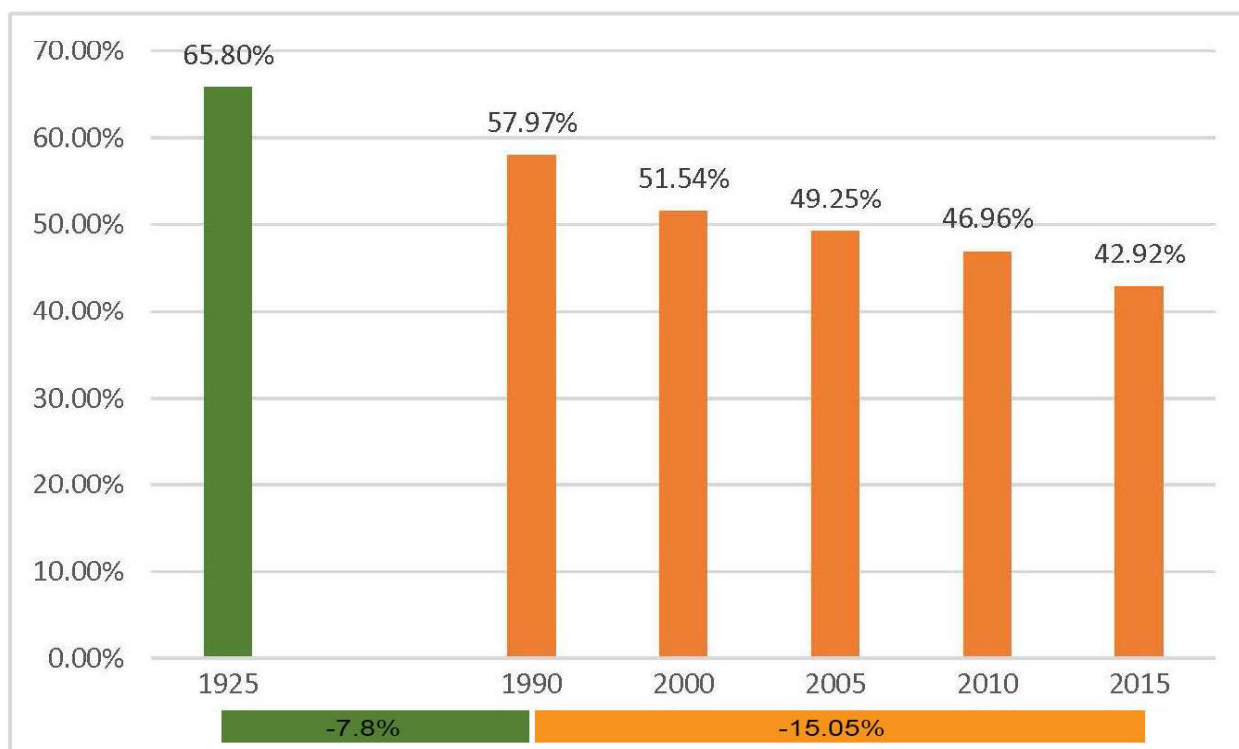


Fig. 2. Forest cover change 1990 to 2015²²

Obviously, despite laws and policies and an extensive forest administration put in place to ensure the sustainable use and conservation of its forests, the Myanmar government has largely failed in this objective in practice. One-third of the 2.07 million ha of intact forests lost between 2002 and 2014 were inside forest reserves²³ and, in 2014, forest reserves contained only 27% of intact forest. 55.2% was degraded forest, 14.9% was not covered by forest at all and 2.1% was plantations.²⁴ Protected areas were in a better condition with 68.8% intact forest, 20.5% degraded forest, 6.8% non-forested areas and 1.1% plantations.²⁵ The authors of the report from which these figures were taken thus conclude:

*that while intact forest and the general forest cover has been comparatively well-conserved within protected areas, forest reserves have in general been as poorly conserved as unreserved areas. Accordingly forest reserves are now generally exhausted and most of these are dominated by degraded forest while many carry no trees at all or exhibit large areas of non-forest.*²⁶

In response to the forest crisis, the government imposed a one-year national logging ban from 2016 to 2017, and a ten-year ban for Bago Yoma. Exports of unprocessed, round logs have been banned since April 2014.²⁷ At the end of March 2017, the ban was lifted and the government announced that it was now working on ensuring that only verifiably legal timber was brought to the international market. The state-run Myanmar Timber Enterprise, which is supposed to control Myanmar's timber trade, declared that it would stop using contractors in timber harvesting, and the Ministry of Natural Resources and Environmental Conservation (MONREC) claimed it was putting a system in place to ensure that the source of Myanmar timber was traceable.²⁸ In all this, however, the government is faced with formidable challenges. As a Member of Parliament recently stated in parliament, the country's illegal timber trade is a "large-scale problem that is rife with corruption. [] Most officials are thought to be on the payroll of the illegal traders. [] Village administrators and township-level officials often face pressure to offer protection to illegal traders" and "There have been multiple threats from these illegal timber traders towards officials and others".²⁹ Furthermore, according to the Ministry of Natural Resources and Environmental Conservation, between 2002 to 2017, "One deputy administrator and eight people have been killed and 42 have been injured in Myanmar during investigations into illegal timber trading".³⁰

2.2. Forests and climate change: Myanmar's engagement in REDD+ and its NDC

Deforestation and forest degradation have been identified by the UNFCCC as a major source of greenhouse gas emissions. Under the agenda item that came to be known as Reducing Emissions from Deforestation and Forest Degradation (REDD+),³¹ the body aims to “slow, halt and reverse forest cover and carbon loss in developing countries”,³² an initiative that has developed over the past decade into the largest-ever concerted attempt by the international community to address the global deforestation crisis.

With its decision in December 2011 to join the UN-REDD program, REDD+ has also become one of Myanmar's main initiatives in attempting to reduce deforestation and forest degradation. Initial progress to get REDD+ going was fast. The Myanmar government finalized its REDD+ Readiness Roadmap in July 2013, which sets out how it will implement its REDD+ Readiness activities. A REDD+ Task Force, chaired by the Forest Department, was set up to manage and coordinate the Readiness process. It is supported by six multi-stakeholders' Technical Working Groups. Readiness Stakeholder Consultations were conducted and, in late 2014, draft national REDD+ safeguards were developed by the Forest Department of the Ministry of Environmental Conservation and Forestry. They were submitted to broad public consultation. The draft safeguards for REDD+ are very comprehensive and repeatedly refer to “Indigenous Peoples (ethnic groups)”.

However, progress has been slow since 2014, partly due to the general elections in late 2015 and the formation of a new government in 2017. The National REDD+ Strategy has also not been developed and nor have the REDD+ safeguards been finalized. Consultations for the REDD+ Strategy started in 2017 but only in Magwe Region, Mon State and Kachin State. In all other regions and states they will be conducted in 2018. Likewise, for the finalization of the REDD+ Safeguards, consultations are planned for 2018.

Supported by and in cooperation with various foreign donors, for example Korea Forest Service, International Center for Integrated Mountain Development (ICIMOD), International Tropical Timber Organization (ITTO), Forestry and Forest Products Research Institute (Japan) and the Center for People and Forests (RECOFTC), several REDD+ pilot projects have commenced, and some have already been completed in Bago Region, Shan State and Sagaing Region.

Forest protection is also one of the core components in Myanmar's Intended Nationally Determined Contributions (INDC) submitted to the UNFCCC's COP in Paris in 2015.³³ It describes how Myanmar intends to reduce greenhouse gas emissions and promote adaptation to climate change and, as one of its intended measures, this document reiterates the target of the National Forestry Master Plan to designate 30% of the land area as Permanent Forest Estate and 10% as protected areas by the year 2030. This target is maintained in the draft, and not expected to be changed in the final version of the Nationally Determined Contributions (NDC) to be submitted to the UNFCCC COP in 2018.

2.3. Who's to blame?

Identifying drivers of deforestation and forest degradation

A critical first step in addressing deforestation and forest degradation is, of course, to identify the causes, which in the language of the UNFCCC means the drivers of deforestation and forest degradation. The UNFCCC is, however, cautious in its call "to take action to reduce the drivers of deforestation and forest degradation [] noting the complexity of the problem and that drivers are unique to countries' national circumstances, capacities and capabilities",³⁴ and it requests that national strategies and action plans to address the drivers of deforestation and forest degradation should at the same time consider "land tenure issues, forest governance issues, gender considerations and the safeguards, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities."³⁵

A recent report concluded that agriculture, above all the establishment of large-scale plantations, is the strongest driver of deforestation in Myanmar, while unsustainable timber harvesting is the main driver of forest degradation in Reserved Forests. In both cases, the underlying rationale is profit maximization, and it happens "most intensively along rivers streams, major roads, and land borders to neighboring countries, particularly China and India".³⁶ Conversely, "large tracts of continuous intact forest are still found in remote parts of, particularly, Kachin State and Tanintharyi region. Apparently, the conflict between the central state and armed ethnic groups in these two regions, which, among others, have resulted in slower infrastructural development, seem to be the main underlying reasons why these forests have remained intact."³⁷ At the same time, ethnic armed groups based along the borders are themselves heavily involved in logging. The government is trying to deprive ethnic armed groups of their revenues from logging but has not been fully successful. Thus "timber is still being

smuggled across the Chinese and Thai borders, especially from logging concessions in natural forests in ethnic areas, which is illegal according to the laws of both Myanmar as well as importing border countries such as Thailand.”³⁸

The Forest Department identifies the drivers similarly, acknowledging legal and illegal over-exploitation as a main driver of deforestation in the forest sector, followed by various forms of resource use by local people, among them unstable or pioneering shifting cultivation, over-harvesting of fuel wood and charcoal, over-grazing, as well as forest fires, pests and diseases.³⁹ Outside the forest sector, the main drivers identified are the expansion of agriculture (subsistence and commercial), mining, hydro-power development, infrastructure, settlement and development of fisheries.⁴⁰

The underlying reasons for the Forest Department’s failure to protect the country’s forests have been summarized as follows:⁴¹

1. Systematic “revenue-target”-driven over-extraction at the orders of successive central governments. Formally, this was mainly legal extraction but substantial illicit practices as well as high wastage have occurred due to political favoritism in relation to the Myanmar Timber Enterprise and ‘crony’ subcontractor companies.
2. Expansion of agriculture and “land grab” agri-business concessions into forests.
3. A disempowered and somewhat demoralized Forest Department with inadequate staffing, monitoring capacity, enforcement powers, and inadequate salary resulting in petty corruption.
4. Unregulated and partly criminalized domestic timber and wood extraction without an effective management or regulatory regime.
5. Insecure land and tree tenure for local people, marginalizing civil society and undermining incentives to conserve, protect and plant trees, and to work with the Forest Department to do so.
6. A conflict economy in many upland areas bordering neighboring countries, caused and maintained by Union Military,⁴² allowing them to indulge in illegal timber trading and taxation (among other sectors) for personal gain.

Insecure tenure for local people has been identified as one of the underlying reasons for the state's failure to protect the forest. Indeed, it is now well recognized by the international community that tenure security over land and resources is one of the main preconditions for sustainable resource management, and poverty eradication. This is clearly reflected in the United Nations Sustainable Development Goals.⁴³

In Myanmar, lack of land rights and the non-recognition of customary tenure, in particular, have a number of serious consequences for people who depend on the land for their living, in particular indigenous peoples. This is compounded by the prevalent negative bias against some of their customary land-use practices, in particular shifting cultivation.⁴⁴ Even though the list of drivers presented by the Director General of the Forest Department⁴⁵ refers only to "unstable or pioneering shifting cultivation", the government's current policy is to eradicate all forms of shifting cultivation since it considers it a source of pollution and harmful for the environment.⁴⁶ One way of doing this is to deny any recognition of rights over land used for shifting cultivation.



Fig. 3. Village in Chin State

3. Land and forest rights

Myanmar's Constitution of 2008 states in Article 37 that the Union of Myanmar

- (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.*
- (c) *shall permit citizens right of private property, right of inheritance, right of private initiative and patent in accord with the law.*

However, despite the provision that citizens can obtain the right to private property, only a minority of all farmers in the country have legal documentation giving them some kind of tenure rights over land and forest.

3.1. Land laws and the new land-use policy

Two laws were passed in 2012 to remedy this situation: the Farm Land Law, which provides for the registration of land by individuals and organizations, and the Vacant, Fallow and Virgin Lands Management Law, on the basis of which business concessions for “unused” land can be issued. Both laws have been criticized for being seriously flawed and, especially with respect to the latter, for benefiting (foreign) investors rather than farmers. One of the main concerns is that there is no recognition of customary land rights and other informal tenure and occupancy rights, and thus there is instead increased land tenure insecurity for small farmers, and particularly indigenous peoples, many of whom practice shifting cultivation for which no legal recognition is possible.⁴⁷

The **Farmland Law of 2012** gives the possibility of obtaining formal land-use certificates (LUC, popularly known as “Form 7”), which can be transferred, inherited and mortgaged. The law is clearly targeting individually-owned land in lowland farming areas. In the uplands, LUC have been granted only for individually-owned rice terraces and other plots of permanently farmed land. The law does not mention customary tenure and it is not possible to obtain LUC for land under collective tenure, such as communal land, which is fairly common in upland areas, particularly among indigenous communities. Furthermore, the law makes prescriptions and imposes limitations on land use, for example, that land should not stay fallow and that permission has to be obtained to change from seasonal crops to perennial crops.⁴⁸

The **Vacant, Fallow, and Virgin Land (VFV) Law of 2012** provides for the granting of land concessions for land considered unused. A Central Committee is given the authority to grant 30-year leases for up to 50,000 acres of land to cultivate perennial crops or seasonal crops for industrial raw materials, and up to 3,000 acres to grow orchard crops. Concessions can also be granted for poultry farming, aquaculture, mining and for “other purposes”.⁴⁹

The law defines vacant and fallow land as “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 cultivating on it and the lands, which are specifically reserved by the State”.⁵⁰ Most of the land thus considered “vacant” or “fallow” is in fact land under customary use and management by communities, such as fallow land for shifting cultivation or grazing land. It may also be land that people were forced to abandon when they were displaced by armed conflicts.

The VFV law “does recognize that farmers are using VFV land without formal recognition by the government. These provisions, in conjunction with language in the Farmland Law, allow for existing use of VFV land by farmers to be formally recognized by the government, the land to be reclassified as farmland, and LUCs issued to farmers that have been using the land.”⁵¹ The law also provides a mechanism for farmers’ families to apply for use rights to unused VFV land (a maximum area of 50 acres).⁵² However, this rarely happens since registration of land under the VFV law is a complicated, costly and time-consuming process with steps to be taken from the local to the state and, finally, national level, i.e. the Central Land Management Committee.⁵³ This is far beyond the means and abilities of most communities and clearly favors more resourceful private enterprises. It is rather worrying that there are indications that obtaining these concessions has, in fact, more often been simply a means of grabbing land rather than of putting it to any use. It has been estimated that, between 1992 and 2016, 3,968,314 acres of VFV land were allocated to companies or individuals but that only around 15% of it is actually being used.⁵⁴

Both the Land Law and the VFV law are currently being amended. According to drafts that have been circulated, it appears that neither of them include changes that address the need to recognize customary tenure, which would make it easier for indigenous and other upland farmers to obtain legal protection of the land they depend on. Many therefore put their hope in the National Land-Use Policy that was passed in 2016.

In 2013, the Government of Myanmar began drafting a National Land-Use Policy (NLUP), conducted public consultations in 2014 and 2015 and, in January 2016, after six drafts, adopted the new NLUP. The stated aim of the NLUP is “to implement, manage and carry out land use and tenure rights in the country systematically and successfully, [and it] shall be the guide for the development and enactment of a National Land Law, including harmonization and implementation of the existing laws related to land []”.⁵⁵ It provides for the establishment of a “National Land Use Council for the implementation of the National Land-Use Policy and related laws”.⁵⁶

Civil society organizations working on land rights issues in Myanmar have noted with appreciation that their advocacy efforts have borne fruit and that the policy recognizes customary land tenure practices and communal tenure arrangements. For indigenous peoples, Part 8 is of particular relevance: “Land-Use Rights of Ethnic Nationalities”.

This section of the new NLUP refers, among other things, to:

- The traditional land-use system of ethnic nationalities, traditional land-use rights and “land tenure rights”
- Establishing a process for recognizing the rights of communities (not just individuals)

It also provides, among other things, for:

- The preparation and revision of customary land-use maps and records of ethnic nationalities in a participatory manner, with the involvement of representatives and elders
- Formal recognition and protection of the customary land tenure, land use and rights of ethnic groups, whether or not existing land use is registered, recorded or mapped
- Reclassification of the customary lands of ethnic groups in accordance with the expected new National Land Law, and for the temporary suspension of any allocation of land until existing ethnic land users have registered these customary lands, and therefore
- Protection from grants or leasing of land by the government allowed under any existing law
- Restitution of land lost “due to civil war, land confiscation or natural disasters or other causes”
- Recognition of land-use rights relating to rotating and shifting cultivation in farmland or forestland

Paragraph 77 part X of the NLUP on “Harmonization of Laws and Enacting New Law” states that: “A new National Land Law shall be drafted and enacted, using the National Land-Use Policy as a guide for the harmonization of all existing laws relating to land in the country.”

For indigenous communities and other poor farmers living in the uplands of the country, the revision of existing and the enactment of new laws recognizing customary tenure and, in particular, communal land rights will be critical for their economic and cultural survival. The question is whether there is sufficient political will to amend and enact laws in accordance with the NLUP. There is reason for concern, as the authors of a recent report⁵⁷ conclude:

[] there is much apprehension about the capacity of the government to implement land reforms in a way that will achieve broad-based development goals. Concerns are not only levelled at the limited technical and human capacity of government agencies. They are also based on a fundamental recognition that the political/economic context in which decisions over land are made often enables powerful political and economic actors to capture benefits at the expense of weaker groups.

3.2. The Forest Law and the Community Forestry Instructions

Currently, 24.05% of the land area is legally classified as Permanent Forest Estate under the jurisdiction of the Forest Department of the Ministry of Environmental Conservation and Forestry. The Permanent Forest Estate comprises Reserved Forest (18%) and Protected Public Forest (6.05%). Protected Areas cover 6.67%.⁵⁸ They are under the jurisdiction of the Forest Department’s Nature and Wildlife Conservation Division. In addition, there is so-called “unclassified forest”, under the Ministry of Agriculture, Livestock and Irrigation. Myanmar’s 30-Year National Forestry Master Plan has a target of increasing the Permanent Forest Estate to 30% and Protected Areas to 10% of the country’s land area by the year 2030.

There is a plethora of laws, rules and instructions regulating the management and conservation of forests and protected areas, including, among others, the Forest Law of 1992 and the Forest Rules of 1995, the Protection of Wildlife & Wild Plants & Conservation of Natural Areas Law of 1994 and the corresponding rules of 2002, the Logging Rules of 1936, the National Code of Forest Harvesting Practices of 2000 and the Community Forestry Instructions of 1995 and 2016.

The Forest Law of 1992 distinguishes between five categories of Reserved Forest: commercial reserved forest, local supply reserved forest, watershed or catchment protection reserved forest, environment and biodiversity conservation reserved forest and “other categories” of reserved forest.⁵⁹

However, even though some may also serve the purpose of environmental conservation, most of the Reserved Forests are primarily intended for the commercial production of forest products. Protected Public Forests are mainly designated for environmental conservation but may also be used for the sustainable production of forest products.

Paragraph 40 of the Forest Law of 1992 declares any “trespassing and encroaching in a reserved forest” as well as “breaking up any land, clearing, digging or causing damage to the original condition of the land without a permit” or “catching animals, hunting or fishing” in a Reserved Forest to be a punishable offence, so the settlements as well as all the villagers’ land and resource-use activities located inside a Reserved Forest are considered illegal.

Equally stringent restrictions are imposed inside Protected Areas. With provisions ranging from a ban on hunting to “digging on the land, cultivating or carrying out any work”⁶⁰ or “destroying ecosystem or any natural state in the natural area”⁶¹, the law potentially criminalizes any activities that often form part of the day-to-day livelihood and customary land use of indigenous and local communities.

Only since the issuing of the first Community Forestry Instructions (CFI) in 1995 has it been possible for communities to obtain legally-recognized use rights – although not ownership rights – over forest land and resources. The CFI of 1995 provides use rights to Forest User Groups (FUG) for a renewable 30-year period. The members of the FUG have the right to harvest timber and other forest products primarily for their own use and according to a management plan approved by the Forest Department. They can sell surplus products, but only within the village. The FUG members can, and are supposed to, plant trees for reforestation, and the Forest Department is supposed to provide seeds and seedlings for the first rotation of a tree plantation, plus technical support.

The revised CFI of 2016 are a considerable improvement over their predecessors, above all since they allows the commercial sale of timber and other forest products and the FUG to “Form as legal association for extraction of timber and timber products and for commercialization and marketing of their products”.⁶² The FUG is allowed to “Practice for agroforestry which (sic!) suited for the region in implementation of CF”⁶³, and the explicit reference to shifting cultivation as a prohibited activity inside a CF has been dropped in the CFI of 2016.⁶⁴ The procedures, which were rather complex and complicated under the CFI of 1995, have been simplified. Furthermore, while under the previous CFI any outsiders could form a FUG and apply for a Community Forest Certificate (CFC) anywhere they liked, according to the new CFI only people living within a five-mile radius of the respective forest area and having lived there for at least 5 years “and those who really depend on the forests” can form a FUG. Most significant of all is the reference to customs: “However, if the forest is traditionally managed by local people according to the customs or norms or if it is approved by the District Forest Officer according to local conditions, living period and distance from forests shall not be necessary to consider.”⁶⁵ It is the first of three references to – and thus indicators of the recognition of – customs (the 1995 CFI did not have any). The second is in paragraph 4 regarding areas permitted for the establishment of CF. While the 1995 CFI states that it includes “Forest lands traditionally managed by the community”⁶⁶, this has been amended to “Forest lands traditionally managed by the local community according to the culture or customs”⁶⁷. Most significant of all is paragraph 11, by which the allotment of forest land to a FUG shall be situation-specific and that, among several factors, the “Boundary which is decided according to local customs and norms” should be taken into consideration.⁶⁸ This is the closest the CFI gets to recognizing customary tenure. Being merely departmental instructions and without any legal basis in the Forest or and other law, the CFI cannot offer legal recognition of customary tenure.

What is encouraging is that the Ministry of Environment and Natural Resources has acknowledged the lack of legal recognition of indigenous peoples’ (referred to as “minority people”) customary management systems and that it considers the CFI as a possibility for providing some protection. It states in the CBF National Assessment Report:⁶⁹

Minority people residing in mountainous areas are practicing for their livelihood traditionally and they have own system and rules which are completely not approved by law yet. The framework of CFI intends to formalize those areas as CFs.

To conclude, while the CFI of 2016 signify a step further away from the centralized state management of the past towards collaboration with local communities, it stops short of genuine recognition of rights and true devolution of decision-making power. Under the new CFI, the decision-making power of communities is still limited, reflected in the requirement to obtain approval of a management plan and submit regular reports, and communities are still granted only temporary use rights; there is no recognition of their ownership rights over their customary lands and forests.

3.3. The peace process and land and resource governance

The currently ongoing peace talks under the Union Peace Conference, also referred to as the 21st Century Panglong Conference,⁷⁰ has raised hopes for a lasting solution to the decades-long armed conflicts between the Myanmar government and various ethnic groups – many of whom consider themselves to be indigenous peoples. The peace conference has three components: 1. National dialogues - to be convened by armed groups and political parties; 2. Regional dialogues – to be convened by regional and state governments; and 3. Thematic dialogues – to be convened by Civil Society Organizations. Civil Society Organizations can participate in all three levels of dialogue.

Among the key demands of ethnic armed groups and political parties, and the most contentious issues in the negotiations, are the restructuring of the State as a federation of autonomous states and, connected to that, the devolution of land and resource management to the autonomous state levels.

With the support of CSOs, some ethnic armed groups (EAG) have already completed or are in the process of drafting their own land-use policies. The Karen National Unions (KNU), the biggest armed group of the Karen, which has entered into a ceasefire agreement with the Myanmar government and is a signatory to the Nationwide Ceasefire Agreement, published its own Land Policy in December 2015. In Kayah State, a group of CSOs⁷¹ are currently in the process of drafting a “Karenni State Land Policy”. The draft is already far advanced. They intend to submit the policy to the EAGs of Kayah (Karenni) State in the hope that it will be supported by all. The Karenni National Progressive Party (KNPP) will most like adopt the policy drawn up by the CSOs.

A land policy is likewise currently being drafted by the Council of Naga Affairs, a Naga CSO network, and the Naga Tradition and Culture Committee, the oldest Naga (semi-) CSO in Myanmar. The government of the Naga Self-administered Area has expressed great interest in the policy, and the intention is also to submit it to the National Socialist Council of Nagalim-Kaplang (NSCN-K), the strongest armed group of the Nagas in Myanmar.

All the draft or final policies of EAGs known so far explicitly recognize customary tenure, and it is expected that they will be used in the ongoing peace negotiations. In the last Union Peace Conference in May 2017, land issues were given priority as one of the four thematic sectors of the negotiations under the title “Land and Natural Environment”.

The agreements reached in the Second Session of the Union Peace Conference on 29 May 2017, known as the Pyidaungsu Accord, cover 37 principles under the four thematic sectors: political sector, economic sector, social sector and land and natural environment sector.

In the land and natural environment sector, an agreement was reached on the following 10 principles:⁷²

1. A countrywide land policy that is balanced and supports people-centered long-term durable development
2. Based on justice and appropriateness
3. A policy that reduces central control
4. Includes human rights, international, democracy and federal system norms when drawing up land policy
5. Policy on land matters should be transparent and clear
6. In setting up policy on land development, the desire of the local people is a priority and the main requirements of the farmers must be facilitated

Ownership Rights

7. All nationals have a right to own and manage land in accordance with the land law. Women and men have equal rights.

Management Rights

8. Both women and men have equal rights to manage land ownership matters in accordance with the land law.
9. If the land to which rights are granted for an original reason is not worked on within a specified period, the nation can withdraw the granted right and concede it to a person who will actually do the work.

Preventive Program

10. To aim to protect and maintain the natural environment and prevent damage and destruction to lands that were social, cultural, historical heritage and treasured by ethnic nationals.

While there is no explicit mention of customary rights, the agreement contains principles that may open the way for a future legislative framework that addresses the needs and concerns of indigenous peoples, small farmers and other marginalized sectors of society. Among these are the principle that “the desire of the local people is a priority and the main requirements of the farmers must be facilitated” and that “human rights, international, democracy and federal system norms” must be included when drawing up land policy.

Pointing out how centralized resource control as practiced so far in Myanmar is causing discontent and conflict given that resource extraction and development projects lead to environmental destruction, human rights abuses and loss of livelihoods, and how energy generation projects are benefiting neighboring countries rather than Myanmar itself, in a recent publication the Burma Environmental Working Group (BEWG)⁷³ tried to show “a way out of conflict and toward a more sustainable management of natural resources under a federal system of governance.”⁷⁴

The authors believe that:

*Burma does not need to start from zero in developing devolved governance structures. Local communities have managed lands, water, and forests with sustainable customary practices for generations, and de facto governments have supported such practices with formal structures and laws.*⁷⁵

The BEWG's proposed roadmap seeks to put a federal natural resource governance system in place that safeguards rights, prevents environmental destruction and any escalation of conflict. It gives an outline of actions to be taken during three sequential periods, i.e. an interim period when conflicts and political dialogues are still ongoing, a transition period when, upon signing of a peace accord, new constitutional and legal frameworks are developed and federal institutions at the national, state, and sub-state levels are put in place, and an implementation period when the new federal structures are operationalized. The proposed steps are intended "to build the capacity of local, representative governments to establish and implement development priorities appropriate for their respective populations".⁷⁶

The Union Peace Process is an encouraging initiative and the envisaged political transformation towards a federal system with decentralized land and resource management will undoubtedly address many of the root causes of the conflicts the country has suffered for so many decades. However, war is still ravaging Kachin, Shan and Rakhine states, and peace is considered fragile elsewhere, as in Kayah or Kayin states.

Meanwhile, land grabbing is continuing unabated, particularly in conflict areas. Despite the new government's commitment to address land conflicts, it appears powerless to act against the vested interests driving these land grabs. According to a Global Witness campaigner, "What we've seen in Myanmar's land sector is a transition from military rule to a form of gangster capitalism. In many cases the army has merely swapped its uniforms for suits, with military officials and their cronies retaining firm control of the country's land sector".⁷⁷

The situation is different in ceasefire areas, although often confusing for local farmers. On the one hand, the government claims ultimate ownership of the land and therefore to be the sole authority in land governance; ethnic armed (ceasefire) groups, on the other hand, are still in control of large areas and have - and are determined to implement - their own policies. Ceasefire agreements have usually been reached with promises from the government to enter into a political dialogue and to give the armed groups the opportunity for business deals in their areas. Thus, for example, companies backed by the Karen National Union (KNU) have an agreement with the state-owned Power China International Group to build a dam on the Tanintharyi River as well as a small port and a road to establish an industrial zone. The KNU has promised villagers compensation for their land. However, the central government has so far not sanctioned the deal. Development projects are planned across the resource-rich Tanintharyi region, particularly since a Special Economic Zone has been established

in Dawei. The fact that many have not yet taken off may be a blessing, at least for indigenous communities and other local people as the land rights situation remains unresolved. Padoh Mann Ba Tun, head of the KNU Central Land Committee, told the Myanmar Times that “the peace process has opened the door to investors but little is being done for local villagers. The KNU has issued land use and owner rights to the people [] but the government does not necessarily recognize KNU-issued documents, and vice versa.”⁷⁸

Obviously, forging a comprehensive and lasting peace is an arduous process and there is still a long way to go in bringing about the necessary political reforms on which a final solution ultimately rests, also for the country’s land and forest governance crisis.

As the country is inching toward peace and the revision of laws under the present unitary government is making little progress, indigenous and other forest-dependent communities are trying to make use of whatever legal and other means they have to protect and defend their rights to the land and forests on which they depend.

II**Forest conservation and indigenous peoples' rights:
A review of experiences**

Since colonial times, indigenous communities have found ways of coping with the changes forced on them by colonial rule and the subsequent Burman-dominated military regime, and of adapting their efforts to manage and conserve the forests. In some cases, they managed to remain only marginally integrated and thus only partially exposed to the state's laws and policies, and were thus able to continue with their customary forest management systems. In others, they were brought fully under the control of the Forest Department and the military and experienced severe violations of their human rights through forced labor and displacement. In recent times, since the passing of the Community Forestry Instructions, some communities have accepted the possibility of collaboration with the state around forest management, while others are exploring new ways of asserting their rights to own and manage their land and forests.

Based on case studies conducted by various researchers in recent years, this chapter gives an overview of the experiences of indigenous communities when confronted with different and changing forms of state intervention in forest and resource management. The first sub-chapter summarizes the findings of studies on customary forest conservation, in particular a case study among the Asho Chin in Magwe Region. It is followed by a sub-chapter on the impact of state forest management on indigenous communities, covering resettlement and forced labor, the designation of a community forest as a Public Protected Forest and the establishment of a Wildlife Sanctuary. The third sub-chapter deals with the potential for and limitations of tenure security through community forestry, with cases from Magwe and Shan State, and the concluding sub-chapter gives an account of recent grassroots initiatives for forest conservation among indigenous communities in Chin and Kayah State.

4. Customary forest conservation

Across the country, indigenous peoples' organizations and their CSO partners have, in recent years, begun documenting customary tenure and resource management systems as part of their advocacy efforts for the recognition of customary land rights and management practices.⁷⁹ These studies are testimonies to the diversity of indigenous communities' land-use and management practices, and to the challenges they are facing in a context of armed conflict, dispossession, general tenure insecurity and the legal restrictions on land use and livelihood practices that result in a loss of livelihood and food security.

These studies have documented sound, time-proven land-use and management practices that have ensured people a decent life, with a large degree of economic security and self-sufficiency, and the conservation of natural resources. Karuna Mission Social Solidarity (KMSS) in Loikaw published several case studies on the customary land use of indigenous communities in Kayah/Karenni state,⁸⁰ and these document the diversity but also commonalities of land use and forest conservation among the State's indigenous peoples. Some of them, like the Kayan Kangan communities of Yusomos, Kwaingan and Saungpatha, practice permanent farming on paddy fields and the fertile red upland soils, maintaining their fertility through crop rotation and the application of manure. This form of land use has almost entirely replaced the rotational shifting cultivation that was practiced in the past. The communities have designated community forest areas and devised rules that ensure the conservation of the forest and the sustainable use of forest products. In Yusomoso community, which has only a small territory of some 3.3 sq. km, around 32% of the land area has still been designated as community forest. In the neighboring community of Kwaingan, 55% of its 11 sq. km territory is kept under forest; 31.5% of the territory is community use forest and 21.2% protected forest, where only limited use is allowed. Both forests are collectively owned by the community, with only some small areas owned by clans and individuals. The remaining forest area is a ten-hectare large forest that protects a spring, which is vital as a water source for Kwaingan and its neighboring communities.

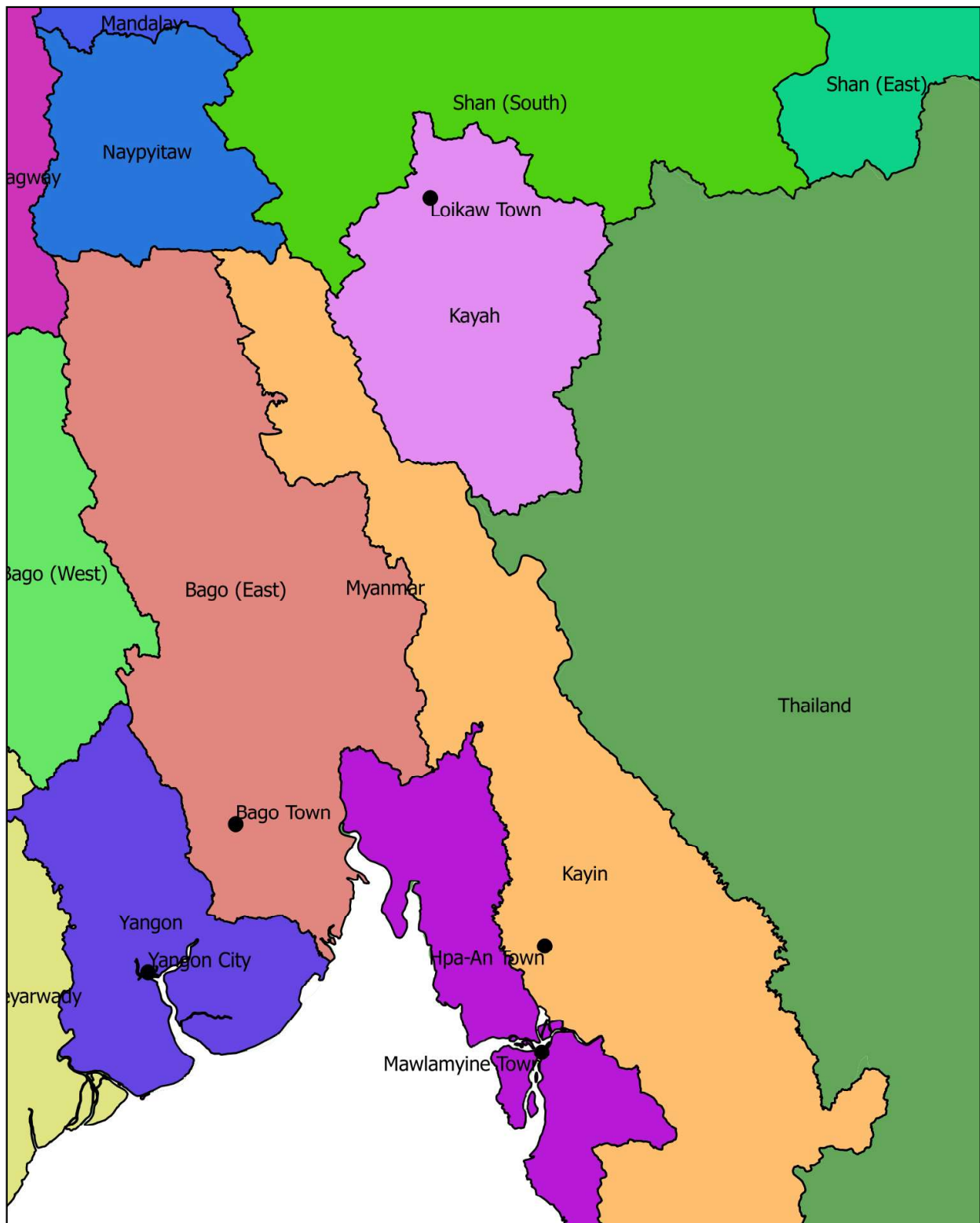


Fig. 4. Map of Kayah and Kayin State

Khupra, a community of the Kayan Hlahui indigenous people, however, lies in a more rugged, mountainous area with little land for permanent farming. The people practice a long-fallow system of shifting cultivation. At any given point in time, over 70% of the 20 sq. km territory remains under forest, although the forest cover is more dynamic as a result of the temporary use of some areas for growing seasonal crops, particularly rice. 20% of the land is permanent forest while the remaining 50% is fallow forest, thus consisting of trees of between 1 and 14 years of age. Customary law regulates the use of shifting cultivation land and ensures the maintenance of fallow forest. The permanent forests are either old spirit forests, cemeteries or newly-designated protected forests.



Fig. 5. Khupra village

A very different form of land use is found among the Pgakernyaw (Sgaw Karen) communities of Leik Tho Township in Kayin/Karen state.⁸¹ These communities, like many Karen and other indigenous communities in the border regions across the country, have suffered for decades from the conflict between the Myanmar government and ethnic armed groups. Many communities were forcibly relocated, their houses, granaries and even fields often destroyed by the Myanmar army. In response to the acute livelihood insecurities, the communities in Leik Tho started to develop a farming system that was less vulnerable than shifting cultivation to arbitrary destruction by the army: agroforestry with permanent crops that could be grown as understory in the forest, not easily detected and destroyed. Today, the main crops grown in the forest are cardamom and coffee, in lower elevations they grow betel nut and other permanent crops in small clearings. The territories of these communities are thus almost completely covered with forest.



Fig. 6. Karen woman in her agroforest

These brief examples of forest conservation among indigenous communities in Kayah/Karenni and Kayin/Karen State show the variations in land and forest management in response to local conditions, but also the commonality that all communities recognize the importance of maintaining sufficient forest cover and of having rules for its management and conservation.

Since most indigenous communities in the uplands practice shifting cultivation, often in combination with other agricultural practices such as terrace paddy cultivation or agroforestry, the following case study gives a more detailed description of the customary forest management that is part of the holistic, landscape-level management of land and resources that is common among shifting cultivation communities across the region.

4.1. Customary forest conservation of an Asho Chin community in Magwe Region⁸²

Sar Pauk is an Asho Chin community of 302 people in 51 households located in the eastern part of Arakan Yoma in Bone Baw village tract, Nga Phe Township of Minbu District in Magway region. Its 17.43 sq. km territory extends from 320 to 1,070 meters above sea level.

Sar Pauk is an example of a community in which customary land management revolving around traditional shifting cultivation is still practiced. Despite the government's policy of halting shifting cultivation and occasional reminders from the authorities that they are not supposed to practice shifting cultivation, the people have been able to continue without much interference. They have adopted agroforestry as a complementary form of land use for growing cash crops but, so far, this has been of limited scope.

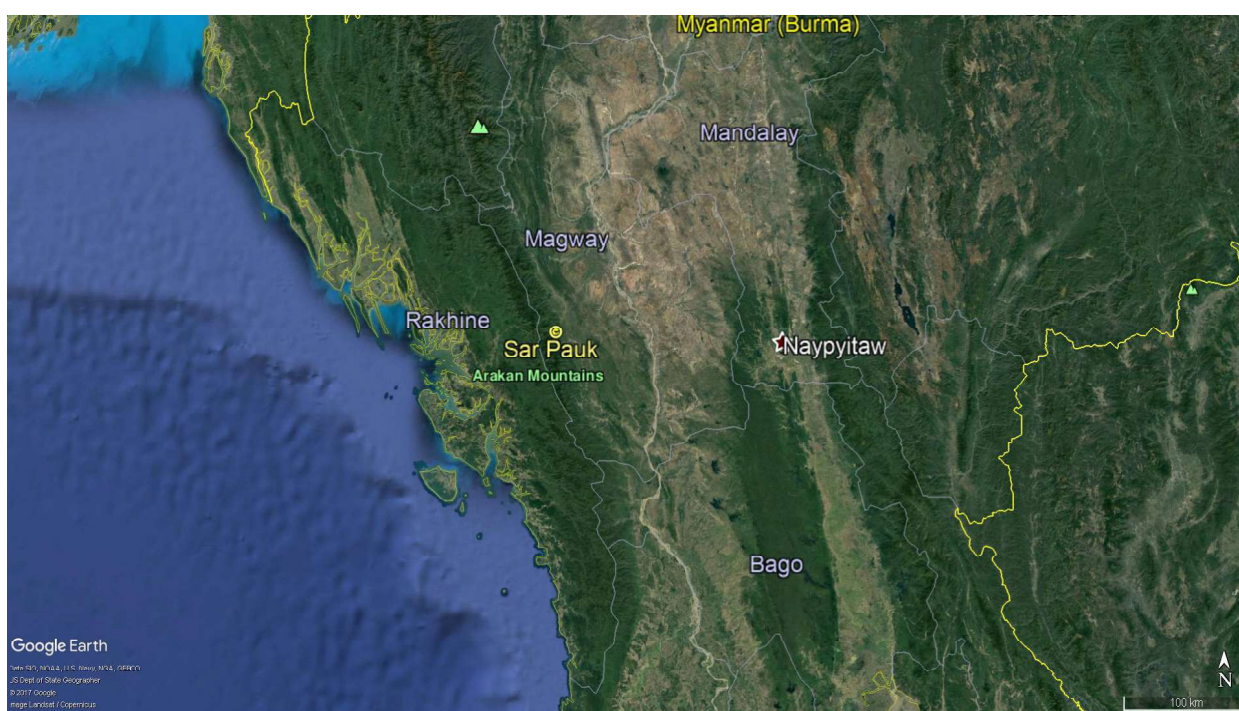


Fig. 7. Location of Sar Pauk community



Fig. 8. Harvesting rice in a shifting cultivation field in Sar Pauk

As in other shifting cultivation communities, land management of most of Sar Pauk's territory takes place at the landscape level. Only with regard to the individually-owned agroforestry plots, house lots and kitchen gardens are management decisions taken by the landowning household alone.

Sar Pauk community has several blocks of shifting cultivation land, which are used in a more or less fixed cycle of one year's use and five years' fallow. The area to be cleared for a new cycle is identified collectively by the villagers and depends on the maturity of the fallow vegetation. The discussion on which block to open in a new cycle can go on for quite some time.

Despite increasing population pressures, which have forced them to reduce the fallow period, the careful management of shifting cultivation land by the community has ensured that fallow forests are regenerating well, and there are no visible signs of permanent degradation of shifting cultivation land. Crucial for this is the prevention of fires on fallow land. Sar Pauk villagers take extra precautions to prevent fire from escaping when they burn a new block by making a fire break and watching the burning carefully.

Bands or blocks of protected forest separate the shifting cultivation areas, and this helps to prevent the escape of fire to neighboring land under fallow, and acts as seedbanks that help in the regeneration of fallow forest. Watershed forests, forests on ridges and along streams, are always protected. In the eastern, lower-lying parts of Sar Pauk's territory, large areas are under permanent forest. These are ang dong (deciduous) forests and most of the land is not good for cultivation. There are also small patches of sacred forests and cemetery forests (one for the animists and one for the Christians).

Overall, some 67% of Sar Pauk's territory is kept under permanent forest, and the practice of preserving "buffer forests" between shifting cultivation blocks results in a mosaic of interconnected forest areas. Such forest corridors are important for forest-dependent wildlife to move across the landscape. In addition, there are large areas under secondary fallow forest, and these are also a source of forest resources for people and habitat for wildlife.



Fig. 9. Satellite image of shifting cultivation blocks and protected forest in Sar Pauk

According to the customary law of Sar Pauk, no cutting of trees is allowed in sacred and cemetery forests. In all other protected forests, any other form of agriculture is forbidden. People are, however, free to extract forest resources for their needs, including firewood and timber for house construction. There is no restriction on the use of any forest resources, nor are there any regulations on hunting. However, there is a custom among people from Sar Pauk not to hunt gibbons, although this is not followed by all other village.

The conservation of their forests has been challenging in recent years, however, as unsustainable logging - initially by the government but later on a smaller but consistent scale by outsiders and community members - has led to severe forest degradation.

Cutting trees for sale has long been practiced by Asho Chin villagers to meet their emergency needs for cash. Trees would be cut with a bush knife and then laboriously sawed into beams and planks with a handsaw operated by two persons. This form of logging was on a very low scale and allegedly had hardly any impact on the forest. The situation changed drastically when saw mills were set up in several places in the foothills around the edges of the forest and upland villagers were asked to provide

logs for them. Around 2007, chainsaws became available in the stores of major towns and there were no government restrictions on their sale or use.

Chainsaw logging was done by outsiders as well as by some people from Sar Pauk themselves. In Sar Pauk, the lower-lying forests far from their settlement were mostly logged by outsiders. In other parts of the village territories, it was community members from Sar Pauk who did most of the chainsaw logging. Nobody asked for permission from, nor did they share the proceeds from the sale of timber with, other villagers. The reason for the lack of interference by other community members is the customary rule that trees can be cut by any community member in the community's forests if they need to either for domestic use or sale.

Free access to timber for community members has not been a problem in the past since not much timber was required to meet the needs of the community for building materials or the occasional sale when there was an urgent need for cash.

The Forest Department of Nga Phe township did very little to address the crisis. Allegedly, there was no regular patrolling and when cases were reported to them by concerned citizens and local CSOs, they took no action, saying they did not have sufficient information and too few staff. Corruption was common and the big operators were never caught. If anybody ever got caught it was the small-scale chainsaw loggers from the communities.

Seeing how forest degradation had accelerated all over the township and that the Forest Department did not seem to care, young local activists of the Nga Phe Youth Network, some of them Asho Chin, began to raise awareness of the laws and policies and of environmental conservation among communities, and they began to investigate illegal sawmill operations, which eventually led to the closing down of one of them by the Forest Department in 2017. The activists, have received anonymous threats but are determined to continue their work.

Some community members in Sar Pauk, among them those who attended the CSO awareness raising on environmental conservation, became concerned about the ongoing uncontrolled logging and destruction of their forests. Around five years ago, Sar Pauk community began to discuss the problem in their village meetings and decided to act. A new rule was introduced by which any cutting of trees in the community's forest, even for domestic use, required permission from the village administration committee and elders.

People in the area also allegedly learned about a change in government policy on logging, and some chainsaws were handed over to the Forest Department in Nga Phe town. Only two or three are now kept in Sar Pauk for domestic use, or when timber for community members' house construction has to be processed.

While initially slow in responding, the people did thus eventually adapt customary law to address the problem of uncontrolled small-scale logging by community members. Enforcement of the new rule against outsiders, however, is proving more difficult. The lower-lying forests in Sar Pauk have allegedly been thoroughly logged by people from the nearby villages.

Aware of the difficulties in enforcing forest conservation rules alone and without any official recognition of their rights over their forests, Sar Pauk community members decided to apply for a Community Forestry Certificate. The people are currently discussing how to go about this.

5. State forest management:

The impact on indigenous peoples and forests

The current state forest management in Myanmar is one of the legacies of British colonial rule. In the 19th century, the British introduced forest management practices developed in Prussia, and brought German experts to its South Asian colonies to help apply a technocratic approach to its forest sector to ensure a sustainable supply of timber.⁸³ Along with this scientific management approach came the colonial state's seizure of virtually all forest land by declaring it Crown Land, i.e. state property, thus denying communities any legal right to their lands and forests and abolishing customary forest management and conservation practices.

Forest management as introduced by the British was particularly about controlling forest exploitation, with systematic harvesting cycles to conserve forests and ensure a sustainable timber supply. Early on, foresters in the colonial administration service in British India, such as the German, Dietrich Brandis, who for some years was also the head of the British forestry administration in Burma, were also aware of and concerned with the needs of forest-dependent people and proposed "incorporat[ing] existing systems of local control and use into the new scientific management paradigm". However, his suggestion did not become part of official government policy and the expansion of state ownership and monopoly of use and management of forest land proceeded apace.⁸⁴

As elsewhere in the region, the post-colonial state in Myanmar continued with both the technocratic management approach to forestry and state ownership and control of forest land. An elaborately bureaucratic administrative system was put (or kept) in place to manage and supposedly conserve the country's forest land, encompassing over a third of the total land area. Conservation and sustainable yields of timber, in theory, continued to be its goal but, in reality, as discussed in chapter 1.2, Myanmar's state forest management largely failed in both respects.

State forest management all too often had a serious impact on forest-dependent people. Even during British times, when Reserved Forests were established, communities were forcibly resettled. Today, the presence of communities may in many cases be tolerated but people are often harassed as the Forest Law is arbitrarily applied by forest officers, more often than not just in order to extract bribes from local people in order to avoid being fined or jailed. In other cases, as illegal occupants of a Reserved Forest, communities have often been forced to work for the Forest Department under slave-like conditions.

The following two sub-chapters present the results of studies and investigations into the impact of resettlement and forced labor on Sgaw Karen communities in Bago Region, the administrative enclosure by the state of the community forest of the Somra Nagas in Sagaing Region by declaring it a Public Reserved Forest, and the establishment of a Wildlife Sanctuary in Kachin State and Sagaing Region, which became known as the world's largest tiger reserve.

5.1. Dispossession, forced labor, displacement: Human rights abuse and the tragedy of the commons in West Bago Yoma⁸⁵

The Bago Yoma (Pegu or Bago range) is a low mountain range extending North-South between the Irrawaddy and the Sittaung River in central Myanmar. Pgakernyaw (Sgaw Karen) communities have lived in the Bago Yoma for hundreds of years.



Fig. 10. Map of Bago Region and Bago Yoma (Source : Myanmar Information Management Unit)

Bago Yoma used to be densely forested, containing dense stands of valuable timber, particularly teak. In pre-colonial times, the cutting and sale of teak was already a state monopoly, and under British colonial rule this was handed over to British timber companies and Burmese contract loggers. Despite the high densities of the much-desired teak in natural forests, especially in Bago Yoma, the British started establishing teak plantations in Bago Yoma as early as 1856.⁸⁶ They hired the German, Dietrich Brandis, as superintendent of the teak forests of Pegu division and, inspired by the traditional shifting cultivation he observed among the Karen there, he helped develop what has come to be known as the taungya system of establishing tree plantations.⁸⁷

Karen villagers provided labor for clearing, planting and weeding teak plantations. In return, they were allowed to plant crops for the first few years between the trees. As the teak trees grew, villagers were moved to new land and repeated the process. As a result of this process, many villagers became dependent on the state forestry service, and local resistance to the state takeover of forests became increasingly difficult.

Raymond Bryant, of King's College London, describes how the formerly rebellious Karen were effectively co-opted into teak reforestation: "The taungya forestry system was attractive precisely because it was a means to regulate, and gradually eliminate shifting cultivation from Burma's forests. In effect, each acre planted was an acre no longer available for use by the hill Karen."

The same practice was continued by Myanmar's Forest Department in the Bago Yoma until at least 2012.⁸⁸ However, after independence, this practice was conducted in an entirely different context: once the military regime had taken control, it launched massive operations against ethnic groups that were demanding and had begun armed struggles for independence. As part of the military's strategy, communities all over Bago Yoma, as in the forested uplands of other parts of the country, were forcibly resettled in order to cut them off from the ethnic armed groups. The case of Thar Byu community is but one example of the devastating impact this had on indigenous communities.

The village of Thar Byu community used to be in the interior of Bago Yoma, about eight hours' walk from where they are living now. According to the elders, the village was founded in 1841, but some say it may have been long before that. People were shifting cultivators, growing all the food they needed, selling only a few products such as sesame and chili to obtain the few goods they needed from the outside. Fish in the streams and game in the forest were plentiful. Even during their grandparents' time there were elephants, wild buffalos, gaur, tigers and even rhinoceroses, so people had to be careful when entering the forest. They used to have rules that guided people in the use of land and natural resources. It was forbidden to hunt certain animals and certain forests were considered sacred and were protected.

When the British Forest Department established the Reserved Forests they surveyed the area, identified and mapped all Karen villages and recognized and registered them as "forest villages". They were allowed to practice shifting cultivation within the identified village boundary but not in the designated Reserved Forest, where they were also not allowed to cut trees. Some communities in the area still have the map that the British made of their village. Some villagers also still have the medals their leaders received from the British as proof of their recognition as "headman".

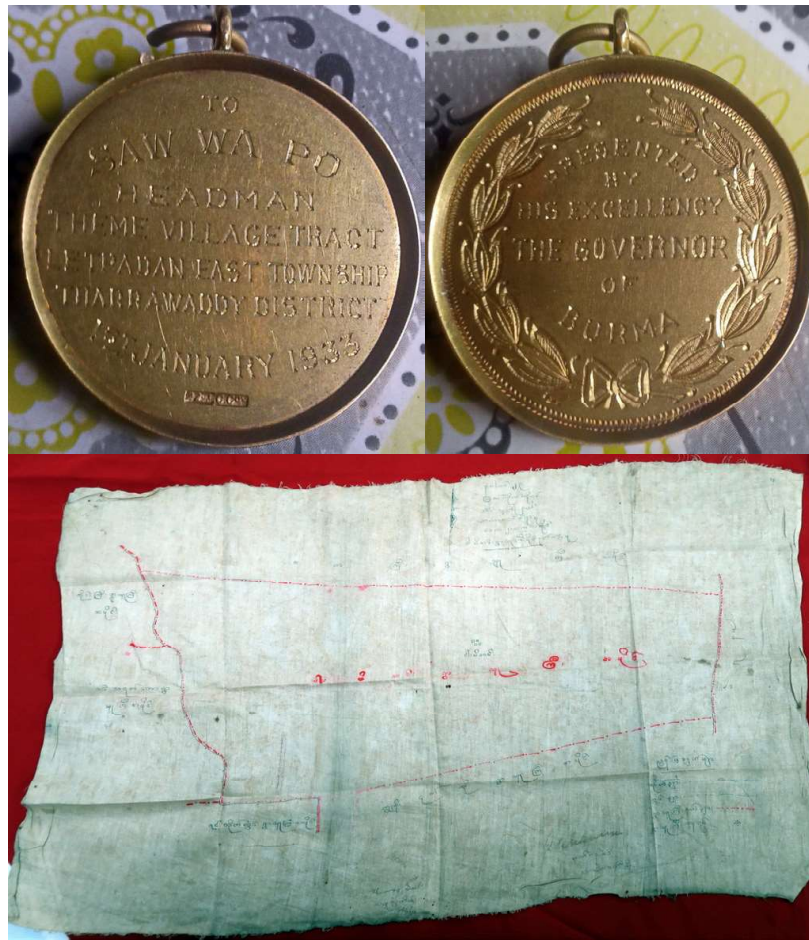


Fig. 11. A map of an officially recognized "Forest Village" made by the British Forest Department and the medal recognizing a village tract headman.

In 1969, units of the Karen National Union (KNU) moved to the area. In 1972, the army came to Thar Byu village and started to force villagers to be porters when they went on patrols. Porters were beaten and the weak and sick left behind to die. In 1974, the whole population of the neighboring Bamanlite village was forcibly relocated to Thar Byu. Many of them died there. In 1975, the army forcibly relocated all settlements in Bago Yoma to the lowlands as part of its "Four-cuts policy" aimed at undermining ethnic armed groups by cutting off their access to food, funds, information and recruits.

The people of Thar Byu were relocated together with people from Bamanlite, Nya Wa Kwi and Theme villages to a place near the Burman village of Thar Pin Gone. the people were living in crowded conditions with little food and water and over 40 died. The men were required to go back to their old villages to collect rice from the rice barn and bring it to a common rice barn from which the army distributed rice every three days. Again, the army forced them to be porters and, sometimes, people had to spend a whole month with them in the jungle. They were forced to work on the army's paddy fields and were not allowed to cultivate fields of their own for two years, until the common rice barn was empty and they started to starve.

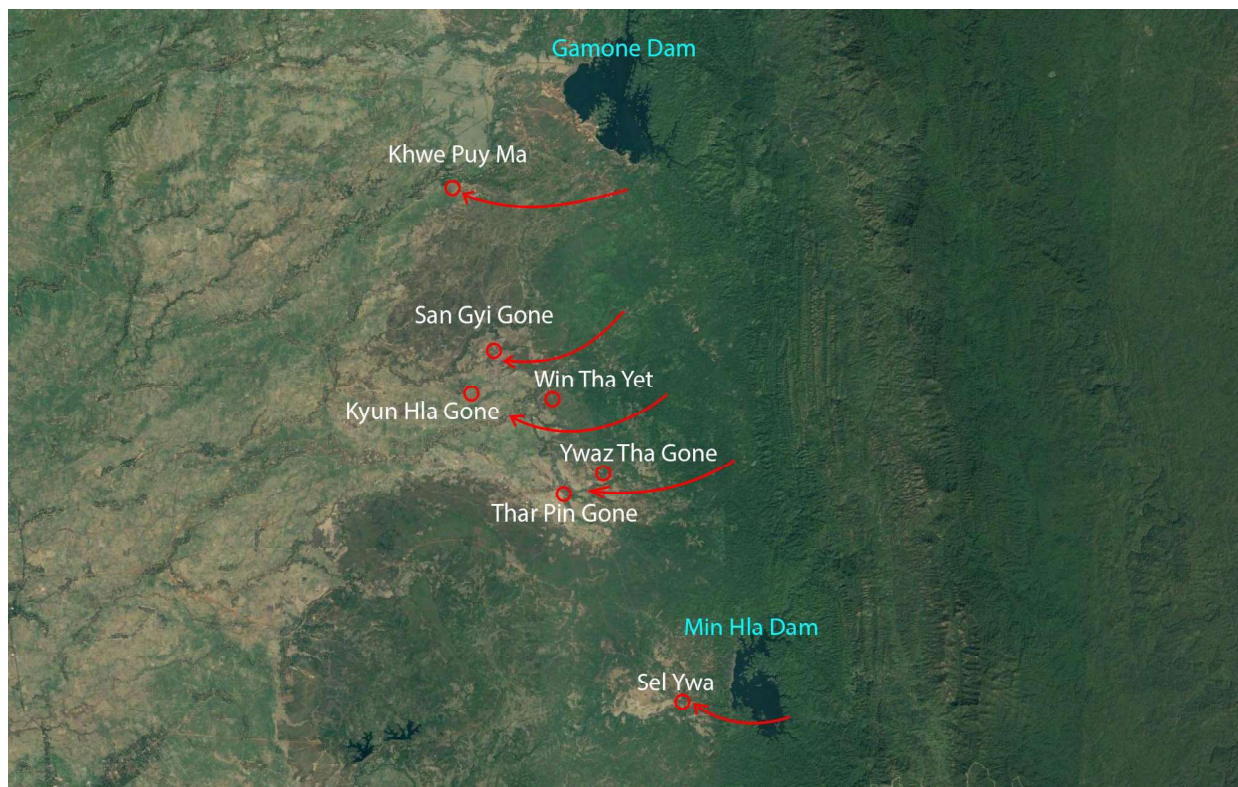


Fig. 12. Approximate course of village resettlements

In 1979, they began to farm shifting cultivation fields but, because there were so many families and the available land was so little, the people of Bamanlite community decided to move to Sel Ywaz, another resettlement site for the Karen communities. For those who remained in Thar Pin Gone, their attempts at reconstructing their livelihood was short-lived. In 1981, the Forest Department commenced a teak reforestation project in the nearby concession areas, using the British "taungya reforestation" approach. People were asked to plant shifting cultivation fields and, once harvested, plant teak in the concession area. They were not allowed to practice shifting cultivation outside the project areas, so people had no choice but to follow the instructions of the Forest Department. For planting teak, they received a meagre remuneration of 80 to 90 kyat per acre (today around 0.07 USD), which was over the years raised to 300 and then 600 kyats (0.22 and 0.44 USD respectively). For 20 years, until the year 2000 when the reforestation project ended, people had to live in temporary huts, farming their fields and planting teak during the planting season until the assigned lots were completed, and then moving on to a new area. With every year, the reforestation area moved further and further away from Thar Pin Gone. After the harvest, they had to carry the rice to the resettlement site. Since the Forest Department did not allow them to farm outside the concession area, nobody dared develop land for themselves while the reforestation project was going on.

Once the reforestation project had ended, people were left to themselves. Except for four families who owned elephants that they put to work on the logging concessions, nobody had the means to buy paddy land. When the reforestation project closed, people had to work as daily laborers, and some started to take up shifting cultivation. Since some of the land is suitable for permanent rain-fed farming, they slowly developed the land for permanent use. Thirty-nine of the 63 Karen families in Thar Pin Gone resettlement site now have some land and may be able to live off farming in the future but 24 families still depend only on daily labor. Barely able to make a living, it is very difficult for them to find the time to develop land. And they are competing for the remaining arable land with the Burman villagers who live in the same area. Over 10 families have no proper houses and live scattered in farm huts on land belonging to Burmans, for whom they work as farm hands.



Fig. 13. Some of the resettled families and their descendants still live in very poor dwellings

The forced resettlement of the Karen villages in Bago Yoma had a devastating impact on the wellbeing of the people, throwing most of those who survived the first years into abject poverty. However, it was not only the people but also the environment that suffered from the consequences of the government's anti-insurgency and forest policies. As the KNU was driven away and the Karen communities removed, the Forest Department took full control of the forests of Bago Yoma. As a result, these forests, once some of the richest in valuable timber, are now among the most degraded in the country.

When the people from Thar Byu were resettled to Thar Pin Gone, they had to use the surrounding forests to meet their needs for building materials and fuelwood. As other resettled communities and the local Burman villages depended on the same forests, they soon became depleted. Very quickly, there was also hardly any game left for hunting and the fish in the rivers became scarce. What happened was the result of a typical open-access, first-come-first-served situation in which there is no control. Whatever customary management may have existed in local Burman villages, they had no chance to uphold it when the government took control of the land and brought in the resettled communities. And the resettled Karen were concerned only with their bare survival, a situation in which the development of a sense of collective responsibility, restraint in resource use and long-term management planning is highly unlikely to develop.

As the villagers in Thar Pin Gone resettlement site explain, people cannot monitor each other. Everybody cuts down trees for their own use, for making charcoal or to sell directly to earn some money to buy food. There are no more large trees near Thar Pin Gone. The valuable hardwood trees were logged under government-issued logging concessions long ago, before the Karen were resettled there. After that, illegal logging started and was ongoing until around 2014. Now, even the teak plantation on which the Karen were forced to work is badly degraded since illegal loggers cut all the large teak trees down.



Fig. 14. Degraded teak plantation. Of the larger trees only stumps are left.

With no useable trees left, the Karen of Thar Pin Gone have to go to their old village territories, many hours' walk away, to obtain timber for house construction and other forest products. There are several checkpoints set up by the Forest Department and, on the way back, they have to pay bribes to the officers. When they want to start building a house, they again have to pay Forest Department officers to avoid problems.

The forests of their old village territory are also already badly degraded as illegal loggers have penetrated deep into the interior of Bago Yoma. There are no more communities living there who could try and protect their forests as they used to do in the past and, with the Forest Department unwilling to maintain at least a semblance of control, there too forest governance has completely broken down.



Fig. 15. Illegal logging of the interior forests continues: Sawn logs are transported by motorbikes

Maybe most tragic of all is the younger generation's loss of connection with their ancestral territories, with the rich traditional knowledge, the beliefs, rituals, songs, poems, and teaching of elders related to the forests and the plants and animals that live there. Many of these species have become extinct due to overhunting and habitat destruction and the younger generation has had no opportunity to learn about them. They have grown up in a place where all the knowledge and customary beliefs and practices has had no application, and they have hardly ever been to their parents' and grandparents' old village. While many of the older generation would still like to go back there – in some other resettlement sites the people actually did leave and return

to their old village – none of the younger ones want to leave, despite the hard life they have in a place with few opportunities for making a decent living. For them, the old village is too far away, there is no road, no school, no clinic and no shop. Many would rather try to go to the cities in search of jobs.



Fig. 16. Disconnected from the old village and the traditional forest knowledge: Young girl born in the resettlement site

Separating indigenous peoples from their ancestral land extinguishes the institutions, knowledge and skills that form part of what has been shown to be some of the most effective resource management and conservation systems. Studies among the Karen in Western Thailand, for example, have shown that their classification of forest types is much more detailed than that of biologists, and can be of great value to environmental conservation.

LEK [Local ecological knowledge, c.e.] in the Karen communities of Thung Yai is derived from a long and close association and interaction with their surroundings. Having observed both stasis and change longer than anyone else, they have developed terms which reflect a more refined and detailed understanding of the characteristics of each habitat type, and the processes occurring there. [] The Karen classification of communities is 'fine grained' and regional in scope, pertaining only to TYN [Thung Yai Naresuan]. This is precisely the type of classification which the World Resources Institute sees as the most valuable sort for sub-national conservation planning.⁸⁹

The case of the Karen communities in West Bago is an example of the devastating impact misguided security and forest management policies can have on indigenous communities and the forest. The case shows how resettlement, whether for forest conservation or as a counter-insurgency strategy, affects every aspect of the life of the communities, leading not just to poverty but social disintegration and a loss of culture and traditional knowledge. At the same time, State forest management in the Bago Yoma has failed completely to conserve its once rich forests. There was virtually no enforcement of forest conservation, leaving the forests both in the resettlement sites and the interior under de facto open access, resulting in uncontrolled exploitation. However, the communities' response to the state's enclosure of their forest varies and the ensuing forest exploitation may not always follow the same trajectory, even though, as the next case study reveals, the result remains the same.

5.2. "Controlled" open access:

The Somra Naga's response to state enclosure

It sounds like a contradiction in terms but "controlled" open access probably quite aptly captures how the Naga community of Somra responded to the Forest Department's declaration that it was designating 5,000 acres of their community protected forest as Public Protected Forest. A recent study by the Naga CSO Resource Rights for the Indigenous Peoples (RRtIP) on the customary tenure system of Naga communities in Layshi Township, in the Naga self-administered Zone of Sagaing Region, documented this case.⁹⁰ It began when Forest Department officers set up a sign at the side of the road leading through the forest without any prior information or further explanation to the village and the customary owners, making its intention public. There was no indication as to where the intended boundaries of the Public Protected Forest were supposed to be. This forest has been managed for generations by Somra village through their customary tenure system. The customary system limits the amount of fuelwood that each household can extract for their own use, and timber can only be harvested for local needs and only with the permission of the appropriate customary authorities. Two clans from the community hold spiritual and management responsibilities over the forests around the proposed Protected Public Forest area.

A community meeting was convened by the Village Chief and the village council to discuss and take a decision on how to respond. There was a great deal of uncertainty with regard to the government's intention, i.e. whether it was to protect the forest or to log it. In the end, it was decided to send a letter through the General Administration Department (GAD) to object to the designation of their customary forest as Public Protected Forest; however, the letter never reached the higher authorities and they never received any reply. In anticipation of the future occupation of their forest by the government, they decided to log it themselves before others could. At the public village meeting, they changed their customary rules and opened the forest for timber extraction by all villagers. However, the community did not simply create a totally unregulated open-access situation in which everything was up for grabs by anybody. Community members were permitted to harvest timber and fuelwood for their own use and for sale on the local market but were still supposed to request permission - in accordance with their custom - from the customary clan authorities, who are the descendants of the village founders and who hold spiritual claim and responsibility over the forest. It was furthermore agreed that 10% of the proceeds from timber sales should go to the clan, which is the formal customary owner of the forest, 10% to the village fund and the rest to those who logged and sold the timber.

Unlike in cases when an open-access situation is created by the breakdown of customary forest management, for the Somra Nagas it was a conscious collective decision within the framework of their customary law and institution, leading to a "controlled" open-access situation with clearly defined benefit sharing. Nonetheless, the result is a severely degraded forest, something neither they nor perhaps the Forest Department wanted to happen. The case is nonetheless yet another example of what happens when customary land and forest management is undermined by state intervention.

5.3. Double standards in conservation: The Hukaung valley tiger reserve

Further to the north of Somra village, in the Hukaung valley of Kachin State and the hills surrounding it in Sagaing Region, the Hukaung Valley Wildlife Sanctuary has been established as the world's largest tiger reserve. When set up in 2001, it covered an area of 6,371 sq. km. In 2004, the sanctuary was expanded to include the entire valley and surrounding hills, covering a total of 21,890 sq. km.⁹¹

Kachin and Naga communities living in the protected area and the extension zone, who are pursuing their customary forest-based livelihoods, are accused of causing harm to the environment and wildlife, and are now facing rigid restrictions with regard to land use, hunting, and the collection of forest products. No free, prior and informed consent was obtained from the communities before establishing the sanctuary, and they were not allowed to participate in the planning and decision-making regarding the establishment and operation of the wildlife sanctuary on their customary land.

Not long after, in 2006, the Yangon-based Yuzana Company was given a license to develop an "agricultural development zone" inside the wildlife sanctuary, in an area in which several indigenous Kachin and Lisu communities were also living long before the sanctuary was established.⁹² In 2007, the company began operating, confiscated villagers' farmlands and destroyed crops and large areas of forest to establish its 200,000-acre sugarcane, jatropha and cassava plantation.⁹³ Forests were cleared and, by 2008, there was no more forest left in the areas designated as animal corridors, only the sign of the Forest Department and the Wildlife Conservation Society were left standing.⁹⁴ The villagers tried to resist the dispossession but their protests were met with violence. Four villages were simply destroyed and the 300 households moved to a "model village". Nine other villages were relocated.⁹⁵ The Yuzana company is also engaged in large-scale gold mining inside the wildlife sanctuary, causing severe pollution of water and soil due to the intensive use of cyanide in gold processing.⁹⁶



Fig. 18. Map of Hukaung Valley Wildlife Sanctuary: A large area in the center of the protected area has been degazetted.

Apparently, a large area in the center of the valley has meanwhile been degazetted from the wildlife sanctuary. UNESCO describes it on its website as having the shape of a “doughnut” around an unprotected center, and gives a total area of 17,890 sq. km, indicating that the area has been reduced by 4,000 sq. km.⁹⁷ It is a severe setback for biodiversity and forest conservation efforts in the country. Even in 2007, Bird Life International was already warning in its newsletter that the Hukaung reserve was “headed for the garbage bin”.⁹⁸ Whether the decommissioning of the alluvial core area has brought any benefits to the communities in terms of land and forest rights is rather doubtful. While Yuzana continues its destructive and large-scale operations, the communities in the area around the wildlife sanctuary are still facing restrictions and harassment by rangers.

This chapter has compiled case studies that show the impact of State forest management and biodiversity conservation on indigenous communities in Myanmar. These are not exceptional cases, either for Myanmar or for Asia or indeed the world. Colonial forest departments have been moving communities out of areas declared as forest reserves since the 19th century and, since the creation of the first National Park at Yellowstone in the USA in 1872, people have been forcibly resettled away from protected areas.⁹⁹ Today, the number of evictions is declining. "There are still large-scale, violent evictions, generally in national parks, but they are less common now. But much more common is the everyday form of exclusion [of tribal groups] which makes it impossible for anyone to live in protected areas."¹⁰⁰ Over the past three decades, however, a new paradigm has emerged both in forest and biodiversity conservation, which seeks collaboration rather than confrontation with communities.¹⁰¹ Across the world, community forestry has rapidly spread and, in the Asia-Pacific region, communities now hold statutory tenure rights to over one-third of all forests.¹⁰² In the 1990s, Myanmar followed suit. The next chapter takes a look at what implications the adoption of this new approach has had for indigenous communities and forest conservation.

6. Delegated forest management: Community forestry in Myanmar

In 1995, when it issued the Community Forestry Instructions (CFI), the Myanmar government followed the example of other governments across the world and included community forestry in its forest governance. The purpose was to return some control over forests to communities with the hope that it could thus promote both sustainable resource management and poverty alleviation.¹⁰³ Community forestry (CF) replaced the so-called Local Supply Working Circles (LSWCs) that had previously been set up in forests near villages, with the intention of providing them with forest products to cover their needs, such as timber, fuel wood and other non-timber forest products.¹⁰⁴ The main difference between the LSWC and community forestry was "that LSWC was managed by the Forest Department (FD) to satisfy the basic needs of the local community, whereas the CF is managed by the local community themselves."¹⁰⁵

However, in Myanmar, the right to manage a community forest does not come with ownership rights. By receiving a Community Forestry Certificate from the Forest Department, a community gets only 30 years, theoretically renewable, of limited use rights for their forest. Community forestry as practiced in Myanmar is therefore a form of delegated management of common property resources,¹⁰⁶ in contrast to a permanent title model in which the state “fully and permanently hands the land over to local indigenous communities for private collective ownership”.¹⁰⁷

In 1978, the UN Food and Agriculture Organization (FAO) defined community forestry as “any situation which intimately involves local people in a forestry activity”.¹⁰⁸ In the ensuing years, other terms were coined for similar initiatives in different countries and contexts, such as social forestry or participatory forestry. Since these differ in terms of connotation and, above all, since they may not be confined to community participation but may include other stakeholders in forest management, the FAO is now using the term community-based forestry.¹⁰⁹ According to the definition of the Center for People and Forests (RECOFTC), it refers to “all aspects, initiatives, sciences, policies, institutions and processes that are intended to increase the role of local people in governing and managing forest resources”.

It has, however, been argued that a clear distinction should be made between resource management and conservation practices merely “involving” local people and those in which communities are the main actors and decision-makers, and that “community-based management” should refer to “initiatives that are primarily controlled and legitimated from within a community. Externally initiated activities with varying degrees of community participation should not be referred to as community-based, at least not until the community exercises primary decision-making authority”.¹¹⁰ For the context of Myanmar, therefore, the term community forestry, as used by the government itself, seems to be appropriate.

Since the issuing of the CFI a little over two decades ago, 165,000 ha of forest have come under community forestry.¹¹¹ This is only 18% of the Forest Department’s target of 919,00 ha (2.27 million acres) by 2030.¹¹² Progress has clearly been rather slow. Even if the target is reached, however, the total forest area under community forestry would be a mere 3.5% of the 31 million ha of Myanmar’s officially designated forest land. Compared to other countries in the region, this is very little: in India, Nepal and Lao PDR, for example, over 30% of all forest land is under community management, in the Philippines and China it is even as high as 60%.¹¹³

The question is, how successful the government's new policy has been in achieving its declared goal of improving forest conservation and the livelihood of communities. A macro-level assessment of the FAO and Ministry of Environmental Conservation and Forestry (MoECaF)¹¹⁴, which uses a standard assessment framework developed by the FAO, comes to an overall positive conclusion but does not provide any insights into the diversity of experiences on the ground, i.e. the difficulties encountered by communities, the reasons for failure or the factors that contribute to success.

The only study so far that tries to do this at a national level was published in 2011,¹¹⁵ on the basis of case studies on 16 communities in two States and two Regions (Kachin, Shan, Mandalay and Ayayerwady) with a wide range of conditions in terms of size of the communities, area of the CF or age of the Forest User Groups (FUG). At the time the CF agreements were awarded, most of the forests were in a degraded condition; only in three cases were the forests of moderate quality, and none were of good quality.¹¹⁶

The performance of the FUG and thus the relative success of CF in these communities was assessed with respect to six criteria, and the findings of the study can be summarized as follows:

1. Institutionalization of FUG 50% of the FUG were found well, 31% moderately well, institutionalized at the time of formation. For three communities, institutionalization was found to be "seriously flawed; particularly due to elite capture problems."¹¹⁷
2. Effectiveness of forest protection and management Almost all FUGs have introduced effective management and protection of their community forests. However, forest protection "remains a challenge, as outsiders continue to try to harvest forest products: many villages don't want to get into conflictual relations, but Forest Department (FD) staff are often not backing them up".¹¹⁸
3. Regeneration and/or improvement in forest condition Forest regeneration is occurring in all villages, with 13 of the 16 community forests being in good or moderately good health.¹¹⁹ CF plantations have not been so successful but, in all communities, ecosystem services of the CF, i.e. water supply, soil condition and biodiversity habitat have improved.¹²⁰

4. Livelihood benefits of forest regeneration With regeneration of forests in all communities, there is better provision of forest products such as timber, fuelwood and non-timber forest products (NTFP) as well as ecosystem services, from which community members benefit. The authors conclude that "There is undoubtedly much potential here for enhancing the livelihood benefits through both livelihood oriented forest management and also value addition and marketing development".¹²¹
5. Fairness and equity in the distribution of benefits and costs, and particularly whether the poor and most needy receive benefits In two of the 16 communities, benefit distribution was found inequitable, in 8 of them it was found moderately - and in 3 highly - equitable. Several villages were initiating community development projects such as infrastructure projects (schools and bridges) with timber and cash generated from the community forest.¹²²
6. The sustainability of the FUGs' achievements Some FUG have become inactive, others were found to be "moderately active". The factors that contribute to a higher level of sustainability of FUG are the support of NGOs and government staff and better environmental conditions. Conflicts are a problem in 11 of the 16 communities, and in 5 of them these are serious. The most prevalent cause of conflict is enforcement of regulations on extraction and, in 3 sites, perceived exclusion from FUG membership.¹²³

The overall conclusion of the report is that half of the FUGs were working well, most others were found to be working moderately well and only one of them was dysfunctional.¹²⁴ However, the authors of the report acknowledge that they have "focused primarily on the performance of community forestry according to its own terms – i.e. the increase in forest cover in areas labelled community forests and the possibility of benefit sharing from those areas [and] have not examined the more complex land use dynamics which introducing community forestry may precipitate".¹²⁵ However, they conclude, despite restrictions with regard for example to the practice of shifting cultivation, "introducing CF may still be attractive to villagers as a route to more secure land tenure, especially as taungya cultivation [i.e. shifting cultivation, C.E.] typically lacks tenure security."¹²⁶

In fact, tenure security for communities has been most often mentioned as the reason for engaging in CF both by communities and CSOs supporting them.¹²⁷ But how much tenure security does the possession of a CF certificate actually provide? A recently conducted case study by the indigenous NGO POINT in an Asho Chin community in Magwe Region has come up with some interesting findings.

6.1. The limits of rights:

Community Forestry and the pipeline in Myay Latt community

Myay Latt is a neighboring community of Sar Pauk, which featured earlier in this chapter, located in Bone Baw village tract of Nga Phe township in Magwe Region. It is a small community of only 22 households and therefore not officially recognized as an administrative village but considered to be part of Bone Baw. The people's livelihoods are based almost exclusively on agroforestry since the government forced them to stop shifting cultivation. Myay Latt is one of the first communities in the area to engage in community forestry. It obtained its Community Forest Certificate in 2006.

The reason for applying was not so much their wish to get support for better forest conservation to improve their livelihoods but to obtain protection against land grabbing by the military. During the construction of the Minbu-Ann road leading through their territory in 1993 and 1994, the army had camps there and started using the land to grow food. In 1995, the military erected signs along the road leading through the community's territory announcing its intention to confiscate the land in that area. Through a missionary working in their community, they came to know of the possibility of obtaining a Community Forest Certificate (CFC) that gives communities use rights over forest land for a 30-year period. In the hope that this might help them avoid land confiscation by the army, they submitted an application in 2004 and, two years later, received a certificate for an area of 100 acres. The military removed the signs and left the area but whether it was because of the CF or for other reasons is not known.



Fig. 19. The community forest of Myay Latt, with a banana agroforest in the foreground.

With the threat of land grabbing gone, new challenges emerged. Once logging operators had stripped the forests of all the most valuable teak and other hardwood, which happened before the CFC was received by the community, small-scale logging commenced involving the communities themselves, as has been described in the case study on Sar Pauk community above. Like Sar Pauk, Myay Latt eventually also decided to put a stop to this by changing their customary law regarding access to timber. They are now able to control timber extraction on the part of community members but have difficulty enforcing their rules on outsiders. Having a CFC has not made any difference and they are still struggling to protect their community forest from encroachment by outsiders.

In a self-assessment of the benefits and challenges they are facing, the Forest User Group has been rather critical. While appreciating improvements in forest quality and forest products for domestic use, they found that they have so far not obtained the benefits they were hoping for in terms of income, and are having difficulty in protecting the forest from encroachers. They found that the Forest Department was not supportive, either with advice in silviculture or with help in enforcing conservation rules against outsiders.



Fig. 20. Members of the Forest User Group of Myay Latt in a regenerating part of their community forest.

The extent to which communities' rights are protected by a CFC became evident in 2012 when the Myanmar-China Gas Pipeline was built right through Myay Latt's community forest. Construction began without seeking the communities' free prior and informed consent; there was no consultation, not even prior information. The bulldozers just came and started digging. However, when community members began to oppose the project, the authorities first threatened to jail anyone trying to obstruct the project and then began to negotiate. Finally, when they realized the community had a CFC, the authorities recognized that they had some rights and became willing to negotiate compensation payments. Five years later, these negotiations are still ongoing because the government is refusing to pay the compensation demanded by the FUG, giving the argument that the FD is the actual owner of the land and they will pay compensation only for damaged or destroyed trees.

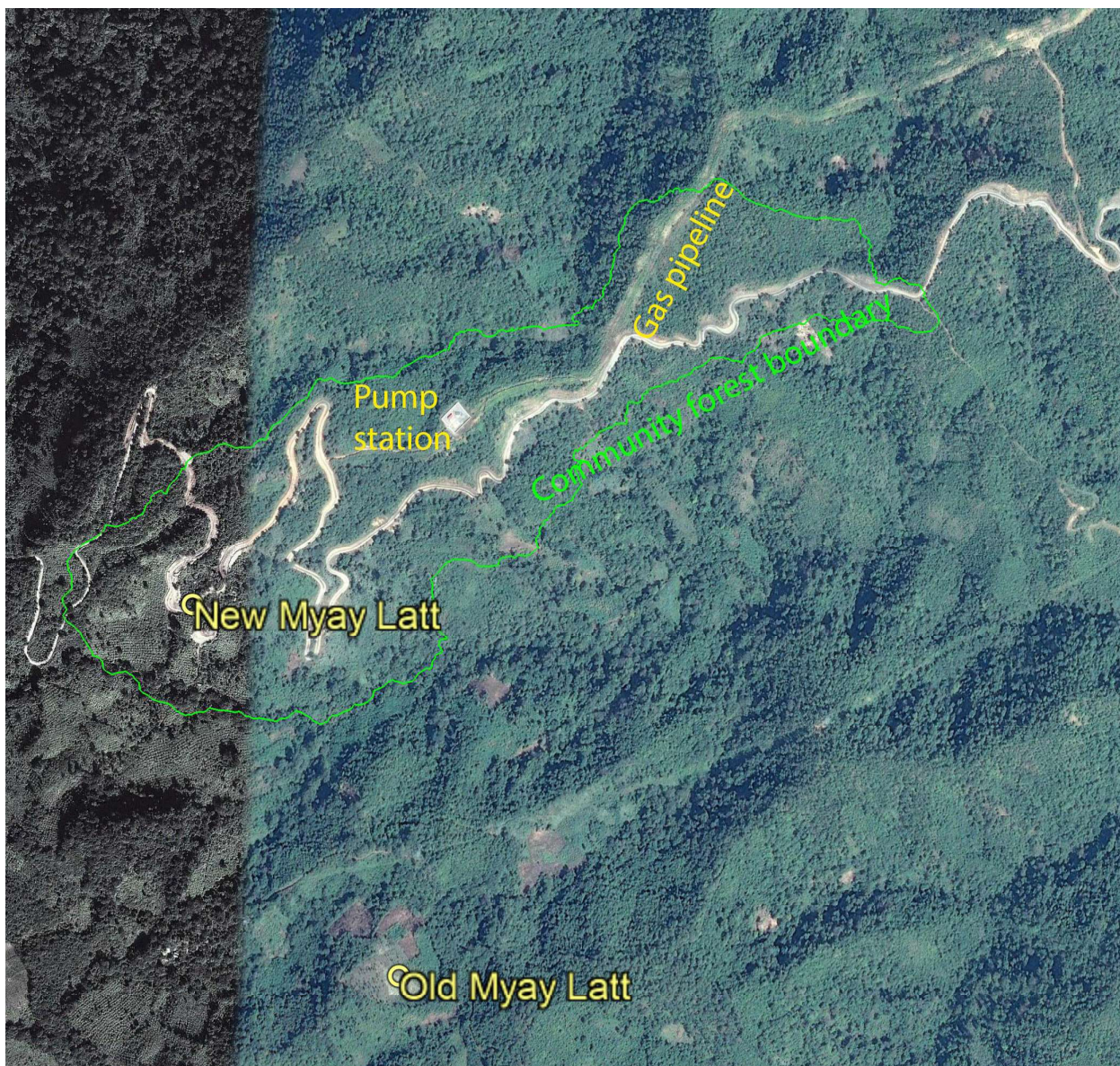


Fig. 21. Satellite image showing the two settlements of Myay Latt, the community forest area and the gas pipeline

Of course, this argument is fully in line with the law since a CFC gives only limited, time-bound use rights. Consequently, the 2016 CFI explicitly state as one of the rights of FUG to "Claim the compensation for the loss of trees and crops if other development projects implement(sic!) in CF area", but no compensation for lost land itself.

The way the government went about the construction of the pipeline and the way they argued in the negotiations with the FUG holders thus clearly reveals how weakly protected their rights are under CF.

The experience of the FUG in Myay Latt also shows that there is no due process in place for compensation of land reallocated by the state to other purposes. The new CFI of 2016 are an improvement in this respect since they include as one of the forms of support to be provided by the Forest Department the "legal support in the claim of compensation for the loss of crops, forests and trees due to development or other project/program; and coordinate with relevant organizations for compensation to receive within the term of period".¹²⁸ And yet the questions remain, "What are the rights that CF user groups have to compensation and due process for land under a CF certificate? And what happens when it is the FD itself that has decided to re-allocate the land?"¹²⁹

In a way, Myay Latt community was "lucky" that the pipeline was built through their officially recognized CF. Had it crossed their territory elsewhere, there would most likely not have been any negotiations at all. With 100 acres, the officially certified CF of Myay Latt is very small, covering only a fraction of the customary community forest. It has been a common practice by the FD to grant only small areas; rarely has the FD approved the whole area communities have applied for. The reason usually given is that communities would not have the capacity to manage a larger area.¹³⁰ This means that even communities who have a CFC have no legal recognition and protection of all the other land, which effectively means most of their territory.

In the absence of any other feasible legal option, some CSOs in Myanmar are now exploring the potential in the revised CFI of 2016 for securing communities' tenure over their communal land. One of these pilot initiatives is described in the next sub-chapter.

6.2. Pushing the boundary: A pilot project in Shan State

Across the country, local and international NGOs have either included community forestry as part or the full focus of their community development or land rights programs. RECOFTC has the largest project, working with 103 communities in Ayeyarwady Region, Bago Region, Shan State, Chin State, Magwe Region, Rakhine State and Tanintharyi Region. Among other CSOs with CF projects are Karuna Mission Social Solidarity (KMSS) Yangon and Taungngu offices, working in Bago Region and Kayin State, Metta Foundation in Kachin State, Kayah State and Shan State, and the Myanmar Institute for Integrated Development (MIID) in Shan State.

Most of the ongoing CF projects have commenced under the provisions of the 1995 CFI and the CFC granted covers only a part of the customary land of the communities involved. MIID's project is trying to use the new CFI of 2016 to go beyond what has been done so far, and to actually pilot the implementation of the National Land-Use Policy (NLUP) of 2016, which explicitly recognizes customary tenure to ethnic nationalities.

As part of the multi-country project "Rural Livelihoods and Climate Change Adaptation in the Himalayas (Himalica)" and the USAID Land Tenure Project, and in cooperation with the Forest Department, MIID is working with five communities of the Taung Yoe indigenous people in Southern Shan state. The villages and all their customary land lie within a Public Protected Forest. The communities have no legal rights to their land. Located inside the Permanent Forest Estate, they are not able to register house plots or apply for land-use certificates ("Form 7") for their permanent agricultural land.¹³¹ Obtaining a CFC is the only option.

The MIID project pursues four objectives: 1. Pilot 2016 Community Forestry Instructions; 2. Pilot Community Land Tenure methods of the National Land-Use Policy; 3. Improve livelihoods through agroforestry; and 4. Increase forest cover while restoring degraded forest areas.¹³²

A recent initial case study report observes:

"This project acts as a pilot for using CF to secure tenure over a village and village land, and to manage forest and agriculture in an integrated manner under one title. The CF design is made possible by amendments to the Community Forestry Instruction (CFI) that was approved in 2016, which included references to customary boundaries and management norms, and removed the prohibition on including rotational and permanent agriculture."

As the author of the case study concludes, "This CF is notable because it expands the ways that the CFI has been in several important ways:

1. Land Use Types: The CF area will include rotational agriculture, permanent agriculture, and households within the CF boundaries as well as natural and planted forest
2. Inclusion: All households, and both men and women, will be members of the CF user group.
3. Multiple villages: The five villages prefer to register land together rather than identifying village boundaries. []."¹³³

The project pilots "using CF certificates to recognize tenure over homes, farms, and forests together rather than degazetting and individually registering home and permanent agriculture plots."¹³⁴ In so doing, the project is indeed piloting the implementation of the NLUP, since the recognition and protection of customary tenure requires the possibility for communities to have their customary territories, including all types of land distinguished and held under customary tenure, demarcated and legally registered.



Fig. 22. View of part of the MIID project area in Southern Shan State.

Across the country, partnerships are emerging between indigenous communities and CSOs for the documentation and mapping of customary tenure and land management systems and for exploring ways of obtaining the State's recognition of their rights to their land, forest and resources without having to confine themselves to CF. The Catholic Church's Karuna Mission Social Solidarity (KMSS) is conducting participatory action research and community mapping with indigenous communities in Kayah State, Shan State and Kayin State. The indigenous organization SHAHNAH is part of the same project and conducting participatory documentation and mapping with Naga communities in the Naga self-administered zone of Sagaing Region. While not excluding CF as an option, these and other organizations are supporting the communities to claim their rights based on the provisions in the NLUP and in international law such as the UNDRIP. This implies concerted advocacy efforts with other CSOs and indigenous grassroots organizations to bring the land and forest laws in Myanmar in line with the NLUP and international legal standards for the protection of indigenous peoples' rights.

Grassroots initiatives may also show the path that forest conservation may take in the future. They are reminiscent of the grassroots conservation and land rights movements of indigenous peoples in other parts of the region, such as in the Philippines and Indonesia, which have led to or are leading to the profound legal and policy reforms that indigenous communities in Myanmar are also envisioning. These initiatives are still few and far between but are rapidly spreading as communities are linking up in formal and informal networks,¹³⁵ becoming aware of the current policy discussions and are learning from each other. Two such grassroots initiatives are discussed in the final chapter of this section.

7. The Way Forward: Toward Genuine Community-based Management

As a result of a growing awareness of and concern for the degradation of their forests and imminent threats from external state and non-state actors, indigenous communities have taken their own initiatives to meet the challenges of protecting their forests. Inter-community networks have emerged to join forces and coordinate their efforts in protecting large tracts of forest stretching across adjacent village territories.

These initiatives are different from the conventional CF projects in several respects. Although awareness raising efforts by CSOs may have helped jump-start the initiative, they are entirely community-led and thus independent of external control or supervision. Pre-existing or newly established contacts with supportive CSOs have developed into a partnership, with the latter providing technical support such as for documentation and mapping. Unlike many CF initiatives, however, they are not externally driven and are fully owned by the communities.

7.1. Inter-community conservation network in Kayah State

One example of emerging community-based forest management is the inter-community network of the Natural Forest Protection Committee (NFPC) in Daw Tha Ma Kyi village tract, Demoso township in Kayah State. This network was formed among six communities comprising the five administrative villages of Daw Tha Ma Kyi village tract, namely Daw Tha Ma Kyi, Daw Kaw, Daw Nay Khu, Daw Tha Cha, Daw So Phay and Daw Phon. All six communities belong to the Kayah, one of the indigenous peoples of Kayah State.

The NFPC was established after members of the local CSO Karenni Evergreen and the Karenni National Progress Party (KNPP) conducted awareness raising among the villages in the area on the importance of forest conservation. It was formed with the purpose of cooperating around protecting the forests they were dependent on, in particular the watershed area located in Daw So Phay, which is critical for water provision for all villages during the dry season. However, soon after it was established, the NFPC became inactive as a result of increased military operations under the Tatmadaw's Four-Cuts Policy¹³⁶ that was applied in the 1990s against ethnic armed groups, among them the KNPP. As part of this strategy, all villages in the area were forcibly resettled to a lower-lying location where they could be better controlled by the military.

In 2003, after the villages were able to return to their ancestral settlement sites, members of the NFPC resumed their discussions and were determined to revive the network and to ensure that all villages of Daw Tha Ma Kyi village tract become a part of it. They began to organize meetings among the six communities and, since 2013, have been having regular meetings twice a year. A committee was set up in each village, and three members of each of these comprise the network-level NFPC.

The committee agreed on a set of basic rules which apply to the two types of forest they have identified and are to be respected by all member communities:

1. Community protected forest: This forest is for the use of community members to cover their needs for all kinds of forest products. Cutting of timber is permitted but requires the permission of the village-level committee.
2. Prohibited forest: This is strictly protected forest where no cutting of wood is permitted. Hunting is also forbidden. Only the collecting of minor forest products such as vegetables, herbs or mushrooms is allowed. In some of these forests, the collection of honey and orchids is also forbidden. Since bamboo was previously planted in parts of these forests, their owners are allowed to continue harvesting bamboo but no more bamboo or anything else may be planted there.

The forest conservation and management rules have been disseminated among the member communities orally. They have so far not been written down nor have any signs or other boundary markers been set up. However, the NFPC would like to document their land use and management system and map their territories and land use in order to seek recognition for their customary rights to the land and forest from the government.



Fig. 23. Members of Daw Phar village during the demarcation of their spirit forest called Ei Lu. Daw Phar is a member community of the Natural Forest Protection Committee (NFPC) in Daw Tha Ma Kyi village tract.

The NFPC has asked the Karenni Welfare and Development Center (KWDC) and the Ethnic Community Development Forum (ECDF, a nationwide network of which KWDC is a member) to help them with the documentation and mapping. The documentation comprises each village's and the NFPC's history, livelihood and customary land and forest management practices. They intend to revise and write down the rules and regulations. On KWDC's and ECDF's suggestion, they revised the composition of the committee to include women and youth representatives.

Once the documentation and all maps are completed, the NFPC wants to approach KNPP and the government and advocate for formal recognition of their rights to their customary land and forests.



Fig. 24. Daw Tha Cha village, one of the members of the NFPC in Daw Tha Ma Kyi village tract. In the background, part of the jointly protected forest is visible.

7.2. From crisis response to forest conservation in Chin State

A similar initiative was taken in Kanpetlet township in Chin State where 11 villages of the Dai Chin people want to document their customary law and land management practices and draw up joint rules and regulations for the conservation of forest, land and natural resources, in particular the large tract of virgin forest in the watershed areas of the villages.

The formation of the people's organization was triggered by a food crisis ten years ago. Between 2006 and 2008, the villages in Southern Chin state experienced an acute food shortage as a result of bamboo flowering and the ensuing population explosion of rats, which devastated fields and granaries. To avoid starvation, the people had to bring food to their villages, which proved extremely challenging since most of them had no road connection. Aware of the need for better road access, and that they could not expect to get any help from the government, the people of Khayaing

village decided to broaden and improve the trail leading to their village so that it could be reached by motorbike. When they started the road building project in 2009, neighboring villages were rather skeptical but were soon convinced of the value of the initiative and joined in. Eleven villages thus jointly built an 18-mile-long motorbike road from Khayaing village to Kyintwe village, from where a government road leads to Kanpetlet town. It was completed in 2014. The success of this project encouraged the villages to institutionalize their cooperative efforts by forming a people's organization which they named Social Development for Remote Areas (SDRA).

Also in 2014, a young member of Khayaing community who was working for the indigenous NGO POINT and had come home for a holiday break conducted awareness raising for SDRA members on climate change, environmental conservation and REDD+. Having experienced the impact of climate change and learned about plans for the designation of their forests as protected areas and as a REDD+ pilot area, the SDRA members decided to launch another joint initiative: the documentation of their natural resources, biodiversity and customary resource use and management, the mapping of their territories and the formulation of common rules and regulations for the management and conservation of the land and forest on which they all depended. For technical support in the documentation and mapping, they sought the support of the Chin Human Rights Organization (CHRO).



Fig. 25. Khayaing village, one of the member communities of SDRA.

If successful, CSO-supported grassroots initiatives like those in Kayah and Chin State can lead to a form of forest and land management different from most of the current CF projects since these would be, as quoted earlier, “primarily controlled and legitimated from within a community”.¹³⁷ This would imply a true paradigm shift away from merely delegated management toward genuine community-based forest management and a collaborative partnership between communities and the State.

For these initiatives to succeed and the much-needed transition to occur, however, the right conditions need to be in place: secure land rights and a regulatory framework that supports communities in the enforcement of conservation rules and forest management.

III

Conclusions: The need for real change

This short review has looked at the different approaches to forest management thus far used in Myanmar and tried to assess their achievements and impact with regard to forest conservation and the rights and wellbeing of indigenous communities.

Customary forest management as described in the case study on Sar Pauk community in Magwe Region has been practiced by indigenous communities for many generations and is still being successfully used to protect forests in large parts of the country. However, over the past one and half centuries, customary forest management has come under pressure as colonial and post-colonial States have claimed ownership of most forest land and imposed a supposedly scientific, and in practice very technocratic and bureaucratic, approach to forest management. In remote areas, in particular, communities are still able to maintain some control over their forests. However, they are confronted by increasing demand for timber, on the one hand, and increasing need for cash, on the other, driving community members to join in the previously illegal logging of their territories. Attempts by communities to control logging have been frustrated by their lack of power to enforce rules on outsiders, and the absence of support from the state authorities. More often than not, Forest Department and police officers turn a blind eye on, or even collude in illegal logging.

The case studies included in this report confirm what has been reported from across the region: the State's forest management has failed to fulfil its objective of protecting forests, and this has had serious negative impacts on communities as severe restrictions have been imposed on land and resource use, or whole villages relocated. In fact, all over the world human rights violations have been committed in the name of forest and biodiversity conservation. Not just for the sake of more effective forest conservation, therefore, but also to ensure respect for fundamental human rights in general, and the collective rights of indigenous communities more specifically, it is obvious that the current forest governance system based on exclusive State ownership and control needs to be abandoned.

The findings of the case studies reviewed in this report lead to another conclusion: that under the current system of forest governance in the country neither communities nor the State alone are able to address the drivers of deforestation and conserve forests. Communities have realized that they need recognition of their legal rights to their land and forests and the support of the authorities in enforcing local

conservation rules against illegal logging. The Myanmar government, in turn, seems to have realized that collaboration with communities is essential for successful forest conservation and has followed the example of other countries in the region by including community forestry as part of its forest governance system. However, with an overall target of merely 3.5% of the country's total forest area, which is currently still far from being reached, Myanmar's CF program cannot be considered to be making any real difference beyond testing the new approach.

As reviews and the case study on experiences with CF discussed in this report have shown, there are positive results in terms of improvements in the communities' livelihoods and the quality of the forest under CF. However, the case study also shows that CF provides only weak tenure security and that other, stronger legal provisions are necessary to give indigenous and local communities the much-needed recognition and protection of their customary rights to land, forest and resources, which alone can guarantee their long-term wellbeing and self-determined development.

The revised CFI of 2016 include some important changes, among them the possibility for the commercial sale of forest products. This seems to go in the right direction, since a global review published in 2016 pointed out that studies have shown:

[]that rights to commercial use of the forest (accompanied by sufficiently robust institutions) are needed if CBF is to generate sufficient income to contribute to poverty reduction beyond simply sustaining flows of subsistence products.¹³⁸

The CFI of 2016 have, however, retained their fundamental weaknesses, i.e. the limited decision-making power and weak rights of communities. This severely limits the changes which this approach could bring to the life of forest-dependent people and the health of Myanmar's forests. As the regional review on community forestry in Asia and the Pacific conducted by RECOFTC concluded:

Legal possession and active control are crucial preconditions for communities to manage forests in a sustainable manner” [] Only where communities possess forests and exercise active control over forest management, including commercial uses, are they able to derive benefits from forest management and to have suitable incentives and means to engage in sustainable management.¹³⁹

The evidence in favor of forest management by communities, and in particular indigenous communities, is compelling. A comprehensive global literature review¹⁴⁰ concluded that there is a “large and growing literature in support of the proposition that strong indigenous/local tenure is associated with forest management outcomes that are at least as good or better than outcomes for areas owned/managed by the State (such as protected areas).” Furthermore, the authors point to broad support in the literature reviewed for “conditions [that] are associated with better forest outcomes”:¹⁴¹

- Security of tenure regardless of form
- Protected status (with better outcomes when combined with multiple use and/or indigenous territories)
- Community-level management (local involvement/autonomy in rule-making)
- Strong and established local institutions
- Positive economic incentives to justify the investment in forest management
- Support from NGO
- Supportive national policy.

In Myanmar, many of these conditions are met. The case studies covered in this report show that there is strong community-level management, with either strong and established customary, or evolving new local, institutions such as the community networks in Demoso township in Kayah and Kanpetlet township in Chin States that have been set up in response to new challenges and conditions. There is also a vibrant civil society and an increasing number of indigenous-run NGOs that are entering into partnership with and providing support to indigenous communities. However, again, what is lacking are the most critical and indispensable conditions: a supportive legal and policy framework in general, and security of tenure in particular. This is where real change is needed.

Bringing about the legal and policy changes that support indigenous and other communities in their sustainable management of land, forest and resources would help the government fulfil its pledges to the international community in its Intended Nationally Determined Contribution to address deforestation and forest degradation. Consequently, the successful implementation of REDD+ in the country will also depend on this much-needed paradigm change in forest conservation. With its engagement in REDD+, Myanmar also has to honor the social and environmental safeguards that are part of the agreements reached at the UNFCCC’s COP 16 in Cancún and which include provisions on the land rights of communities. Myanmar has already drafted its own REDD+ safeguards, which contain Principle 1: The REDD+ program recognizes

and respects rights to lands, territories and resources. Paragraph 1.2. of this principle states: "The REDD+ program recognizes and respects both statutory and customary rights to lands, territories and resources which Indigenous Peoples (ethnic groups) or local communities have traditionally owned, occupied or otherwise used or acquired."

As reflected in the REDD+ safeguards, granting land rights to indigenous peoples is not just a question of prudence in pursuing the practical goal of more effective forest conservation but a question of respecting the fundamental rights that indigenous peoples enjoy under international law. For Myanmar, it is a question of not merely a moral but - since it supported the UNDRIP in the UN General Assembly - a legal obligation.

Recommendations

Myanmar is currently drafting its REDD+ Strategy. Consultations were conducted by UN-REDD in Kachin and Mon State and in Magwe Region in 2017, and will take place in all other states and regions in 2018. UN-REDD is also supposed to organize consultations on the REDD+ safeguards in 2018. Since they will have to comply with the Cancún safeguards, the recognition of community ownership over land and forests that has been included in the draft will have to be maintained in the final document.

The Forest Law itself and the Farm Land Law are being revised but it is not known what direction the revisions are taking. At the time of writing this report, the draft bills have not yet been discussed in parliament. Draft amendments to the Vacant, Fallow and Virgin Land Management Law have just recently been circulated; there are no major changes in favor of community rights nor the recognition of customary tenure. Most critical for future reforms of laws on land and forest rights will be the establishment of the National Land Use Council, which is mandated with implementing the National Land-Use Policy and related laws.¹⁴² The danger is that the NLUP itself will be revised and key provisions, such as Part 8 on Land Use Rights of Ethnic Nationalities, deleted, as recommended by the Legal Affairs and Special Cases Assessment Commission.

Several ethnic armed groups have come up with or are currently drafting their own land policies, all of which recognize customary tenure. The agreements reached with the government in the Second Session of the Union Peace Conference on 29 May 2017 include application of principles of human rights, international, democracy and federal system norms in drawing up land policy.

In order to maintain the momentum of progress in recognizing the customary land, forest and resource rights of indigenous and local communities, and the much-needed paradigm shift in forest governance towards genuine community-based and collaborative forest management with the state, IWGIA and POINT therefore recommends:

That the Government of Myanmar

- Fulfills its pledge to strive for internal peace, addresses land conflicts and, to that end, brings about the necessary reforms, in particular
- Rejects the recommendation of the Legal Affairs and Special Cases Assessment Commission to revise the NLUP
- Establishes a National Land Use Council that effectively works on implementing the NLUP in letter and spirit, and for that
- Comprehensively revises and harmonizes all laws related to land and forest rights in line with the NLUP

That the Ethnic Political Parties and Armed Groups

- Maintain in existing land policies, or include in draft land policies, recognition of the customary land, forest and resource rights of indigenous and local communities
- Explicitly takes up recognition of the customary rights of indigenous and local communities in the negotiations related to the land and natural environment sector in the Union Peace Conference

That UN-REDD and the MoNREC

- Ensure that the national REDD+ safeguards for Myanmar are in compliance with the Cancún safeguards and, to that end, that the provisions of the draft safeguards regarding the customary rights to lands, territories and resources of indigenous peoples and local communities are maintained

That the Forest Department

- Supports communities in enforcing their forest conservation and management rules against outsiders regardless of whether they possess a CFI or not

That Civil Society

- Continues with and steps up concerted advocacy for recognition and protection of the customary land, forest and resource rights of indigenous and local communities
- Supports communities in documenting their customary laws and tenure, self-demarcation, mapping, land-use planning, the formation of inter-community networks and their involvement and self-representation in national level advocacy and networks

That international NGOs, bilateral and multilateral donors

- Provide support to indigenous communities, their networks and CSOs working with them for these activities.

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11. *Ibid.*
12. *The distinction between 'people' and 'peoples' is critical for indigenous peoples since only the latter implies collective rights, like, for example, to self-determination or territories. Thus, indigenous peoples' representatives have insisted, often against stiff resistance from state governments, to use 'peoples' in the document that was later adopted by the UN General Assembly as the UN Declaration on the Rights of Indigenous Peoples.*
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25. *25 Ibid.*
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27. *<https://eia-international.org/myanmar-logging-ban-major-step-forest-reform>*
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29. *Enforce timber law: MP, Global New Light of Myanmar, July 14th 2017, Issue 88, Volume 4 <http://www.globalnewlightofmyanmar.com/enforce-timber-law-mp/>*
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31. *The World Bank's Forest Carbon Partnership Facility describes REDD+ as "countries' efforts to reduce emissions from deforestation and forest degradation, and foster conservation, sustainable management of forests, and enhancement of forest carbon stocks" (<https://www.forestcarbonpartnership.org/what-redd>). It is one of the initiatives of the United Nations Framework Convention on Climate Change (UNFCCC) to mitigate climate change. It was first proposed and agreed on in 2005, and by 2015, the main decisions within the UNFCCC on REDD+ were completed.*
32. *<https://theredddesk.org/markets-standards/redd-under-unfccc>*
33. *The Republic of the Union of Myanmar 2015. Myanmar's Intended Nationally Determined Contribution-IND C, op.cit.*
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36. *Treue et.al. 2016, op.cit., p. 25*
37. *Ibid.*
38. *Woods, Kevin 2013. Timber Trade Flows and Actors in Myanmar: The Political Economy of Myanmar's Timber Trade. Forest Trends Report Series. Forest Trade and Finance. November 2013, p. 2*
39. *Nyi Nyi Kyaw 2015, op.cit.*
40. *Ibid.*
41. *Treue et.al. 2016, op.cit., p. 26*
42. *Myanmar's armed forces, also known under its official name 'tatmadaw*
43. *Landportal website: <https://landportal.info/book/sdgs>; White, Andy 2017. Opinion: Leaving no one behind—Why land rights must be the linchpin of sustainable development. devex 03 October 2017.*
<https://www.devex.com/news/opinion-leaving-no-one-behind-why-land-rights-must-be-the-linchpin-of-sustainable-development-90593>

44. *Shifting cultivation is a highly diverse practice of land use still widely used in the world's tropical and sub-tropical areas. Other terms commonly used for this form of land use are, rotational farming, swidden farming/agriculture or slash-and-burn agriculture or. The latter usually carries a negative connotation, reflecting the widespread prejudicial view that it is a destructive and wasteful form of agriculture. As a minimum definition, shifting cultivation can be described as a form of agricultural which is characterized by: 1. The removal of the natural vegetation (usually forest or shrub land), in most cases (though not exclusively) by cutting and subsequent burning; 2. An alternation between a short duration of cultivation and a comparatively long duration of fallow (usually woody species, i.e. forest fallow), and therefore 3. The regular, in most cases cyclical shifting of fields.*
45. *Nyi Nyi Kyaw 2015, op.cit.*
46. *See e.g. in the 2015 Election Manifesto of the National League for Democracy. On page 20 of the authorized English translation of the manifesto, it states under chapter 4, paragraph viii) Environment: "The NLD will carry out the following activities in order to reduce the current levels of pollution and environmental harm, and to create a better environment. [] 2. Farming. "We will provide education and practical assistance in order to eradicate shifting cultivation practices."*
47. *Scurrah, Natalia, Kevin Woods and Philip Hirsch. 2015. The Political Economy of Land Governance in Myanmar. Mekong Region Land Governance (MRLG), November 2016, p. 10*
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51. *Oberndorf, Robert B. 2012. Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar. Yangon: Food Security Working Group's Land Core Group, p. 22*
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59. *Chapter III, paragraph 4.*
60. *The Protection of Wildlife and Conservation of Natural Areas Law (1994), chapter IX, article 30 (c)*
61. *Ibid., chapter XI, article 36 (c)*
62. *Ministry of Natural Resources and Environmental Conservation 2016. Community Forestry Instructions, para. 24 (h)*
63. *Ibid., para. 24 (f)*
64. *The CFI of 1995 states in paragraph 19 (e) “Land allotted for community forest development should not be used for gardening or shifting cultivation purposes, with the exception of agroforestry”*
65. *Ibid., para 3 (c)*
66. *Ministry of Natural Resources and Environmental Conservation 1995. Community Forestry Instructions., para 4 (e)*
67. *Ministry of Natural Resources and Environmental Conservation 2016. Community Forestry Instructions, para. 4 (f)*
68. *Ibid., para. 11 (b)*
69. *FAO and MoECaF op.cit., p. 6*
70. *This is in reference to the Panglong Agreement that was reached on 12 February 1947 in Panglong town in Shan State, between the Burmese government under Aung San, the father of State Councillor Aung San Su Kyi, and the Shan, Kachin, and Chin.*

71. *Including the Karenni Social Welfare and Development Centre (KSWDC), Karenni Evergreen (KEG), Myanmar Alliance for Transparency and Accountability (MATA) and the Karenni State Farmers Union (KSFU)*
72. *Website of the State Councillor Office: <http://www.statecounsellor.gov.mm/en/node/904>*
73. *Burma Environmental Working Group 2017. resource federalism. roadmap for decentralized governance of Burma's natural heritage. <http://www.bewg.org/sites/default/files/2017-10/ResourceFederalismBriefWEB.pdf>*

BEWG is a network of ten civil society organizations formed in 2005, primarily working in areas affected by ethnic conflict.
74. *Ibid., p. 2*
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Our vision

A world where all indigenous peoples fully enjoy their rights, participate and are consulted on decisions that affect their lives. We exist to ensure a world where indigenous peoples can sustain and develop their societies based on their own practices, priorities and visions.

Our mission

We work for a world where indigenous peoples' voices are heard and their rights are implemented.

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