



The Role of Land Ownership in Grassroot Level Environmental Protection within Myanmar

December - 2021



I. Introduction

Myanmar is considered as one of the most vulnerable countries to experience climate change. While the culprits of climate change such as deforestation and mining are being created by large corporations and companies, it is a sobering reality that the burden of climate change will be borne by the most vulnerable population, who are already struggling to make ends meet everyday. Nevertheless, climate change will eventually still affect everybody in more than one way, and it will consequently shift the region's economic and social lives. Thus, climate change is an all-inclusive issue and requires participatory creative problem solving strategies.

In thinking about sustainable environment and the overall environmental justice issue within Myanmar context, the role of customary land practices is unavoidable. A pure top-down approach, where there is a lack of understanding and alignment between the government's agenda and the local customs and interests, has proven again and again to be ineffective, if not problematic. Nowadays, more land and environmental activists are advocating their governments to collaborate with the communities in decision making processes, and to take a more holistic approach because unlike many top-down approaches, working alongside the local people can create a better understanding between the involved parties in handling such issues.

Customary land practices help drive the culture and accountability of the respective community members, which incentivize them to use their land as sustainably as possible. These practices offer a safety net for the local people as it ensures not only economic safety but also social harmony. Regardless of literacy rate and scientific knowledge, indigenous and local communities generally have lived experiences and therefore, often have a better practical understanding of their environments than outsiders who tend to lack such lived experiences. In addition, as those who have to endure the burden of climate change first hand, these community members have realized that even a small imbalance in the ecosystem and climate change could significantly affect their wellbeing, their economic livelihoods, and their cultivation practices, and thus have learned to live in harmony with their environment for generations. Therefore, it is highly important for land activists and governmental departments to leverage the local knowledge and the collective power of communities in dealing with land and environmental issues.

The customary land practices which date back to colonial times in Myanmar have always been well-embedded in the cultures of those living in communal land. This comes as no surprise since customary practices used to be formally recognized and were allowed to be practiced by the British colonial regime.¹ Customary land laws have never been accepted officially by the Myanmar government since. However, with foreign investments and projects, portrayed as “development” projects coming into the country since Thein Sein's government around 2011, it is getting more difficult to maintain customary land practices which are often in conflict with the land laws and the economic agenda set out by the

¹ Ethnic Community Development Forum (2016). *Our Customary Lands: Community-Based Sustainable Natural Resource Management in Burma*. The Transnational Institute (TNI). p.55.

government. Customary land practices center around ensuring social justice via fair land usage and allocation among the community members whereas the economic agenda by the government centers around economic development in which the fruits of the development rarely if ever goes back to the affected communities, and mainly serves the interest of the government and the investors. The most controversial project that is relevant to this issue is the Myitsone Dam Project in Kachin State. The project is worth approximately US \$20million in total where 90% of the hydropower goes to Kunming for its economic activities and only 10% goes to the Burmese territories.² This project has raised not only socio-cultural concerns but also environmental controversies. Apart from the concerning local population displacement that has to take place should the project be implemented, local communities, CSOs and activists have been opposing the dam project due to the fact that

- (1) the Irrawaddy River where the Myitsone Dam will be constructed is held as the birth of civilization for Myanmar, and
- (2) The construction of the dam will significantly sever the biodiversity of the river and the surrounding areas according to Myanmar's Biodiversity and Nature Conservation Association (BANCA).³

Despite such controversies, CSOs and activists who advocate for customary land practices in the place of foreign investments that will have negative impacts on the environment and the people in the areas are often labelled as "anti-development" which further undermines the legitimacy of customary land practices and what they truly stand for.

Not only are customary land practices often branded as anti-development or even out of date, they are also often judged as harmful for the environment without conducting thorough research on their impact or acknowledging their important role in providing economic safety. Such a dilemma often pushes people into thinking that fighting for such causes has become a zero-sum game. As such, this policy brief attempts to explore the role of land ownership in grassroots level environmental protection in Myanmar. It will mainly focus on how evolving landscapes affect agricultural practices, the perceptions of customary land practices in terms of sustainability and ownership, and some final thoughts, conclusions and recommendations on the issue. Due to Covid-19 and the coup during the time of this survey, there were limitations on our sample size and the regions selected for the survey. However, it is the hope that the policy brief will spark renewed conversations and ideas around the intertwined nature of environmental protection and customary land practices among the stakeholders, and may be used as one of the tools for advocacy in demanding land and environmental justice.

² Verree, Filippo (2021). *Chinese hydropower policy in Myanmar: The cases of Yadanabon Bridge and Myitsone Dam*. University of Pisa. p.238.

³ Verree, Filippo (2021). *Chinese hydropower policy in Myanmar: The cases of Yadanabon Bridge and Myitsone Dam*. University of Pisa. p.240.

I. A Brief Explanation on Customary Land Tenure in Myanmar

Historically, land ownership, especially in communities of Southeast Asia, was influenced by a practice of what the Burmese called, “Dama ucha”, i.e. first founders of the domain.⁴ This is also the root of customary land tenure where the local community members agreed upon a set of rules and regulations that they would collectively abide by and in failing to do so, face penalties agreed upon by village elders and leaders. Customary land practices in Myanmar, like many in other countries, are different according to the geographies, histories, and ethnicities of relevant practitioners. For example, “the Karen have long maintained a customary land management known as ‘Kaw’; the Kayah customary land management system is known as ‘Khay’ and every Kachin tribe has their own system for managing community, residential and cultivated lands”.⁵ Another similar theme among these customary land practices is the practice of shifting cultivation especially in the upland regions of Myanmar. It is estimated that about 2-20 million are shifting cultivators, taking up about 23 - 25% of the total land area.⁶ Despite the large number of shifting cultivators, unlike permanent cultivations, holdings of shifting cultivations are still systematically made in a way that is difficult for them to be formally registered as an official land use practice.

A thematic study by Kirsten Anderson (2016) defines Customary Land Tenure in the following way:

*Customary tenure is a set of rules and regulations, which have been defined through time by a community to manage their lands and natural resources sustainably. These customary rules or laws have become institutionalized under community or customary structures: they are well known, accepted and enforced by communities. However, they do not form part of official state laws.*⁷

As it suggests, the legal framework for customary land tenure had been non-existent. Despite law amendments and changes since then, the 2008 constitution has nevertheless set the tone for the future of land use and land ownership in Myanmar. The 2008 Myanmar Constitution reads that the state is the ultimate owner of all land and natural resources.⁸ As such, the highest form of land security one could get in Myanmar is obtaining land use certificates, which could still be denied if the state deems that the land be used for “public service”. Nationalizing resources puts customary land practitioners at risk for “illegal” activities on unregistered land especially since around 80 percent of the land is untitled.⁹ Additionally, with the legal structure centered around Burmese language and the limited connectivity across the regions, ethnic groups who are the main practitioners of customary land tenure system have very little or no access at all to know and understand about the laws that are affecting them and therefore, are the first to suffer from land use rights abuses.

⁴ Andersen, K. Ewers (2016). *The Recognition of Customary Tenure in Myanmar*. MRLG Thematic Study Series #3. Vientiane: Mekong Region Land Governance. p.3.

⁵ Ethnic Community Development Forum (2016). *Our Customary Lands: Community-Based Sustainable Natural Resource Management in Burma*. The Transnational Institute (TNI). p.7.

⁶ Burgess, Claire (2015). *Land Governance Community Voices*. Action Aid. p.21.

⁷ Andersen, K. Ewers (2016). *The Recognition of Customary Tenure in Myanmar*. MRLG Thematic Study Series #3. Vientiane: Mekong Region Land Governance. p.iii.

⁸ Constitution of the Republic of the Union of Myanmar (2008), Article 37. Retrieved from https://www.constituteproject.org/constitution/Myanmar_2008.pdf?lang=en

⁹ Andersen, K. Ewers (2016). *The Recognition of Customary Tenure in Myanmar*. MRLG Thematic Study Series #3. Vientiane: Mekong Region Land Governance. p.1.

II. Demographic Features of the Interviewees

Customary land tenures in Myanmar are highly complex as they are *customized* according to the geographical location, ethnic groups and histories. While there is some research on the social and political impact of customary land practices in Myanmar, the research on environmental impact of customary land practices from the perspective of the local communities is comparatively fewer. Therefore, the questions in the survey try to explore how each interviewee interprets or understands customary land systems including agricultural practices, and their opinions/experiences concerning the impact of their land use practices on their surrounding environment. As such, the interviewees should have the ability to articulate clearly about customary land practices, what they entail, and how they are different from their current cultivation systems. Therefore, those who have experiences and/or knowledge about customary land practices are prioritized for the interview sample. Due to this purpose, the sampling is relatively selective and smaller compared to other policy briefs.

Our interviewees came from Akha and Lahu ethnic groups, most of whom are 41 years old and above. The sampling has a somewhat equal distribution between male and female, with male about 60% and female 40%. Most of them are from Tachileik followed by Tarlay, Maingphyat, and Kyaing Lat townships of Shan state. Half of them mentioned that their land has been used throughout the generations and the rest said otherwise. Only 45% of them responded that they are customary land practitioners, while 55% of them responded no. This is also echoed in their responses about whether most of their village members still practice the customary land system, with 55% of them saying only a few. In terms of agricultural practices, about 70% of the respondents are mixed cultivators, with only 30% being pure cultivators. Mixed cultivators refer to those who mix their cultivations; in this case, paddy plus perennial, shifting plus paddy plus perennial, and shifting plus paddy. Pure cultivators are those who grow only one type of cultivation. In this case, 25% exclusively practice shifting cultivators and 5% exclusively grow paddy. Perennial crops are also recognized in Myanmar as cash crops due to its role in bringing household income along with other types of cultivation.

Are customary land practitioners the majority or the minority in your village?

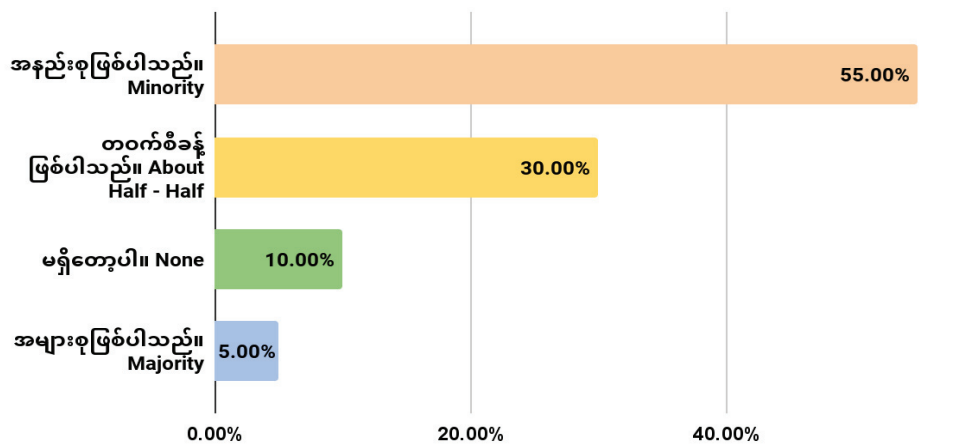


Figure 1: Amount of Customary Land Practitioners

It is important to keep in mind that while there are responses saying that some people still follow the customary practices, it does not mean that such practices are officially recognized by the government or that they overpower the official land laws and regulations. Customary land practices may only be practiced in a limited capacity so long as it does not interfere with the state's interest.

What cultivations do you practice?

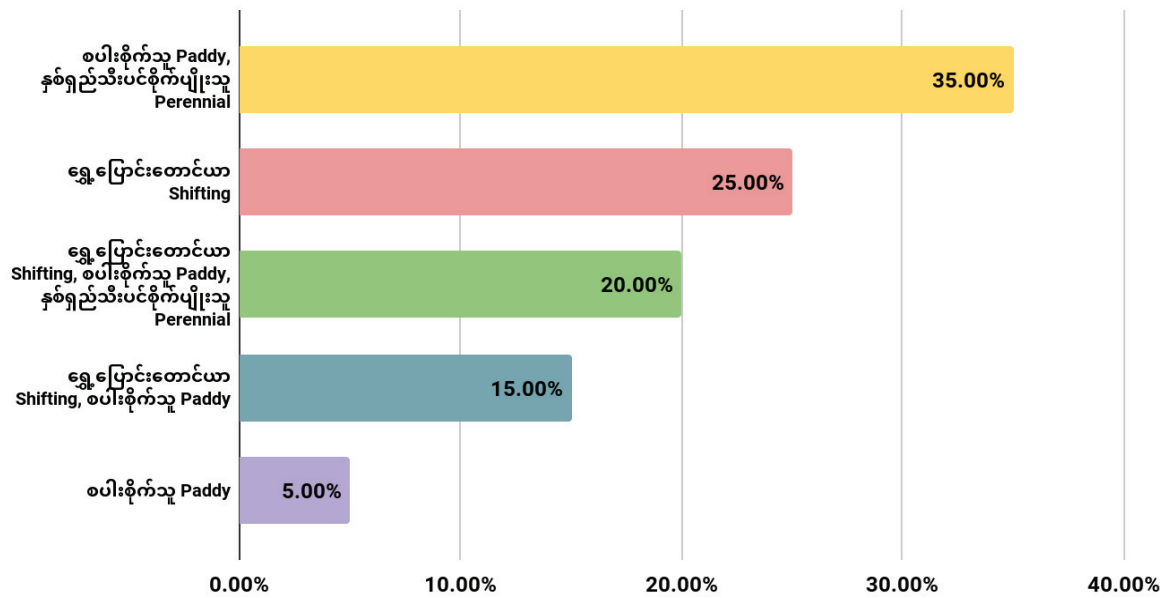


Figure 2: Cultivation Types

The majority of our participants are mixed cultivators as growing only one type of cultivation is becoming less reliable for income generation.

III. Evolving Landscape and Agricultural Practices

Our data shows that cultivation practices evolved mainly due to climate change and economic needs. However, these two factors are not independent of each other or of other external factors. To start off, 30% of our respondents noticed a change of landscape and weather after 2009, 35% mentioned different years, and the rest were unable to recall the exact year. Regardless, all of them agreed that they have experienced climate change to a certain degree during their cultivation years.

After which year (estimate) did you notice changes in your environment and the weather?

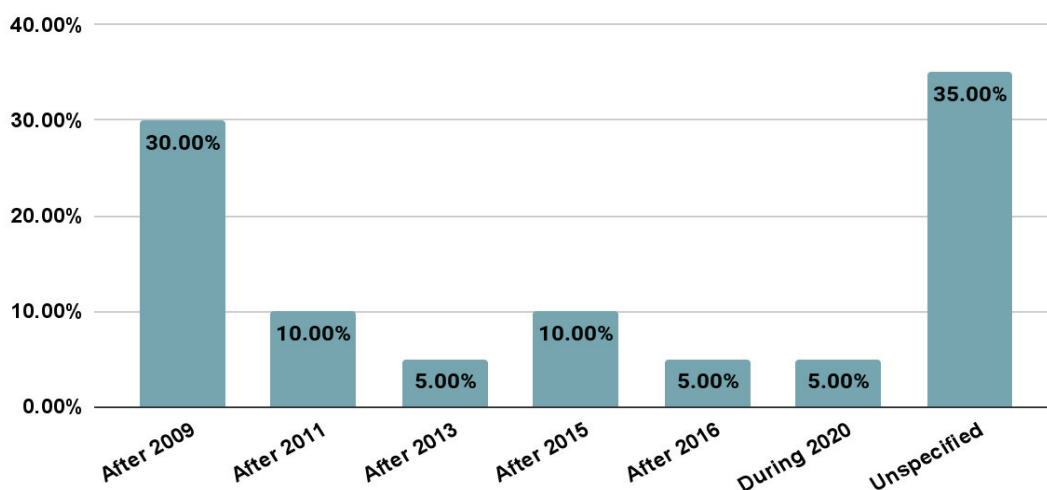


Figure 3: Estimate Time Period for A Change in the Environment and the Weather

Based on the responses, during and after 2009, mining and rubber companies came into the areas to take over some land, one specifically stated about 1,000 to 11,000 acres using the Vacant, Fallow and Virgin Land Law (VFL Law). This influx of mining and rubber companies led to chemicals, stones, sand and gravel intruding on their cultivation areas due to the operations. As a result, soil erosion occurred and waterways had been changed since then. All of our respondents collectively experienced high temperatures and a shorter rainy season which has worsened the water shortage, even for household use. Additionally, the earthquake in 2011 led to an inflow of sand and gravel which consequently resulted in soil erosion. Since then, some areas of land had been unusable due to their decrease in or lack of soil productivity. All respondents collectively shared the experiences regarding the increase in water scarcity, high temperatures and climate change compared to the past, and agreed in general that the way of doing things has changed for the worse. **This implies that the changing landscapes and agricultural practices are driven by the activities and consequences of large-scale corporations.**

In the past, the respondents mentioned that the farmers practiced swidden cultivation also known as shifting cultivation, where the farmers leave the plot fallow for some years after the cultivation period. This fallow period plays a role in increasing the productivity of the soil of that particular land. Their ancestors also used organic products for their cultivation such as using compost, animal and manual labor as opposed to using herbicides, chemical fertilizers and machineries. However, nowadays, due to the

changes in temperature and natural resources, more people are using fertilizers to increase their production, herbicides to clear the land, and motors to get water manually.

As a result, shifting cultivation practice has taken a new style as farmers are mixing it with others such as paddy and perennial crops. Due to fluctuations in weather, temperature and water availability, people started to grow and mix their primary cultivation with other crops as an insurance for economic livelihoods. Some respondents also believe that other cultivations will help reduce the temperature while others do it mainly for economic purposes.



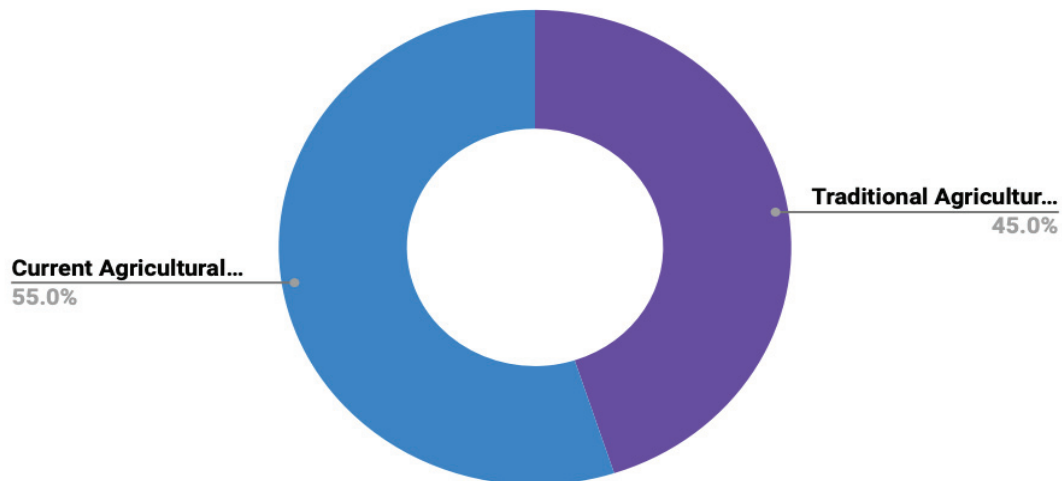
Paddy Cultivation in Tachileik, Eastern Shan State: Photo by U Maw Shay and U Den Yay Hla



Shifting Cultivation in Tachileik, Eastern Shan State: Photo by U Maw Shae

IV. Perceptions of Customary Land Practices: Environmental Protection

Which agricultural system is better for the environment?



The main differences between those who practice the traditional agricultural practice and the current agricultural practice are that in the current agricultural practice, the farmers 1) integrate perennial crops during the fallow period, 2) avoid or mitigate burning the plot, and 3) use fertilizers and herbicides as opposed to organic ones.

In terms of cultivation, 55% of our respondents think that their current agricultural system is more environmentally friendly while 45% think that the traditional agricultural system is the more sustainable method. **These different responses come from the different takes on how shifting cultivation should be practiced.** Some believe that the traditional way of doing shifting cultivation where the plot land is left fallow for about five years or more for vegetation to regrow and the soil to regenerate is the sustainable way to use the resources in the long run. Others believed that instead of leaving the area fallow for many years, they prefer growing perennial crops in between the cultivation periods. One of our respondents mentioned that the village head had encouraged her to grow perennial crops as it may help regulate the temperature and induce rainfall. This may be the reason why most interviewees assume that their current land practices which include the integration of perennial crops to be more environmentally friendly as they believed it would help reduce the high temperature.

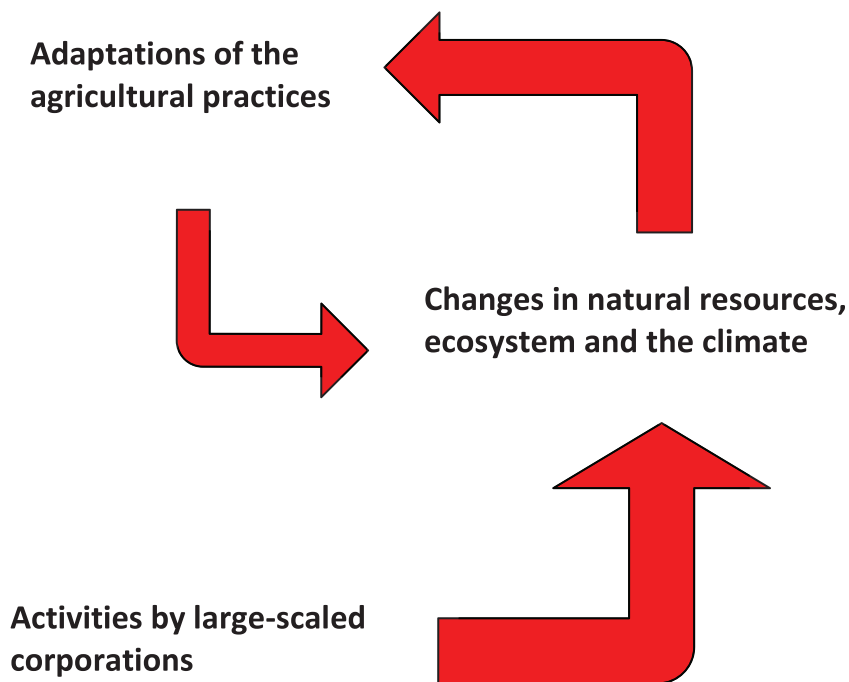
"I'm not very literate, so I am not sure if legalizing customary land practices would help with the environment. But our village head told us that if we integrate perennial crops with our shifting cultivation, it will regulate the temperature and induce rain."

41 year old and above Lahu interviewee

The other reason why a slightly bigger portion chose their current agricultural system as more environmentally friendly is due to **their attitude towards the burning aspect** of the traditional shifting cultivation. When asked about whether their current cultivation practices follow environmentally friendly methods, some stated that they have either reduced or avoided burning the plot, which they believe to be one of the causes of high temperature and drought. Furthermore, there is also a sense of guilt among our interviewees in using fertilizers and herbicides as they believe that such usage may lead to unhealthy food production and eventually destroy the soil fertility. However, as food production is important for livelihood, and as resources are getting scarcer, they have resorted to using chemical fertilizers for their cultivation.

While many are aware of the impact of their cultivation practices on the environment, they also believe that the activities done by companies to be the main drivers of the changing landscape and resources. The respondents recognize that while there is a carbon footprint at an individual level such as via burning the forest or using chemical fertilizers, they also believe that the companies' activities have harmed their surrounding environment on an exponentially larger scale by producing chemical wastes into the water and cutting down trees with little control. According to our respondents' perception, due to such deforestation and "industrialization" (a general term used most commonly among our interviewees), temperatures became unbearable, making it harder for the villagers to work longer hours. Consequently, using machines and chemical fertilizers became a more efficient, less time and energy consuming option for many of them. This in turn affects the availability of natural resources and the surrounding ecosystems.

While the technical nuances in such land use issues deserve separate discussions, the following picture gives a rough demonstration of the perception of community members regarding the cyclical nature amongst their current agricultural practices, the changing environment and the corporations' activities. The size of each arrow shows the significance of each impact.



Notwithstanding the environmental consequences brought about by outsiders and companies' actions, the repeating theme observed in the responses is the idea that the traditional way of practicing shifting cultivation is harmful for the environment particularly due to the forest burning aspect. However, the extent to which shifting cultivation has a negative impact on the surrounding environment is a nuanced conversation that should be more widely discussed between farmers and relevant experts. Shifting cultivation is often held as the main driver of deforestation and climate change. However, there has been research that shows that it is *not* a major cause of deforestation. According to the FAO, UNDP, and UNEP, the main causes of deforestation and thus carbon emission in Asia has been intensification of agriculture and large-scale direct conversion of forest for small-scale and large industrial plantations, and *not* shifting cultivation. In fact, according to the FAO's own definition of forest, shifting cultivation does not cause deforestation but forest modification.¹⁰ This is the space where external experts can collaborate with the local communities to raise awareness about the more scientific aspect of the farmers' land use practices.

¹⁰ International Work Group for Indigeneous Affairs, Asia Indigenous Peoples Pact Foundation, Indigenous Knowledge and Peoples Network (2009). *Shifting Cultivation and Climate Change*. Retrieved from https://www.iwgia.org/images/publications/0514_Briefing_paper_shifting_cultivation_final.pdf

V. Perceptions of Customary Land Practices: Ownership

Although there are mixed responses in deciding which agricultural system is more sustainable, there is nevertheless a majority consensus that legalizing customary land tenure systems will contribute positively to grassroots level environmental protection efforts and sustainable usage of resources.

Would an official permission for customary land practices by the government help environmental sustainability?

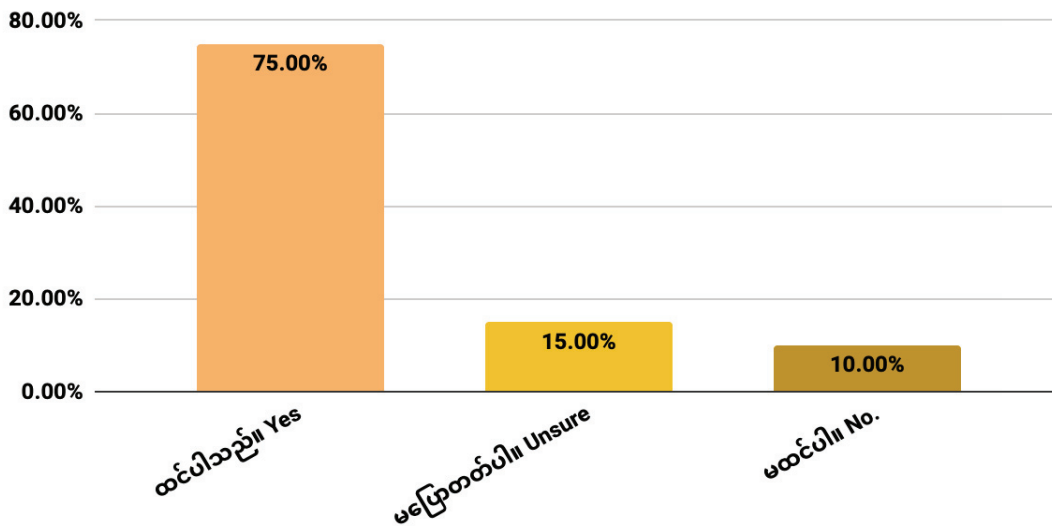


Figure 4: Opinions on Official Permission for Customary Land Practices

The reason is simple: customary land tenure system gives social security to the community members that any form of government-approved land use certificates do not. In the customary system, land is generally considered as a communal property, and thus cannot be sold and bought as one pleases unless the customary practice specifically states otherwise. Furthermore, local land issues are handled at a grassroots level by the village head and elders instead of government officials, creating a more horizontal, equal, and accessible power sharing system. Therefore, our respondents believe that having more ownership in how resources should be used and how local land issues should be solved will make environmental protection efforts more effective as they have the practical knowledge about their environment and the community. Additionally, the majority has expressed their fear of land confiscation by outsiders repeatedly in the survey, and thus believed that if customary rules and regulations were to be legally permitted by the government, they would have a say in how to protect their resources. The fact that the local communities are gradually losing their ownership to outside interference is also one of the reasons why the customary land system is widely favored.

“[If customary land practices are legally implemented], land disputes will be reduced. Outsiders will not be able to take our land, and hence, our village land will automatically be protected.”

41 year old and above Lahu interviewee

Over the last few years, the decision makers in Myanmar have attempted to integrate customary practices into the official land laws as the country is slowly shifting towards a more democratic and inclusive political landscape. In doing so, they often make the mistake of defining customary land differently from the local communities and ethnic groups. In the 2018 VFV land law amendment, the government officially recognized the existence of customary land. However, the law has created controversies among land activists and CSOs due to its definition. The following is an unofficial translation of the said law amendment.

“Section 30-a shall be added after section 30 of the vacant, fallow and virgin lands management law as follows; -

30-a. : Management of the following types of land shall not be governed by this [VFV] law; -

(a) *The lands for which the right to use as hillside cultivation (Taungya land) is granted under the existing law and rules,*

(b) *Customary lands designated under traditional culture of the local ethnic people.*

(c) *The lands currently used for religious, social, education, health and transportation purposes of the public and ethnic people.”¹¹*

The customary land, according to this law, is the land designated to be used for the traditional cultures of the local ethnic people. However, the land used for shifting cultivation was excluded from customary land according to the amendment. **Rather it only stated that shifting cultivation land will no longer be governed under the VFV land law, and that shifting cultivation land is granted only “the right to use”.** Therefore, there still seemed to be no legal protection against shifting cultivation land which still puts it at risk for arbitrary confiscation. Furthermore, due to the complex articulation of Myanmar land laws, it is doubtful that most farmers, many of whom are from ethnic groups, know and understand the consequences of this amendment. Regarding this point, Namati Myanmar has written a response, focusing on the fact that among the 290 respondents in the survey, only about 3% are knowledgeable about the amendment of the VFV law and only 1% know that customary land is excluded from VFV land.¹² This also highlights the fact that farmers may not even know which category their land falls under and the respective rights.

Perhaps due to this controversy, in 2020, there was a change in land laws regarding shifting cultivation again. Before 2020, only permanent land types such as paddy cultivation which are already legally recognized as farmland can be applied for Form 7 and Form 105 while shifting cultivation did not have that privilege. According to the 2020 Farmland Law, Article 3 (a) amendment, however, shifting cultivation can now be considered as a type of farmland under Farmland Law, which means that the land can now be legally applied for Form 7, an officially recognized land use certificate in Myanmar, as any other agricultural land.¹³

¹¹ 2018 VFV Amendment. Official Version: <http://www.mlis.gov.mm/IsScPop.do?lawordListId=51270>.

¹² Namati (2019). *Most Farmers Do Not Know about the Vacant, Fallow and Virgin Land Management Law as the Grace Period to Register Closes: New data from a survey of 290 farmers who depend on land classified as Vacant, Fallow and Virgin Land.* p.2.

¹³ Farmland Law Amendment (2020). Retrieved from <https://www.moali.gov.mm/sites/default/files/attached-files/2021/07/2.The%20Law%20Amending%20the%20Farm%20Land%20Law,Modification.pdf>

Regardless of the actual implementation of this amendment, at least on paper, an argument can be made that the permission to apply for Form 7 for shifting cultivation is a positive change because at least, this will make the land less vulnerable to arbitrary confiscations. However, an indirect judgement has been made with this law amendment. Land types under Form 7 can be bought or sold whereas customary land cannot be easily done the same. In a way, this 2020 land law amendment regarding shifting cultivation considered such agricultural land as a private commodity, rather than a public commodity. Granted, if a certain customary land law integrates such a notion of private commodity in their land use policy, then this is a result of the consensus of the relevant community members. However, the fact that such a notion is imposed by a top-down approach is problematic as this may not necessarily reflect the sentiment of every land user in every region of the country.

Furthermore, in many customary land tenure systems, once the land users leave the village either for good or temporarily, the land goes back to the community to be used for their own needs. However, according to the 2020 land law, this aspect was not addressed, meaning that although the land owner may not be actively living and working in the village, this land is the owner's private asset and thus, cannot be legally transferred back to the community. There are also concerns that the 2020 farmland law restricts the farmers' choices such as crop types or deciding the fallow periods, which still makes the top-down approach a significant component of the law. **This means that the local communities still have limited power in self determination when it comes to managing their land and environmental resources.**

VI. The Interconnection between Land Ownership and Grassroot Level Environmental Protection

The Primary Reasons Farmers Cite for Needing Legal Rights to Land.

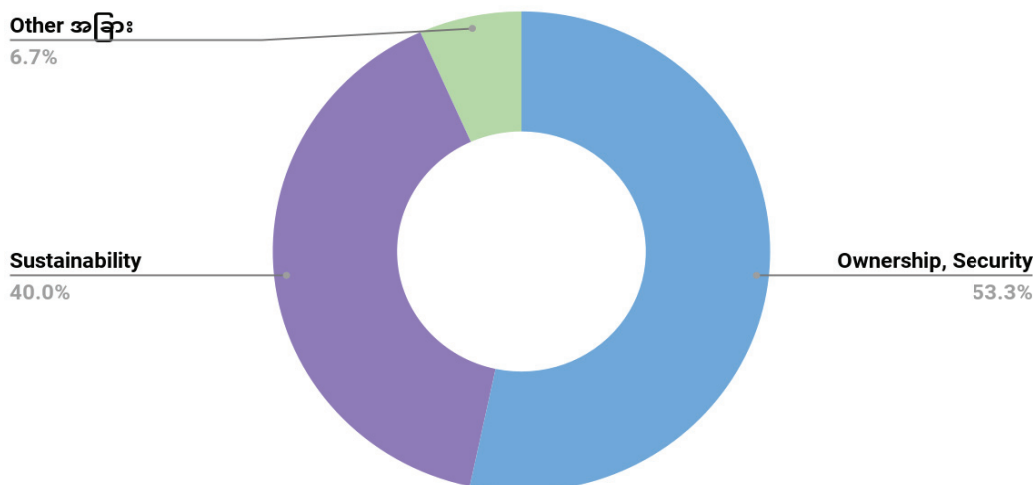


Figure 5: The Primary Reasons Farmers Cite for Needing Legal Rights to Land

Any conversations about grassroots level environmental protection inevitably leads to the topic of land ownership because ownership (in the form of customary land tenure systems) plays an important role for the local-level sustainable agricultural activities. Without such ownership, the communities are unable to prevent the influences of outsiders and their impacts on the resources. It is futile to talk about grassroots level environmental protection if the communities are not given a fair playground as other stakeholders when it comes to making decisions that affect their livelihoods. This is also collectively agreed by our respondents albeit their different opinions towards other questions. More than half of the respondents (See Figure 4: Opinions on Official Permission for Customary Land Practices) believe that if the government officially grants them the permission to implement their own customary land use practices, they can better protect their environment on their own. Some explicitly stated that such implementation will help with environmental sustainability (See Figure 5: Sustainability) while others mentioned that it will provide them with land tenure security (See Figure 5: Ownership, Security) which has a subsequent implication that such security can provide more space for communal environmental protection activities and sustainable agricultural practices.

“Only when customary land tenure is officially recognized and respected by the government will we get land security.”

41 years old and above Akha interviewee

Land security provides them not only the opportunity to protect the environment but also their livelihoods. Regardless of income levels, many customary land practices guarantee the relevant members the right to use the land via mutual understanding. Thus, it gives them the stability and predictable

economic security that the current land system does not offer. No amount of interventions by third-party organizations, environmental protection activities can be effective as long as outside stakeholders still have the legal power to override the communities' rights.

Despite the law amendments, the land tenure system has been too rigid and too complicated for the farmers and ethnic groups to get a sense of security in the first place. The system still has a huge component of a vertical approach that favors mostly the Burmese-speaking communities, and a bureaucratic approach that is inaccessible to many farmers in remote areas. Such rigidity leaves very little space for the communities to exercise their own land and environmental protection activities without getting stuck in legal complications. Although very little space regarding land and environmental issues is given to the local communities and ethnic groups at a national level, they are bearing the consequences of the actions imposed by corporations and outsiders as in the case of the Myitsone dam project. Such consequences force the local communities to adapt and change, often against their own will and capacity. Adaptation comes at a high cost for the affected community members. For instance, modifying their land use practices due to the constricting resources gradually affects the environment that they rely on for livelihood. Eventually, the communities are stuck in this vicious cycle of economic and cultural poverty that seems to have no specific solution. This shows that land ownership and the capacity to protect one's environment are linked in a way that should any changes or imbalances occur on one side, they inevitably affect the other.

For these reasons, local community members should be given the space to voice their concerns without fear of repercussions as they have a genuine interest in protecting their environment and resources. Although they may not be equipped with the scientific knowledge, the capacity or the resources for sustainable agricultural practices, their experiences and needs are well-founded on practicality. It is also clear that the farmers have been trying in their own ways to sustain their resources based on the information that they can gather even though such information can be misleading at times. This is the reason why it is crucial for farmers to be able to filter misinformation as well as disinformation about their land use practices. For instance, many are convinced that shifting cultivation is inherently harmful for the environment while in reality, this may not always be the case. Additionally, whether growing perennial crops has any impact on the temperature and climate change is a conversation that requires expertise knowledge. With the right amount of support in knowledge, capacity, and financial/practical resources, the farmers are willing and able to adapt to the more sustainable cultivation practices.

Perhaps more importantly, Myanmar people as a collective group should recognize that the idea of customary land use practices is not a foreign one. In fact, ethnic groups have always been, and are still, able to manage their own land and environmental resources on their own terms. In 2015, the Karen National Union issued its own land use policy and registration procedures.¹⁴ Although it is not officially recognized by the central government, it shows that ethnic groups, given the power and right to do so, are able to self-govern and self-determine their own resources without the need for a central government's control.

¹⁴ Karen National Union - KNU Land Use Policy (2015). Office of the Supreme Headquarters Karen National Union Kawthoolei. Retrieved from https://www.tni.org/files/article-downloads/knu_land_policy_eng.pdf

VII. Conclusion and Recommendations

In discussing grassroots level environmental protection, there must be an emphasis on the role of customary land practices, and an honest and thoughtful collective reflection on the issues of the land and environmental management system in Myanmar. Customary land systems are complex, highly customized, while at the same time, adaptable structures that are collectively agreed upon and practiced by the community members. For this reason, it is crucial to acknowledge that a cookie cutter approach will not work in land and environmental management in a country as diverse as Myanmar. Shan state alone, where our respondents live, hosts about 5.8 million people (2014 data), which includes different ethnic groups such as Akha, Lahu, Pa-O, Intha, Lisu, Danu and more, each of which has its own land system and culture. Attempting to centralize such customs will further create chaos and undesirable consequences on these communities not only in terms of their livelihoods but also in terms of their relationships with the surrounding environment.

Due to such complexity, land and environmental management systems must pay attention and cater to the practical environmental and economic needs of the communities. In order to do so, the two systems must go hand in hand with each other where the rules and regulations of environmental protection should be complementary to the existing land management practices of the respective communities. What is needed at a national level though is a revolutionary perspective that communities and ethnic groups have the rights to self-determination and self-governance. Otherwise, any amendments or new laws will merely be a matter of reinventing the wheel, and the failure to establish effective land protection will continue to bring economic instability and land insecurity among the local communities which further create distance and resentment between the mainland Myanmar and the ethnic groups. Granted, land and environmental issues are not formulaic in nature, and every context at one point will have to find out its own modus operandi. However, in every dialogue concerning land and environmental justice, it is worth considering the following recommendations:

Land and Environmental Activists, Civil Society Organizations

- Land and environmental activists and Civil Society Organizations should take initiatives and collaborate with sustainability experts to address and clarify the preconceived notion of shifting cultivation or any other forms of agricultural practices being inherently harmful for the environment. The impact of each agricultural practice should be more widely discussed from an objective and scientific perspective at a grassroots level between local communities and environmental experts.

Researchers, International Non-Profit Organizations, Local Non-Profit Organizations

- Further research or exploration on a) the correlation between sustainable development and customary land practices/agricultural practices, b) the impact of land laws on the environment and c) how customary land tenure systems among ethnic groups have an impact on their social security, all within Myanmar context, should be conducted by independent organizations and academics through collaboration with the communities, the local government and other organizations.

The Myanmar Government

- The government should give at least three seats to land and environmental activists in each land and environmental committee exists at a national level where their voices and concerns are given equal weight, space and power as those of any other stakeholders at the table. Regardless of position, wealth or connection with the government, no specific person or entity should have a “veto” power in the decision making processes where communities’ security and livelihoods are concerned.
- Keeping the second point above especially regarding the “veto” power in mind, this inevitably should lead the stakeholders to initiate the conversation of reviewing and changing the land and environmental laws that mostly serve the interest of the state and not of the people. For example, Article 37 a, b and c of Myanmar’s 2008 constitution, which has been one of the most problematic root causes of land and resource conflicts in Myanmar, should be repealed.
- For accessibility and inclusivity purposes, any land and environmental laws, amendments, legal terms and terminologies should be officially translated by the government into the local languages of major ethnic groups. Otherwise, there are risks of potential misunderstandings, misinterpretations and misassumptions about legal matters should the translation be done on an individual or an organization basis.

Customary land rights have always been a source of tension between the previous governments and ethnic groups who have been demanding the right of self determination since Independence. Wars and armed conflicts have risen due to mismanagement and misunderstanding of territory rights and ownership. One of the main solutions, if not *the* main solution, to this problem is a conscious act of inclusivity of ethnic minority groups and local communities initiated by the government. Inclusivity in terms of space and power at every level of the decision making process is crucial to remedying decades of land mismanagement as well as of resentment built up between the government and the ethnic groups. In doing so, it is important to build trust between different stakeholders primarily between the government and the marginalized ethnic groups as the government legally acknowledges each community’s language, culture and traditions associated with the land upon which the ethnic communities have built and defined their identities.

Methodology

The survey questionnaire includes both qualitative and quantitative questions with more weight on the qualitative side. A couple of online preliminary meetings with our partner and paralegals in Shan state were held before our survey was conducted for the purpose of ensuring the relevance of the questions and the overall feasibility given the restrictions. Then, 20 interviewees who are knowledgeable about customary land systems were selected by the paralegals from Shan state. Due to the COVID-19 third wave and the political instability, the survey area was narrowed down into some townships of Shan state rather than all of our project areas in other states and regions of Myanmar. In order to ensure safety of both the paralegals and interviewees, comparatively politically stable townships (at the time of the data collection) namely Tachileik, Tarlay, Maingphyat, and Kyaing Lat townships of Shan state were selected as our target regions. The survey also attempts to obtain a somewhat equal number of male and female participants.

Due to the limitation in both survey regions and the sample size as a result of Covid 19 restrictions and political instabilities at the time of the survey, this dataset does not benefit from either full coverage or randomization, and therefore, should not be considered as a comprehensive take on all issues related to customary land systems and land rights in Myanmar. However, it provides a glimpse of the perspective of the affected local communities who have experienced land grabs and encountered both the economic as well as the environmental consequences of such actions. The interviewees also have qualitative knowledge about customary land systems, and thus, hold a practical understanding of and the ability to articulate the intertwined nature between customary land practices and their impact on the natural resources as well as on the community.

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About Namati

Namati advances social and environmental justice by building a movement of people who know, use, and shape the law.

Namati works in partnership with community paralegals in six countries. The paralegals support their communities to protect common lands, enforce environmental law, and secure basic rights to healthcare and citizenship.

Globally, Namati convenes the Legal Empowerment Network, more than 2,200 groups from 160 countries who are learning from one another and collaborating on common challenges. This community successfully advocated for the incorporation of justice into the United Nations' 2030 Sustainable Development Goals.



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