Guidebook

MRLG
MEKONG REGION
LAND GOVERNANCE

March 2017

Documenting Customary Tenure
in Myanmar
A guidebook

First edition

POINT

THE 88 GENERATION PEACE & OPEN SOCIETY

KYO KACHIN YOUTH ORGANIZATION

Ta'ang Students and Youth Union

Mekong Region Land Governance

Guidebook

Written by Celine Allaverdian, Julia Fogerite, Natalia Scurrah, Si Thu Than Htike

For more information, contact

Celine Allaverdian: allaverdian@gret.org

Julia Fogerite: julia.fogerite@gmail.com

Natalia Scurrah: nscurrah@gmail.com

Si Thu Than Htike: sithudoh@gmail.com

Table of Contents

List of figures

List of tables

List of acronyms

CF	Community Forestry
CFI	Community Forestry Instruction (CFI)
CSO	Civil society organisation
ECDF	Ethnic Community Development Forum's
FPIC	Free, Prior, and Informed Consent
GIS	Geographic Information System
GPS	Global Position System
IDP	Internally displaced people
KEAN	Kayah Earthrights Action Network's
NGO	Non-Governmental Organisation
MRLG	Mekong Region Land Governance project
PAR	Participatory Action Research
PFE	Permanent Forest Estate
LUC	Land Use Certificates
MIMU	Myanmar Information Management Unit
MONREC	Ministry of Natural Resources and Environmental Conservation
NLD	National League for Democracy
NLUP	National Land Use Policy
VFV	Vacant, Fallow and Virgin (land)
VGGT	Voluntary Guidelines on the Governance of Tenure ().
UNDRIP	United Nations Declaration on Rights of Indigeneous People

Executive Summary

This guidebook provides conceptual, legal and practical tools and resources to help civil society organizations guide communities through the process of documenting customary tenure at the local level. It also provides suggestions for how to build on the momentum generated by the documentation process to develop strategies and actions to defend, strengthen and promote customary rights at community, regional and national level.

Documenting customary tenure is important for many reasons: it can empower communities to better articulate and assert their land rights against competing interests; it can build evidence to help advocate for customary tenure recognition at various levels, and it can generate reflection and learning necessary for communities to address key issues concerning land and natural resources management in their communities. Documenting customary tenure now will also help to prepare communities and anticipate any issues that may emerge if and when the government rolls out a customary tenure recogntion program.

The guidebook was developed out of practical field experience and conversations with local groups in Myanmar that have been documenting customary tenure in recent years. Some groups have been documenting customary tenure to inform policy and law, some to defend against land grabs, and others to improve community resource management and encourage environmental conservation. MRLG also conducted training and piloting with eight civil society organizations from around the country. Their experiences and lessons learned form a strong foundation for this guidebook.

Although customary tenure is widely practiced across the country, there are numerous legal challenges for recognizing customary resource rights. The National Land Use Policy (NLUP) supports recogniton of customary tenure, but existing laws would have to be amended to be consistent with the policy, particulary the Farmland Law, the Vacant, Fallow, and Virgin Land Management Law, and the Forest Law. Until these laws are harmonized with the NLUP, communities will remain vulnerable to land expropriation by the state and commercial interests. Opportunities to secure customary tenure exist through current government legal reform and drafting of new laws, the peace process, the recognition of international conventions such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as well as international 'soft law' instruments such as the Voluntary Guidelines on the Governance of Tenure (VGGT).

This guidebook provides a flexible approach that allows tailoring the documentation process to fit the goals of the community and the local situation. First, it provides an overview of key principles and approaches for facilitating a participatory, inclusive, and transparent process of documenting customary tenure. The principles are drawn from Participatory Action Research and include how to gather accurate data and use that data ethically.

A summary of the current tenure situation in Myanmar, including the legal framework, is provided together with an introduction to basic concepts around land tenure and property rights. These are intended to serve as aids to train facilitators and inform community members during the documentation process. These apects can be found in **chapters 1, 2 and 3**.

The guidebook then presents a detailed, step-by-step process for preparing, designing and implementing a documentation process together with community leaders and facilitators **(chapters 4, 5 and 6)**.

The preparation phase outlined in chapter 4 includes collecting background information on the locale, identifying key stakeholders and how to involve them, selecting documentation sites, and agreeing on the main goal(s) of documenting customary tenure with the selected

communities. Preparation also includes developing a risk assessment and strategy for mitigating conflict and obtaining Free, Prior, and Informed Consent (FPIC) from the communities.

Chapter 5 of the guidebook provides suggestions for how to train community facilitators and develop the documentation process together with community representatives. Users will be guided through decisions such as what aspects of customary tenure to focus on (to reflect the objectives), who should be involved in documenting each component, and what methods and tools to use.

Chapter 6 of the guidebook introduces seven key components of customary tenure that can be documented. These include: Village characteristics and history, land use and land management, resource tenure and transfers, institutions, conflict resolution, livelihoods, and the cultural dimensions of land. Each of these components is explained with suggested research questions for facilitators and proposed methodology. The chapter describes key tools to use and procedures to follow when documenting each component of customary tenure, including mapping, focus group discussions, interviews and field observation.

Finally, the guidebook provides practical advice on how to manage the data collected and communicate findings for effective advocacy, community outreach and collective action **(chapter 7)**.

1. Introduction

Why was this guidebook developed?

In recent years, interest from civil society organizations (CSOs), communities and donors in documenting customary land tenure has grown significantly in Myanmar. Many communities throughout all Myanmar have customary rules and arrangements to manage their lands and natural resources. Approximately half of Myanmar's territory is occupied by ethnic groups who manage their lands and forests under customary rules and arrangements. These customary tenure systems are not always adequately understood by the policy makers, authorities and practitioners who deal with land issues. These systems are also not recognized nor protected under the current legal framework. Laws such as the Vacant, Fallow and Virgin Lands Management Law expose communities to risks of 'land grabbing' by the state and by commercial interests.

The endorsement of the National Land Use Policy in early 2016, which includes various provisions recognizing customary tenure, including shifting cultivation, represents a key opportunity to improve active recognition of customary land rights. However, there is lack of clarity on how customary tenure will be recognized in the future legal framework, from the expected forthcoming Land Law through to the revision of relevant government procedures and instructions on the ground. Meanwhile, multiple land polices are being developed by ethnic groups. These land policies are based on local customary systems. They are both political tools to advocate for an alternative vision of land governance as well as practical tools that in some cases are being used to formally recognize customary land.

Documenting the rules and arrangements for using and managing land, mapping communal land and natural resources under customary tenure, and providing written evidence of people's cultural, spiritual and livelihood connections to land is useful at many levels. Documenting customary tenure creates a learning process through which communities improve their awareness on land, and helps them to better grasp local issues concerning land and natural resources management. It can also help to articulate and assert their land rights against competing interests. Collecting evidence of diverse customary tenure systems supports efforts by communities, CSOs and elected officials to advocate for customary land rights recognition at local, regional and national levels. It may also help to prepare communities and anticipate issues for any eventual government program that would aim to recognize customary rights. Finally, lessons from documentation can inform the development of future government procedures for the protection and recognition of customary tenure, in all its diversity.

This guidebook was developed out of practical experience and conversations and with groups that have been documenting customary tenure, some to inform policy and law, some to defend against land grabs and others to improve community resource management and encourage environmental conservation. MRLG conducted pilots with eight CSOs. Their experiences, suggestions and lessons learned are included in this guidebook.

How to use this guidebook?

The guidebook presents a flexible framework for documenting customary tenure that is intended to help civil society organizations (CSOs) and communities adapt the documentation process to their own objectives and local context. The guidebook, which gathers many resources could be used by NGO staff, academics, religious organizations, community leaders, customary organizations, and other types of civil society organizations (CSOs).

This guidebook refers to the primary designer and facilitator of the documentation process as "**CSO facilitators**." Community members who are trained to help document customary tenure are called "**community facilitators**."

Instead of providing a fixed set methodology for documenting customary tenure, the guide proposes a **flexible methodology**. This means that according to the time and resources at hand and the documentation's objectives that the facilitators will define together with the community, it is possible to select the priority topics, questions and tools, as with a restaurant menu "à la carte". The guidebook explains these different options and provides guidelines, questions and tools that will help CSO and community facilitators think through each step of the documentation process. The CSO and community facilitators will play an active role in tailoring the process to their own needs. Playing an active role in defining the documentation's objectives and deciding how to conduct it gives communities more control and ownership over the documentation process and the results. This also enhances learning and community empowerment of communities.

If you are a CSO that wants to document customary tenure, it is recommended that you read through the entire guidebook to understand the steps and decisions that must be made at each point in the process. As outlined in **chapter 5**, trainings of trainers[1] will be supported by MRLG and interested partners to take CSO facilitators through each step of the guidebook. The guidebook can also be used for the training of community facilitators to document customary tenure in communities[2]. The guidebook will therefore contribute to building a community of practice who share an interest in documenting land and resource systems, and who are willing to learn together and progressively improve the methodology which is proposed in the guide and which may need further fine-tuning as it is applied in different contexts.

Figure 1 in the next page presents the key phases of the customary tenure documentation process including training, preparation, implementation and sharing of results, and steps to follow within each phase. It also indicates who should be the persons conducting those steps and actions and who to involve.

Chapter 2 provides an overview of Myanmar's current legal context relating to customary tenure, while **chapter 3** introduces concepts around customary tenure, tenure and property rights and introduces key principles and approaches of participatory action research.

For more information and step-by-step guidance on preparation phase prior to the documentation process, please refer to **chapter 4**. This includes guidance for collecting background information on the locale, identifying key stakeholders and how to involve them, selecting documentation sites, and agreeing on the main goal(s) of documenting customary tenure with the selected communities. Preparation also includes developing a risk assessment

---

[1] It is also planned to develop ToT training materials that can be used to train CSO and community facilitators.

[2] This training occurs at the end of the documentation preparation phase when objectives have been agreed upon, selected communities have given consent, and representatives from those communities have been selected to help facilitate the process.

and strategy for mitigating conflict and obtaining Free, Prior, and Informed Consent (FPIC) from the communities. **Chapter 5** provides suggestions for how to train community facilitators and develop the documentation process together with community representatives Users will be guided through decisions such as what aspects of customary tenure to focus on (to reflect the objectives), who should be involved in documenting each component, and what methods and tools to use.

Chapter 6 of the guidebook introduces the key components of customary tenure that can be documented. These include: basic village information, local history, land use and land management, resource tenure and transfers, institutions, conflict resolution, livelihoods, and the cultural dimensions of land. Each of these components is explained with suggested research questions for facilitators and proposed methodology. This chapter also describes key tools to use and procedures to follow when documenting each component of customary tenure, including mapping, focus group discussions, different types of interviews and field observation.

Chapter 7 provides practical advice on how to manage the data collected and how to communicate findings for effective advocacy, community outreach and collective action

The appendices provide links to useful resources and additional practical tools for the documentation process.

Phase	Step	By whom?	With whom?
Train	**Train CSO documentation facilitators**	Documentation resource persons (persons trained on guide by MRLG)	
Prepare	**Review existing information and learn about the target area**		CSOs, local government, other key informants
	Clarify the documentation objective(s)	CSO facilitators, with technical support from documentation resource persons if needed	
	Identify who will be involved in the documentation process		
	Conduct consultation meetings at community level - Reach a common understanding of objectives - Assess potential risks of the documentation - Obtain free prior and informed consent from communities - Select village sites and identify community facilitators		- Community members from all categories identified, including vulnerable groups - Representatives from neighbouring villages - Local authorities
	Training of community facilitators	CSO facilitators	Documentation resource persons if needed
	Documentation design - Finalize documentation objectives - Select key components to document and questions to answer - Select appropriate methods/ tools to use for each component - Identify who to involve for each documentation component - Prepare documentation plan and timeline	CSO facilitators + community facilitator with technical support of documentation resource persons if needed	Input from key resource persons within the community as appropriate
Document	**Documentation field work** - Implement the PAR documentation as per agreed design - Analyze findings with community - Identify possible actions with community to address observed issues	CSO facilitator + community facilitators with technical support of documentation resource persons if needed	Active participation of the community (from all categories identified, including vulnerable groups)

Share	**Compile and share findings**
	 - Agree on data ownership issues, what information should be shared (or not) and how it should be shared
	   - Do the write up accordingly
	   - Disseminate accordingly
		CSO facilitators + community facilitators with technical support of documentation resource persons if needed	All categories of stakeholders identified, including vulnerable groups, neighbouring villages, local authorities and decision-makers, as per the documentation dissemination plan

Figure 1: Step by step diagram of the entire process documentation process

2. Legal challenges and opportunities for customary tenure recognition in Myanmar

2.1 Customary law in historical context

Most land in Myanmar is held through customary or informal tenure arrangements. This is particularly the case in the ethnic upland areas, where shifting cultivation has historically prevailed, and where colonial and state land administration systems have been most poorly integrated. Customary systems have been maintained by communities that have been governing themselves and have not been under the direct administration of a central State. While these customary systems are based on traditional practices, rather than on formal written law, they do clearly set rules about how land is used and how decisions are made about land use.

Colonial powers often administered land indirectly through customary leaders. This indirect form of administration formally recognized customary systems in some ways. In Myanmar, the Chin Hills Regulation of 1896 and the Kachin Hills Regulation of 1985 are examples of how the state system formalized how it would interact with diverse customary systems. In Myanmar, customary systems have in many cases remained in place after the colonial period in uplands and border areas.

In recent years, there is growing recognition of the role that protection of customary tenure systems can play in promoting sustainable, equitable, and prosperous rural communities in Myanmar. State recognition is still limited, with the National Land Use Policy providing a basis for further recognition of customary tenure. While recognition of customary land and resources is considered by some as an essential step in securing peace and prosperity in Myanmar, others may perceive it as a threat to national sovereignty. Efforts are most probably necessary on the different sides to build trust and resolve power struggles for the general interest of the country's diverse peoples.

2.2 Customary tenure in the current legal framework

The lack of legal recognition of customary land has left communities vulnerable to land expropriation by the state and commercial interests. The opening of the country and increase in foreign investment has allowed companies to acquire land for agribusiness concessions and other extractive and infrastructure projects. Land held under customary tenure is vulnerable to land grabs because it is not titled or otherwise protected under the current legal system. Shifting cultivation land, for example, is improperly classified as either Vacant, Fallow and Virgin land, or as part of a Permanent Forest Estate.

The Constitution (2008)

The Constitution states that the Union of Myanmar is the ultimate owner of all lands and all natural resources but recognizes private property rights. The 1947 Constitution, passed one year before independence from British colonial rule, established the state as the ultimate owner of land, and following independence the government nationalized and redistributed land under the 1953 Land Nationalization Act. Some groups in Myanmar interpret Article 37 to mean that the land rights of indigenous people and ethnic nationalities are not recognized in the constitution. In addition, some may also wrongly interpret that the land belongs to the government. Actually, in many countries, it is stated that the State or the People are the

ultimate owners of the land, without necessarily posing a problem for tenure security. There is a confusion between State and government. While major changes to how land is governed may require making amendments to the constitution, many priority issues may be addressed by modifying other policies, laws, procedures, and instructions.

> Article 37. The Union 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.

The Farmland Law (2012)

> (3-a) Farmland means land defined as low land (paddy land), upland (Ya), silty land (Kaing Kyun), hill-side cultivation land (Taungya), perennial crops land, nipa palm land (Dhani), garden land or horticultural land or alluvial land.

The Farmland Law gives farmers land tenure rights for cultivation through the delivery of Land Use Certificates (LUC). Individuals can buy, sell, and transfer land with these certificates, which are also referred to as Form 7. Overall, the law is more adapted to lowland private property systems. The issuing of Land Use Certificates (Form 7) has been more widespread and systematic in the lowlands than in upland areas. Furthermore, the land registration process only allows individual private ownership. It does not provide any space for customary arrangements such as communal tenure and shared ownership over resources. There is no mention of customary tenured land in the law. In some upland areas, Form 7 has been granted essentially to rice paddy terraces while the rest of the land under the customary system remains unrecognized. At best, the permanent orchards and tea plantations may have a form 105, which is an intermediary step in the LUC issuance process.

Another key issue is that the land use rights recognised through the LUC have prescriptions which limit the disposal rights of farmers. For example, on form 7, it is explicitly mentioned that the land should not stay fallow. This is problematic for shifting cultivation It also states that it is necessary to ask permission to change from seasonal crops to perennial crops.

The Vacant, Fallow and Virgin Land (VFV) Management Law (2012)

The definition of "vacant" and "fallow" land in the VFV Management Law puts customary land, and particularly shifting cultivation land, at high risk of appropriation. Under the VFV Management Law, active fallow land under rotational cycle can be legally transferred to private ownership since fallow lands are regarded as "vacant" and unused. This law also causes problems for internally displaced peoples (IDPs) who may return to their land in the future to find it has been declared vacant and allocated to someone else.

> Ch.I, 2(e) Vacant land, Fallow land means the land on which agriculture or livestock breeding business can be carried out and which was tenanted in the past and abandoned for various reasons and without any tenant cultivating on it and the lands, which are specifically reserved by the State.

The VFV Management Law is designed to allocate land to private businesses, and in practice this is often at the expense of rural farmers. The maximum amount of land granted to private

companies is 50,000 acres, compared to the 50 acres maximum granted to rural farmers. It is estimated that, between 1992 and 2016, 3,968,314 acres of lands have been relocated to companies or individual as VFV land, however only about 15% are actually utilized[3].

Ch.IV, 10(a-i) for perennial plants, the permit should not exceeding 5,000 acres at a time. If 75 percent of the permitted acres have been cultivated, new permits not exceeding 5,000 acres at a time up can be granted up to the total of 50,000 acres. Actual cultivable acres of more than 5,000 acres at a time shall be permitted is the business is for the interest of the state with the approval of the Union Government.

Ch.IV, 10(a-ii) for orchards, permits should not exceed 3,000 acres.

Ch.IV, 10(a-iii) for industrial seasonal crops, permits should not exceed 5,000 acres at a time. If 75 percent of the permitted acres have been planted/utilized, new permits again should not exceed 5,000 acres at a time up to the total of 50000 acres. If the business which should be permissible for the interest of the State, permits of more than 5,000 acres at a time can be granted with the approval of the Union Government.

Ch.IV,10(a-iv) Respective regional organizations can grant permits not exceeding 50 acres of vacant, fallow and virgin land to rural farmers and families who want to carrying out agriculture on manageable family-sized scale.

There are no provisions in the VFV law specifying that land owned by local people should be excluded from the confiscated land area. If the land of local people is mistakenly included in the area of permitted VFV lands, there is no formal independent mechanism to address grievances or resolve conflicts between companies and local people.

Ch.VIII, 25(a) when the person who is granted the right to use vacant, fallow or virgin lands, submit that s/he has suffered the dispute, obstruction, trespass and mischief by local cultivators in implementing the business, the Central Committee shall coordinate with the relevant department or organization first. If the dispute is not settled through this coordination, it shall be carried out in accord with law.

Ch.VIII, 25(b) if the land previously cultivated by local cultivators is included in the area of permitted vacant, fallow and virgin lands, even if they do not have the legal right to cultivate, the Central Committee shall coordinate and negotiate

Ch.VIII, 25(c) if there are cultivators who had authorization to cultivate on the permitted vacant, fallow and virgin lands, the Central Committee shall make an agreement with both sides in accordance with the law.

The Forest Law (1992), the Forest Rules (1995) and the Community Forest Instruction (1995, revised in 2016)

---

[3] U San Thein, Diepart, J.-C., Allaverdian, C. and Aung Tin Moe, 2017. Agrobusiness large scale land acquisitions. Current situation and ways forward.

Around 30 percent of land in Myanmar is classified as forest land and is under the administration of the Ministry of Natural Resources and Environmental Conservation (MONREC). This forest land is considered part of the Permanent Forest Estate (PFE), and classified as either Reserved Forest, Protected Public Forest, or Protected Areas. Reserved Forests are managed for timber, Protected Public Forest is allocated for subsistence use, and Protected Areas are strictly protected for conservation.

Table 1: Forest Types under Permanent Forest Estate (PFE)

Legal Classification	Area (km2)	% of National Land Area
Protected Areas (PA)	38,906	5.75
Reserved Forest (RF)	120,236	18.0
Protected Public Forest (PPF)	47,492	6.05
Total Area in the Permanent Forest Estate (PFE)	206,634	29.80

Source: Planning and Statistics Division, Forest Department, 2014 as referenced in the 2015 Myanmar National Biodiversity Strategy

This system of forest management is based on the idea that forests belong to the state to manage for timber and conservation. Trees growing outside of the PFE area are also subject to the rules and regulations of MONREC. Restricted species, including teak, can only be harvested and sold with government permission.

The PFE is an administrative category, and there are forests outside of the PFE and there are agricultural areas within it. Lands held under customary tenure can be found within the PFE, especially shifting cultivation land, sacred forests, and community managed forests. Since an Executive Order in 2013, villages with over 50 households and a history of living in the area can have their village and permanent farmland removed from the PFE so they can receive land use certificates. Land used for shifting cultivation usually remains within the PFE and the government recommends that it should become agroforest recognized by a community forestry certificate.

The Community Forestry Instruction (CFI) of 1995 is the most common way to recognize community claims to forest areas under current national laws. The CFI allows community groups to receive community forestry certificates that are valid for 30 years and then can be renewed. Just over 80,000 hectares of community forest have been granted certificates by the Forest Department[4]. In order to promote community forestry (CF), the Community Forestry Instruction was revised in July 2016 and awaits an amendment to the Forest Law to strengthen its legal recognition. One of the key changes is that the revised version allows the establishment of community enterprises linked to community forests. This change is intended to recognize the economic importance of forest products for rural livelihoods and enable CF to contribute to rural development.

---

[4] Myanmar's National Biodiversity Strategy and Action Plan, written by the Forest Department, published October 2015 (https://www.cbd.int/doc/world/mm/mm-nbsap-v2-en.pdf).

CF has not been designed to recognize customary forest management. Some communities have found it useful for protecting their forests from land grabs and logging. In some areas where customary tenure is strong, however, CF is considered to undermine sustainable forest management because it conflicts with the customary system. CF also can cause problems with customary systems and rural livelihoods when a certificate is granted on shifting cultivation land as an attempt to sedentarize shifting cultivation.

While some communities have found it a useful way to protect their forest tenure, there are shortfalls that prevent it from being an effective mechanism to recognize customary forests. CF certificates are granted to forest user groups, and the structure of these groups may not be compatible with the customary system's rules about who can use and manage forests. The CF management plans are also given a structure with rules that do not fit with the different types of forest management found in customary systems. A more flexible way of recognizing different forest management for different purposes, including strict protection, watershed protection, religious use, and sustainable use would improve the ability of CF to recognize customary forest tenure.

---

(18) Responsibilities and Duties of the Users' Group:

   a. Establish tree plantations in barren areas
   b. Use natural methods of conservation rehabilitation in forested areas
   c. Protect against fire hazards
   d. Develop forest plantations and natural forests
   e. Protect against indiscriminate cutting, felling, girdling, pruning, removal of barks,etc.
   f. Protect against extraction of stones, sand, earth and metal in the designated areas
   g. Prevent illegal land use activities
   h. Methodical utilization to avoid undue losses of forest products
   i. Protect against soil erosion and environmental deterioration
   j. After the primary extraction period, the user group shall, under the supervision of the DoF, engage in collecting seeds, establishing nursery planting seedlings and conserving the soil
   k. Implement the activities as described in the management plan

(19) Prohibitions: No member of the user group will engage in the following:

   a. Activities not prescribed in the management plan
   b. Selling and renting of the community forest
   c. Metal extraction and other activities that would cause forest degradation
   d. Construction of houses or sheds not meant for the conservation of the community forest
   e. Land allotted for community forest development should not be used for gardening or shifting cultivation purposes, with the exception of agroforestry

---

2.3 Formal recognition available for different land use types

The following table summarizes what land use types it is possible to for the union government to officially recognize under the current legal system. Customary land tenure systems manage multiple land use types in an integrated way. The table shows that the current titling system divides this system by separately recognizing only a few land use types.

Table 2: Land ownership rights under different land use types

Land Use Types	How can it be registered?	Relevant Laws/Policies	What kind of claims are recognized?
Permanent Farmland (including paddy lands, upland (*ya)* lands, garden lands…), silty land (Kaing Kyun), hill-side cultivation land (Taungya), perennial crops land, nipa palm land (Dhani), etc…	Form 7 since 2014 Before 2014, Form 105 or tax receipts, farmers' booklets	Farmland Law 2012	Since 2014, it is full private property including the right to inherit, sell, mortgage and to lease. But there are some restrictions including choice of crops (no fallow allowed, need permission for change to perennial crops etc…).
Shifting Cultivation/Taungya	Not formally recognized	National Land Use Policy	No ownership or use rights recognized, especially for fallow land. Classified as VFV land, farmland, or part of the Permanent Forest Estate
Forest	Community Forestry Certificate	Community Forestry Instruction; 1992 Forest Law, 1995 Forest Rules	30 year subsistence use rights according to management plan Fuelwood lots can be allocated for community use, but this is uncommon
Inland and Nearshore Fisheries	Co-management agreements	Freshwater Fisheries Laws in some states and regions	Community-Based Fisheries Associations can get legal recognition and can co-manage fisheries areas with government. This is possible for inland freshwater fisheries and on the coast for near-shore fisheries (defined as within 20 km from the shore).

2.4 Opportunities for improved recognition of customary tenure

The National Land Use Policy (2016)

A significant breakthrough has been the development of Myanmar's National Land Use Policy (NLUP), which includes key provisions recognizing customary land tenure. The new National League for Democracy (NLD) government has made strong commitments to address land issues, increase land tenure security and make peace with ethnic groups. However, there is uncertainty about how these reforms will take shape. In particular, there is lack of clarity on how provisions to formally recognize customary tenure contained in the NLUP will be detailed in the new Land Law or implemented in practice.

Although the term "customary" is never clearly defined in its territorial, social, institutional and legal sense, the NLUP states that:

- The government of Myanmar will protect customary rights;
- It will prepare customary land use maps;
- It will reclassify customary lands;
- It will formally recognize customary rights;
- It will register customary land use rights, including land under shifting cultivation;
- It will define customary land dispute resolution procedures in the future Land Law;
- It will monitor whether the customary land use rights of ethnic nationality groups have been formally recognized and protected;
- It will facilitate research in order to determine appropriate procedures for the formal recognition and protection of customary tenure rights.

Although some challenges remain in the NLUP, such as an emphasis on centralized management, unclear wording, and a focus on land acquisition procedures, it nevertheless presents a major opportunity for advocating for greater recognition of customary tenure.

Key provisions on customary tenure in the NLUP

Part (I) Objectives and Principles

Chapter (I) Objectives

6. (c) *To recognize and protect customary land tenure rights and procedures of the ethnic nationalities*

Chapter (II) Guiding Principles

7. (d) *To recognize and protect private and communal property rights of citizens as included in the constitution*;

Chapter (III) Basic Principles

8. (a) *To legally recognize and protect legitimate land tenure rights of people, as recognized by the local community, with particular attention to vulnerable groups such as smallholder farmers, the poor, ethnic nationalities and women*;

Chapter (III) Changing Land Use by Individual Application

29. *To protect existing land users in the local communities from negative impacts of proposed individual land use changes, the following shall be done:*

> *(d) Protecting lands that are under rotating and shifting cultivation and customary cultivation practices*
>
> Part (VIII) Land Use Rights of the Ethnic Nationalities
>
> 64. ***Customary land use tenure systems shall be recognized in the National Land Law*** *in order to ensure awareness, compliance and application of traditional land use practices of ethnic nationalities, formal recognition of customary land use rights, protection of these rights and application of readily available impartial dispute resolution mechanisms.*
>
> 68. *The customary lands of ethnic groups used traditionally that fall under current forest land or farmland or vacant, fallow and virgin land classifications shall be transparently reviewed, registered, and protected as "customary land", in accordance with the Constitution of the Republic of the Union of Myanmar, and land allocation to any land user, other than for public purposes, shall be temporarily suspended until these lands are reviewed, recognized and registered as customary lands.*
>
> 73. *In order to resolve disputes related to land use of ethnic groups, ethnic customary land dispute resolution procedures currently used shall be defined in the new National Land Law, and the respected influential representatives from the ethnic groups shall participate in dispute resolution decision making processes.*
>
> 74. *For ethnic nationals who lost their land resources where they lived or worked due to civil war, land confiscation, natural disasters or other causes, that desire to resettle to their original lands, adequate land use rights and housing rights shall be systematically provided in accordance with international best practices and human rights standards.*

Peace Process and Political Dialogue

The peace process and ongoing political dialogues provide another opportunity to advocate for the recognition of customary tenure. Conflicts over land and natural resources are one of the underlying grievances that has fuelled war in Myanmar for decades. The framework for the political dialogue that was developed in 2015 during talks for the nationwide ceasefire included five main themes, one of which was on land and natural resources.[5] While the future of the peace process is uncertain, land will likely remain on the agenda.

Some ethnic groups are developing their own land policies that recognize customary tenure. The policies are being developed from research and documentation of tenure systems and through consultation with civil society and community representatives. In some cases, these policies directly influence how land is administered and are practical trials of how to recognize customary tenure. By writing these land policies, different groups are developing visions for how land should be administered and how customary tenure could be recognized. They will then be prepared to advocate for changes in land administration based on these land policies.

---

[5] Framework for Political Dialogue, Chapter 5, Agendas for Political Dialogue:Matters relating to management of land and natural resources policy

      1. Matters relating to management and distribution of land and natural resources

      2. Matters relating to protection of the environment and natural disasters

International law and UNDRIP

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted in 2007, following 20 years of negotiations. Along with most countries, the Myanmar Government voted in favour of UNDRIP, while also specifying that it "would seek to implement it with flexibility". However, Myanmar has not conferred formal legal recognition to indigenous peoples in the manner of their choice. The term "indigenous peoples" [hta-nay tain-yin-tha ဌာနေတိုင်းရင်းသား] is not widely understood and used in Myanmar, except among groups advocating for ethnic nationality rights.

The UNDRIP Declaration sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. Below are the most important articles of the declaration:

- Article 26 states: "*Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*"

- Article 10 states that "*Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent [FPIC] of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return*".

- Article 11 states that "*States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs*".

- Article 19 requires that "*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them;…*".

- Article 28 provides the right to redress for indigenous peoples whose traditional lands have been "*confiscated, taken, occupied, used or damaged without their free, prior and informed consent…*"

- Article 32 gives indigenous peoples the right to develop their own priorities and/or strategies for their own lands, and requires States to obtain FPIC before approving any project affecting indigenous lands or territories.

Though it is not legally binding instrument under international law, it has normative force as it reflects the commitment of the United Nation's member states to move in certain directions.

3. Customary Tenure Documentation: overview and approach

3.1 Fundamental principles for the documentation process

Basic principles of the documentation approach

Participatory: Even research that is intended to be participatory often falls short of participatory ideals. Most often, researchers collect information from a community, then analyze the data themselves, and return to present the community with their assessment and recommendations. In some cases, the researchers may not even share their research with the community, and focus instead on communicating with academics, government, NGOs, and donors. This style of research is useful to collect in-depth information but it is often criticized as extractive, taking the knowledge and time of local communities without contributing anything in return.

An alternative model is research that is done by and for the community. A common name for this approach is Participatory Action Research (PAR) and there are a number of guides that are helpful for developing this type of research (see appendix 1 Useful resources).

In PAR, communities play an active role not only in the production of knowledge but also in the design of the entire research process and in the use of this knowledge for addressing the problems under study. By framing research agenda, communities have greater control and ownership over the process and results. This research approach is not just about obtaining the required information from the communities. It is about creating opportunities for **collective learning** that would perhaps not take place without it. It is about **promoting discussion within communities** on crucial issues, so that they can **take action based on their analysis** to make positive changes.

This process seeks to **empower communities** to make decisions about the research design, analyze the results, and decide what to do in response. It fosters equal partnerships between community members and CSO or academic researchers who support and facilitate the process and provide training and guidance. It increases community members' confidence in their own knowledge and capacities. By doing so, it also enhances their advocacy skills as well.
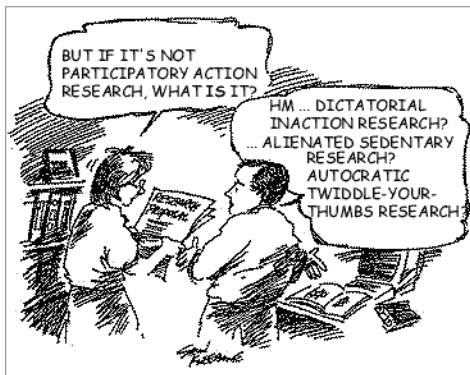
Figure 2: "What is not PAR?"

Source:jenrwelch.com

In this approach, it is crucial that the community is fully involved in:

- setting the objectives of the documentation and the research design,
- participating in the various group discussions,
- discussing and analyzing the results,
- identifying possible actions to address observed issues

To make this effective, community members must be trained as facilitators (see chapter 5). The main role of community facilitators is to bring diverse community members together to develop a common understanding of the purpose and goal of the documentation, to promote discussion and facilitate joint analysis and learning. This goes way beyond simply collecting and recording information. The emphasis on discussion groups in the methodology is to create a space for community members to reflect on their current situation, what they want to change, and how they can make those changes a reality.

Inclusive: The documentation process should not only rely on local land and resource experts, although they also play an important role. It should involve diverse members of the community. An inclusive process is more likely to accurately represent multiple people's interests, priorities and concerns. Diverse discussion groups are a good opportunity to share information among the community. For example, giving elderly people the chance to share old customs and stories with younger generations will prove to be useful. Some groups may require special effort to ensure their participation, such as ethnic minorities (there may be more than one group in the village), migrants, the poor, the landless, women, youth, and the elderly. These groups need to be identified and there should be a clear strategy for how to include them in the documentation process. Chapter 6 has more information on how to identify and include vulnerable groups, and the value they add to the documentation process.

Flexible and iterative: The focus of the research may change as participants develop their understanding of what the documentation is about and why it is important to them. Throughout the process, new questions may arise which takes the research in new directions that may not have been foreseen at the start. This reflects the cyclical nature of action research, which involves a period of analysis and reflection on the context and the planning for future steps and action. The documentation process concerns learning for action and learning from action.see figure.
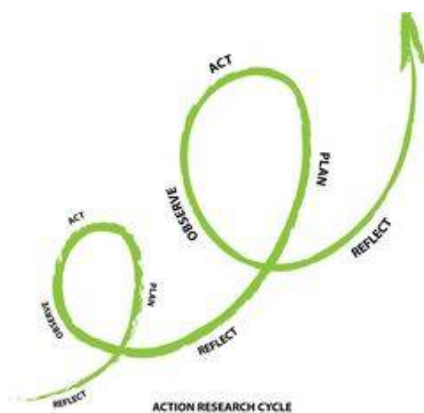
Figure 3: Action research cycle

Transparent: In order to build trust and avoid misunderstanding about the documentation process, the objectives and process of documentation should be clear and transparent. Open

discussions should be held with community members in the preparation stage, at village planning meetings, and when results are shared and verified.

Data Ownership: Communities whose customary land is documented should retain control and ownership of the data collected. Communities may not want to make some information public, such as the presence of valuable forests and other resources that could attract attention and increase the threat of land grabs. They may also not wish to advertise the presence of endangered species on their land, to prevent attracting poachers or other outside interests. CSOs facilitating the documentation should discuss early on with communities how the information will be shared and used. The community must agree on what data can be shared, who it can be shared with, and for what purpose (see step 5 in Chapter 4).

Key principles to obtain quality information

Triangulating: In order to verify the accuracy of data, information should be checked from multiple sources using multiple tools (for example, if you have a focus group discussion on farming, you may need to crosscheck with field observation to see crops). For example, wealthy and poorer households may have a different understanding of the availability of and access rights to particular resources in the village. Men and women may also have different priorities and needs. Identifying areas of inconsistency or disagreement with respect to people's knowledge and understanding of issues in the village is actually very useful. These differences often points to key issues and opens up discussions.

Being aware of biases: In all documentation processes there will be bias. Bias means there is a concentration on or interest in one particular area, subject or perspective, which leads to other information being given less attention or missed altogether. It is thus important to be aware of bias in order to reduce it. The bias may come from the facilitators themselves or from the informants. There are many different forms of biases: gender bias, wealth bias, spatial bias, timing bias, expectation bias and more. Bias can also be linked to the way the documentation is done, for example, in the methods or tools used, or location of the documentation (e.g. only meeting households which are near a road). Also, the season when the research is done can emphasize certain seasonal resource use and livelihood activities over others, or there may be particular groups of people away or unavailable at the time of the documentation.

One important way to manage the biases is to ensure that the views of a group are not mistakenly believed to represent the situation or opinion of the whole population. An inclusive process will help to ensure this. For more information, refer to the Inya Institute Social research methods manual.

Converting research questions into discussion questions: CSO and community facilitators must know "in their heart" what information they need to collect. The quality of responses largely depends on the way questions are asked. Facilitators will need to translate the big research questions into a smaller and simpler set of questions that are adapted to the knowledge and lived experience of persons involved in the discussion or interview. The facilitator also needs to identify the type of tools that may be useful to get people to think about specific issues in order to reveal the required information.

For example, if you want to understand "How are land disputes resolved in the customary system?" first you have to ask what kind of disputes there are and over what resources (e.g. shifting cultivation plots, Irrigation water, Forests, etc.). You also have to understand who the dispute is between (individuals? households? villages?). You then have to ask who is involved in resolving the disputes (elders? village leaders? A local judge?). You also have to ask what the process is for resolving the dispute (mediation? a trial? a group discussion?) and what the

outcomes may be (a fine? exile from the village? providing a meal for everyone involved in the dispute?).

This guidebook can help to generate research questions and then break these down into more specific questions for discussion. Chapter 6 provides examples of research questions for different aspects of customary tenure systems. It also describes tools to use to answer specific questions, including mapping, group discussions, and visiting sites in person. The questionnaire master list in Appendix 4 provides more examples of how to convert research questions into a series of more specific discussion questions.

Use of Participatory Action Research tools: Wealth ranking, seasonal calendars, sketch maps, and other tools can be useful to support data collection and present the information in a visual way that can be understood by participants in group discussions. However, tools should not be applied mechanically in a "tick the box" manner. It is important to select the most useful tools according to what information is needed. Before using a tool, it is important to think about how the tool will help structure the group discussions.

Participating in daily life activities: The proposed approach is not about simply arriving to a village, asking questions and writing things down. If CSO facilitators are outsiders to the village, it is essential that they take time to immerse themselves in the activities of villagers and participate in their daily routines. Even if time is limited, spend time accompanying villagers in their daily tasks on the farm, but also ensure that you are welcome to do so. Evenings are also a great time to share ideas and stories in a more informal setting. Making an effort to spend time with villagers in a casual and natural way will help to build trust and develop relationships, which is crucial to the success of the documentation activity.

Ethical principles of research

Social research always raises ethical and political concerns. It is important to familiarize yourself with key ethical principles of research and employ a "code of conduct" during the documentation process.

- **Voluntary participation**: (step 5 on free, prior and informed consent in chapter 4)
- **No harm**: the researchers should not put the subjects at risk of emotional or physical harm (see step 5 on risk assessment in chapter 4)
- **Anonymity**: when sharing findings, the researcher should avoid identifying specific individuals or groups of individuals, unless consent is specifically given. It might be necessary to remove personal details, so that persons remain anonymous.
- **Confidentialit**y: when a person discloses facts and opinions, it is necessary to make sure their identity remains confidential, especially when it is sensitive information. Only the researcher knows the identity of the individual from whom information is obtained. People should be informed about this confidentiality principle ahead of interviews and focus group discussions.
- **Neutrality**: It is important to remain neutral and avoid taking sides during the documentation process. Facilitators should listen to different sides without criticizing or judging stakeholders.

3.2   Basic concepts of customary tenure

In many areas of Myanmar, especially in areas where communities have strong ancestral relationships to their land, customary practices are used. It is widely practiced across the country, particularly in ethnic regions. There are many different types of customary tenure systems in Myanmar, which vary depending on ecology, terrain, available resources, ethnicity and social organization, population density, as well as factors such as extent of market integration.

Here below are some key concepts that are useful to have in mind when preparing and conducting the documentation process.

Definition of customary tenure: It refers to places where the local rules and institutions continue to play an important role in allocating and managing land and natural resources based. Customary tenure is a set of rules and regulations, which have been defined through time by a community to manage sustainably their lands and natural resources. These rules do not form part of official state laws but are based on historically conferred social and political legitimacy. Though not recognized in formal statutory law, customary rights and associated rules and institutions are legitimate in the eyes of communities: they are well known, accepted and enforced by communities and in most cases by neighbouring communities as well. The group boundaries and right-holders of specific resources are well-known and respected. However, as for statutory tenure, customary tenure is about a social relation between the users and those with the authority within the community to recognize the rights of the users. This relation may vary from uncontested commitment to mistrust.

Land covers many dimensions

Land does not mean only land for cultivating rice, cash crops or orchards. It also includes forests, grazing land, rivers, streams and water sources. Land is an important asset of local communities who rely on agriculture, livestock breeding, forest products, inland fisheries and other natural resources. Land is not only a physical thing or economic asset for livelihoods. It is also highly symbolic as it represents people's ancestral lands. Land is a heritage steeped in particular cultures, sovereignties and identities. Burial grounds and spiritual forestlands, for example, are places where ethnic groups may have a specific and deep spiritual connection. These lands are intertwined with customary law that gives right-holders responsibility to care for them.

Tenure and the diversity of rights

A person or community's rights to land and other natural resources define their natural resource tenure. It include rights but also includes the obligation not to use these in a way that harms others.

Whether it is formal or customary tenure, tenure covers a "**bundle of rights**", which means there can be different types of rights over a particular resource.
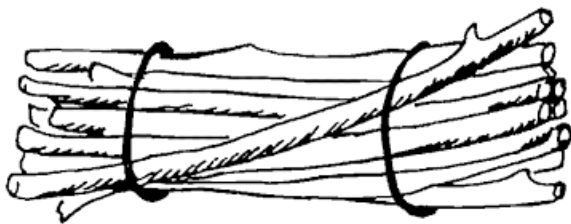
Figure 4: Bundle of rights

It is useful to differentiate between different types of rights such as:

- o the right to **access:** for example to enter a sacred forest area, to cultivate a plot of land, to have cattle enter on a grazing land etc…),
- o the right to **withdraw** a resource: for example to collect tubers or firewood from a forest, to take the harvest from a cultivated plot, to fish from a river).
- o **management**: the right to regulate the land's internal use (for example: to decide what crops/trees to plant, how to plant etc..) and to make improvements to the lands (such as building a terrace and contour bunds, digging a well and an irrigation canal etc…).
- o **exclusion:** the right to determine who will have an access right (for example, to prohibit other villagers to enter the lands by building a fence, or to allow neighbours and relatives to access your lands) and how rights may be transferred (the right to decide how to allocate lands to children for inheritance).
- o **alienation**: the right to sell and lease rights (**alienation**)
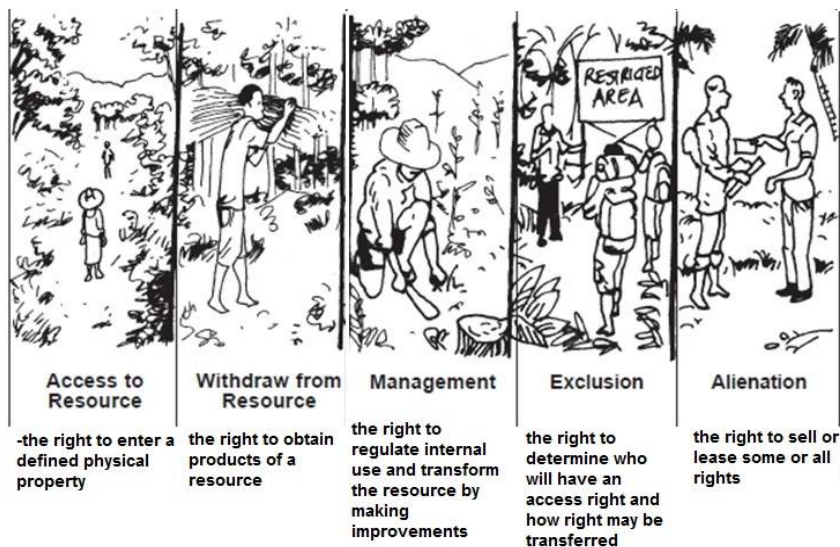
Figure 5: Bundles of rights

Different classes of right holders in customary systems

Different people can have different levels of rights (see figure below). In English, terminology can go from "full owner" if you have the full range of rights (including the right to sell), while other terms such as "proprietor", "authorized claimant", "authorized user" and "authorized entrant" cover a more limited range of rights over a land. This is not necessary to remember all these technical terms but it is important to understand that people can have different bundles of rights and "levels" of claims.

	Full owner	Proprietor	Authorized claimant	Authorized user	Authorized entrant
Access	X	X	X	X	X
Withdrawal	X	X	X	X	
Management	X	X	X		
Exclusion	X	X			
Alienation	X				

Source: Ostrom and Schlager (1996: 133).

Figure 6: Bundles of rights associated with positions

Different forms of tenure and management

For land and other natural resources, there are different categories of tenure. These forms of management described below tell how the bundle of rights (= rights conferred to the users as described above) are managed:

- *Private property:* rights held by an individual (or a household as ground reality) or legal individuals like companies;
- *Public/state property:* rights held by the state and in which the public sector enforces control over the resources;
- *Common property*[6] – rights held jointly and shared by a group of people. This is often the case with forests, grazing land, water and fisheries[7]. It requires that communities of resource-users devise their own management institutions, including the allocation of access rights, rules for decision-making, and mechanisms for monitoring, enforcement, and conflict resolution.[8]
- *Open access*: no specific rights are held nor enforced by anybody. It is a vacuum situation where nobody (neither the state nor the local resource users) has the power nor the legitimacy to enforce rules of use. This is not to be confused with common property.
- A fifth option who has gained popularity in the world for the management of common-pool resources since the 1990s is *co-management.* This involves a partnership between the government and a community of resource-users in which the community develops a system of access rights and rules, while the state provides the legal and political authority needed to enforce this system. However, experiences throughout the world show that it is not a universal panacea.

---

[6] "**Common Pool Resources**" refers to the resources to be managed and governed while "**Common Property Resources**" refer to the governance system of these resources.

[7] These types of natural resource are actually **common pool resource**. Common pool resources are characterized by the fact that they are shared resourced and that the use by one individual or group means that less is available for use by others. An example would be fish in the ocean, it is too costly and difficult to prevent people from coming in and fishing, but when they catch fish, there will be less for everybody else. This term is not to be confused with common property. Common-pool resources may be managed by national, regional, or local governments; by communal groups; by private individuals or corporations; or used as open access resources by whomever can gain access.

[8] Ostrom, 1990. Governing the commons: the evolution of institutons for collective action.

Although these major categories of "tenure" can be distinguished in theory, they often overlap in practice and change over time. For example, a forest area may be officially State property under "permanent forest estate" but can also be considered locally as common property with villagers jointly holding rights to practice shifting cultivation and to collect firewood. Even over the areas, there can be private claims: for example, in a shifting cultivation area, a family who cleared and used the plot first 30 years ago can request the right to cultivate it again after each fallow cycle. Another example is the transformation of some shifting cultivation lands into terraces. Given the investment needed to build terraces, it often gets considered as private property.

Another example is for example a tribe or clan chief who controls large tracts of lands and allocates use rights to villagers. In customary perception, it is not his "property", it is perceived to belong to the whole tribe or clan. He only holds the management rights in the name of the all the members of the tribe or clan. However, in some places of the world, with the generalisation of private property and increasing commercial pressure, this conception can slowly slip away and the chief may think it is his "private property" that he can sell out to anyone.

What does management imply for customary tenure?

As seen above, the rights mentioned above can be held by different classes of right-holders such as an individual, a family, a clan, a community, or a wider ethnic group. Management rights can also be held by a family or a wider group such as a village community. Customary authorities (for example a groups of customary leaders) may conduct decision-making processes that include users.

Control and management include functions such as

- o to define rules and operational rights and to regulate internal use of land and natural resources (for example, defining maximum quotas of timber per household per year or defining specific periods during which logging or hunting is allowed or forbidden, or authorizing the transformation of a forestland into an permanent orchard or terrace). This also includes the capacity to change to change rules and operational rights.
- o to apply sanctions to those who do not follow the rules (for example: fining a person who felled trees out of the authorised logging period)
- o to include or exclude particular individuals or groups from accessing particular resources (example: to give a land cultivation rights to a migrant to recently arrived in the village, or oppositely to exclude neighbouring villages to enter with cattle)
- o to define how a right can be transferred (norms for inheritance, for selling etc...)

In addition, there can be different levels of management rights over the same plot of land. For example, as part of its "management" right, a farming family can have the right to decide which crops to grow and how to do the rotation. However, there may be another person or group of persons (such a village elders' committee or chief of a clan) who also has management right over the same land, with authority to define rules and regulations for cutting of trees, timing for fallows and burning, for example. The State can also overlook the felling of timber and collect revenue over it.

All this is important to consider when reflecting about recognition of customary tenure. When conducting the documentation, it is crucial for facilitators and the community to think about what are the rules/norms, rights and functions that want to protect and recognise.

Different tenure arrangements under customary tenure

Each land use type has an associated tenure, and rules for use and management. Customary tenure does not only consist of communal land. In many cases, there is a mix of communal land (at the level of a community/village, a clan or a larger ethnic group) and land plots or resources claimed by individuals or households. Forests and shifting cultivation areas may be communal land, while orchards and rice terraces are claimed by households, all within the same customary system.

Many customary systems around the world are based on individual or household claims over land, with the addition of village-level rules about acceptable use, sharing and transfer of the rights. For example, shifting cultivation areas are most often perceived as communal lands, although there can be private claims by individual families over parts of the land. However, even on these private-claimed areas, the right holders must follow the community rules regarding use and management (e.g. when and where slash and burn is allowed), transfer (e.g. no right to sell lands to outsiders) and sometimes sharing (e.g. one family must lend for free the surplus land that they cannot cultivate).

In these cases, titling of individual land under the government system and the Western "private property" concept are too limited to capture the village level "ownership" rules.

Co-existence of non-customary and customary tenure

In some areas, local people may exercise both customary and non-customary tenure. In the context of Myanmar, non-customary land can be defined as farmland with form-7 under the Farmland Law, forests recognized by the Forest Law or vacant, fallow or virgin land identified by VFV Management Law. However, in reality, it is often not possible to clearly differentiate between customary and statutory land due to co-existing and overlapping legal claims and jurisdictions. For example, a particular plot of land may be both customary land in the sense that it has been used and managed under customary arrangements by local people for a long time, but it can also be identified as non-customary land under state law. Fallow land is often legally ambiguous, falling under both customary law as it is used and managed by shifting cultivators, yet at the same time classified as 'vacant' land (and therefore non-customary land) under the VFV Management Law. A key challenge of contemporary land reforms is the recognition of customary rights into statutory law.

Changes in customary tenure

Customary systems have internal rules that specify how land under different tenure arrangements can be used, managed, changed or sold. The internal rules governing customary land and other resources are rooted in the local context and designed to fit with local knowledge and practices. However, they also have flexibility and capacity to adapt to cultural, social, technical and economic changes. In this sense, a customary rule does not necessary have to exist for a very long time to be legitimate. Since local contexts may change over time, adjustments of customary tenure practices are also necessary.

What customary tenure is NOT

- Customary law does not have to be old to be legitimate.
- Custom is not static: it evolves and changes to adapt to demographic, social, economic technical and political context.
- Customary tenure is not only communal land; it also includes land claimed by clans, households, and individuals.

With the influence of statutory laws on private ownership and land registration and the social changes that have affected communities, the rules discouraging the sale of land to outsiders seem to gradually become weaker. There has also been a strong tendency for lands under

communal tenure to gradually be claimed privately by individual households for perennial cash crops and paddy terraces.

Diversity of customary tenure in Myanmar

The **customary tenure systems practiced in Myanmar are very diverse** as they also reflect the country's cultural diversity. Groups from Karen, Kayah, Naga, Kachin, Chin, Pa-Oh, Shan, Ta'ang, Rakhine, Mon and other ethnic nationalities have all documented aspects of their customary systems and are advocating for recognition of customary tenure. Within these ethnic nationalities categories, there are many more ethnic identities, each with its own form of customary tenure. How can customary tenure be recognized while maintaining space for the rich diversity of customary systems in the country? One possible objective of documenting customary tenure is to help answer this question and identify the key common aspects that are shared between different customary systems.

At this point, some common aspects of customary tenure can be identified based on what has already been documented. Some of these commonalities are:

- Land is used by people living within the community. If someone moves away from the community the land that they had previously claimed can now be used by someone else in the village, usually a close relative. This prevents accumulation of land by absentee land owners.
- In customary systems where selling land is allowed, preference is given to relatives who want to buy the land, then to people in the community, and only then to people who are living outside the community.
- The **overall security of tenure** is determined by the match between the property rights and the specific historical, social, economic and cultural context in which the rights are held and managed.

4. Documentation preparation stage

Overview of key steps in the preparation stage

Below is a summary of the main steps in the documentation preparation stage. Each step is described in more detail in the remainder of this chapter.

Step 1: Train CSO facilitators
Training will enable to have local CSO facilitators that are able to conduct the "customary tenure documentation" with community facilitators.
Get in contact with partners and MRLG to find out when can this training be organized for CSO facilitators

Step 2: Collect existing information and learn about the target area
Review existing information, find maps and useful resources and meet with other organizations working in the area to understand the context and situation of the area you plan to work in.

Step 3: Clarify the documentation objective(s):
Think about why you want to document customary tenure and what you want to achieve. Consider the final product you want, and what information you need to document to achieve your aims

Step 4: Identify who will be involved in the documentation process:
Conduct a stakeholder analysis: Who do you need to get permission from to conduct the documentation? Who should be involved in the consultation process and planning meetings?

Step 5: Conduct community consultation meetings
Reach a common understanding of objectives
Assess potential risks of the documentation and how to minimize or mitigate these.
Obtain free prior and informed consent (FPIC) from communities
Select village sites and identify community facilitators

Step 6: Train community facilitators and design the customary tenure documentation study
Review documentation objectives
Identify most important components of customary tenure to document
Select methods and tools to use for each component
Identify who to talk with for each of the components of customary tenure
Prepare a timeline of activities

Step 7: Present the documentation design with broader community stakeholders to get feedback

Figure 7: Process and step for the preparation

Step 1: Training of CSO facilitators

This guidebook presents a flexible framework for documenting customary tenure that is intended to help CSO facilitators adapt the process to their own objectives and local context. Specific training is needed for this. Please see Chapter 5 on training for more information.

Step 2: Collect existing information and learn about the target area

During the project preparation stage, collect background information on the target area relevant to land tenure and customary systems. Reports and news articles can provide information about land use, conflicts and history.

Learn about the administration of the area to understand the relevant policies and laws. Who is in charge of administration in the area? Are there land use certificates from EAOs or union government? What land policies are being developed in the area?

If you have worked in the area before, review previous projects for relevant information about tenure and resource use. Meeting with CSOs working in the target area can supply valuable insights and unpublished data. This initial data collection step will inform the stakeholder assessment, the FPIC plan, and the risk assessment.

Where to find documents:

MYLAFF: mylaff.org

Burma Library: www.ibiblio.org/obl

Where to find maps:

Google Earth

MIMU: http://www.themimu.info

Online resources for maps include satellite images from Google Earth (see Figure below), maps on forest cover change from Global Forest Watch, and various GIS resources from the Myanmar Information Management Unit (MIMU). You can find the location of the community by finding the nearest town and observing road and villages. Also, smart phones have built-in GPS location options and interactive maps such as Google map which enables you to "drop a pin" on the map to mark the location where you are standing.[9] You can browse Google map to create the map you need, project it onto a screen, or print it out in advance on paper or a big vinyl in order to facilitate discussions with communities during the mapping sessions.

---

[9] This requires activating the "location" option and to have internet access. If this is not available, a real GPS may be necessary.
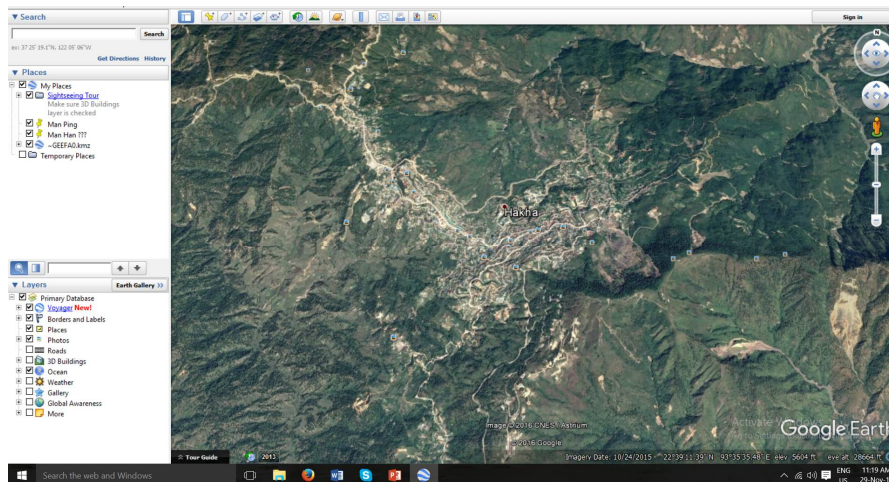
Figure 8: Maps on Google Earth can be projected onto a screen or printed out to facilitate discussions with communities.
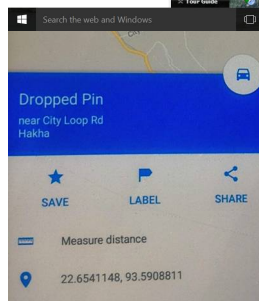
Figure 9: The Google map application on smartphones allows to you to "drop a pin" where you are standing to find its location on a map, including on Google Earth

Step 3: Clarify your objectives

There are many reasons to document customary land tenure systems, and the type of information collected and methods used to document should be clearly linked to your objectives. Documenting customary tenure in an action research frame will to some extent fulfill most of these objectives:

- identify things to change within local communities and customary systems
- protect against existing or future land grabs
- provide evidence to influence government policy and practice, including the development of procedures for recognizing customary tenure
- create a learning process in which communities are more prepared to assert their land rights against competing interests or in preparation for any eventual government program to formally recognize customary tenure.
- maintain traditional knowledge, culture and customary practices over generations

The process of documenting customary tenure will contribute something to each of these objectives. However, having clear objectives will help to prioritize what information needs to be collected, to what level of detail, and how the information will be compiled and used to ensure key issues and messages reach the intended target or audience. It will also help to negotiate trade-offs and manage time during the documentation process.

In addition of the overall aim to promote community empowerment, this guidebook is most useful for three main types of objectives:

a. Evidence-based advocacy for law and policy

b. Redress land grabs or prevent future land grabs

c. Strengthen community land and resource management

It is best to select one main objective. If you wish to tackle two or three objectives in the same documentation process, there is a risk of it becoming too wide and complicated and you might not achieve any of the proposed objectives.

Evidence-based advocacy for law and policy

The documentation process can gather relevant and credible information that is packaged in a way that can be used for advocating greater recognition of customary tenure.

As this figure illustrates, there are three key components to successful advocacy:

- Identifying the right target
- Developing the right message
- Communicating the message in a way that ensures the target audience 'hears' it
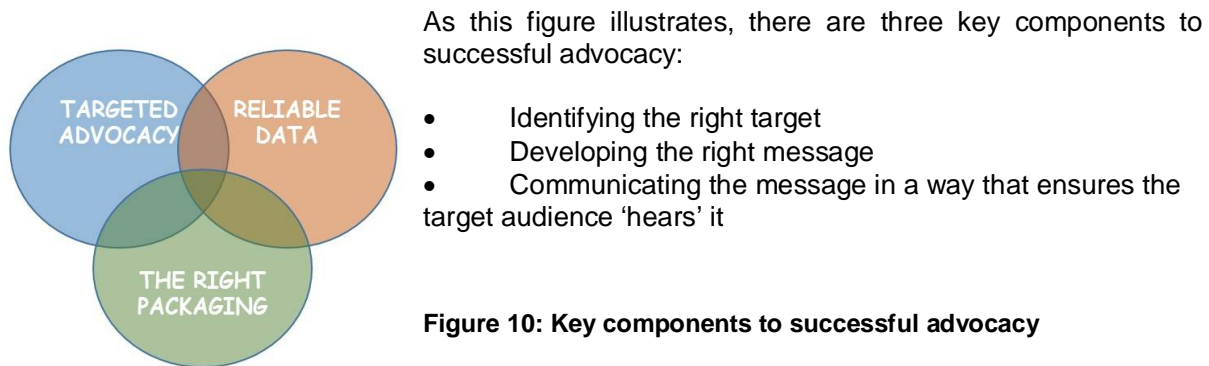
Figure 10: Key components to successful advocacy

Developing policy or Law

Many groups (such as Ta'ang, Mon, Kachin, and Kayah groups) in Myanmar are documenting customary tenure to inform the development of land and related policies and laws at both sub-national and national levels. Documenting customary tenure can ensure the most important components of customary tenure and the diversity of actual practices and issues on the ground are considered properly in policy and law. The documentation must capture the information needed to legally recognize customary tenure system including: what are the crucial rights and norms that communities want to protect, for the sake of their livelihoods, culture and identity? What institutions should be recognized and what powers they are they to be granted? What customary dispute resolution mechanisms should be recognized?

Analysis of the data can include a technical assessment of how to recognize the documented system under the law, including a review of the different options for obtaining legal recognition (including interim protection measures) and potential risks of formalizing tenure. Documenting customary tenure is also an opportunity to show that developing policy and law in an inclusive and participatory process can be useful and beneficial for all. Hold consultation meetings bringing together multiple communities to share the customary tenure documentation results with government agencies and other stakeholders and give feedback on drafts of the developing land policy or law.

Advocating for the recognition of customary tenure

Documenting customary tenure is often a part of evidence-based advocacy for the legal recognition of customary tenure. The information documented can provide evidence for why customary tenure should be recognized. An inclusive, participatory documentation process builds grassroots support for this advocacy, strengthens political support for customary tenure recognition, and prepares communities and community leaders to advocate for the protection

of their customary land. The table below outlines common arguments for why customary tenure should be protected and how documentation can be tailored to support various claims.

For this objective, it is useful to build evidence with facts and figures to demonstrate these advocacy points.

Table 3: Common arguments in support of customary tenure recognition

Common arguments for why customary tenure should be protected	What information is important to collect to support the claims
Customary land claims should be recognized because of cultural identity, which gives local communities historical and cultural connection to the lands. These claims often cite UNDRIP and indigenous rights as support (see Chapter 2).	In order to support these claims, record cultural aspects of customary tenure that should be preserved for cultural survival, including festivals, dance, music, stories, cultural histories, and religious sites
Communities can manage their resources efficiently and productively under customary practices: Smallholder farmers are productive farmers who use resources efficiently to produce a diverse variety of crops for both subsistence and sale. According to the UN Special Rapporteur on the Right to Food, diverse family farms using agroecological methods are essential to food security and are the future of a sustainable global food system. Recognition of customary tenure means securing tenure over shifting cultivation and community forest areas that are essential to rural livelihoods.	To understand how customary land tenure provides for productive farming systems, spend time documenting the topics covered in the livelihoods component in Chapter 6.2. How does each land use type contribute to community livelihoods? What crops are sold, and what crops are grown for household use? What are the links between customary tenure and livelihoods/food security?
Communities can manage their resources sustainably: Customary tenure systems often include rules for protecting watershed forests and forests along lakes and streams. Customary hunting rules sometimes forbid hunting during breeding season, ban hunting some species of animals, or ban hunting in certain areas. Shifting cultivation and traditional farming practices maintain soil fertility and control pests and weeds without relying on chemical fertilizers, pesticides, herbicides, and insecticides that damage the environment and human health.	To make a case for the sustainability of a land use practice, focus on land use management as described in Chapter 6.2. Document how natural resources like fisheries, water, wildlife, and forests are managed, how resource use is regulated and how this affects the health of these resources. How does the health of forests and other resources compare to areas that are not held under customary tenure?

Customary communities often manage their resources equitably: In customary systems with relatively strong equality, a pro-poor, anti-poverty argument can be used for recognition of customary tenure. In some communally tenured shifting cultivation lands, vulnerable families, including widows, are provided land in annual lottery for plots.	To make a development or pro-poor case for recognizing customary tenure, spend time documenting the component on livelihoods as described in Chapter 6.2. Spend time identifying and meeting with members of vulnerable groups to understand how the customary tenure system makes them more or less vulnerable. How do they obtain help according to the customary system so they do not fall into poverty? Discuss different types of land and resource claims described in the component on tenure in Chapter 6.2 to understand how customary tenure influences the distribution of resources among community members.

Examples of customary tenure documentation which seek to collect evidence for policy input and advocacy include: Ethnic Community Development Forum's (ECDF) publication "Our customary lands, Community Based Sustainable Natural Resource Management in Burma,[10] and Kayah Earthrights Action Network's (KEAN) report, "Our Customary Land Use Management System".[11]

Redress land grabs or prevent future land grabs

Many groups are documenting customary tenure to oppose land grabs. Sometimes documentation is done in response to a concession that has just been granted to demonstrate that the land is being used and already claimed by local communities, for example: in the case of agribusiness concessions or areas that are being claimed by the state for infrastructure such as roads or hydropower dams or that are enclosed by the establishment of wildlife sanctuaries.

Other groups are documenting customary tenure as a protection measure in anticipation of potential future land grabs. Road construction is often accompanied by land speculation, so documenting local land claims along a road is useful.

When documenting tenure in order to prevent or oppose land grabs, the information and process will likely be different in some way to that of documenting customary tenure for advocacy and policy purposes. A greater focus on making accurate maps is likely appropriate, so that it is clear what areas are claimed and what areas are overlapping with concessions. It may be necessary to gather more information about the history of a community, land use, and conflict, with less time spent on documenting other aspects of customary tenure.

Documentation that focuses on opposing land grabs should carefully consider what legitimating claims will be made, and collect information that will be needed to make those claims. Also include in the facilitation a discussion of negotiation strategies and goals – is the goal to gain land back or receive appropriate compensation?

---

[10] See: http://www.ecdfburma.org/images/our%20customary%20land%20-%20eng_for%20web%201.pdf

[11] https://www.facebook.com/Kayah-Earthrights-Action-Network-KEAN-723924817710920/

Strengthen community land and resource management

Documentation of customary tenure systems can also be used as a basis for improving community natural resource management as part of environmental or livelihood projects. These projects are different than those for advocacy and protection from land grabs because they aim for the community to make decisions and improvements to the way they manage their resources. This may involve documenting community rules and institutions for governing resources and identifying ways to improve it. The recommendations that communities generate from the documentation process may also be aimed at government. This type of documentation may also serve to strengthen claims to resources and prepare communities from preventing future resource grabs. However the difference is that this type of project is focused on behavioral change at the local level as well. It is often part of longer-term projects that seek to protect the environment while also providing viable livelihoods for communities, often in co-management or benefit sharing arrangements. The differences in methods include linking the identification of changes in resource governance with further work to implement those changes. This approach often establishes new village management committees or strengthens existing committees or institutions to improve resource management.

An example of customary tenure documentation that seeks to strengthen community land and resource management is the publication "We Will Manage Our Own Natural Resources: Karen Indigenous People in Kamoethway Demonstrate the Importance of Local Solutions and Community-Driven Conservation".[12]

Summary on clarifying documentation objectives

As mentioned before, this guidebook is most useful for policy-oriented advocacy, land grab defense, and the first stages of participatory land use planning. There are many guides available that focus specifically on participatory land use planning that would be valuable additional resources. Some of these guidebooks are listed at the end of the guidebook under appendix 1.

---

[12] http://www.burmapartnership.org/wp-content/uploads/2016/03/Book_We-Will-Manage-Our-Own-Natural-Resources.pdf

Table 4: Examples showing how customary tenure documentation has different objectives and focus

	Evidence-based advocacy for law and policy	Redress land grabs or prevent future land grabs	Strengthen Community Land and Resource Management
What to document?	Document the situation and practices on the ground so that changes are made in policy/laws in accordance to ground realities Highlight specific issues that need to be taken into account for sound customary tenure recognition	Document the situation on the ground to assert land claims against an outside threat	Document the situation on the ground to enable the community to make changes
What focus?	Focus on recording information, facts and figures for advocacy	Focus on documenting land claims and resolving conflict	Focus on process and participation within community
What tools to use?		Accurate, digitized maps useful for asserting land claims	
Output	Create a report, photos, video, maps, or other advocacy material to share with government, media, civil society	Create a report, photos, video, maps, or other advocacy material to support land claims	Community land use plan that has been agreed on by community members
Target audience	Policy makers, civil society networks involved in national level advocacy	Companies, politicians, courts, local authorities	Community members

Step 4: Identify who will be involved in the documentation process

An important part of the preparation phase is identifying groups and individuals who will be involved in the documentation activity, and what role they will play. This process of identifying who will be involved in the activity and who has an interest in the issue is often referred to as "stakeholder analysis".

Different people will need to be involved at different stages of the documentation process, from the initial phase of seeking formal permissions from relevant authorities (if necessary), to holding initial consultation and planning meetings with community representatives, engaging in the documentation of tenure systems, through to the final stages of compiling the information, sharing and using the results of the research for internal reflection and external advocacy.

In the initial planning phase, it is important to consider the following questions:

- Who do you need to get permission from to conduct the documentation?
- Who should be involved in the initial village consultation meetings?
- Who should be involved in the research design meetings?

During initial consultation and planning meetings with community and other stakeholders, you will be able to identify more specifically who will be involved in the following steps. For example, once village sites are jointly selected, it will be necessary to **identify key individuals in the community/village who will facilitate and coordinate the research**. Community facilitators will need to receive training on the process and methods for documentation customary tenure and to clarify their roles and expectations (see Chapter 5 on training).

It will also be necessary to identify which groups and individuals within the community will participate in the documentation process through focal group discussions, interviews and more informal discussions. This is described in more detail in Chapter 6.

It may also be appropriate to involve people beyond the immediate community, such as representatives from government or ethnic armed organizations (EAOs) and from neighbouring communities. Their involvement depends largely on the aim of the documentation activity (see previous step on clarifying objectives).

Government Involvement

The stakeholder analysis will help develop a strategy for how to engage, where appropriate, with different line departments (such as Department of Agriculture, Department of Agricultural Land Management and Statistics, Department of Forestry, etc.), elected representatives, customary leaders, EAOs and their line departments, and other armed groups. The research plan should specify the involvement of these groups at each stage of the documentation process. These decisions should be made in consultation with the involved communities, and should be discussed during meetings in the early planning phase.

Involving line department staff in the documentation process may increase support for the documentation process and results with government, and increase staff understanding of customary systems. If the objective of the documentation is to influence land policies and laws, it may be useful to exchange views with relevant government agencies to understand what information and in what format is useful for input into policy and law development.

One option is to discuss the documentation process with the relevant government officials at the planning stage, and invite staff to attend events where communities share their results. Another option is to include line departments or other local authorities in the documentation

process in the village. Some NGOs consider this an effective way to increase the government's awareness and understanding of customary tenure, while others consider the presence of line department staff and other authorities to prevent communities from freely sharing information and openly discussing the community's situation. A particular issue here is at what point and to what extent it is appropriate to involve government staff in meetings. This is a particularly important question in dual administration areas, where decisions about government engagement may be more complicated. Careful consultation with involved communities is essential.

Step 5: Undertake a community consultation process

Depending the area you are working, it may be necessary to first obtain formal permission to undertake the documentation activity from relevant authorities at township and/or village tract level, as identified in Step 4.

The next step is to hold village consultation meeting(s) with key community and other stakeholders identified in Step 4. The initial meeting should be held with local leaders, including representatives from each village where you plan to work. You may also want to include customary leaders from this area and neighbouring areas and civil society groups from the area. Consider if government should be involved at this stage and if so, what line departments should be invited. You may want to hold separate meetings with different groups, or invite them all together.

To start the process, you will need to provide some background information that explains why you think it is important for communities to document customary tenure. It may be useful to provide an overview of key issues around customary land in Myanmar, including information on the extent of legal protection of customary tenure under the current legal framework, as outlined in Chapter 2 of this guidebook.

One effective way to communicate what documenting customary tenure involves is to invite villagers who have undergone the process to share their experience and what they got out of it.

At the initial consultation meeting(s), you should aim to:

- Come to a common understanding of the objectives of the documentation (see Step 2)
- Discuss possible risks of the documentation (e.g. conflicts) and how to minimize or mitigate these.
- Agree on how to obtain free, prior and informed consent (FPIC) from communities for conducting the documentation
- Agree on selected village sites and identify who in the village will help to facilitate and document tenure.

Assess potential risks and how to minimize or mitigate them

When undertaking initial community consultations and planning meetings, it is important to discuss potential risks of documenting customary tenure in the community and how to deal with potential problems that might arise.

One of the first steps to prepare to document customary tenure is to conduct a risk assessment together with community representatives. A risk assessment is a process that will enable you to identify the potential risks and conflicts that may arise when conducting the customary tenure documentation or after the process on the basis on produced maps and documents.

For each identified risk, it is also necessary to assess the severity of the consequences of the risk and their likelihood to occur.
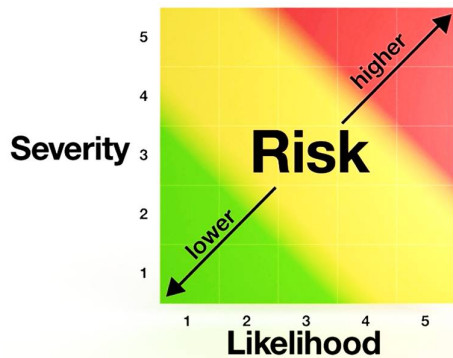

Figure 11: Key criteria when assessing risks

Conducting a risk assessment will help you define a plan or strategy for minimizing or mitigating risks together with communities. Below are examples of potential risks and suggestions for how to minimize or mitigate them.

Risk of Conflict

A key risk of documenting customary tenure is the potential for generating or intensifying conflicts. Documenting customary tenure may expose, generate or enhance many different types of conflicts. In order to document customary tenure responsibly, it is essential to identify potential conflicts and develop a plan or strategy to mitigate or manage conflict.

Conflict over land is often the main motivation for documenting customary tenure and the documentation process may serve as a way to resolve the conflict. However, the process of documenting customary tenure may also worsen existing conflicts or cause new ones as it brings to light competing land claims. Risk of generating conflict exists for both during the documentation process as well after the documentation process is completed if there are disagreements about how the information and maps produced are shared and used by members of the community, CSOs and other stakeholders.

Depending on the agreed objectives of documentation, it may be appropriate to try to resolve conflicts over land, especially if one of the objectives of documentation is to oppose a land grab, to register the land in the future, or to improve land management. In other cases it might not be appropriate to try to resolve conflicts, and the documentation process can instead focus on recording conflicts but never to take sides. Conflicts are not just risks to be minimized but also key points of information, where customary mechanisms for dealing with conflict may be documented in action and power dynamics are displayed in sharp relief. Conflicts also may show where customary and government systems fall short and are unable to resolve conflicts.

How to develop a conflict mitigation strategy

The most important factor in handling conflict is to have a clear, shared vision about the objectives of documenting customary tenure that is widely understood. When conflicts arise,

reminding all those involved of the shared objective may help to reduce misunderstanding and conflict.

1. Be clear about objectives. How will the information and maps produced be used and by whom?
2. Discuss in advance with relevant community figures what type of conflicts exist or are likely to emerge, and how to handle disputes.
3. Inform neighbouring villages about the documentation activity; invite representatives to the first village information meeting and participatory mapping session.
4. Have a clear plan on how you will mark boundary disputes on maps.
5. Are you trying to resolve disputes? This may be necessary if the objective of documentation is to oppose a land grab, if you would like to register the land in the future, or are trying to improve local resource governance. If trying to resolve land disputes is part of the objective, work through existing customary systems of dispute resolution and locally legitimate institutions when possible. The process of dispute resolution can be documented as data showing the local arbitration system.

When conducting the risk assessment and conflict mitigation strategy, consider how your objectives will influence what risks will arise and what mitigation measures will fit best with your goals.

If the documentation objective is evidence-based advocacy for law and policy, the risks of causing conflict can typically be managed by:

- Recording the conflict as it stands rather than attempting to resolve it or taking sides.
- Using maps to generate discussion, rather than to determine who has claim over what specific areas.
- Recording overlapping land claims and uncertain borders when making maps, instead of trying to force people to define "correct" lines.
- When conflicts are revealed during mapping, record the ways that the conflicts are being resolved (or are not being resolved).

Even with a risk-mitigation strategy focused on documenting different perspectives on a land conflict, it is possible that just asking people to talk about the conflict may bring issues to the surface. Two households or two villages that have a disputed border may purposely avoid talking about the disagreement directly as a way to reduce the risk of escalating conflict. In that case, even discussion and documentation may heighten the conflict, so it is important to have a conflict mitigation strategy.

If the **documentation objective is to redress land grabs or prevent future land grabs**: Many groups want to document customary tenure in order to resolve a current land conflict or prevent future land grabs. In this case, the motivation for documenting tenure is based in conflict, or the anticipation of conflict. Whether conflicts can be address or resolved through customary tenure documentation process depends on the nature of the conflict, and requires careful consideration.

The risk mitigation strategy should consider:

- If the organization facilitating documentation have the necessary negotiation, mediation, and advocacy skills and strategies. In some cases, it may be necessary to bring in external third parties to assist in conflict mediation.
- In cases where mapping is being conducted to prevent future land grabs or land speculation, it may be appropriate to select sites where community cohesion and leadership is strong.

If the documentation objective is to strengthen community land and resource management: If the objective is to improve natural resource management or develop a land use plan for part or all of the community's land, the documentation process can be a means to understand what conflicts are present, how they might be resolved, and who should be involved in resolving them. Customary systems may be appropriate to mediate disputes within the community or between villages. Land use planning may also have to deal with land grabs. Planning processes may also have to mediate between customary or community understandings of land use and zonation and the government's understanding of land use and zonation.

Risk of making sensitive information public to outside interests

Mapping areas of particular cultural, religious or ecological/biodiversity value can help to defend customary land from external interests, but mapping can also make land more vulnerable because it makes these areas visible and known to external people. For example, valuable natural resources could attract interest of outside groups for investment or conservation.

Risk of formalizing and 'freezing' customary rules and practices

Mapping customary tenure and recording on paper the internal rules for land use and management risks 'freezing' customary systems in a way that makes it difficult for them to change and evolve. In order to adapt to changing circumstances, customary rules and practices need to remain flexible and open to review and change in order to adapt to changing contexts.

Risks associated with formalizing customary tenure are increased when registering and titling land with the government because customary tenure systems can become standardized into a land administration system. When land tenure is formalized, it is also simplified so that it can be managed by a government system. While many civil society groups in Myanmar are advocating for the recognition of customary tenure, they are conscious of the need to have a system in place that is flexible enough to recognize the diversity of customary land tenure systems in the country.

Risk of excluding displaced people who may return to their village

Many parts of the country have a legacy of forced displacement and resettlement. Reported estimations mention over 200,000 Internally Displaced People and refugees that have been forced to leave their homes because of armed conflict.

When working with communities that have been forced to move, spend time discussing the history of the community and where people used to live. Villages that were resettled along the Union Road in Tanintharyi have in some cases started to cautiously return to their old fields and forests inland. Many thousands of people in Tanintharyi and across the border in Thailand hope to return to their customary land when it is safe to do so.

Risk of neglecting customary claims over cultural sites

Mapping customary tenure may focus on areas that are actively managed by the community, and may neglect areas that are not directly used but have some cultural claim. A mountain may be actively used by the surrounding villages, but collectively claimed by many more people as a site of important religious or cultural heritage. Some Kachin activists, for example, assert that since the Myitsone is a shared cultural site and the heartland of the Kachin people, any consent for major development in the area would need to be given not just the villages in the immediate vicinity but require a broader consent from Kachin society.

Table 5: Examples of potential risks and how to minimize and manage them

Potential risk situation	Examples of how risk may be minimized or managed
Boundary dispute between villages	Invite neighbouring villages to participate in initial community consultation meetings and village mapping activities. Have a clear, shared vision about the objectives of documenting customary tenure that is widely understood. Use maps to generate discussion, rather than to determine who has claim over what specific areas. Record overlapping land claims and uncertain borders when making maps, instead of trying to force people to define "correct" lines. Discuss in advance with relevant village representatives how to handle disputes.
Conflict between ethnic groups in the village	Ensure adequate representation of different ethnic groups at all stages of the documentation process Ensure different ethnic groups give consent to the documentation activity. Have a clear, shared vision about the objectives of documenting customary tenure that is widely understood. Make special efforts to building trust from different groups throughout the process. Discuss in advance with relevant community figures representing different ethnic groups how to handle disputes
Conflict between local residents and company	Select sites where community cohesion and leadership is strong. Have a clear, shared vision about the objectives of documenting customary tenure that is widely understood – is the goal to gain land back or receive appropriate compensation? Discuss what can be achieved through the documentation process, and what the risks are, taking care not to raise unrealistic expectations. Ensure the organization facilitating documentation is prepared with negotiation, mediation, and advocacy skills and strategies. In some cases it may be necessary to bring in external parties to assist in mediation.
Area with attractive resources is mapped and may become known to investors or	Develop a shared understanding about how information and maps should be shared and used. A simple way to respect the community's ownership of data is to write an agreement about how the data can be used. This is particularly useful for maps, which are usually the most sensitive data that is collected during the documentation process. Develop rules during the documentation training with community representatives and regularly

conservationists.	check in with community members about what information they are comfortable being used for advocacy (see also Chapter 7).
Formalizing or 'fixing' land tenure/ customary systems	Discuss and record how rules on land use and management can be reviewed and changed as a way to ensure that rules do not become frozen and inflexible. Pay attention to land and resources with multiple uses and multiple ownership and access claims. Record seasonal variations in land access and land use. Ask about secondary uses of land, including gathering wild plants and grazing. Spend time understanding the variety of types of land ownership and access claims that are recognized in the customary system. Also ask if people from other villages have any ownership claims or resource rights within the village. Are there shared claims between villages? When mapping, make a clear distinction between land use and tenure.
Excluding historically displaced people who may return to their villages	Spend time discussing the history of the community and where people used to live. Not only document the land that communities are currently using, but also document the customary land where people may return in the future.
Neglecting customary claims over cultural sites	Ensure documentation includes areas that are not directly used but have some cultural claim by one or several communities (e.g. mountains).

Obtaining free, prior and informed consent (FPIC)

Obtaining free, prior and informed consent (FPIC) from communities is crucial before initiating any documentation activity, but what does FPIC really mean and how do you go about obtaining consent?

First, consider how communities would be able to grant FPIC. What are the appropriate channels for making decisions in the community? In many cases, the decision would be made at a community meeting. The meetings may involve representatives from various villages in the area who can make decisions on behalf of their respective communities

When undertaking community consultations and trying to obtain FPIC, consider the following:

Free: Depending on who is present in meetings, and who is part of the process, people may not feel comfortable speaking openly about their concerns or voicing opposition. Working with trusted local organizations may help to create a safe space for discussion, or allow concerns to be conveyed outside of meetings. Criticisms and concerns about the process or methods may feel frustrating, but they can also be understood as a positive sign that people feel comfortable speaking honestly.

Prior: how long do you need to give people to discuss the process before agreeing to participate? Including legitimate representatives in the planning phase will help to give adequate time to discuss and consider the process before making a decision.

Informed: What are the expected benefits of documenting customary tenure? What are the risks or negative aspects of documentation? Discussing the possible risks with local representatives during the planning stage will help to ensure that participants have full information about documentation so they can make an informed decision.

Consent: Consent can only be given if refusal is also an option. Sometimes people may feel like they cannot say 'no'. If there is little trust between your organization and the community, they may not be comfortable refusing directly. If government is present and supporting the process, people may not feel comfortable to refuse. Therefore, it is important to consider whether participants can openly express concerns or decline participation. Power dynamics and cultural norms may also make direct refusal inappropriate. There are many ways to say 'no' but it may be difficult to hear or interpret – you will need to be prepared to 'hear' it in indirect forms.See figure below.

Figure 12: "Forced" consent is not consent.

Questions to consider for FPIC process:

- Who can give consent for participation in the documentation activity? Can a village leader give consent on the community's behalf, or is a more inclusive consultation process necessary?
- Who must be included in discussions when the documentation activity is being planned and designed?
- What does consent look like in the context in which you are operating?
- Do participants feel free to voice concerns, ask for changes, or refuse to participate?

Select village sites and identify community facilitators

Site selection is relatively straightforward when working with communities that have requested customary tenure documentation. Selecting villages that are nearby can make the process more efficient and encourage sharing and learning between villages.

When not responding to direct invitations to document tenure, select the sites during consultation meetings at the project preparation stage. A consultation meeting with relevant community leaders, as identified in the stakeholder analysis and FPIC process, should be based on a shared understanding of the objectives.

> When possible, try to select village sites that:
>
> - Have effective, respected leaders
>
> - Are enthusiastic about documenting customary tenure
>
> - Are committed to peacefully handling land disputes within the village or with neighbouring villages

Selecting communities transparently and together with local leaders increases support for the documentation activity and may help to smooth over disappointment from communities that were not selected. It may also increase legitimacy of the results if local leaders agree that the selected sites are appropriate examples of customary tenure to be used in advocacy and as examples when developing land policy and law.

A clear and transparent selection process can also help to increase support for the documentation process with neighbouring villages, who may be concerned that their own tenure claims will be neglected. CSOs that have started documenting customary tenure have often found that neighbouring villages also want to document their customary tenure.

It is easiest to document customary tenure in places where there are socially legitimate representatives who can work with you, help to define documentation objectives, develop a conflict mitigation strategy, and agree on site selection. In areas with weak or conflicting institutions, this kind of support is harder to get and communities may have more concerns about the documentation process.

Areas that have fewer land conflicts will be easier to work in. However, land conflict is often a strong motivation for documenting customary tenure and areas with disputes over land may also be the most strategic places to document tenure.

Once village sites are agreed on, identify community facilitators in each village that will coordinate and assist with the documentation process. Where possible, ensure that there is adequate representation of different ethnic groups, if there is more than one in the village.

Step 6: Train community facilitators and design the customary tenure documentation study

Although the leading NGO/CSO will most likely play a leading role in guiding the documentation process, selected community facilitators should receive training on land tenure issues and documentation methods so they can help to plan and coordinate the documentation process. This will be a practical "learning by going" training during which participants will be drafting the design of the customary tenure documentation. Guidelines for conducting the training of community facilitators are found in Chapter 5 on training.

Step 7: Present the documentation design with broader community and other stakeholders to get feedback

The trained facilitators should hold a meeting with broader community members, civil society representatives, and other appropriate customary, cultural, and government leaders that they identified in the stakeholder analysis and community consultation process. They should present the documentation's objectives, the key questions to be addressed, stakeholders to involve and tools to be used. The purpose of the meeting is to involve the broader community and other important stakeholders in the documentation design process, so they feel ownership of the documentation process and the future results. This may be possible in one meeting, or it may be more appropriate to hold multiple meetings with different groups.

5. Training

This chapter is specifically focused on how to make this guidebook become 'alive'. Alive means it is used by a community of practice who share the same interest for documenting their land and resource tenure systems, who are willing to learn together and progressively improve the methodology which is proposed in the guidebook and which may need further fine-tuning through lessons learned by practical experience.

The aim of this guidebook is to build and upscale the capacity of organizations and communities to document customary tenure through trainings and a "learning by doing" process. To achieve this, three types of training are planned.
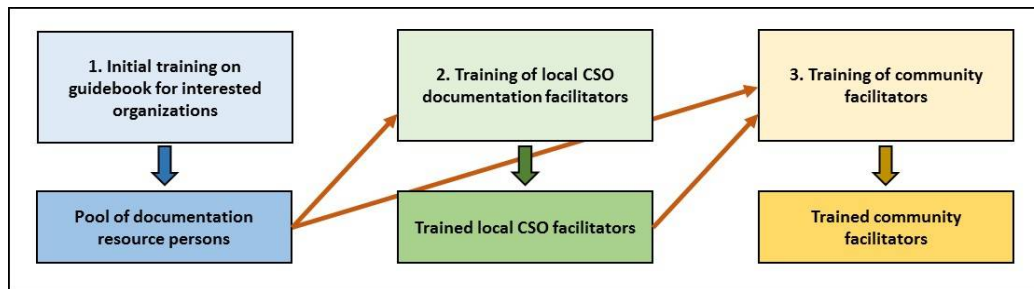
Figure 13: Trainings for Customary tenure documentation

5.1   Initial training of documentation "resource persons"

The first training on the guidebook will be delivered by MRLG to interested persons who already have some previous experience of customary tenure documentation. The objective of this training is to form **a pool of documentation resource persons that can then train CSO facilitators** throughout the country in different languages and be called upon for support and coaching on some of the challenging parts of the process, such as:

- consultation with communities in the preparation stage of the customary tenure documentation
- training of community facilitators
- design and planning of the documentation
- analysis of findings and write up
- planning of actions following the documentation

At the completion of the initial training, which may take up to two full weeks (including practical field work), the trainees will become customary tenure documentation "resource persons". This means they will have acquired the following competencies:

- Good knowledge on the contents of the guidebook
- Good understanding of land and resource tenure issues, its key concepts and the principles of participatory action research (PAR) and its facilitation methods
- Be able to present the overall documentation process to others
- Be familiar with the different customary tenure documentation components, as well as the methods and tools used to collect different types of information
- Understand and have put into practice the different steps of the documentation preparation and design process, and be able to explain it to others with suitable facilitation methods

- Understand and have put in practice the full customary documentation process and be able to explain it to others, with suitable facilitation methods
- Be confident to facilitate the process of analyzing findings and identifying possible future actions with the communities
- Be able to provide guidance on how to organize the information collected and write the results
- Be able to train and to coach CSO and community facilitators on all steps of the documentation process

The documentation resource persons will need to be familiar with basic adult learning principles and learn training and facilitation methods. In some cases, the "resource person" may also be the "CSO facilitator". In other cases, the "resource person" will support the local CSO facilitator in some crucial moments of the documentation preparation.

5.2 Training of local CSO documentation facilitators

This training will be delivered by documentation "resource persons". The objective of the training is to build the capacity of CSO facilitators to conduct customary tenure documentation with community facilitators and to be able to coach community facilitators in all steps of the documentation process. The training will have similar learning objectives to the training for "resource persons" outlined above.

5.3 Training of community facilitators

First, community facilitators must be selected in each village based on transparent criteria. Community facilitators should have a strong interest in documenting customary tenure. They should be relatively neutral within the community and be well respected and trusted. Ideally, they should be able to bring people together, get people motivated to undertake the activity and have a "natural" ability as facilitators. There are many ways for CSO staff and community facilitators to interact in a PAR process. Some documentation processes select community members as facilitators and pair them with NGO staff who are familiar with the documentation process and methods (see Option A in figure below). Others may spend much more time training members of a community on land tenure issues and documentation methods so they can lead the process, with CSO staff playing more of a supportive role and helping to record results and assist with advocacy and reporting (see Option B in figure below).

Option A is preferable if community facilitators are not able to spend two to three weeks in an intensive training programme. Option B is preferable if community facilitators have sufficient time and interest to undertake training and have a high capacity to learn and to lead the research process.
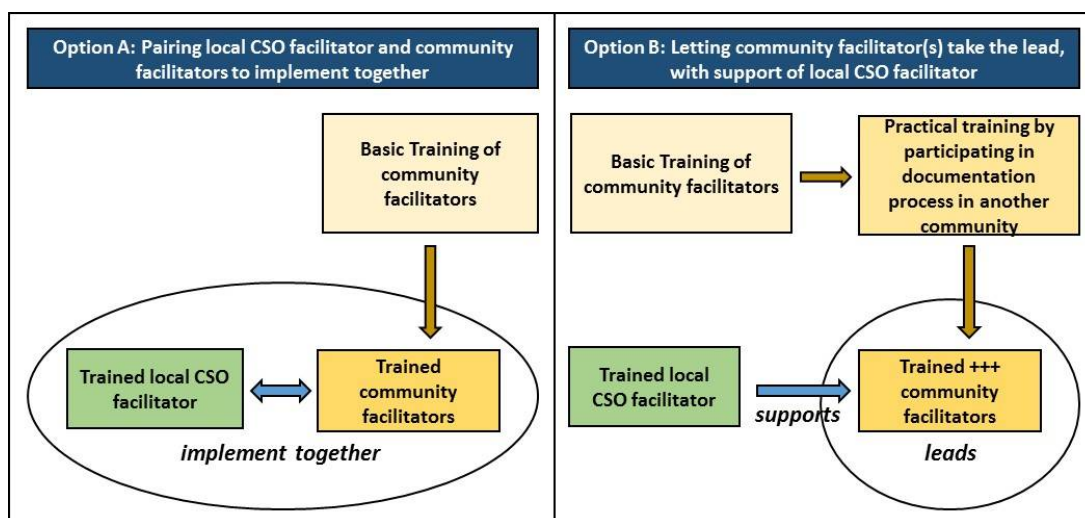
Figure 14: Different working and training options for community facilitators

One or two facilitators from each selected community should attend, as well as the CSO facilitators that will be working with them in the communities. Documentation resource persons from other CSOs who have more experience with the process may also attend to help with the training. Customary leaders, elders, or other experts may also be invited to share their knowledge and help design the documentation process.

The objective of the training is for community facilitators to:

- Have knowledge of key components of customary tenure to be documented and participatory action research methods.
- Be familiar with basic facilitation principles, methods and tools to conduct the documentation as per PAR approach.
- Understand the steps of the documentation process, including the final stages concerning data ownership, write up and sharing findings as per defined documentation objectives.

Be familiar with the documentation components and tools, the research design process and timeline for implementationAt the beginning of the training, each participant should discuss why they are interested in documenting customary tenure. What experiences have they had that motivate them to be involved in this process, and what do they hope to achieve?

Second, the trainer should give an overview of the current land tenure situation in Myanmar, covering the information presented in chapter 2 and 3.

Third, the trainer leads the facilitators through discussing each aspect of customary tenure described in chapter 6. The trainer describes the concepts and gives some examples, and CSO and community facilitators describe examples from their selected communities. Breaking down the different aspects and linking them to concrete examples will help facilitators to think and talk about customary tenure in an organized and systematic way.

Fourth, after covering the basic concepts, the group together will **make a documentation plan**. This includes reviewing the documentation objectives previously agreed upon with the community, and identifying together which components of customary tenure are priority for documentation. The team must consider how much time is available for documentation and

prioritize questions and components according to which are most important to achieve the overall objectives. The team will then identify who to talk with on each of the components of customary tenure and the facilitation methods and tools to use.

Here below are further details on how to link this "documentation planning" training with the resources available in this guidebook:

The first step in making this documentation plan is to go through each aspect of customary tenure and develop more detailed questions and topics to document in each community. Depending on the objectives defined in the preparation phase, some aspects of customary tenure will be priorities to spend time on, and others will not need to be documented in much detail. Some aspects will also be less relevant in the local context. For example, some communities may no longer use customary systems for resolving conflicts, or may no longer observe cultural or religious ceremonies that are linked to land.

After discussing each aspect of customary tenure, the CSO and community facilitators should have a clear idea of what information they should document for each aspect of customary tenure. These topics and research questions are explained in chapter 6. Next, the facilitators should identify who needs to be involved in the process referencing the groups identified in Section VI.3, which include experts, vulnerable groups, and women. The facilitators should also decide how to collect the necessary information, using methods described in Section VI.3 including from group discussions, mapping, interviews, and site visits.

After the facilitators know what they want to document, with whom, and how, they should write out questions that will help them facilitate discussions and conduct interviews. The questions in the text of chapter 6 are too broad and complex to ask to a group and expect an answer. Instead, facilitators need to remember these broader questions and break them down into simpler, more specific question that can be discussed easily. The questionnaire master list in the appendix 4 is a draft of many of the questions that facilitators can use. Facilitators can go through the master list and select the questions that apply to their situation, adapt questions so they fit the local context, and add any questions that they think are necessary.

In the last part of the training, the facilitators should make a schedule for the documentation process for each day in in each village with responsibilities assigned to specific facilitators. Write each step, including village meetings, focus group discussions, and interviews, to be conducted. Keep in mind what times of day people will be available. Expect to change the schedule once the documentation process begins, to take into account unexpected delays and unanticipated opportunities. Starting with a draft schedule will make it easier to adapt the schedule while remembering to cover all the most important information.

If there is enough time, the facilitation team may organize an exchange visit to a community that has already documented their customary area to hear about the process. The training can then be informed by past experience of communities and facilitators with the documentation process and this can help to understand the goals and challenges. It will also give the villagers who have already documented customary tenure an opportunity to share their experiences and explain their land and resource management system as well as their motivations for undertaking the documentation.

<u>Training in the case of Option B:</u>

It is similar process as in option A, except that in addition, there will be additional 1 or 2 weeks field work in another community to participate as an observer-trainee a similar documentation process. This needs good coordination and planning with a CSO. It may also need additional support to assist for the reporting and sharing phase.

6. Customary tenure documentation

As described in Chapter 3, customary tenure systems are the rules and regulations for managing land and resources, together with the social, cultural, and institutional structures that make those systems possible. Customary tenure systems are complex and diverse, and it is possible to spend months documenting just one aspect of the system. It is therefore essential to decide what aspects of customary tenure are most important to document, and what level of detail is necessary to achieve your objectives.

This chapter explains the key components of customary tenure systems and provides guidance in selecting which aspects to focus on. It then outlines a proposed methodology for documenting different components. This chapter can be used during trainings for both CSO facilitators and community facilitators to develop a detailed plan for how to document customary tenure in each community. It can also serve as a reference guide during the actual documentation process.

6.1 Introduction to key documentation components

In order to facilitate the documentation process we separate the "customary tenure system" into seven key components, as follows:

Figure 15: Key components of Customary tenure documentation

We have created "components" to help the documentation facilitators through the process and understand that a wide panel of issues can be addressed under "customary tenure" but it is obvious that these components overlap. They are not "separate boxes", they are closely interlinked and interact with each other. That is why focus group discussions and interviews do not necessarily need to address each component in separate sessions. For example, the fact that more and more people depend on income from road construction may change the way people are using their lands. In this case, it is interesting to enquire about land use at the same time as livelihoods.

Summary of key Customary tenure documentation components:

History: Understanding the past helps to explain the present situation and assess potential future trends. Starting with the history of the village in the documentation process can be useful to gain a better understanding of the changes concerning the other component of customary tenure.   What major events have affected the local community? What major changes can be observed over time?

Land use and management: Land use refers to how different types of lands are being occupied and used by the community, such as farmland, residential areas, grazing land, forest land, lakes and rivers. It also refers to the natural resources that are linked to the land, such as trees (for timber or firewood), non-timber forest products, wildlife, fish and aquatic products, on which villagers may depend on. One land type can have multiple uses.

Land use management refers to the specific rules concerning access and use of lands and the extraction of the natural resources that are on it. Under customary systems, each land use type has specific rules for how it can be used and managed, e.g. what is planted where, when and by whom, what areas area for livestock grazing, what is collected from the forests. For each land use type, there are rules concerning who can use those resources and under what circumstances.

Resource tenure and transfer: A person, family or community's rights to land and natural resources define their resource tenure. Resource tenure is defined as all the ways by which people gain legitimate access to natural resources. Tenure is a bundle of rights (including rights to access, withdrawal, management, exclusion and alienation) but also includes the obligation not to use resources in a way that harms others.[13] As outlined in chapter 3, there are different categories of resource tenure systems and this directly impact how rights conferred to users are managed.

Transfer refers to the way that a person or a group's rights to land and resources can be transferred to another person or group. This covers both **permanent transfers** such as inheritance (including "marriage" prize), sale or donation, and **temporary transfers** such as renting/sharecropping or lending for free. Western influence has often led to the understanding that tenure is ownership and property. However, in many parts of the world, these concepts are different and it is important to capture this during the documentation in order for communities to better understand what rights exactly they wish to get recognized.

Institutions: This concept refers to two main aspects: 1) organizations and individuals who have the power to make decisions related to land and natural resources and; 2) the norms, rules and regulations concerning the use and governance of land and resources (including rules about how decisions are made). By examining institutions, you can identify who the actual decision-makers are and to understand the interactions between government and customary rules and institutions.

to be continued: Summary of key Customary tenure documentation components

Livelihoods: A livelihood "comprises the capabilities, assets (stores, resources, claims and access) and activities required for a means of living; a livelihood is sustainable which can cope with and recover from stress and shocks, maintain or enhance its capabilities and assets, and provide sustainable livelihood opportunities for the next generation".[14] When documenting customary tenure systems, this component explores how community members depend on land uses and natural resources for their livelihoods. This covers what is sold (monetary income) and what is consumed and used by the family for subsistence. This last aspect is very important. It is often ignored by economists and policy-makers who use development indicators such as "Poverty line of less than 1 USD per day". This leads to the perception that subsistence-based households are very poor and vulnerable although in reality, many can have secure and sustainable livelihoods. This issue is crucial to capture for advocacy.

Conflict Resolution: Natural resource conflicts are disputes over access, control and use of land and natural resources. Each society has its own kinds of conflicts and its own ways to solve them. This component seeks to understand what are the main causes of conflicts (competing interests and what new stakes and interests? What competing claims of rights, or for power and control?) and how these conflicts are resolved through customary or state institutions, or both.

Cultural values: Land is not only an economic asset. It can have a cultural and symbolic value. This component will help to capture the other important dimensions of how land is valued.

These components help us understand the different aspects of customary tenure systems but in reality they are not separate or isolated components. There are many overlaps and links between them. Issues or themes around customary tenure that come up in discussions will rarely fit perfectly into one box or another. For example, the fact that more and more people depend on income from road construction may emerge as a key driver of change in the way people are using their lands. In this case, it is makes sense to enquire about land use at the same time as livelihoods. During focus group discussions and interviews, it is not necessary to address each component separately in a single session (in fact, it would be impossible to do so!).

Moreover, not all the components may need to be documented. Indeed, to make the process manageable, you will need to select the priority components to document that best fit your objectives. This occurs in the documentation planning stage and particularly during the community facilitators training, as described in chapters 4 and 5.

---

[14] Chambers and Conway, 1992. Sustainable Rural Livelihoods: Practical concepts for the 21st century. IDS: 7

Core components of customary tenure

Three core components of customary tenure systems will likely be included in all documentation efforts: **Land use and management, Tenure and transfer** and **Institutions.** These three components are not totally separate. The Figure below shows how these three components are closely interlinked.
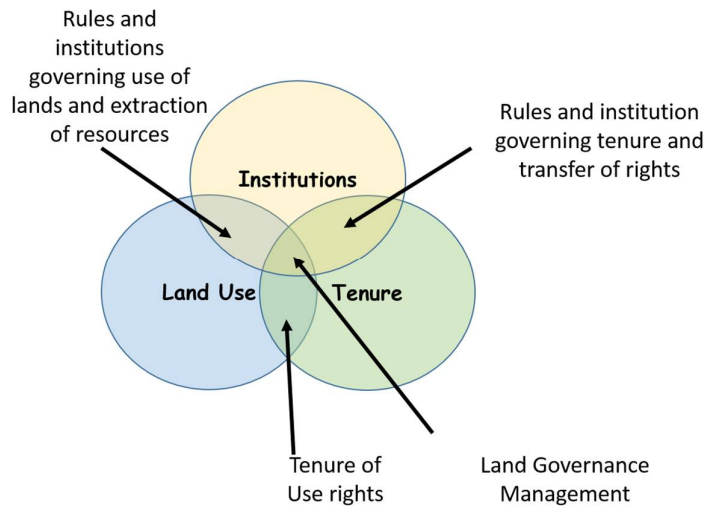
Figure 16: Core components of customary tenure with land use, tenure and institutions

As shown in Figure above, land governance and land management lies at the intersection between land use, tenure and institutions. The many points of overlap between the three components means that it is not likely possible to examine these components in isolation. Focus group discussions on any of these components will inevitably intersect with the others. When talking about land use, you may also need to enquire about rules concerning use of different types of land and extraction of natural resources. When you enquire about tenure, you will also need to understand what the rules are concerning access rights for different groups of people, as well as rules for the transfer of land (sale, inheritance, etc.).

Although the three components overlap, it is nevertheless also useful to distinguish between concepts such as land use and tenure. Land use mapping and tenure mapping are different things and should not be confused.

6.2 Documenting the key components of customary tenure systems

This section provides guidance on how to go about documenting the key components of customary tenure systems introduced above. While each component has its own subset of questions, there are cross-cutting themes that should be addressed and integrated in all the components you are planning to explore (see Box below).

Cross-cutting themes to integrate in each component

The questions below are cross-cutting issues that should be addressed in all the documentation components you are planning to explore.

- **How has each of these components changed over time?**

When you document customary tenure, you are taking a snapshot of the customary system at one point in time. For each aspect of customary tenure, ask what things were like in the past, and how they have changed over time.

- **What is working well and should be maintained? What should be changed in the future?**

Customary systems can adapt and change, and how the system is currently is not necessarily how people want it to remain. Always ask at the end of a focus group discussion or interview what people would like their tenure system to be like in the future.

- **What are the differences for each of the components for men and for women?**

Each component should have information from both men and women. The gender assessment of customary tenure should be integrated in each part of the documentation, not just in the women-only focus group.

More information about gender considerations can be found in section 6.4.

Basic village information

Basic village information puts the rest of the customary tenure information in context. It is not a component of customary tenure systems and thus not introduced as such in section 1 above. Nevertheless, it is an important starting point for documenting customary tenure and needs to be examined as a separate category of information. This information will partially be learned during the preparation stage and can be collected from village leaders or village administrators. Data from written administrative records on households and land may not be accurate but should be checked if available.

Administrative location: What is the name of the village? What are the names of the neighboring villages? What village tract and district is the village located in?

Demographic Information: Demographic information helps to understand who is living in the village, and how that influences land tenure. For example, the population may be increasing

because of migration to the area to work in concessions, factories or other projects, or young people may be leaving the community to find work in mines, cities, and other countries.

How many households are there in the community? How many men and women are there living in the community? How has population changed over time? Is it increasing? Is it decreasing? Why?

Cultural and Religious Information: What ethnic groups live in the community, and what percentage of community members are different ethnic groups? What percentage of different tribes or clans are in the village? What religions are followed by members of the community?

Infrastructure: Infrastructure paints a fuller picture of community life and resources. What are the common buildings in the community? Is there a school, a health clinic, government offices? Are some fields irrigated? How do people travel to and from the community? What is the condition of the roads?

Local history

Documenting the local history is very important as it helps to understand the current situation

Understand: What are the most significant changes in the village in community members' lifetimes? How has land use changed? How has the customary tenure system changed?

With whom? Elderly and young people together in a group

Tools to use: Focus group discussions using village timeline, sketch maps of past or changing land use, interviews with male and female elders

.and can also help to anticipate potential future trends and changes. It is recommended to start asking about history at an early stage of the documentation process, as it may help the documentation team to gain a deeper perspective on the present situation and on the reasons why there may be unequal distribution of land and resources and how different groups have obtained different level of rights to land and resources.

How to do it?

Bring a group of elderly people and youths together to talk about the village history. Draw a timeline of the major events in the village's history. People may not know the exact year of different events, so the facilitator should use major historical events as reference points to determine the general time periods. Some examples for Myanmar of major events could be: when territory changed hands in World War II, regionally significant military conflicts, mass bamboo fruiting events, and important political events. Time can also be measured using significant life events of the villagers, for example, when their children were born, when they were young, or by reference to different generations (in their parents' or grandparents' time). You can also organize the timeline by topics and use specific colours for each topic.

During the focus group discussion, the following issues can be discussed in an open and flexible way:

- History of settlement of the community and migrations (first settlers, in-migrations, out-migrations, and how land has been claimed by waves of settlers over time)
- Key political events, conflicts and policies that have affected the community
- Key events that strongly impacted on livelihoods (e.g. the construction of roads, introduction of new cash crops, agricultural market price collapse, creation of a protected forest area, construction of a factory, land grab, etc.)

- Political and administrative changes in the village and with respect to local authorities, changes in institutional structures in land or natural resource management
- Key periods and events in terms of agricultural practices (introduction of new technologies, new crops and land use practices, access to markets)
- Key events and changes in customary tenure practices (e.g. change in shifting cultivation systems, changes in village boundaries, changes in land use, changes in rules and institutions to manage land and resources, etc.)
- Whenever possible, it is useful to ask how many households lived in the community at different times in order to understand the population trends: is population increasing? Decreasing? For what reasons?
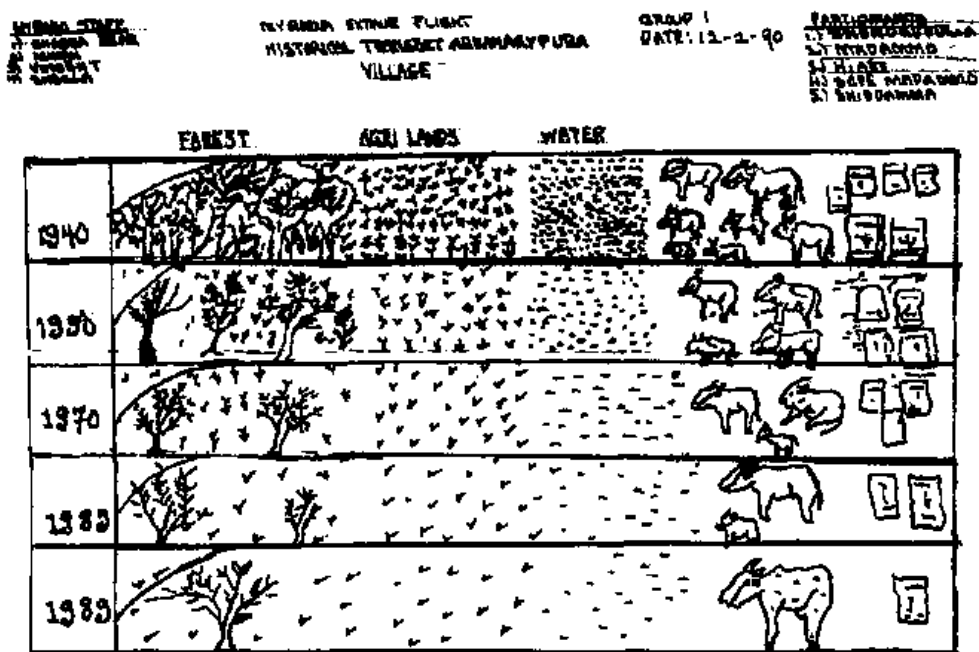
Figure 17: Example of time line combining information on changes in resources availability

Figure 18: Example of transect block diagrams showing land use changes over time (source: E. Le Gal, N. Molinier – Analysis diagnosis, region of Wolayta/Damot Gale. CNEARC 2009)

Land use and land management

Understand: How is land being used? For each land use type, what are villagers' practices regarding land use and extraction of different natural resources? What is the status and trend for different resources?

Combining with **"institutions"** component: What community rules govern the allocation, use and management of each land use type? How are these land use types and resources managed?

With whom? Village leaders and specialist resource users, both men and women (see section X for explanation of this group)

Tools to use: focus group discussions using sketch maps, satellite images, scale maps, site visits, seasonal calendars, interviews

Start with a focus group discussion. Ask what land use types there are in the community and draw a sketch map together of these different types. A vinyl poster with the google earth imagery of the area can be helpful to draw a scale map using semi-transparent paper. With each focus group, ask people to revise and add to draft sketch maps drawn previously (see chapter 6 and on mapping).

Over the whole documentation process, you may need to re-draw the sketch map several times with different focus group discussions, gradually improving the reliability of the information. Don't forget to capture the multiples uses of land (one plot can have multiple uses).

A draft list of land use types will already have been prepared during the community facilitator training, and this will help you to prepare questions and begin the sketch map with the focus groups. Land use types may include: irrigated paddy, rainfed paddy, garden, orchard, shifting cultivation, watershed protected forest, woodlot, pine forest, thatch area, bamboo forest, sacred area, grazing land, rocky ground, bee-hive rock, community recreation area, lake, pond, river, stream, fish pond (artificial), community fishing area, no-fishing zone and more.

Land use: Talk about each land use type. For each land use type, ask:

- What are the different uses of this land?
- If it is used for cultivation, what crops are planted during the different seasons of the year?
- What products (timber, firewood, non-timber forest products, animals, stones, irrigation water) are extracted?
- What are the rules concerning the access and use of different land use types? Who has access? How are these decisions made?
- What are the rules concerning how NTFPs and other resources can be taken? Have these rules changed over time?
- What resources are abundant, which ones are scarce?
- Who is using different types of land and resources? Who is not doing so, and why not?

Depending on the customary system and the local situation, some land use types will be more important to document than others. Shifting cultivation areas are not recognized under the current union government legal framework, so it may be useful to pay special attention to shifting cultivation practices and the multiple uses it has over the whole rotation cycle.

Community management of forests may also be particularly useful to document, since most forest use is not recognized under the current legal system. Around 30% of Myanmar's land area is classified as Permanent Forest Estate and is under the authority of MONREC. Community use can be recognized with a Community Forest Certificate and some communities have found this certificate a useful way of securing tenure over their customary forests. Since customary forest management is not recognized, it may be useful to have a group discussion specifically about forest management.

Land Management: For each land use type, discuss how the land is allocated and managed and what the rules are for management. It is good to ask for concrete examples whenever possible.

You may consider the following questions:

- Are the group boundaries clearly defined? Is it clear who is entitled to use or not to use this land and associated resources?
- Are the rules enforced? How are they enforced? Who is involved in rule enforcement (monitoring, decision making)?
- If someone breaks a rule about this land use type, what will happen? What are the sanctions for the different levels/types of violations? Has this ever occurred?
- Have the rules ever changed? How can the rules be changed? Who decides? Who participates? (give examples)
- In case of conflict, how is it solved? Any examples?

A seasonal calendar can show the steps for managing the forest over a year, or for shifting cultivation over multiple years.

If your objective is to strengthen community land and resource management or collecting evidence-base to advocate for greater formal recognition of customary tenure, spend time recording these resource management rules. Make sure many different people in the community have a chance to discuss and make changes to the draft rules. The community may decide to establish new rules or new land use types (e.g. conservation forest area, or a no-hunting zone). In this case, ask detailed questions about what is and is not allowed in the forests to generate discussion about the options.

Resource Management Rules:

It may be useful to have groups of specialist resource users writing out the community rules for managing resources. Groups can be formed to write rules for forests, medicinal plants, shifting cultivation, and other resources that involve specialist knowledge.

When discussing the rules, ask the group about the reasons for each rule. Generate discussion about the motivations and goals for each rule, so people clearly understand the reasons for establishing or strengthening them.

Make sure to integrate into the rules, procedures for how these rules can be changed in the future.
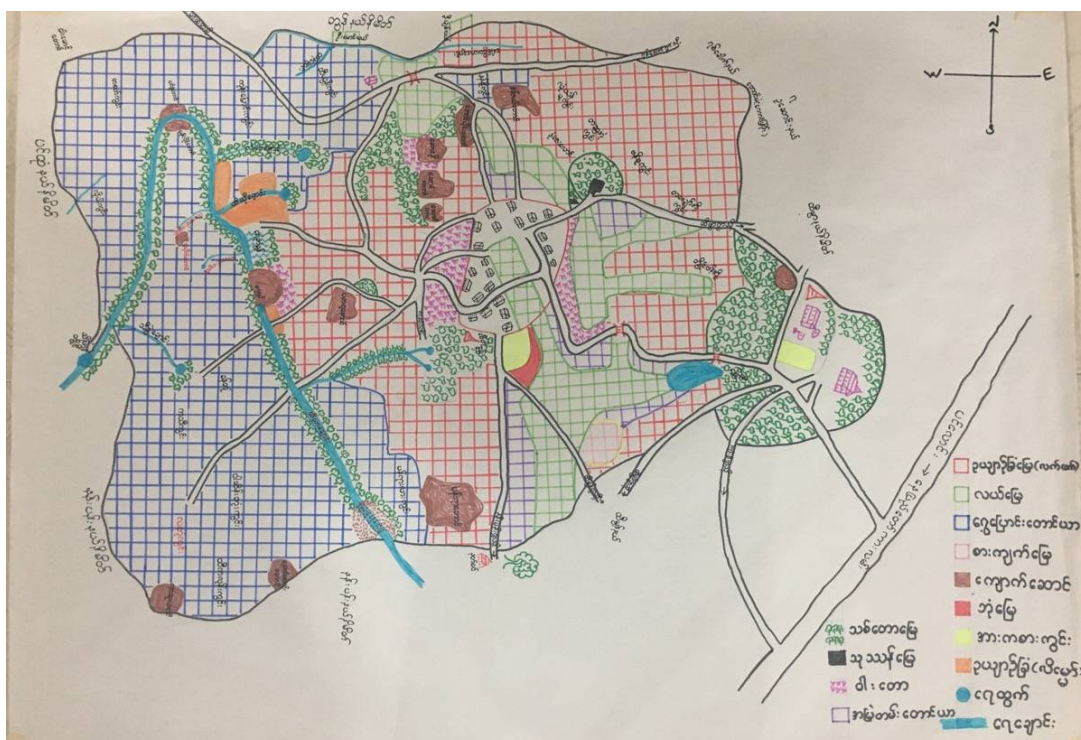

Figure 19: Land use map from customary documentation process by the Farmers and Land Workers Union (FLU)

Resource tenure and transfer

Understand:

Tenure rights: What are the different kinds of rights on land and resources in the customary system? Who are the right holders? Ask about individual, household, family, village, clan, tribe, ancestral domain claims. Are there resources that anyone from the village can collect and use? Are there resources (water, forest, grazing land) shared with other communities?

Access to and transfer of rights: How does someone come to have access rights over land or resources? Ask about inheritance, sale, and any other ways that someone can obtain land and the rules.

With whom: focus groups, household interviews with members of vulnerable groups

Tools to use: focus group discussion using sketch maps, satellite images, scale maps

---

For this component, hold focus group discussions using the land use sketch maps that may have been drawn previously with other groups. You can draw another map showing different forms of tenure in the village and compare it to the land use maps.

For each of the key land use types, ask

1. What type of tenure does this land use type have? Is it public/state? Private? Communal? Open access? Co-management?[15]
2. What are the different rights over the different resources of this land use type?
3. Who holds these rights?
4. Are there any documents showing ownership of this land use type? (government forms, tax documents, other records)
5. Who can access this land use type, even if they don't own it? What can they access?
6. What are the rules for access to rights and to transfer rights? Have these rules ever changed and if so, how?

When documenting customary tenure, be careful to document access rights, not just ownership rights. Access rights are often used by poorer people in the community. Someone who does not 'own' land may still have access to it. For example, collecting wild fruit and vegetables may be allowed in forests and taungya fallows owned by other households. If someone does not own land, they may be able to cultivate someone else's land with annual crops for a season for free or by renting.

---

[15] Sometimes, it can overlap: for example a forest can be officially public in the eyes of the State but actually have private claims or communal claims under customary tenure.

Transfer

It is useful to talk about rules for transferring rights and gaining access to rights. Different types of "ownership" often have different rules for how land can change owners. What are the rules for inheritance? Are they different for men and women? What are the rules for selling land? Are the rules different for different types of land and resources?

This covers both **permanent transfers** such as inheritance (and "marriage" prize), sale, donation or **temporary transfers** such as renting/sharecropping or lending for free.

Institutions

Understand: How are decisions concerning land and resource rights made? What are the customary institutions and what are their functions and responsibilities? What are the government institutions and what are their functions and responsibilities? How do the customary and government institutions interact? In case of common resources, do higher authorities accept users to self-govern over the resources?

With whom? Leaders of the institutions identified in the social map, vulnerable group members, customary tenure leaders, local authorities and line department staff

Tools: interviews, focus group discussion using social mapping, Venn diagrams

The key issues to examine under institutions component are: Who are the different key decision-makers over land and natural resources management? On what can they decide and how do they make decisions? What is the relationship between these different authorities? To avoid overlaps between the components, the "institutions" component will not be used to document the rules for land use and management, which is examined under the "Land use and management" component, nor the rules concerning tenure, which is examined under the "Tenure" component.

How to proceed?

Start with a focus group discussion. Make a social map of the different institutions linked to land and natural resource use and management. These institutions can be within the customary system, like tribal elders and cultural and literature committees. They can be religious or secular organizations, churches, monasteries, youth groups, community based organizations and networks. They can also be local authorities or line department officials from government or Ethnic Armed Organization (see figure below).

You can also ask:

1. What are the roles of these institutions? What land and resources do they manage?
2. What is their sphere and level of influence?
3. How do they interact with each other?

As you focus on customary institutions, you can ask:

- Which ones are strong? Are there any that used to be strong but are now weak or no longer exist?
- How can customary rules and decision-making processes be changed?
- What is the relationship between customary institutions and government institutions?
- What is the relationship between customary and governmental institutions in dual administration areas?

It is good to ask for concrete examples in order to avoid talking in a too broad and general way.
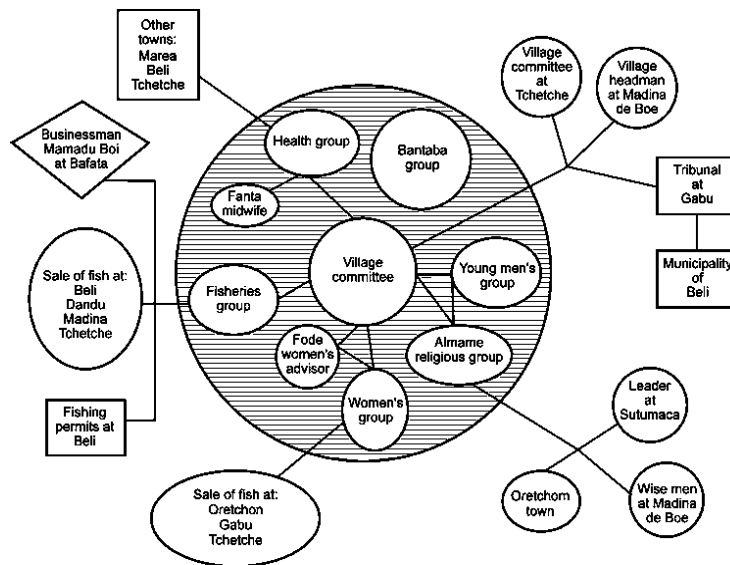
Figure 20: Example of social mapping

Customary Conflict Resolution

Understand: What kinds of conflict occur over land and resources in the village? How do people try to resolve these conflicts? How are conflicts resolved in the customary system? What conflicts cannot or should not be resolved using the customary tenure system?

With whom? People with a customary role in dispute resolution, people involved in any interesting case study of dispute resolution

Tools to use: focus group discussion, interviews

Hold a focus group discussion on the different kinds of conflicts there are in the village. Ask:

- What kinds of conflicts occur over land or resources in the village?
- How do people try to resolve the conflict? Who is involved in resolving the conflict?
- Does the customary system have ways to resolve conflict? Who is involved? What are the steps for resolving a conflict in the customary system?
- If someone breaks a rule in the customary tenure system, what are the consequences?
- What is the relationship between the customary system for conflict resolution and the government administrative or judicial system? In what cases do people use the customary system, and what cases do they use the government system?
- What conflicts are not being successfully resolved? How can the situation be improved?

The table below shows an example of how to record the types of conflict over land and resources in a community. Recording the types of conflict and reflecting on whether the

customary methods are currently effective for resolving each type of conflict may encourage discussion of ways to improve the process.

Types of Conflict	Between Individuals or Households	Between Villages	Between ethnic groups	Between village and company	Between village and government
Water access	Upstream and downstream / water theft	Upstream and downstream	Upstream and downstream	Water pollution	Irrigation or hydropower dam
Forest		Disagreement about boundaries		Unregulated timber extraction by company	Concession or protected area in community forest area
Shifting cultivation	Clearing land on another household's old fallow	Disagreement about boundaries		Agricultural concession in shifting cultivation land	
Fisheries	Some people using destructive fishing methods				Auction sale of fishing permits

Livelihoods

Understand: How do people depend on land and resources, including under the customary system, for their livelihoods? What is the relationship between land and food security? What is the level of inequality/equality in the customary system? How does the customary system provide a social safety net for poor and vulnerable groups?

With whom: All wealth classes identified in wealth ranking, people who are landless/poor/vulnerable, households who recently went through a shock (health problem, poor harvest, landslide/flooding/natural disaster)

Tools to use: observation of village, wealth ranking in meeting with leaders, separate focus group discussions and household interviews with each of the groups mentioned above, using household economy maps.

Documenting livelihoods may help to understand the following two key aspects:

Contribution of resources under customary tenure to local livelihoods

The importance of customary tenure for livelihoods, especially forests and shifting cultivation land, can be an effective message when advocating for the recognition of customary tenure. Documenting the value of forest products, including timber, rattan, bamboo, forest fruits and vegetables, as well as medicinal herbs can demonstrate the importance of secure access to forests for livelihoods. Shifting cultivation land also provides essential and diverse foods for households. Without secure tenure to shifting cultivation land continued access to these crops is at risk. Cash crops that are promoted by government sedentarization programs are not a substitute for shifting cultivation crops.

It is also possible to document the importance of customary tenure to food security and nutrition. Are there many families in the village who do not have enough food for the year? If someone has a bad harvest, how can they get help? How are diverse and nutritious foods obtained?

This livelihoods component should be completed after having identified with communities the key land use categories, as well as the productive uses (e.g. crops grown, forest products collected, grazing land) linked to each land use category. Data on land tenure and access (such as proportion of households owning paddy terraces, proportion of households using shifting cultivation lands, average size of owned tea plantation, etc.) is also useful for this component.

How to proceed?

To show the importance of secure tenure over land, forest and other resources for livelihoods, develop a list of the crops and other resources that the community uses from each land use type during a group discussion. Combining the list of crops with a map of the village can show clearly the contribution that each area makes to the community's well-being.

Example of a household economy map
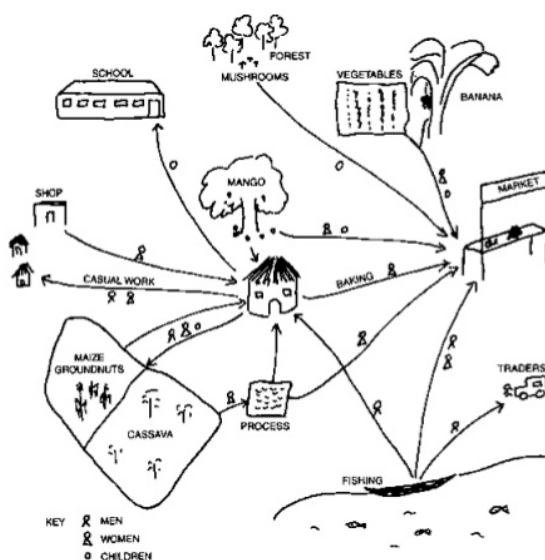
Conduct a wealth ranking exercise with community leaders. In order to do this, you will need to identify criteria for what constitutes 'wealthy', 'medium' and 'poor' households. This is usually done by measuring assets such as the amount land owned, number of livestock, and types of livelihoods (eg: being farm laborer), etc.

After conducting a wealth ranking exercise, draw a household economy map with households of each wealth category in order to understand how they depend on the resources under customary tenure for food and income.

Figure 21: Household economy map
Source:http://www.slideshare.net/imranahmad131/pra-tools-imran-ahmad-sajid

If you want to highlight the importance of a particular resource, it can be useful to collect figures on actual economic contributions to households and the community as a whole (for example: "collection of forest tubers by the poorer household can generate an average extra income of 300,000 MMK" or "one acre of shifting cultivation plot can cover the food needs of a family of five for 10 months").

Contribution of the customary system to social equity and reduced vulnerability

Some customary land tenure systems are designed to maintain relative equity/equality between community members. Documenting this aspect of customary tenure can support advocacy by arguing that recognition of customary tenure ensures that poor and vulnerable groups are able to meet their basic needs.

Some customary systems have rules that prevent the accumulation of wealth. Some Naga tribes, for example, expect those with good harvests or more wealth to re-invest that wealth into the community by hosting feasts of merit for the community. Land ownership rules may prevent accumulation of land by one family or household. There may also be rules allowing households to use land for one year for harvest if they do not have access to any land themselves. When documenting this aspect of customary tenure, ask what inequality looks like in the community. What does it mean to be relatively poor? What does it mean to be relatively wealthy? A wealth ranking is a useful tool for answering these questions.

Customary tenure systems often have social safety nets that people can call upon in times of need such as when families have a bad harvest, a medical emergency, or a death in the family. For example, when a household has a bad harvest and does not have enough food in the Naga Makury tribe, someone from the same clan will donate half of the contents of their household granary to the household that is having trouble. When documenting this aspect of customary tenure, ask how someone can get help when faced with an emergency or hardship.

Communities that have higher levels of inequality can use this information to reflect on how to better look after the poorest members in their community. How can they ensure that the relatively poor have their basic needs met? How can the community ensure that more people, including vulnerable groups, benefit from development? Documenting the ways that the system falls short in helping people in times of hardship can generate discussions about how to improve the social safety net in the community and prevent people from falling into debt or poverty during a crisis.

Cultural Dimensions of Land: Feasts, Festivals, Stories, Art, Dance, Song

> *Understand:* What cultural practices are linked to the customary land use system? How is land linked to the maintenance of culture and identity?
>
> **With whom?** religious leaders, musicians, artists, weavers, craftsmen, elderly people
>
> **Tools:** calendar of festivals, focus group discussion, interview with elders, interview with customary religious leaders, photos, video recordings, audio recordings of song and dance performances, songs sung while planting/harvesting/weeding/other land management activities

Documenting the cultural dimensions of customary tenure can help to strengthen the practices and values that maintain traditional management systems. Feasts and festivals are tied to the agricultural season, often at planting and harvest times. Traditional dances are inspired by the motions made when farming. There are songs for transplanting rice, for walking to the shifting cultivation fields, for keeping away pests.

Traditional religions are bound up in the land and lakes and forests. Sacred lakes, forest glades for religious rituals, caves, and mountaintops are all sacred areas with rules for use under customary systems.

Communities can come together to celebrate the cultural dimensions of tenure and link them to efforts to protect customary land and strengthen environmental stewardship. Song, dance, storytelling, and art can help to transfer traditional knowledge to young people and strengthen customary systems that have been weakened by years of conflict and displacement.

6.3   Steps for documenting customary tenure

Once the preparation phase is completed (see chapter 4 and 5) and you have designed your documentation plan, follow and adapt the steps below to implement the documentation process.

1. **Meet with village leaders**, including local government as appropriate, to inform them of the documentation plan and timeline. These leaders can help the community facilitators plan the initial community meeting to start the documentation process. This can also a good opportunity to collect the basic village information.

2. **Hold a community meeting to present the documentation plan**. Focus on explaining the documentation process and how people can be involved. Inform about the focus group discussions planned in the next days.

3. **At the first community meeting, or directly after, divide community members into groups to draw sketch maps of the village**. Drawing the maps may take a few practice attempts. Use these sketch maps to facilitate a discussion about the main land use types, land conflicts, concerns, and important customary practices in the community. During the documentation process, draw new sketch maps every few days to include new information.

4. Arrange a **group discussion about village history** with people of all ages, from youths to elders. Understanding the history of the village will give context to the rest of the documentation process. Having elders and young people in the same discussion creates a space for elders to pass down stories of their history and knowledge about how life and land use have changed over the decades.

5. Conduct **group discussions on different aspects** of customary tenure, as per your objectives and documentation plan. Some land uses, like forests, may warrant their own group discussions.

6. When you are not conducting group discussions, you can also **conduct interviews, visit households and participate to daily tasks, walk and observe** key places in the community's land. This will be a great opportunity to ask questions, take photos, and hold informal discussions.

7. The **CSO and community facilitators should meet every day to share** what they have learned, check for contradictory information, clarify uncertainties, and identify what still needs to be documented and revise the documentation schedule if needed.

8. **At the end of the documentation process, hold another community meeting to share results of the documentation process**. Members of the different discussion groups can share the main points of the group discussions with the wider community. At this meeting, community members can verify information, address information gaps, reflect about future trends and discuss next steps.

6.4 Who should be involved in the documentation process?

Identify who should be involved in documenting and discussing each component of customary tenure discussed in the previous section. Include community leaders, and people who have expertise on specific topics. Make sure to include women, young people, and elders to include a range of perspectives. Identify any vulnerable groups that may not be included without special effort, as well.

Community Leaders

People who hold local leadership positions have special expertise about customary tenure because they have a position in the institutions and decision-making processes. Ask them about village institutions, land ownership and transfer, and arbitration. Village elders may have a leadership role, and are an important source of information about the history of the community and how the customary system and land use system has changed over time. Examples of community leaders include Village Elders, Village Chiefs, Culture and Literature Committee members, and religious leaders. Line department staff can also be interview where appropriate.

Diverse perspectives and specialized knowledge

Some people have expert knowledge about a particular land use or resource type. Information about that land use type should come from these experts. Women and men may have different roles in land management and in customary institutions, so both men and women should be actively involved to make sure their different expertise are documented. Some people may be particularly knowledgeable about seeds. Cowboys take care of mithun and buffalo for colonies and should be asked about grazing and grazing land. Hunters are resource specialists who can give information about wildlife, hunting, and forests.

Elders and youth groups both have specialist knowledge to share. Elders can give historical context and are sometimes a vulnerable group. Youth group members may have more formal education than others in the village. They can share their aspirations for the future, which may be different to that of their parents and grandparents' generation.

Vulnerable Groups

Vulnerable Groups should be included to have a broad understanding of the function of customary tenure and land use in each village. A participatory research process must not just include the village leaders and most educated residents. Vulnerable groups often take more time or effort to reach, maybe because they have less available time for meetings, do not speak the same language as the research team, or do not think of themselves as experts or people who should be involved in politics. People may be vulnerable because of their social or economic status. They may also be vulnerable if they do not belong to the dominant ethnic group in an area, do not follow the same customs, or are not comfortable speaking in the same language. Vulnerable groups include elderly people who cannot easily leave the home, women who are responsible for housework and are unavailable for group discussions, members of minority ethnic groups, recent migrants, and the poor. Displaced people, migrant workers, and refugees are also vulnerable groups.

Vulnerable groups provide important information that otherwise would not be included, especially about livelihoods and equality. Including these groups in the documentation process also increases understanding of the customary system in the village and builds support for further advocacy and land use planning.

To identify vulnerable groups and ensure an inclusive process, consider people who are marginalized by their economic, social, and cultural status.

- Conduct a wealth ranking to identify who in the village is relatively poor. What assets do relatively wealthy people in the village have that relatively poorer people do not have?
- What is the land distribution in the village? Are there landless people in the village? Do people have access to a relatively small amount of land, or land of poor quality?
- Are there recent migrants to the village? What assets do they have?
- Are there internally displaced people living in the village? Have people been displaced from the village and are now living somewhere else?
- Are there members of an ethnic group that is not the majority living in the village? Are there members of a minority clan or tribe living in the village? Does being in the non-majority group have an impact on their access to or ownership of resources, decision-making, or dispute resolution?
- Are there people in the village who do not speak the same language as the majority of the villagers, or of the customary tenure documentation facilitators? Should separate group discussions and interviews be held in other languages?
- Are there elderly or disabled people who cannot come to village meetings or focus group discussions?
- Who in the village works in another place for part or all of the year? What kind of work are they doing, and where? What might be missed if they are not involved, and is there a way to include them in the process?

Gender Considerations

Women are often identified as a vulnerable group. Widows, unmarried or divorced women, women who are abused by their husbands, and women whose husbands are working outside the village may be particularly vulnerable.

The documentation process should consider the roles and rights of men and women in the customary tenure system. Women have specialist knowledge that may be missed without a special effort to ensure their participation. The documentation process should be designed to include women as active participants and experts in their own right.

The role of women in customary tenure is particularly important when considering questions of land ownership and inheritance. Women's access to justice in customary and formal land dispute resolution mechanisms are also worth special attention. When documenting land ownership and access, be sure to document secondary access rights, such as the right to collect vegetables or wild plants. These access rights are most commonly used by women. When tenure is formalized, these collection rights are often weakened or erased in favour of exclusive private property rights. In order to safeguard continued access to resources that are important to women and the poor, extra care should be taken to record these aspects of customary tenure.

To involve women in the documentation process, it is necessary to create space and opportunity for women to freely share their knowledge and opinions. For example, a community may make decisions by holding a village meeting inviting one representative per household to attend. While this allows every household to be included, depending on social and cultural norms of the village, the meetings may be dominated by men. If this is the case, take care to specifically invite women's community groups and youth groups to the meeting.

In some cultures, women feel comfortable actively participating in mixed gender groups, while in other cultures it is essential to have women-only focus groups. Women often have a distinct role in the customary system and are resource specialists themselves, so it is worthwhile in all contexts to organize women-only focus group discussions and individual interviews. These focus groups and interviews should include women-headed households where available. If the

initial mapping exercises are dominated by men, it may be appropriate to use sketch mapping and satellite mapping in a women-only focus group as well. When setting meeting times for research activities, the availability of both women and men should be taken into account.

Throughout the documentation process, note how many men and women attend each meeting and focus group discussion. In focus groups that have both men and women, notice who is actively participating and who is not. Try to meet separately with some groups (women, youth, elderly, people who are more comfortable speaking another language) if they are not actively participating in mixed groups.

Thematic Questions:

Two overarching questions that should be examined when considering the role of women in customary tenure: **What aspects of the customary tenure system make women more vulnerable? What aspects of the system reduce women's vulnerability?**

These questions are too broad to ask directly in an interview or group discussion. Instead, break the question down into smaller components, as follows:

- What are the inheritance rules for women under the customary system? How many women in the village have inherited land? Under what circumstance?
- What are the rules for land ownership for women? How many women in the village own land? Under what circumstance?
- Do women have access to land and resources that they do not directly own? For example, cultivation rights on a family member's land?
- What leadership roles do women hold in the community? What are the obstacles for women to take leadership roles?
- Do men and women have different roles or rights under the customary system for resolving disputes?
- What roles do women take in making decisions under the customary system? Do women attend village meetings?

To ensure active participation of women in the documentation process:

- Hold meetings at times and places when women are available to attend
- Hold women-only focus group discussions
- Interview women who have local leadership positions
- Record how many men and how many women attend each village meeting and focus group discussion for monitoring and evaluating the inclusiveness of the documentation process

6.5 Methodology and tools for documenting customary tenure systems

The following sections describe the methods to use when documenting customary tenure, with some suggestions about how to use them effectively. The key elements presented are:

- Mapping
- Focus group discussions
- Individual interviews
- Households interviews
- Field observation

Mapping

Maps are an essential tool for documenting customary tenure. Drawing maps are a useful way to facilitate group discussions about land. They are also one of the most effective tools to communicate community land claims with a degree of precision to government authorities and the private sector.

Participatory mapping has been used around the world for decades to assert local land rights.. This section outlines the different types of participatory mapping and how to choose the most appropriate for your situation. It also outlines a suggested mapping procedure using sketch and scale maps. At the end of this section, a reference list to other guidebooks is provided that go into more detail on the technical steps to making each type of map.

When deciding what kind of mapping methods to use, answer the following questions:

- Why do you want to make a map?
- Who do you want to show the map to?
- What information needs to be included in the map?

Choose the mapping methods based on your answers to these questions. Sketch maps, scale maps, 3D maps, and taking GPS points are the most common methods of participatory mapping, and each are suited to different situations. The table at the end of this section summarizes the strengths and weaknesses of each approach. Choose which methods to use based on your goals, technical skills, the time available, and villagers' comfort with maps.

No matter what other mapping methods you choose, always start first by drawing sketch maps with community members. Drawing maps allows community members to start thinking about how to represent their land spatially. Drawing sketch maps with different groups allows more people to contribute their knowledge to the final version of maps. Use sketch mapping to identify general boundaries of the community's land, key landmarks, and land use types that will inform further mapping activities.

Tips for Mapping

Maps are effective at showing specific aspects of customary tenure, especially land use and land claims.

Participatory mapping uses maps to improve understanding of customary tenure within a community and for outsiders. The maps are a means to these ends, not the ends themselves. Processes that focus on the map and miss the end goals can be ultimately disempowering for communities.

Invite representatives from neighboring communities to attend the first community meeting. Neighboring villages should also be involved in verifying community maps

---

Suggested mapping procedure

Draw sketch maps with discussion groups during or shortly after the first village meeting. This will give the facilitators a good overview of the community's land, and the maps can be used as a reference in later group discussions. Continue to draw sketch maps with different discussion groups, adding new information and refining the map. Once the sketch map is relatively complete, with boundaries, land use types, and landmarks identified, bring a group

of community leaders together to draw a scale map of community land using Google Earth satellite images (see Step 4 below). Share the sketch and scale maps in a community meeting to discuss and verify the maps. Print the scale and sketch maps on vinyl and store them in a public place.

The procedure is designed to generate a relatively accurate map in a short period of time, with minimal need for technical GIS and technical mapping skills. Making scale maps requires someone who can use Google Earth and, ideally, who can digitize the scale map using ArcGIS or QGIS software.

This procedure can be modified to add taking GPS points to increase accuracy over uncertain boundaries. The scale mapping can also be replaced with 3D mapping, which takes more days (3-15 days depending on the size and topography of the area) but is easier for community members to understand if they have little experience using maps.

Step 1: Preparation

Many communities may have concerns about making maps, perhaps because of land conflicts or from previous negative experiences. Successful mapping requires some groundwork before putting pen to paper or recording a GPS point. Most of this can be covered in the documentation preparation phase, and should be reviewed and refined during the community facilitators training.

- Before drawing any lines on a map, you must come to a common understanding with community members about the purpose of mapping. This is done during the preparation phase, since mapping is intended to further the overall documentation objectives.
- Understand the land conflicts and power dynamics that are present. The stakeholder analysis and risk assessment during the preparation phase will help to understand the local situation
- Develop a strategy for how to deal with the risks and conflicts that may arise from making a map. During consultations and community facilitators training, come to an agreement about how these risks should be handled. That may mean recording overlapping land claims on the map, or working with customary or government authorities to resolve disputes.
- Explain that the community owns the maps and can decide how they are used and who they are shared with. During consultations and community facilitators training, agree on how the maps can be used (see Box below on Data Ownership of maps).

Step 2: Sketch mapping

Draw sketch maps at the community meeting at the start of the documentation process. If this is not possible, select a few groups to draw sketch maps shortly after the meeting. Divide the people who attended the community meeting into smaller groups, and give each group markers and a few large sheets of paper. Encourage them to take a few tries to practice drawing maps of their community's land.

When drawing a sketch map, start with major landmarks. Draw major physical features, especially water sources like lakes and streams. Draw infrastructure like houses and roads. What landmarks or physical features are used to mark boundaries? After drawing the major landmarks, draw the different land uses, marking land for shifting cultivation, orchards, community protected forest, and paddy, and any other land use types. Where are these different land uses practiced? How is land use changing over time?

You may wish to divide the groups so that you have some groups that are entirely women. If you have some men and some women groups, ask them to compare their sketch maps. What areas did one group draw with more detail than the other group? What do the differences in the sketch maps suggest about where men and women spend their time, and what resources they are most familiar with?

Step 3: Refine the sketch map throughout the documentation process

Maps are useful when facilitating discussions about many different topics, including rules for different land use types and different types of land claims. When facilitating discussions about these topics, keep a map that has already been sketched nearby so it can be used in the discussion. Encourage people in the discussions to draw their own sketch maps or add or modify an existing sketch map. For example, a hunter may add where different wildlife are found to a map that shows land use.

The sketch maps will evolve throughout the documentation period as new information is added and corrections are made to the initial sketches. Draw new versions of the sketch map to integrate new information into the final sketch maps.

One of the benefits of drawing sketch maps is that a wide variety of people can make their own versions of the community map throughout the process. Sketch maps require minimal technical mapping knowledge from the facilitator, and minimal map reading skills from the participants. They are an ideal way to start mapping.

A benefit of repeatedly drawing sketch maps during group discussions and interviews is that more people have the chance to contribute their knowledge to the maps. Drawing maps also helps people to understand the maps. In communities where maps are not common, drawing a sketch map can make the final sketch and scale maps easier for community members to understand and use.

Step 4: Draw a scale map using Google Earth satellite images

After drawing the sketch map a few times, there will be fewer significant additions and modifications. When the sketch map stays relatively consistent, it is a good time to draw the scale map.

Print out a large Google Earth satellite image of the community's land on vinyl. This should be done as part of the preparation phase before going to the community.

To draw the scale map, bring together a group of community members, including community leaders. Find the location of the village on the satellite image. Then identify major landmarks on the image. A topographic map of the area can help to identify the location of villages on the satellite image.

Place translucent tracing paper over the satellite image and tape the paper to the image so it does not move while you are drawing. Trace the roads and rivers on the paper. Then draw the major landmarks. Draw the community boundaries, noting with a dotted line where there is uncertainty over the boundary location because of a land dispute. Then draw the different land use types on the map.

Step 5: Verification

Share the sketch maps and scale maps at the final community meeting to verify the maps and give community members an opportunity to review and correct the maps.

Involve neighbouring villages in drawing and verifying the maps. During the preparation phase, inform neighbouring villages about the documentation plans. Invite representatives of neighboring villages to the consultations, and to the first community meeting at the beginning of the documentation process. These representatives can then be involved in drawing sketch maps and agreeing on boundaries. Representatives from neighboring villages should also be invited to review the sketch and scale maps to discuss the boundaries. This could happen during a specific meeting between village leaders, or they could be invited to participate in the community verification meeting at the end of the documentation process.

Step 6: Sharing the maps

Take a photo of the final version of the sketch map and print it out on vinyl so that it will not be damaged. Keep the vinyl map in a public place in the community.

A CSO facilitator with GIS training should digitize the scale maps so that there is a digital record. Print the scale map on vinyl and display it in a public place along with the vinyl sketch map

> **Data Ownership of maps**
>
> The community owns all the data that is generated in the documentation process, including the maps. This means that the community has the right to decide how the maps are used and who the maps are shown to.
>
> Making maps can help to defend customary land from land grabs, but they can also make land more vulnerable. Maps could attract the interest of outside groups if they record valuable natural resources. They can also make the areas that have not been mapped yet more vulnerable to land grabs, if government and private sector believe that if land has not been mapped yet, then it is not claimed by customary tenure and is available for investment.
>
> During the documentation preparation stage, the benefits and the risks of making maps should be explained clearly.
>
> During the documentation training, develop a shared understand with community representatives about how the maps should be used. It may be helpful to write down these rules and display them during any mapping activities. They can also be written on copies of the maps.
>
> For example, documentation that focuses on research and advocacy may want to include rules declaring that the maps are for research and should not be used to legally register land.
>
> Another rule may be that NGOs facilitating the documentation can use the maps for advocacy to further goals agreed in advance with the community. Rather than getting permission for every opportunity to advocate, it is more efficient to agree on some basic guidelines for how the maps can be used.
>
> Some communities may not want maps shared with certain groups. They may also want to keep some information private, like locations of valuable natural resources. At the end of the documentation process, confirm with community representatives about how the data, including the maps, should be shared and what should not be shared.

Table 6: Common types of participatory mapping

Type	Strengths	Weaknesses
Sketch map *A map drawn by hand on paper*	Flexible and reflects villagers' perception of land and resource use and claims Can be drawn and added to by different groups during the same session Relatively easy to do. A good introduction to mapping for people with limited experience with maps to draw and to understand Low cost and minimal training and technology	Cannot be geo-referenced and digitized to make maps using GIS software Without geo-referencing, it cannot be compared with other types of mapping data using GIS software (forest cover change, government land administration categories, etc.) Not precise enough to establish land claims with government Map is not to scale. It cannot collect information about area and distance
Scale map *A map drawn on tracing paper over a Google Earth satellite image*	The map can be drawn with a trained facilitator and a focus group in one afternoon A photo of the map can be geo-referenced and digitized using GIS softwareGIS software can be used to analyze the map Different layers can be drawn and placed on top of each other for comparison (e.g. land use type, ownership, land use change) More credible and familiar to government staff used to working with maps Map is to scale. It provides relatively accurate information on boundaries, area, and distance	The number of people working on the map at one time is limited (unless you make multiple versions with different groups) Harder for community members who do not have experience reading maps to understand Scale maps must be available. Topographic maps of the area together with images from Google Earth can be used for Myanmar. The government/forest department? has UTM topographic maps.
3D map *A 3D scale relief model built by cutting cardboard along topographical curves and layering them together to represent changes in elevation*	The 3D map can be easily understood by people with limited experience with maps. A photograph of the 3D map can be digitized The construction process can encourage community involvement and generate ongoing dialogue A 3D map can be displayed in a community and used repeatedly for land use planning discussions	3D mapping takes a more time than sketch mapping or using a satellite image. Depending on the topography and area, a 3D map can take between 3 and 10 days. A topographic map is required to cut out the contour layers Difficult to scale up because of time and training requirements

Geographic Information System (GIS)	Recording points and boundaries with a GPS unit provides precise spatial information that can be digitized	This method requires the most technical training to produce maps and to continue to access and update maps for future use
GIS maps are made with location points taken by GPS units and converted into maps on a computer using software like ArcGIS or QGIS	Boundaries without clear landmarks (a stream, mountain ridge, etc.) can be recorded accurately with a GPS unit by walking and taking readings.	Walking boundaries takes time and may not be safe at all times of year
	Collecting GIS data in different areas is a good opportunity for observing land use and conducting interviews	Data may sit in GPS unit or computer without being used if the NGO does not have sufficient technical staff or training
	Community members can be trained to use GPS units and record the boundaries themselves	
	Community members with limited experience with maps may feel more confident in the mapping if they walk the boundaries rather than showing them on a scale map	
	Maps produced by GIS convey a sense of authority and accuracy that may be helpful in advocacy	
	Maps can be printed and given to communities for future use and reference	

Further Information on Mapping

Reference report Good Practices in Participatory Mapping, IFAD https://www.ifad.org/documents/10180/d1383979-4976-4c8e-ba5d-53419e37cbcc

For 3D Mapping: Rambaldi, G. and J. Callosa-Tarr (2002) Participatory 3-Dimensional Modelling: Guiding Principles and Applications.

USAID participatory mapping handbook

Focus Group Discussions

Group discussions are the heart of documenting customary tenure. These groups create an opportunity for community members to come together to reflect on their current situation and on the future. Discussion is itself is a way to strengthen customary tenure, by providing a space to articulate the value of different aspects of the customary tenure system. Involving both elders and youth in the same discussion groups helps to pass on traditional knowledge and stories about the community's history.

A focus group discussion is structured discussion involved a facilitator and a group of persons (from 4 to 15 but 8 to 10 is often an optimal group size). The respondents are selected according to the pre-defined criteria relevant to the research questions.

Prepare for a focus group discussion by deciding what aspects of customary tenure to discuss. Review the master list of questions for ideas about how to break the broader research questions down into more specific, concrete questions. Decide what facilitation tools you will use. Common tools are sketch mapping, making a timeline, and mapping social and organizational relationships. Know the questions well enough that the discussion is a conversation, and group members have the space to tell stories, elaborate on each other's answers, and provide relevant information that the facilitator does not directly ask.

During a group discussion, group members can confirm or elaborate on each other's statements to make sure accurate information is recorded. When community members are able to read, take notes by writing on color cards or large paper, where community members can see what is written down and make sure that it is correct as another layer of verification.

Facilitate each discussion by encouraging reflection about the customary system. When people explain rules, ask them to explain the purpose of each rule, and what effect that has on livelihoods or resources. Ask "why?" often to promote reflection about the customary system and the value of different aspects of the system.

Always end the discussion by asking what should be maintained and what should be changed or improved in the future. What has to change in order to achieve the future people want to see?

Individual interviews

Interviews are useful to address sensitive issues as it gives more privacy. It is also useful for members of vulnerable groups, who would not feel comfortable sharing their situation and opinions in a group setting. Interviews with households and individuals about their specific circumstances give detail to the general rules and sometimes reveal exceptions to the typical situations described in focus groups.

Key informants are people who have specific expert knowledge or hold an important position in the community. These people have deep knowledge of some aspect of customary tenure to share. Step 4 in Chapter 4 describes how to identify these experts, including community leaders, religious leaders, elders, and people with other roles in the customary tenure system. These interviews do not need to be private, in most cases, and usually community members who notice the interview taking place will join and listen. This provides another opportunity for community leaders and experts to share knowledge about land, tenure, and traditions.

Some people may have a unique situation or life experience that provides a useful case study to understand customary tenure. Some of these people may be from vulnerable groups, and would not feel comfortable talking about their situation in a group. People who are landless or who have suffered from health emergencies can shed light on how the customary system supports those in need and how support systems could be strengthened. Recent migrants to the village can provide an outsider's perspective on the village and compare it to their own previous experience.

Interviews are called "semi-structured" when the interviewer has an idea of what questions to ask before the interview begins, and wants to make sure to cover specific topics. The interviews should be as close to a conversation as possible.

In order to prepare for an interview, decide which aspects of customary tenure you want to talk about and review the master list of questions for ideas about how to break the broader research questions down into questions that are more conversational. Know the questions well enough that you can hold it as a conversation, not an interrogation. If the person you are interviewing says something interesting, ask more questions about it to get more information, instead of moving on to the next topic. Give the interviewer enough freedom to tell stories and share information that they think is important.

For more information and guidelines on individual interviews, see Inya Institute Social Research methods manual.

Household Interviews

Household interviews involves someone from the documentation team visiting families at their homes. Conducting household interviews with poorer households or members of other vulnerable groups is an effective way to talk to people who may hesitate to speak openly in discussion groups or who may not be able to join group discussions. Household interviews can give a clearer picture of livelihoods, including differences in land use, ownership, and access between different types of households.

First conduct a wealth ranking as part of a focus group discussion. Then identify a few households in each wealth category to interview. In each interview, discuss what resources the households has access to. What land use types do they own or have access to, and what crops or resources do they collect from their land? Do they have any source of wage labour? Do they sell any of their crops to get cash income? Then, discuss the household expenses. Do they need to buy food at certain times of the year? Do they spend money on schools or healthcare? What other expenses do they have?

Field observation

When communities know their environment very well, facilitators might think that they are getting all the necessary information through focus group discussions or interviews. However, focus groups tend to give information about the general situation, without giving a clear idea of the specifics, the variations, or the exceptions. Talking informally with people in the village and the fields gives these individual stories to give colour to the research.

Walk around the village and observe the crops, villagers' activities, and the natural environment. Take photos of different land use types and important landmarks. Pause and talk to people while you walk, asking about their activities and how land is managed. People may feel comfortable to share different information in informal settings. It is also easier to understand how land is managed when you can see it directly and ask questions about the landscape in front of you.

Walk to important areas in the village land with community facilitators and community participants, take photos, and hold interviews and group discussions with people who are there. Some people may be too busy working in the fields to participate in group discussions Visiting them while they are working ensures more peoples' perspectives are included.

6.6   Visual and Audio Data

Take photographs of important aspects of customary tenure, land management, culturally and historically important areas. You can give inexpensive cameras to members of the community to take photos of what they think are important parts of customary tenure. This participatory method of taking photos allows people to share their thoughts about customary tenure in a visual, creative way. The photos can be printed and displayed in the village to generate conversation. Photos can also be used for advocacy, communicating the essence of customary practices in a way that is compelling and easy to understand.

Photos can record boundary markers, agricultural practices, sacred sites, markers of history in the village (cemeteries, monoliths, etc.). Photos of land use in agricultural fields and forests can be coupled with information about land management practices. Photos of historical places can be combined with written records of historical narratives. Cultural or religious places can be photographed and paired with traditional stories about those places.

Video can be used to record interviews and traditional performances of song and dance. Audio recordings can record interviews and song, and can be played over the radio which can be an effective way to share information in rural areas.

6.7   Keeping a Record

For every meeting and group discussion, assign one note taker to record the main points of the discussion. Taking notes is challenging. It requires good listening and observation skills, memory, skills in prioritizing key information and fast writing without changing the meaning of what was said. Since notes are taken fast, handwriting might be very poor and sometimes the sentences are unclear. Soon after the end of a meeting or group discussion, read the notes again with your colleagues to verify them, and add information that may have been missed.

When taking notes, try to write down what people say rather than trying to summarize what they said based on your interpretation. As you learn more about a situation, your interpretation may change and your notes will be useful in reviewing what was said in a new light. By recording what people say, important statements can be used as "quotes" in the final report, which can serve as supporting evidence of how villagers understand their customary tenure systems.

However, be aware that what people choose *not* to tell you can also be important information. If someone omits particular information, or avoids talking about an issue that others have raised, it can say something about a situation, and it is important to note this down. Body language can sometimes communicate more than words, so it is important to be a good observer as well as listener, and to write down any impressions you have that may go beyond just what people say.

For group discussions, make a note about topics where there is a long debate or where a conclusion or agreement could not be reached in order to keep track of what topics may need further discussion. Also note information where the speaker does not seem certain, or where others in the group disagree. This will help the team to track what data is reliable and what data needs verification from other sources.

For all village meetings, focus group discussions and interviews, the note taker should always record basic information about who is attending. This includes the number of participants, the number of men and women, if they hold leadership positions, or are if they are members of vulnerable groups.

Take photos of sketch maps, flip charts or posters that you make during village meetings, group discussions or interviews. The sketches and presentation materials can stay with the community, and the photos can be kept by facilitators as a reference. Always assign one team member to be the photographer.

6.8   Data Compilation

The facilitator team should meet every evening while in the village to discuss and reflect on what they learned during the day. The team should discuss what information still must be collected or verified. Some questions may arise when the team finds that they have conflicting information from different sources. Sharing information regularly ensures that these contradictions are identified and clarified during the documentation process.

The information collected each day should be typed up on a laptop computer (if possible) and compiled into a single document that is organized according to topic. Examples of outlines are proposed in appendix 5 specifically to help organize the information collected from the field into a single document. When facilitators meet in the village in the evenings, hand-written notes from each day should be typed up and inserted into the template/form. Following this process will ensure that information collected each day is discussed, reviewed and categorized and that field notes are periodically compiled into a single document. Organizing the information periodically in this way is good preparation for turning the data into a report. While facilitators may feel tired after a long day, allocating one hour every evening for the team to review the information collected and to enter the notes into the template will save a lot of time and headaches later.

6.9   Verifying information

Information can and should be cross-checked in discussions with different groups and individuals. The final community meeting where the results of the documentation are presented is an important opportunity to verify information, correct inaccuracies and/or add information that is still missing.

7. Communicating findings, community outreach and collective action

7.1 Writing up the Information

Writing up the 'results' of the documentation can be a daunting task. This is why it is important to have a systematic way of recording, organizing and compiling information periodically while you are in the field, rather than leaving it all to the end. As noted in section 6.8, the facilitation team should meet every evening during the fieldwork to share and discuss the findings of the day. If facilitators have access to a laptop computer, it is highly recommended that field notes from every day are typed up on the computer and the information inserted into the template provided in Appendix 5. Filling out this template at regular intervals can help to bring data from notebooks into a single document that compiles and organizes the information into separate themes or components. This will make the write up process at the end much easier.

After the documentation fieldwork is completed, the first step is to compile all the information into a Main Field Report that highlights all the key components of customary tenure in the village that has been documented. The first field report may include information on all the topics that were addressed during the fieldwork and it will likely be mainly descriptive.

Appendix 5 shows a sample format or outline for organizing the Main Field Report. It includes a section on objectives, documentation methods, sections for each key component of customary tenure that was documented, and suggestions from the community about what should happen in the future.

Once the Main Field Report is completed, this report can then serve as a basis for the production of other shorter reports or documents that include less descriptive information and more analysis. It can also serve as input for the production of other types of documents such as village profiles or policy briefs, which have specific recommendations and advocacy messages target at particular audiences.

Figure 22: Information flows

The amount and type of information included in a report, village profile, case study, policy brief or other document must take into account to whom it is directed and for what purpose (see Table and Figure below). In all cases, it should include details that help to support the findings with evidence. This helps to differentiate between facts and opinions. Different types of supporting evidence may be provided:
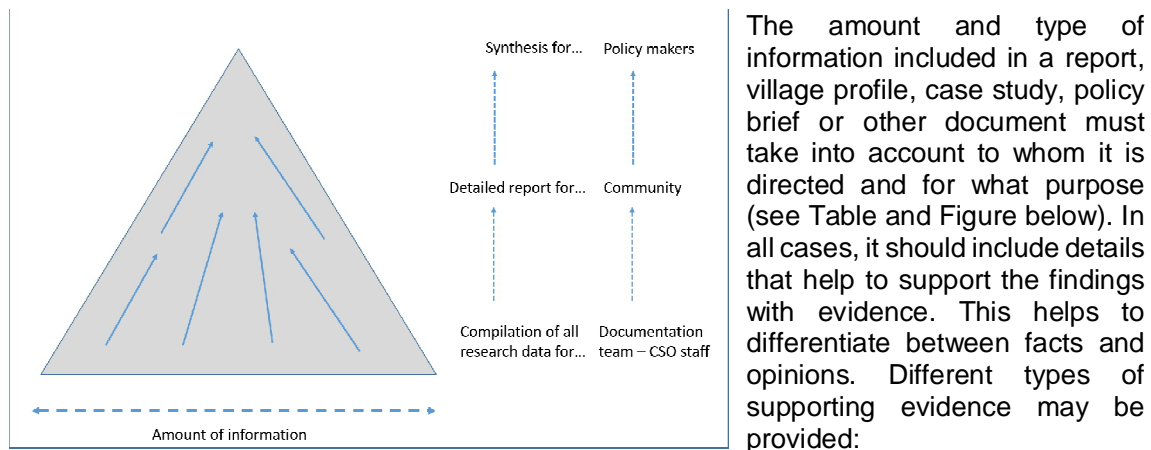
- Figures (quantitative information)
- Examples
- Direct "Quotes"
- Maps produced during the documentation
- Photos

Table 7: Example of ways to communicate findings

Product or output	Type of information	Key audience and purpose
Main Field Report	• All the key components of customary tenure in the village that has been documented. • Mainly descriptive • Likely to be several pages long	• Internal document for the village community to keep as record by facilitation team; • Compilation of main results, which can serve as input for the production of other shorter and more targeted documents
Shorter report or case study	• Highlights a specific aspect of the customary tenure system or land use situation, e.g. the Internal Rules of the village, conflict resolution mechanism. • A case study may highlight an interesting aspect of customary tenure, a trend about land use change or it can describe a case of land grabbing and its impact on the community. • Sharing of lessons and experiences through case studies can have implications beyond the particular village context • Can be descriptive or analytical, depending on purpose and audience.	• Internal for community (e.g. Internal Rules) • Local authorities and other decision makers, to illustrate a particular aspect of the customary tenure system, a trend in land use change that needs to be discussed or evidence of land grabbing case
Village profile or case study	• A snapshot of the village customary tenure system • Mainly descriptive • 1-2 pages	• Internal for the community • Neighbouring villages • Local authorities, CSOs and other interested external parties
Policy brief	• Includes key recommendations for change of policies, laws and their implementation	• Local and national authorities • Policy makers and parliamentarians • Media engagement
Posters, video multi-media	• Telling stories to convey key messages	• Public dissemination for raising awareness

Questions to consider:

- What is the purpose of the document or product? How will it help you reach your goal?
- Who is the target audience of key messages conveyed through the products?
- What is the best medium for communicating your message?
- How will you produce it? Do you need assistance from others? Is it strategic to partner with other communities, groups or organizations to amplify your message and help you reach your target audience?

For more information and guidelines on how to writing a report and advocacy brief writing, see Inya Institute "Social Research methods manual".

7.2 Giving back the results to the community and developing a plan for dissemination and action

Once you have completed the documentation process, hold a community meeting to deliver the key documented results to the community. What document you prepare for the community should be discussed and agreed on at the previous village meeting when the main results were presented and discussed. In addition to a report and/or village profile, you should take to this meeting printed posters of maps prepared during the documentation as well as a poster with information outlining the Internal Rules of the village. All documents and maps must be translated to the local language of community.

At this meeting, community members can again reflect on the key results of the documentation but the meeting should focus on discussing next steps and devise a plan for disseminating and using the documentation for advocacy. Part of that discussion should consider what kind of products or documents should be prepared, including what is their key goal and message and who the audience is, as discussed in the previous section. As a first step, community members need to decide what 'results' of the documentation they would like share with local authorities, and in what format.

Data ownership

The community may wish to share information with some audiences but not with others. This may be particularly important to discuss in dual administration areas. Who the data can be shared with, especially the maps, should be discussed during the documentation training and confirmed at the final community meeting.

Identifying a community or individual by name may put them at risk. Before using potentially sensitive information for advocacy, discuss the risks and benefits and obtain consent from the community or individual concerned.

A relatively simple way to respect the community's ownership of data is to write out an agreement about how the data can be used. This is particularly useful for maps, which are usually the most sensitive data that is collected during the documentation process. Refer to Chapter 6, Section 5 for an example of an agreement on how maps can be used. Discuss with community members about what information they are comfortable being used for advocacy.

CSOs or NGOs that are facilitating the documentation process do not need to ask permission to use data for every workshop and policy brief. Instead, the NGO and the community can agree that the data can be used for advocacy to advance agreed objectives and according to the agreed rules. For example, at the final meeting the community may agree that they want

customary tenure to be formally recognized in law and policy. The NGO would then be able to use the data from the documentation process to advocate for that goal.

When developing an agreement about data use, discuss the following questions:

1. Will the village be identified by name during advocacy? Or will the village be referred to by general area without giving identifying information to protect identities?

2. Will advocacy materials identify people by name? Will photos of people be used in advocacy material?

3. How will maps produced during the documentation process be used afterwards? Who will the maps be shared with? Can the maps be used to try to title land, or are the maps strictly for research and discussion? Is there sensitive information in the maps that needs to be protected?

7.3   Taking action

Some actions will be focused on communicating to people outside the documentation process (government, private sector, other communities, media). Other actions will be focused on communication and change within the communities involved in documentation process.

If multiple villages documented their customary practices, hold an event where they can share their results with each other. Invite any other relevant groups (civil society, media, government, other community representatives) to share the documentation. This meeting can be used to verify information, raise awareness, and discuss next steps with a larger group.

Advocacy

Networking: community members can speak at local, regional, and national meetings and consultations to explain their land and resource management system and advocate on behalf of their community. Hosting trainings for other NGOs and community members who are interested in documenting customary tenure is another way communities can share their expertise and contribute to building alliances for advocacy.

Based on the knowledge and momentum generated by the documentation process, communities may want to take actions to strengthen the recognition of customary tenure at the political level. This may include, for example, advocating parliamentarians at national and subnational level and developing inputs to national political dialogue and negotiation of the peace process.

Inputs to policy and laws: the documentation results can be used as a basis for inputs to revisions of existing laws or development of new laws, and shared with appropriate levels of government. In addition, new land policies are being developed by EAOs, some of which are using community-led customary tenure documentation initiatives as a basis for issuing communal land titles. This is a strategy being used in some areas against land grabs.

Land tenure defense

Documented case studies of land grabs can be used to raise public awareness. Press releases and media engagement can also help to put pressure on resolving a land grab.

Consider if a lawsuit is possible and appropriate. Pro-bono lawyers associations and NGOs may be able to offer free legal advice on land grabs.

Community land use and management planning

Hold discussions within the community about what changes they want to make based on the results of the documentation. The discussions should also assign people to be responsible for the work needed to make those changes.

8. Appendixes

Appendix 1: Useful resources

Mapping guides:

- For an overview of the strengths and weaknesses of different mapping procedures, see: Good Practices in Participatory Mapping, IFAD https://www.ifad.org/documents/10180/d1383979-4976-4c8e-ba5d-53419e37cbcc

- To make sure your mapping is conflict-sensitive: Goddard, N. and M. Lempke. 2013. Do No Harm in Land Tenure and Property Rights: Designing and implementing conflict sensitive land programs. Cambridge, MA: CDA Collaborative Learning Projects. http://cdacollaborative.org/publication/do-no-harm-in-land-tenure-and-property-rights-designing-and-implementing-conflict-sensitive-land-programs/

- For a free online training course on participatory mapping: CTA. 2010. Training Kit on Participatory Spatial Information Management and Communication. CTA, The Netherlands and IFAD, Italy (ISBN: 978-92-9081-446-7) http://pgis-tk-en.cta.int/

- For 3D Mapping: Rambaldi, G. and J. Callosa-Tarr. 2002. Participatory 3-Dimensional Modelling: Guiding Principles and Applications. http://www.iapad.org/wp-content/uploads/2015/07/p3dm_arcbc.pdf

- Community-Led Resource Documentation at the Village Tract Level in Myanmar: A Guide for CSOs. 2016: Myanmar. USAID. Available in English and Myanmar

- Undertaking a Community Level Land Use and Tenure Assessment: Guide Questionnaire for Field Enumerators 2016: Myanmar. USAID. Available in English and Myanmar

Other manuals:

- For a guide on documenting land tenure and developing strategies to support communities to protect their land claims, see: Knight, R. J. Vogelsang, M. Brinkhurst. 2016. Community Land Protection Facilitators Guide. NAMATI. https://namati.org/resources/community-land-protection-facilitators-guide/

- For resources on social science research tools: Inya Institute. 2015. Introduction to Social Research methods manual. Available in English and Myanmar: http://www.lift-fund.org/introduction-social-research-methods-english-and-myanmar. Other training materials available at: http://www.inyainstitute.org/wpcontent/uploads/2014/03/TrainingModule_english.pdf

- For guidelines and trainer's manuals on how to conduct free, prior and informed consent produced by Oxfam Australia: see: https://www.oxfam.org.au/what-we-do/mining/free-prior-and-informed-consent/

- For guidelines to support the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, see: FAO. 2016. Governing Tenure Rights to Commons

- For step-by-step instructions on how to document human rights violations, particularly indigenous peoples' collective rights, and use the data gathered for advocacy, see

Handbook produced by AIPP: http://aippnet.org/indigenous-peoples-human-rights-defenders-field-handbook-on-human-rights-documentation-and-advocacy/

- For educational and training materials on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) produced by AIPP, see available docs in Myanmar and English: http://aippnet.org/rights-updated-training-manual-on-the-undrip-volume-2/

- For practical guidance on how to raise the awareness of media practitioners on indigenous peoples' rights and issues and encourage media practitioners to report more on indigenous peoples' concerns, see available docs in Myanmar and English language: http://aippnet.org/practical-guide-for-media-practitioners-on-indigenous-peoples-issues-in-asia-new-publication/

Where to find documents:

MYLAFF: mylaff.org

Burma Library: www.ibiblio.org/obl

Where to find maps:

Google Earth

MIMU: http://www.themimu.info

Appendix 2: Stakeholder Analysis

Preparation Phase

Meeting about FPIC, Risk, and Documentation Plan

Invite:

Training of facilitators

Invite:

Documentation Phase

First Village Meeting

Invite:

Documentation Topics:

Village Boundaries

Invite:

Customary Tenure Documentation

Invite:

Village Verification Meeting

Invite:

Communication and Advocacy Phase

Meeting to share results of research with other villages

Invite:

Report Launch

Invite:

Stakeholder consultation

Invite:

Appendix 3: Documentation Design

Community Key Issues

What are the most important things to document in this community? Are there conflicts over land that should be documented? Are there special cases of customary tenure that should be documented?

Village Basic Information

Who:

How:

Local history

Who:

How:

Land use and land management

Who:

How:

Resource tenure and transfers

Who:

How:

Institutions

Who:

How:

Arbitration/Conflict Management

Who:

How:

Livelihoods

Who:

How:

Cultural Dimensions of Land: Religion, History, Music, Art, Dance, Festivals

Who:

How:

Appendix 4: Master list of questions

This master list of question is an exhaustive list, from which the documentation team can select the questions the most relevant to their objectives.

<u>**Key Issues**</u>

What are the most important aspects of customary tenure in this village that should be documented?

Are there any major conflicts over land? If so, describe what happened.

Have there been any major impact from armed conflict in village? If so, describe what happened.

Are there any special or unique examples of customary land tenure system in the village?

<u>**General Information**</u>

What is the current population?

What ethic nationalities live in the village? How many households for each?

Ethnic group(s), Clans/Kinship

Ethnic group(s)	Clans/Kinship	No. of HHs	Population
Total			

What religions do people follow in the village? How many households for each?

What was the population size in the past? 10 years ago? 50 years ago?

Who is moving into the village?

Type of migrant	How many people	Why? Give more information
IDPs avoiding conflict somewhere else		
Migrant workers coming for jobs		
People marrying into community		

Who is moving out of the village? Have any moved out to avoid conflict? How many people? Have people moved out of the village for work? Where do they go, and what kind of work? Do they leave for the full year, or only part of the year? Which part of the year?

What infrastructure is in the village?

School / Health clinic / church/ monastery/ other?

How do people travel to and from the village? By car / motorbike road / seasonal road / walking path / boat

What are the sources of energy/power/electricity in the village?

	# of Households	Who pays for the power? How many years have they used this power source?
Fuelwood		
Solar panel		
Generator		
Hydropower		

Have there been any NGO or CSO projects in the village? If so, which organization and what did the project do?

Village History

These are some questions to use when making the village timeline. Have a map available to use as a reference during the discussion.

When was the village established in this location?

Has the community moved to different places in the past? If so, why? Tell the story of previous village locations and why the village moved. (e.g. forced to resettle by military, or moved because of land grab, or moved because of natural disaster).

What events caused a change in village population? (conflict / famine / epidemic / forced displacement)

What important political changes have happened in the village? When did they happen?

Tenure, Access, and Transfer

Tools: sketch maps, satellite image map, focus group discussion, household resource sketch maps

Who: diverse focus groups, household interviews

Tenure and Access

What are the different ways to claim land (individual / household / family / clan / tribe / village/ ancestral domain / other)?

What kind of resources are claimed by each of these groups? (e.g. in some systems forests can be claimed by clans, households, and villages for different uses)

For each land use type, ask:

What kind of claims are there on this land use type?

Who can make claims on this land use type?

Land use type	Who can claim	What resource	How can it be transferred
Forest – community protected forests	Clan or community leader	Community forest area; responsible for resolving disputes over forest resources	Inherited
	Households living in the community	Timber, fuelwood, wild crops	Living in the village as part of the community
	Community	Timber and fuelwood for community buildings (school, meeting area, clinic, etc.)	Living in the village as part of the community
	Individual/Household	Forest area granted to individual or their household in recognition of services to community	Inherited by descendants
Forest-individual woodlot	Household	Planted, harvested, and replanted by household. Fuelwood, timber, wild crops	Claimed initially by planting trees; inherited by descendants of original tree planter; may sometimes be sold
Grazing land	Community	Households within the community use common grazing land	Living in the village as part of the community
Orchard	Household	Crops	Claimed initially by planting the trees; need permission to plant depending on where you are planting; inherited by descendants of original tree planter; may sometimes be sold

Example for forests, orchards, and grazing land. Fill in for all relevant land use types and resources used by the community

What are the ways someone can access and use land or a resource?

Are there areas where people can collect vegetables and go hunting on land that is claimed by other people?

Are there resources that anyone from the village can collect and use?

Transfer

How can someone establish a claim on a resource? (inheritance / purchase / marriage / lease / gift / adoption / other)

Are the rules about how someone can establish a claim different for different land use types?

How is land inherited? How is land divided between family members?

What are the differences in inheritance rules for men and for women?

If someone wants to sell land, what are the rules and conditions? Who can they sell to? Who are they not supposed to sell to?

If someone comes to the village from outside, what are the rules for them to claim or access land? Can they buy land? Under what conditions?

If someone moves out of the village, what happens to the land that they claimed?

What are the rules for leasing land to someone else?

Can land be used as collateral for a loan?

Marking boundaries

What are the neighboring villages? Who was responsible for the delineation of the boundary of the village territory? When?

How are boundaries between villages marked?

Who is involved in the designation of village boundaries?

Are the boundaries clear?

Are there parts of the boundaries where the villages disagree on the boundary location?

Are there areas along the boundary that are shared by people from multiple villages?

Within a village, how are boundaries between land claims marked? (stones / trees / posts / bushes / streams / crops / marking plants / other)

Access

What are the ways someone can access and use land or a resource that is claimed by others?

What can tenants do on land they are leasing/using? What are they not allowed to do?

What are the land rights of people born elsewhere but who live in the community as their primary place of residence?

Questions about vulnerable groups

Are the rules to claim, use, inherit, or buy land different for men than they are for women?

If a woman is widowed, what land can she claim? What land does she have access to? What land can her children inherit?

If a child is orphaned, what land can they access? What land can they inherit?

Claims recognized by government

What land registration documents are held by people in this village? How many people have them? On what land?

	How many HH	What type of land?	When did they get the form? Describe the process. Who didn't get the form?
Form 7			
Form 105			
Tax receipts			
Registration from EAO			

•	• No. of person	• Area (in local unit)
Having certificate		
Not having certificate		
Total		

If you have government registration, describe the process of getting the registration. Who was involved? What are the benefits? What are the problems?

Institutions

Start with a group discussion.

Using social mapping, discuss: Ahat are the main institutions in the customary system? What are the institutions in the government system? What are the EAO institutions? What are the roles of these institutions? How do they interact with each other?

Tools: venn diagram, focus group discussion, semi-structured interviews

Who: leaders of the institutions identified in the venn diagram, vulnerable group members (probably in separate groups, or individual interviews of leaders and of some people who are not involved in leadership positions)

In the focus group discussion, ask the following while making the social mapping or in the discussion after all the institutions are included on the social map.

What are the institutions in the community? (customary committees/ political groups/ religious groups/ women's groups/ youth groups/ resource user groups like community forestry groups, irrigation groups, fishermen groups / other)

Which institutions connect multiple villages/communities? Are there customary institutions that connect villages/communities?

Who are the leaders in the community? (village chief / religious leaders / leaders of the different community groups / leaders of groups above the community level)

How are decisions made in the village? Who is involved in making these decisions?

How are decisions about land made in the village? Who is involved in making these decisions?

What types of decisions need to be made with a community meeting?

What types of decisions need approval of the village chief, the community, or a committee?

What customary institutions are there? Which ones are strongly practiced? Are there any that used to be strong but are now weak or no longer exist?

How are members of village leadership (chiefs, committees, other leaders) selected? How long do they hold the position? Can they be removed from the position if they are not acting in the community's interest?

What is the relationship between customary institutions and government institutions?

What is the relationship between customary institutions and governmental institutions in dual administration areas?

Land Use

Talk about current land use patterns and changes from past land use. What products do you cultivate or collect on different land use types? Go through each land use type (terrace, garden, shifting cultivation, different types of forest) and discuss 1.how they are managed 2. the main products (fuelwood, rice, vegetables) 3. who can claim this land type 3. who can access (borrow, rent, hunt, etc) this land type.

You can record a summary of information on land use types in a table

• Land Use Type	• Type of Claim	Crops		• Area (in local unit)
		Subsistence	Commercial	
• Total land area				

Focus Group Discussion: Start with a general discussion of the land use types in the village territory. Have a map available for reference during the discussion. Either make a land use type map, or use one from a previous mapping session.

What are the main types of land use? (irrigated paddy / rainfall paddy / taungya / orchard / woodlot / grazing land / community protected forest / sacred areas /

How has land use changed since they were children?

What are the most important changes in land use in the last 50 years? The last 10 years? 5 years?

How is land use changing now? What do you expect land use to be like in the future? (in 5, years, 10 years, when children are grown and have families)?

What important changes do you expect? What important changes would you like to see happen?

For each land use type, ask:

What crops are planted?

What products are collected? Fuelwood? Timber? Thatch? Bamboo? Wild fruits and vegetables? Medicinal Plants?

Which crops are for household use? Which crops are sold?

Are there any crops/products that are not supposed to be/allowed to be sold?

What are the rules for managing the land?

Is this type of land being converted to another land use type? What land types are expanding? What types are shrinking?

What are the rules for converting land from one use type to another?

Who can claim this land use type?

Are there people in the village who do not have claims or the ability to access/use this land use type? What are the rules about selling this type of land?

Who can buy this type of land? Who can sell this land?

Who can it be sold to? Is there anyone who cannot be sold this type of land?

Are there any documents recording claims to this land use type? (government forms, tax documents, other records)

Can people access some resources on the land without holding the main claim? Is it possible to borrow or loan the land? What are the rules for using the land as a borrower?

What is the trend in productivity? Can you get the same harvest, more, or less than in the past?

What are the difficulties managing this land use? Are there pests? Soil fertility problems? Water shortages?

What do you think will change about this land use in the future?

What do you think the land use will be like when children are grown and have families?

What would you like to see happen in the future with land use? What do you hope will happen?

What should change so that what you hope for will happen?

Some land use types will have questions unique to them. The following questions are specific to each land use type. Depending on what land uses are in the area you are documenting, select the relevant questions.

Permanent Agriculture

How are decisions made about irrigation? Is there any committee or institution managing irrigation?

Are there customary rules about irrigation? If so, what are they?

Grazing Land

What livestock are there in the community?

Where does the livestock graze? Is there any specific grazing land?

Is the grazing land used the whole year or only part of the year? (example: grazing on shifting cultivation fallows or paddy fields after harvest to fertilize the soil)

Is the grazing land communal, where everyone can use it?

Can people from other village use the grazing area for their livestock?

Are there rules about how many livestock can use the grazing land?

Are there rules for management of different kinds of livestock?

Who is responsible for taking care of the livestock? Is there a specific person who takes care of them for the community, or does each household take care of their own livestock?

If livestock damage crops, what happens? Is there any fine or penalty? Is this a source of conflict in the community?

Local name	Types of Land Claim	Area (in local unit)	Available period
Total area of grazing land			

Orchards

Home Gardens

Agribusiness

Is there agriculture claimed by private companies on the community land?

How did they get the land?

Do they have any registration forms from the government?

Do they have permission from the community and/or according to the customary system?

If a company wants to use land in the community, are there rules for whether or not they can? If they are allowed, what are the conditions? Who can give permission? Are there rules for what they can and cannot use the land for?

Shifting Cultivation

How is shifting cultivation managed in the village?

How are areas to clear chosen each year? (village meeting / meeting between household groups that farm together / individual decision)

What is the decision for where to clear based on? (based on number of years fallow / condition of forest fallow / presence of plants that indicate that the plot is ready)

How do individuals/households choose where to clear?

What are the rules for claiming shifting cultivation land?

Do households keep their claim to the plots that they clear when those plots are fallow, or is the fallow claimed in common by the community?

Do households return to the same areas that they have cleared before? After they clear the land, do they keep the right to clear the land again after the fallow period?

Who can collect forest products from fallows?

Do some families/households have special claims to clear specific areas within the shifting cultivation land? How did they get this right?

Are there any households that do not have access to shifting cultivation land? If so, why?

Make a seasonal calendar for shifting cultivation labor inputs (clearing, planting, weeding, harvesting) and crops (fuelwood, rice, vegetables, etc).

Make a calendar that shows labor inputs for one plot over the full swidden cycle (first year, second year, third year, etc. until I t is cleared again for planting).

How is fire managed? Do people make firebreaks?

How is soil fertility managed? Are there special plants or trees or fertilizers that improve soil fertility? Are there practices to control erosion?

Will there be shifting cultivation land in the future? Why or why not?

Forests

What are the different types of forests? (community protected forest / woodlot /watershed forest / pine forest / sacred forest)

Who claims or can use different types of forest? What forests are claimed by households? What forests are claimed by the community?

Are there forests protected for water supply?

Are there forests protected for religious reasons?

What are the rules for forest use?

Who can extract what kind of forest products? (timber / bamboo / rattan / wild vegetables and fruit / medicinal plants / other)

What is for household use only? What can be sold?

How has the forest changed over time? Why has it changed?

What works well about forest management, and what should be changed?

What benefits do you get from the forest (pest control / home for wildlife / protecting water source / other)?

Types of forest	Local name	Type of Land Claim	Timber products	Non-timber products	Area (in local unit)
Total area of forest land					

Government Forest Classifications

Are there any forests in the area classified by government?

Show on the map where the government forests are located.

	Acres	Year Established	How was it established? Was there a notification process? Who gave permission?
Protected Area			
Reserved Forest			
Public Protected Area			

Does the customary area have a community forest? Is it recognized by government? Who is a member of the community forest user group? Who is on the community forestry committee? Why did they decide to apply for a community forest certificate? Is the community forest successful? What are the challenges for managing and protecting the community forest?

Are there any logging projects within the customary area?

If there is logging, who is involved? Who gave permission? Is there any conflict over logging?

Is there any conflict about the forest area? If so, describe the conflict, who is involved, and the current situation. How have people tried to resolve the conflict?

Sacred Areas, Cultural Sites, Conservation Areas

How does the community protect or preserve ceremonial or sacred sites? What rules protect these areas?

How does the community manage areas important for community culture or history? What rules protect these areas?

How does the community manage graveyards or burial sites? What rules protect these areas?

How does the community protect areas that are important for wildlife or the environment?

How are these rules enforced? By whom? What are the penalties for breaking these rules?

Fisheries

Where do people fish? Lakes / ponds / streams / rivers / ocean / fish ponds

Who is allowed to fish in those areas? Just community members / neighboring villages / anyone

Is there a fishing auction system here? If so, who buys the fishing rights?

Are there any fishermen organizations / associations / unions? If so, what does the organization do?

What fishing methods are currently used?

Nets: nets from boats? nets across streams? What size holes?

Destructive methods: poison (traditional or modern chemical?) / dynamite / electric shock

Traps

Are there rules about what fishing methods are allowed? From the customary system? From the government?

What rules about fishing do people follow?

Are there any species that are not allowed to be fished?

Are there any areas where fishing is not allowed? Why is fishing not allowed there?

What is the trend in fisheries population? Are there changes in average size of fish? Are some species disappearing? Why are these changes happening?

How can fisheries be managed so that there will be enough fish for future generations?

Hunting

Why do people go hunting in this community? Recreation / food / income / cultural / ceremonial

What animals are hunted for food?

What animals are hunted to sell animal parts? (pangolin scales, bear paws and bile, tiger and leopard skins, tortoises, etc)

What animals damage crops? Are they hunted because they damage crops or attack livestock?

What are the customary rules for hunting?

What happens if someone does not follow the rules?

Are there any animals you shouldn't hunt according to culture and custom?

Are there any animals that have special cultural importance?

Is there any time of year when hunting is not allowed? Is hunting allowed to hunt during breeding season?

Are there areas where hunting is not allowed?

Is the population of wildlife changing over time? How has it changed since you were young?

Why is the population changing?

What should be done to make sure there will be wildlife in this area for future generations?

Water

Irrigation Water

Household Use Water (washing, drinking, bathing)

	Sources	Overall quality	Difficult to access?	*Hot Season Issues?*	*Rainy season Issues?*	*Cool season Issues?*	Comment; any problems?
Drinking							
Domestic use (washing, cooking)							

Agriculture-irrigation						
Hydro-power						
Any other?						

How does the community manage water – including springs, ponds, and rivers?

What can community members do and not do near water sources? Can they cut trees along the water source?

How does the community keep its waters clean and abundant?

How does the community manage water in times of scarcity or drought?

If neighbors have traditionally used the community's water source(s), how is water managed between communities?

Are there conflicts about water use?

If there are conflicts, how are they resolved?

Livelihoods and Equity

What are the main livelihoods in this village?

Food security: Are there times during the year where people do not have enough food? When, and for how long? How many people in the village (or how many households, or what percentage of the village) have trouble getting enough food?

Wealth ranking

	Wealthier Household	Medium Household	Poorer Household
House	Cement house	Wooden house	Bamboo house
Land	Large irrigated paddy land and orchard	Smaller irrigated paddy land and taungya	Taungya
Food Security	Grow enough food for the whole year	Grow enough food for 9 months	Grow enough food for 6 months

Income	Family member is trader	Family member has a small shop	Family member works on road construction
Number of Households	50	100	30

Conflict Resolution/Arbitration

What kinds of conflicts occur over land or resources in the village?

How do people try to resolve the conflict? Who is involved in resolving the conflict?

Does the customary system have ways to resolve conflict? Who is involved? What are the steps for resolving a conflict in the customary system?

If someone breaks a rule in the customary tenure system, what are the consequences? What are the penalties?

What is the relationship between the customary system for conflict resolution and the government judicial system? When do people use the customary system, and when do they use the government system?

What conflicts are not being successfully resolved? How can the situation be improved?

This table has examples of conflicts. Fill in the first column with the types of conflict that are relevant to the local context

Types of Conflict	Between individuals	Between Households	Between Villages	Between ethnic groups	Between village and company	Between village and government
Irrigation access						
Forest						
Shifting cultivation						

Is there a conflict over land grabbing in the customary land area? Who grabbed the land? When? Please tell the story of what has happened with the land grab. Who is involved? How are they trying to resolve the conflict?

Is there a conflict over land with the government? If so, please tell the story of what has happened. Who is involved? How are they trying to resolve the conflict?

Culture

Festivals

Name of Festival	When is it held	How is it celebrated

Are there areas of special historical or cultural significance on the community's customary land? If so, how is it protected?

Are there areas of special religious significance on the community's customary land? Where? What is their importance to the community?

Appendix 5: Example of outlines for reports

<u>Example of outline for full field report</u>

1. **Objectives of documentation**
2. **Methodology**
3. **Village background and history**
4. **Land use and management**
5. **Tenure and transfer**
6. **Livelihoods**
7. **Village institutions**
8. **Conflict resolution**
9. **Cultural values**

<u>Example of outline for evidence-based advocacy report</u>

1. **Brief introduction on documentation process**
2. **Key findings from the documentation**
3. **Key recommendations for policy makers and authorities**

<u>Example of outline for redressing land grabs</u>

1. **Brief introduction on documentation process**
2. **History of land use and tenure in the area, including land grab**
3. **Current issues: what land was grabbed, what and whose rights have been denied?**
4. **What impacts of land grabs on communities?**
5. **Recommendations to solve the land conflict**

<u>Example of outline for community land use planning</u>

1. **Brief introduction on documentation process**
2. **Key findings on land use and management**
3. **What issues to be addressed to ensure sustainable livelihoods and equity?**
4. **Action points for the community to improve resource management**

Funded by

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Agency for Development
and Cooperation SDC

Implemented by

LAND equity

GRET
Professionals for
Fair Development