

# *Kaw* Policy Briefer

## The recognition, registration and governance structures of Karen Customary Lands (*Kaw*) under KNU Policy

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Although *Kaw* lands and traditional practices have existed for as long as the Indigenous Karen have lived in the hills of Southeast Asia, the formal recognition of this form of land management had not existed until recently. As the Karen National Union (KNU) continues to develop its policies and regulations to recognize and register *Kaw* and other land classifications, input from community members and civil society is essential, in order to strengthen these procedures and ensure that *Kaw* management systems are effective, transparent and able to support the needs and rights of the community members who live in the *Kaw* areas. The purpose of this Policy briefer is twofold:

- Provide an update on the KNU's CLC *Kaw* registration and administration regulations and procedures
- Provide suggestions/ recommendations about how the *Kaw* registration procedure and how both Central and Local-level *Kaw* administration can be strengthened

## Section I: Background and Legal Status of the *Kaw* in Kawthoolei

### What is the “*Kaw*”?

Karen communities have been living in the forested areas for numerous generations, and have continuously passed on their traditional practices used to provide for themselves from the forest resources and farmlands that surround them. The term that the Karen traditionally have used to describe their lands and their relationship with them is ‘*Kaw*’, which encompasses both the physical lands where customary practices are conducted, as well as the community-based governance system mediating Karen peoples’ relationships with their lands.

*Kaw* lands include the ancestral lands, forests, waters, and natural resources of Karen communities that are governed by local institutions rooted in each particular community’s history, cultural identity, and way of life. The *Kaw* typically have a number of different land use types, including sacred areas, protected forests, rotational upland agriculture, zones, lowland permanent agricultural fields, forest gardens, household residences, etc. Each of these areas is managed through community-developed regulations and taboos, which are enforced by designated *Kaw* leaders/ committees.

*Kaw* are not limited to a single model or governance structure. For example, a *Kaw* can consist of a single community, or multiple communities that have agreed to cooperate to cultivate and protect their lands. Furthermore, not all *Kaw* and *Kaw* practices are overseen by animists believing communities- some Karen Christian and Buddhist communities have also incorporated traditional land management practices or taboos into their own worldviews and land regulations.

Finally, it is important to note that- according to the Karen communities who have been practicing *Kaw* traditions for many generations- these practices and systems are fluid and evolving. *Kaw* communities have adapted to changing social, environmental and economic factors over the years; and will continue to do so in the future.

For a more formal definition of *Kaw*, the following excerpt is taken from Article 1.4.2 of the Kawthoolei Land Policy (KLP):

*(Kaw is) the Karen form of customary tenure. It encompasses lands that are used and governed under the communal stewardship and tenure arrangements of a particular village community. Kaw is constituted by:*

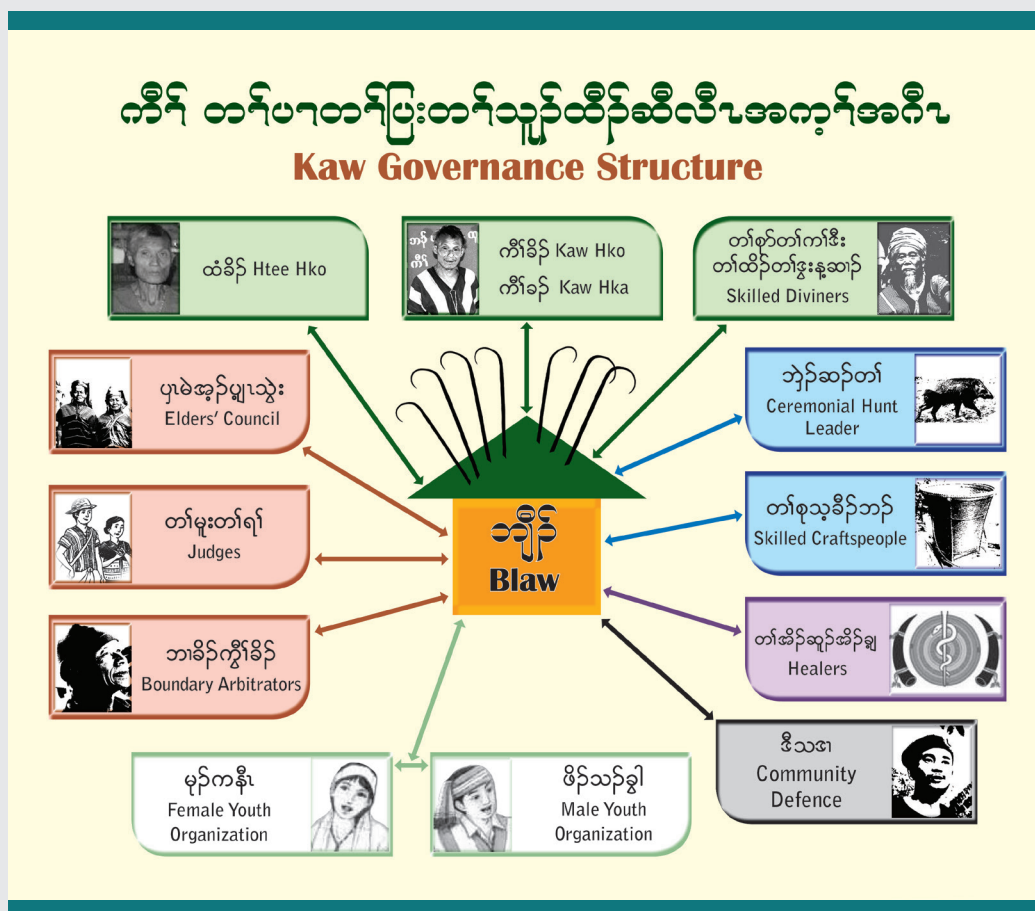
- *Collectively occupied and/or used land, forests, fisheries, water and related natural resources—such as community forests, grazing lands, village (residential area), community gardens, fisheries, and some “ku”-upland rotational farming zones (including fallows), among other categories.*

- Land, forests, fisheries, water, and related natural resources occupied and/or used by families or households—home lots, home gardens, “ku”-upland rotational farming zones (including fallows), orchards, and lowland paddy, among other categories.
- Sacred sites such as traditional burial grounds
- Cultural heritage sites

## Demarcated and locally-recognized *Kaws* in Kawthoolei

Kaw lands have been demarcated, land and forest use rules and regulations have been documented, and Kaw Committees are functioning in 196 Kaws (with a total land area of more than 1.5 million acres) in five districts of Kawthoolei<sup>1</sup>. Most of this demarcation work has been conducted during the last five years, with technical assistance from the KNU Agriculture and Forestry Departments (KAD and KFD), as well as some Karen CSO's. These *Kaw* are recognized by local authorities (including KNU Village Tract and Township offices) and have a wide range of sizes, governance structures and livelihoods. The majority of *Kaw* that have been demarcated so far are located in the mountains of Northern Kawthoolei, where there has not been much infrastructure development and life still moves at the same pace as it has for hundreds of years.

District	# <i>Kaw</i> demarcated and locally recognized	<i>Kaw</i> Area (acres)
Hpa-an	1	7,366
Kler Lwee Htoo	1	8,120
Taw Oo	5	49,421
Mergui-Tavoy	21	708,323
Mutraw	168	749,331
<b>Totals</b>	<b>196</b>	<b>1,522,561</b>



<sup>1</sup> data obtained from the Kawthoolei Land Data Management Office, May 2019.

## Kaw management systems

The Kaw Governance Structure diagram conceptualizes how a typical Kaw administrative system is organized and arranged around different aspects of community life within the Kaw. As portrayed in this diagram, the committees are not arranged in hierarchical order, but they each have a distinct and inter-related role in the Kaw communal governance. These various committees mainly meet when a decision needs to be made and are most often chosen through consensus during community meetings. Multiple committees ensure a system of checks and balances, and ensure greater community participation in decision-making.

The *Htee Hko*, *Kaw Hko*, and *Kaw Hka* are male ceremonial leaders who inherit their positions, and whose major role is to coordinate the annual ceremonial rituals and associated agricultural activities. Most other roles, such as the judges, elders' council, healers, and diviners include both men and women who are recognized by the community for their knowledge and skills. These representatives are chosen based on combinations of merit, inheritance, and community consensus.

Although hereditary leaders govern ceremonies, the elders, diviners, and other knowledge-holders also wield great influence in the social life and environmental governance of the Kaw. The elders and skilled diviners are consulted for their knowledge of the land's history, ecological condition, and relations with spiritual beings.

As shown by its location at the center of the diagram, Kaw governance traditionally revolves around the *Blaw*- a ceremonial meeting hall that is traditionally present in every Karen village. In the *Blaw*, elders perform ceremonies, convene community meetings, and teach youth the knowledge, taboos, and traditions of the Kaw.

While the ceremonial system coordinates communal activities such as upland rotational cultivation, internalized taboos govern individual and interpersonal actions. Since villagers understand social and ecological consequences of violations, these taboos prevent things like stealing or overhunting. When violations or disputes do occur, elders, judges, and diviners are called upon to solve the problem and restore harmony.

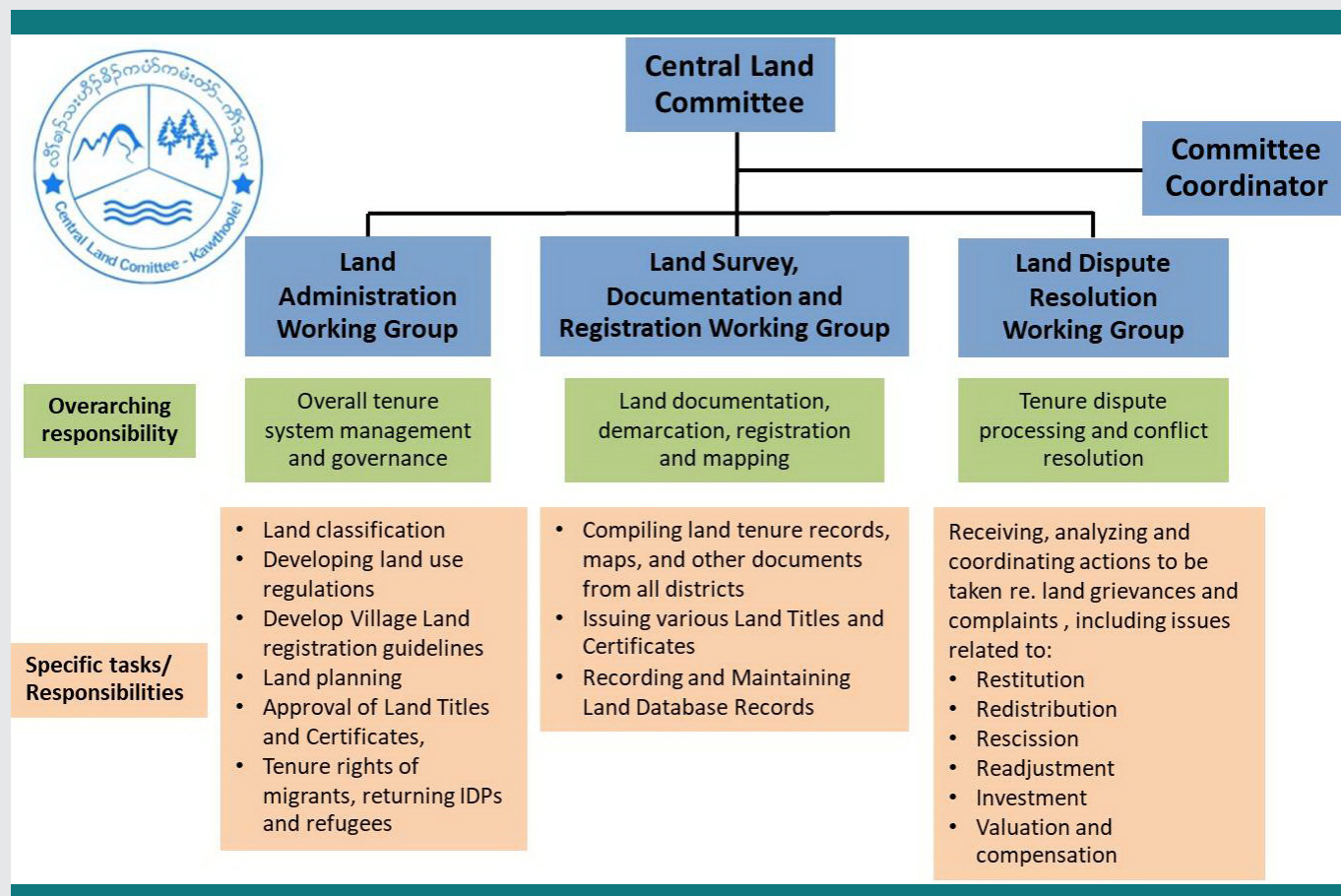
## Kaw recognition and administration under the Kawthoolei Land Policy

Within the Kawthoolei Land Policy (KLP), customary land rights are specifically provided for. For example, Objective 1.2.4 of the KLP is... *To recognize, prioritize and promote **customary tenure rights and practices** and to ensure the sustainable occupation, use and enjoyment of communal land and related rights, especially by the poor, marginalized and vulnerable peoples and long-standing resident village communities, free from encroachment or unauthorized occupation or use by others.*

Furthermore, KLP Article 3.3.1 states that... *Land, forests, fisheries, water and other related natural resources have **social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with Kaw (customary tenure) systems.** KNU Authorities must recognize, respect and always take into account these non-monetized values for peoples and village communities with Kaw tenure systems.*

In KLP Article 3.3.5 it further explains that... *In cooperation with the Central Land Committee and with the consent of customary authorities, the KAD shall work with people and village communities to **clarify and demarcate**, when appropriate and applicable, the spatial and temporal boundaries of communal land held by village communities in Kawthoolei. When surveys are completed for those uses that can be mapped, the **boundaries are to be shown on maps and surveys filed with the Registry.***

The **Central Land Committee (CLC)** has the mandate to address all issues related to the KLP and its implementation, including Kaw registration and final approval. CLC members include representatives from 7 KNU Departments (Fishery and Livestock, Mining, Agriculture, Forestry, Interior and Religion, Justice, Organising and Information), as well as at least two Karen CBO representatives. The CLC serves



a 4-year term, which follows the KNU Congress cycle. The CLC is comprised of **three Working Groups**, whose roles and responsibilities are listed in the chart above.

Due to the increasing number of lands being demarcated and registered in Kawthoolei, it was necessary to establish the **Kawthoolei Land Data Management Center** in 2016, in order to compile and safeguard land data. After Kaw lands are approved by the CLC, the locations and areas are recorded in the Land Management Center's database, along with the other land classifications that have been demarcated and registered under the KLP.

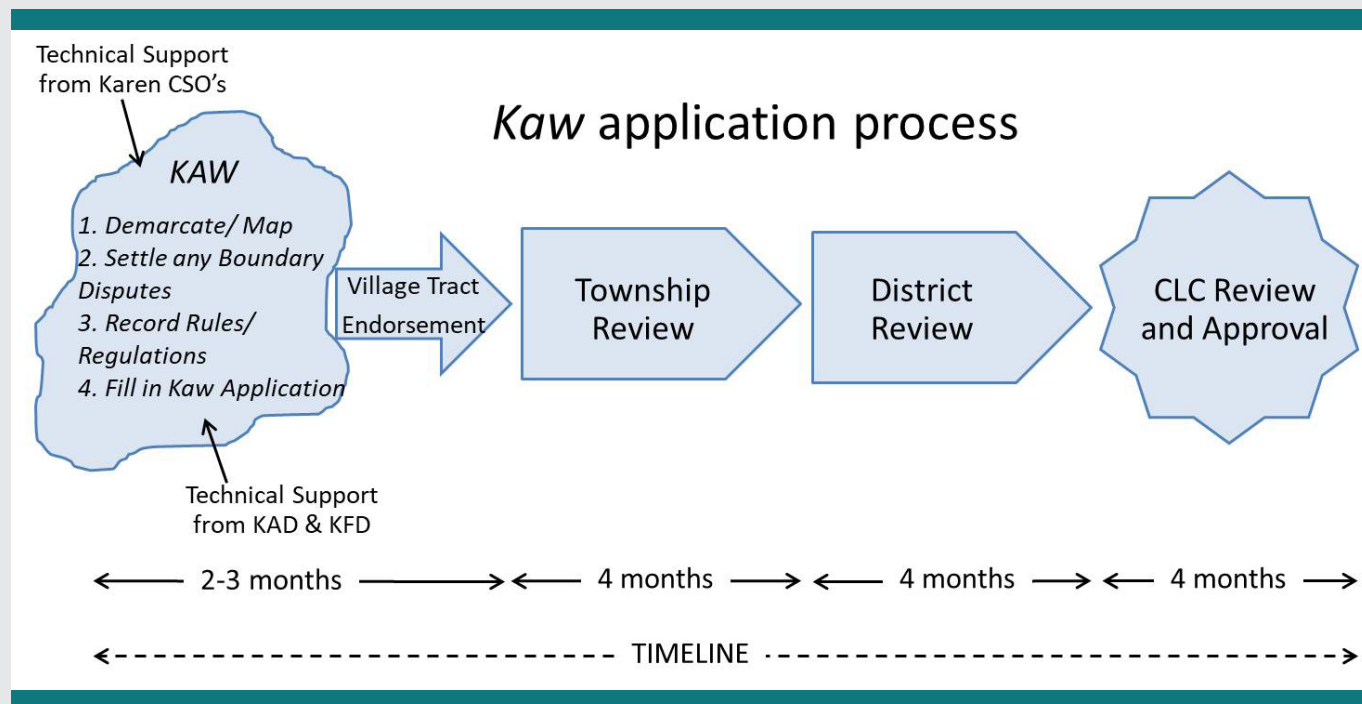
## Section II: *Kaw* registration procedures

Although *Kaw* lands have been demarcated and recognized for local authorities for many years, the process by which *Kaw* lands would be recognized and recorded by KNU Central authorities had not been formalized until recently. Since 2015, KNU Central authorities have been researching and deliberating about how to establish a system under which locally managed and administered *Kaws* could be integrated into the existing KNU land and forest administration structures. As referenced above, *Kaw* already had been demarcated and registered locally, and the *Kawthoolei Land Policy* already explicitly outlines the rights for communities to manage their own *Kaw* lands. Therefore, in order to formalize the *Kaw* application/ registration procedures, the CLC convened a meeting in March 2017, at which the following points were agreed upon:

- 3 communities were selected as pilots for the CLC application/ registration procedures- *Kamoethway* (Mergui-Tavoy District), *Mae La Ah Kaw* (Hpa-An District), and *Kaw Thay Ghu* (Mutraw District).
- Review and approval procedures at the Township/ District/ Central levels were drafted and approved by the CLC.
- After the pilot *Kaws* have completed the application/ registration process, the Central Land Committee will work to streamline the application procedure, ensuring that it can be completed within one year from the time the *Kaw* application process begins.



- Following the registration of the 3 pilot Kaws, a series of meetings will be conducted by the CLC throughout Kawthoolei to inform the public about the Kaw registration procedures. These meetings will at first be concentrated in areas where Kaw practices are still strongly practiced.



### Key points of the *Kaw* application procedure:

- The total time required to complete the application and receive final approval from the CLC **should not be more than one year**.
- After a *Kaw* community (or multiple communities) has decided to apply for official recognition and registration from the KNU authorities, community members will conduct a **participatory ground-truthing and demarcation of the *Kaw* boundaries** and generate a map of their *Kaw* using GPS/GIS devices.
- If there are any **discrepancies or disagreements about the *Kaw* boundaries** with neighboring *Kaws*/ communities, the *Kaw* Committee will meet with representatives from the neighboring *Kaws*/communities to try to resolve this issue between themselves.
  - If the disagreement can be resolved between the two parties, a formal ceremony will be conducted to document their decision and the CLC Boundary Resolution Form will be completed by representatives from both parties and attached to the *Kaw* application.
  - In cases where the dispute cannot be solved by the representatives from the *Kaws*/ communities, the Township or District Land Dispute Committee will be summoned to make a final decision about the location of the boundary.
- Following the demarcation and mapping, the *Kaw* Committee will convene a public meeting to **record the land and natural resource management rules and regulations** for their *Kaw*.
- After the *Kaw* land and natural resources regulations have been recorded, the *Kaw* Committee will work together with key *Kaw* members to **fill out the CLC *Kaw* Application Form**. To complete this form, the *Kaw* Committee must provide detailed information about the *Kaw*'s location, history, administrative structures, committee members' positions and names, land use types, land and natural resource management regulations, and penalties/ justice procedures for infractions against these regulations.
- After this form is completed and signed by the *Kaw* Committee Head, the application will be **sent to each higher level of authority** (Village Tract/ Township/ District/ Central) to be considered and reviewed before the application can be sent up to the next higher level.
  - Specific **review procedures** have been drafted by the CLC and must be completed for the Township (6-step procedure), District (5-step procedure) and Central (11-step procedure) levels.

- Before sending the application up to the next level of authorities, an **endorsement letter** is required from each of the administrative level after it has reviewed/ approved the Kaw application.
- In conclusion, for the final approval of the Kaw application from the CLC, the Kaw application must be completed/ signed and must also contain the following documents as attachments:
  1. Village Tract Endorsement Letter(s) (if the Kaw is located in more than one Village Tract, each Village Tract must provide an Endorsement Letter)
  2. Township Endorsement Letter
  3. District Endorsement Letter
  4. A detailed Land-Use Map for the entire Kaw area
  5. A Boundary Resolution Document (only for cases in which there has been a boundary disagreement with any neighboring Kaw/ community that required an outside intermediary)

### **Case Study: Mae La Ah Kaw community members demarcate and complete Kaw application**

The following sequence of activities were carried out in the Mae La Ah Kaw in order to initiate the Kaw Application processes:

1. A community-level consultation was conducted among 44 community members as well as representatives from neighboring communities. At this meeting, discussions were held and information was shared about participatory mapping and types of land uses for this area.
2. Following this meeting, an 18-member demarcation team conducted a participatory survey and land demarcation of the Kaw lands using GPS/GIS machines. Following the initial demarcation, a second demarcation was conducted by the same 18-member demarcation team the following week, in order to verify the original measurements.
3. After the mapping was completed, a meeting was held with 13 village representatives to record the Kaw rules and regulations that have been used to manage the different Kaw land use areas.
4. Following the recording of the Kaw management regulations, a participatory review all of the information and data for the Mae La Ah Kaw was conducted. This information was then used to complete the KNU Kaw application form during two workshops on consecutive days, at which 63 and then 60 community members participated. After the Kaw application was filled-in and supporting documents were attached, it was forwarded to the Hpa-An Township Office for review, according to the Kaw application procedures.



Activity 2: Participatory Ground-truthing and Demarcation



Activity 4: Community members providing input to complete the Kaw Application Form

## Section III: Strengthening KNU *Kaw* registration and administration procedures

The *Kaw* registration and administration systems that have been developed by the KNU's Central Land Committee are impressive and represent a historic precedent for the formal recognition of customary land management practices in Myanmar/Burma. It is especially encouraging that these processes have been developed through public consultations and piloting among community members and civil society. The current frameworks for *Kaw* registration and administration lay out a transparent process with multiple checks and balances to ensure that the *Kaw* areas and their administrative systems are systematically documented and able to effectively manage their lands and natural resources in a sustainable manner.

This is not to say, however, that all aspects of the existing model are perfect: a number of challenges still exist and there are some parts of the registration procedures and administrative systems that will need to be strengthened, especially as more *Kaw* are registered.

At the local *Kaw* governance level, the continuing challenge of translating long-held beliefs and traditional land management practices into formal written documentation will need to be addressed. Technical support can be provided by the CLC and Karen CSO's in order to train community-based staff to be able to record and monitor traditional methods of land and natural resource management, and to serve as liaisons between *Kaw* elders and KNU/CLC representatives.

Among the challenges at the macro-level, the most pressing issue is building the capacity of the CLC to effectively administer the *Kaw* and to support the development of the local *Kaw* leaders and administrative committees. As the CLC is composed of multiple KNU Departments, it represents a different structural model within the KNU Government. Therefore, it is critical that the CLC's roles/ responsibilities/ functions be clearly articulated and agreed upon by all of the key KNU government actors, in order for the CLC to be able to effectively fulfill its mandate.

### *Moving forward*

Based on the lessons learned from customary land laws and frameworks that have been established in other countries around the world<sup>2</sup>, this Briefer's Research Team has identified some points of the current *Kaw* administrative and application procedures that should be considered.

The most critical part of all the *Kaw* registration and administrative procedures and policies is, of course, the *Kaw* governance systems. Therefore, it is vital that these *Kaw* Committees and leaders are supported and strengthened. With this in mind, the following issues should be discussed, decided upon and then documented- either as internal administrative policy & procedures, or included in future versions of the *Kaw* Application Form:

- o Election/ selection processes for *Kaw* leaders/ committee members
- o Length of term for *Kaw* Management Committee positions
- o Clearly outlining the *Kaw* Land and Natural Resource Committee's (and other relevant community-based committees) roles and responsibilities. For example, which Committees or committee members should be responsible for:
  - Demarcation of village boundaries
  - Record keeping
  - Dispute settlement

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<sup>2</sup> Customary Land Management and Legal Frameworks: Experiences from Around the World; Ethnic Community Development Forum; Chiang Mai, Thailand; 2014



- Natural resource management planning
  - Approval of sale or transfer of family plots within the Kaw
  - Enforcement of regulations
- Reporting/follow up responsibilities of the Kaw Committee, including plans for regular or annual Committee meetings.

Besides these points, local Kaw leaders and committees should also clearly address their stances/ positions/ regulations regarding:

- Women and minority rights/representation on Kaw Committees/ Councils.
- Monitoring of forest and natural resources- developing a participatory system to observe/ measure how the Kaw's forests and natural resources have changed since the Kaw registration.

Besides strengthening the Kaw Committees, there are some minor adjustments that could be made to the current application form and registration procedures that would improve their effectiveness and transparency.

- The current Kaw Application Form would be strengthened if a section was added to record information about the selection/ election procedures for Kaw Committees, as well as amount of time the selected/ elected representative will serve.
- It would be beneficial to more clearly outline the roles of the CLC and the KNU Executive Committee (EC) in the final approval and issuance of the Kaw Certificate.

Since the CLC is the highest oversight body in the Kaw registration and administration procedures, the following points should be considered:

- The CLC should continue to conduct public meetings to share knowledge about the KNU's Kaw Policy with the public.
- The CLC should formulate procedures to provide technical support to build the capacity and strengthen Kaw Committees and management systems.
- The CLC should clearly outline their procedures for Kaw Monitoring & Evaluation, and regular follow-up with registered Kaws.

- As part of this procedure, the CLC should specify a period of time- following the initial Kaw registration- after which a registered Kaw will need to have a formal follow-up/ monitoring meeting with CLC officers to review the situation in the Kaw and strategize about future Kaw management plans.



They Kheu Mu Der Kaw members celebrating the completion of their Participatory Rapid Appraisal of natural resources and land use types.

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