



Kawthoolei Land Policy

Briefer

“Land to the native people”



KNU Land Policy public consultation, Law Khee Lah, October 2014

Background

KNU's first land policy was ratified during KNU's 9th Congress in 1974, based on the philosophy that "farmers will not to transfer their farmlands to others". By the mid-2000s, the land policy had become outdated, so in 2005 the Karen Agriculture Department (KAD) Chair, P'doh Thu Thay Kor, revised and updated the policy with a new slogan "land to the native people". The revised policy was approved by the KNU's Executive Committee (EC) during the KNU's 14th Congress on May 6, 2009. After a series of public consultations and seminars were conducted to amend and clarify some points, the current edition was adopted in December 2015.

The Kawthoolei Land Policy (KLP) addresses land tenure rights in a manner that promotes an enduring peace in the Karen Lands (Kawthoolei) grounded in social justice. It envisions recognition, restitution, protection and support of the socially-legitimate tenure rights of all Karen peoples and long-standing resident village communities, resulting in improved political and ecological governance of tenure of land, forests, fisheries, water, and related natural resources. This policy aspires toward greater self-determination in the context of a decentralized federal Union of Myanmar.

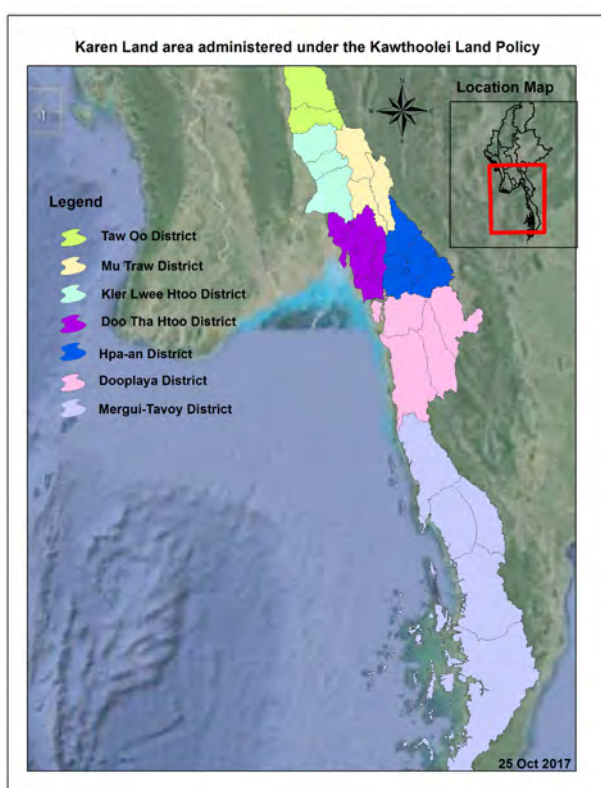


P.O Box 204, Prasing Post Office
Muang, Chiang Mai, Thailand 50205
Email: info@kesan.asia
Website: www.kesan.asia

The KLP covers a wide range of issues related to land tenure including:

- Definitions of land tenure types,
- Registration procedures,
- Safeguards and adjudication procedures,
- Contract farming and investments,
- Restitution and redistribution principles,
- Land valuation and taxation procedures,
- Regulation of spatial planning

The KLP applies to the lands in 7 KNU Administered Districts, as illustrated in the map below.



Key points from the KNU Land Policy

The KNU Land Policy envisions recognition, restitution, protection and support of the socially-legitimate¹ tenure rights of all Karen peoples and long-standing resident village communities, resulting in improved political and ecological governance of tenure of land, forests, fisheries, water, and related natural resources. (p. 1)

Key Objectives:

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. (Article 1.1.2)

To recognize, prioritize and promote the **rights of restitution of refugees and displaced persons** who have been forced from their lands, livelihoods and homes. (Article 1.1.3)

To fully recognize the contribution of those native and long-term residents who have endeavoured to **maintain ecologically sound farming and food production** (including fishing, hunting, gathering and herding) and general living practices that serve the social and ecological welfare of all. (Article 1.1.4)

Key Basic Principles:

Recognize and respect all socially-legitimate tenure rights holders and their rights, **whether formally recorded or not**; refrain from infringement of socially-legitimate tenure rights of others; and meet the duties associated with tenure rights. (Article 2.1.2)

Recognize the **distinct right of women** to claim effective access to land, as peasants, rural labourers, forest dwellers or pastoralists, and as women. As farmworkers, (part-time) farmers, herders, and firewood gatherers, rural poor women have their own connections to land resources, independent of the men within the household, thereby entitling them to their own distinct land use rights. (Article 2.1.3)

Must be historically grounded in order for the often 'invisible' social injustices of the past to be seen and effectively remedied. **Bringing to light and setting right the social injustices** that have been committed against the most vulnerable segments of society on the land is important in its own right. This is crucial for the long-term

¹ Refers to land tenure claims that, although they may not be formally recognized by law, are widely accepted according to local norms and values.

success of this land policy, since past conflicts left unresolved will constrain, if not undo, its success in the long run. (Article 2.1.4)

This land policy embraces a **plural understanding of property rights**, encompassing communal, community, state, and/or individual household use rights. **Individual household and collective plots of land are part of larger socially and ecologically constructed landscapes and waterscapes**; upstream and downstream are interconnected and must be recognized and managed in a holistic manner. This land policy privileges the principle of democratizing access to and control over these land and water resources, of which there are a variety of policy expressions. These include (among others): ceilings on occupation, use and control; redistribution in situations marked by high degrees of land concentration and rural poverty; restitution in situations where people have against their will been alienated from their homelands and deprived of their customary occupation and use rights as a result of past and current conflict; and stewardship. (Article 3.1.3)

Whenever any reallocation or transfer of the tenure rights identified in this policy is being considered, the KNU Authorities will undertake **full and meaningful consultation** with all those whose tenure rights could be affected, to **gain their FPIC before initiating any project**, or before adopting and implementing legislative or administrative measures. Consultation and decision making processes will be organized without intimidation and be conducted using clear and accountable procedures and based on international human rights principles of implementation (Article 4.1.4)

Land Classifications

The Kawthoolei Land Policy recognizes and provides registration procedures for the following land types (not all land types are included in this list- only the most common ones that have been demarcated in Karen State)

- **Village Lands** – These lands include **communal lands**- which are maintained and used by all community members- as well as **family plots**- which are used for farming and residency, by family units. Family plots are registered with either **ownership** or **land use** rights².
- **Kaw** (Customary Lands) - 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 or group of communities (Kaws can consist of a single community or can encompass multiple communities-depending on local understandings and agreements). 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

² Land use rights refer to a type of temporary ownership right that can be renewed and/or upgraded to ownership rights if the land user is able to prove that they have utilized their lands within a specified period of time (usually 3 years).

- **Community Forests**- Forest lands that are used and managed by local communities in order to obtain some benefits from forest resources as well to conserve the community’s tradition, culture, and improve their livelihoods under the management authority of the KFD
- **Reserved Forests**- Forest land under the management authority of the KFD for the purposes of ecological conservation and sustainable forest-based investments, such as wood extraction, by the KFD.
- **Wildlife Sanctuaries**- Forests areas with high levels of biodiversity that are set up to provide conservation and protection. These lands are under the management authority of the KFD, who implement strict conservation measure, such as the prohibition of agricultural cultivation, hunting, mining, grazing, timber extraction activities.



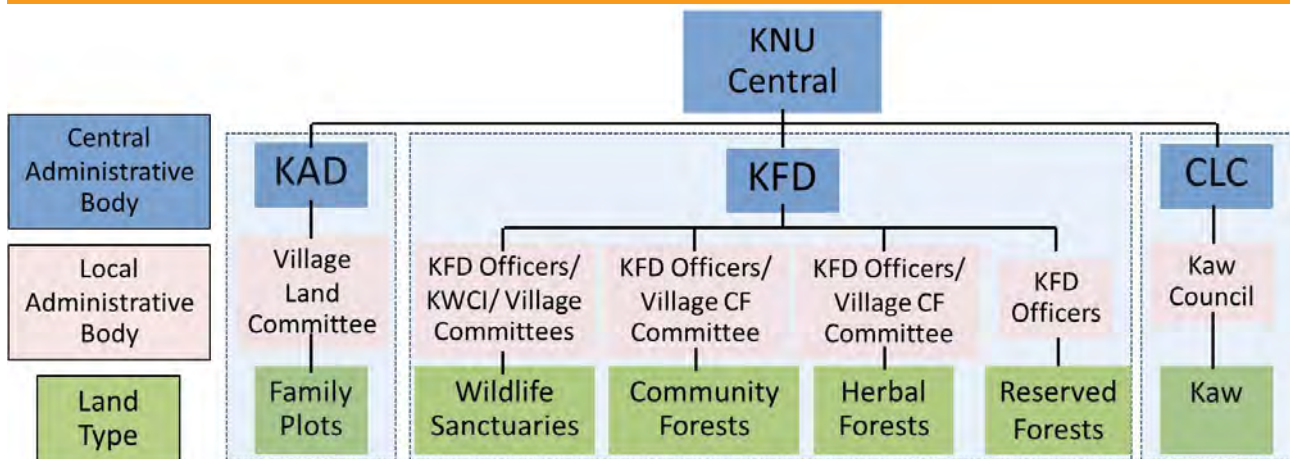
Land Use Zones drawn by villagers in Mutraw District



Multiple Land Use Classifications in Hpa-An District

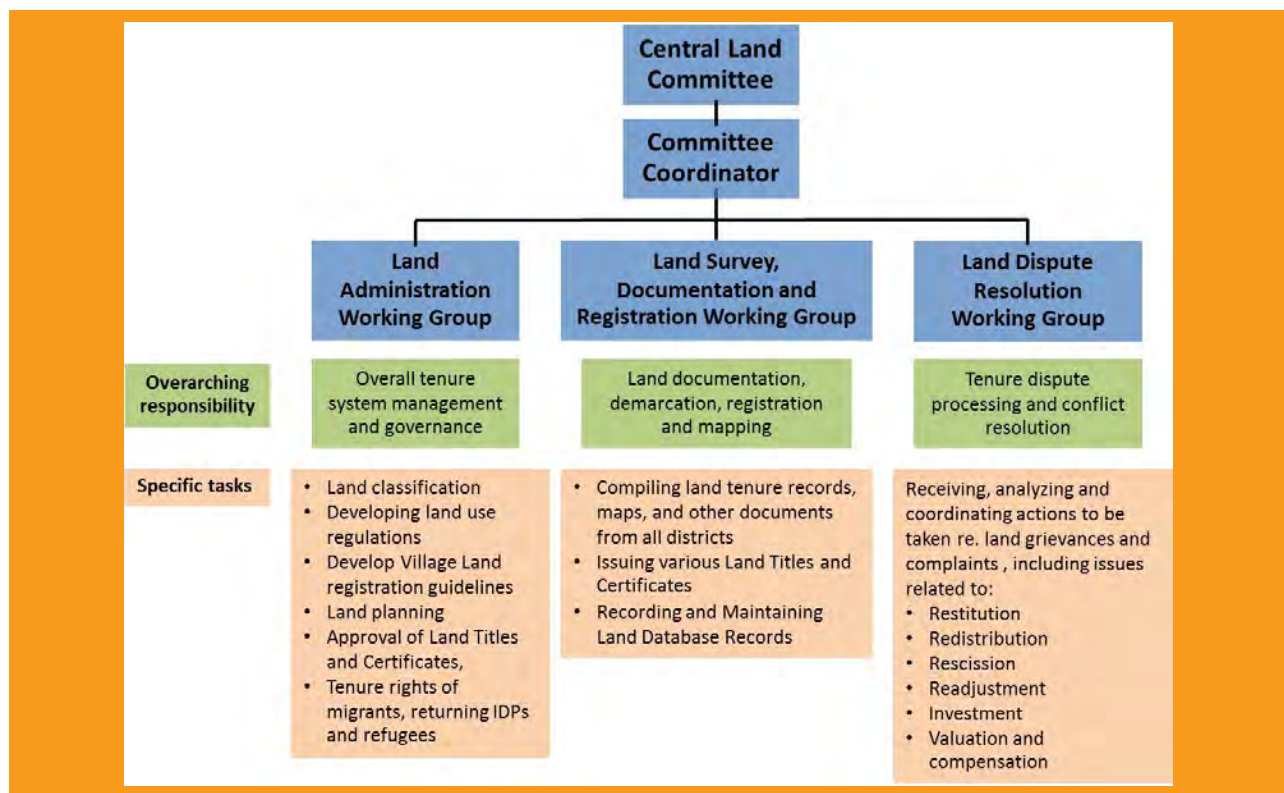
Land Administration

Under the KLP, lands are centrally administered by the Karen Agriculture Department, the Karen Forestry Department, and the Central Land Committee (described in more detail on the following page). Each of these bodies oversees the local administrative body, which varies according to each land type classification as shown in the chart below.



An example of one of the local administrative bodies is the **Village Land Committee (VLC)**. The VLC is comprised of representatives from village leadership and at-large community members. The exact structure of a community’s VLC depends on the size of the community and the community’s decision on the most appropriate structure to ensure justice for all community members concerning land issues. The VLC is elected and their roles and responsibilities come under the review of the entire community.

The **Central Land Committee (CLC)** has the mandate to address all issues related to the KLP and its implementation, including cross-departmental and trans-boundary issues. CLC members include representatives from 7 KNU Departments (Fishery and Livestock, Mining, KAD, KFD, 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 heads are selected by CBO/NGO representatives, and whose roles and responsibilities are listed in the chart below.



Public consultations to provide input to the Kawthoolei Land Policy

For the existing land policy to be more relevant and useful for Karen community members, regular meetings and workshops have been organized. These meetings have been held to discuss how the KLP is being implemented on the ground and to identify ways to improve the policy.

Venue	Date	No. participants
KYO Office, Mae Sot	Nov 2013	25 (5F/ 20M)
Doo Tha Htoo, Karen State	March 17-19, 2014	67 (7F/ 60M)
Queen's Palace, Mae Sot	July 30-31, 2014	10 (1F/ 9M)
Lay Wah, Karen State	Sept 29- Oct 1, 2014	65 (8F/ 57M)
Backpack Office, Mae Sot	Feb 3-7, 2016	54 (2F/ 52M)

One of the most intensive and productive consultations was the three-day meetings about the draft Kawthoolei Land Policy held at Law Khee Lah, Hpa-an District, during September 29 to October 1, 2014. A total of 65 participants attended, including community members, 10 Karen Civil Society Organizations members, and representatives from KNU departments. Feasible and practical solutions for land disputes/conflicts were addressed and different mechanisms about how to effectively support and implement this land policy were also explored. At the conclusion of the workshop, general consensus on the validation of the revised KLP was reached among all the representatives.



Community discussions about Kaw Land Management in Mutraw District



Sharing ideas about Land Use Management in Mutraw District



Community members learning about Land Data entry in Mergui-Tavoy District



Discussions about the KLP held during the Public Consultation in Lay Wah, Hpa-An District

As a result of these consultations, the Kawthoolei Land Policy has been written to reflect the current reality in Karen State. Furthermore, after the revised KLP was shared with other EAOs and CSOs from Kachin, Karenni and Pa-O, it has been used to support their own land policy development.

Land Policy Guidebook

In 2015, a Karen-language **Kawthoolei Land Policy Guidebook** was developed by the KAD, in order to make the contents of the Land Policy more accessible for local community members. This 60-page publication explains the land regulations and procedures that are contained in the policy in a manner that can be easily understood by villagers without formal education or legal backgrounds. Summary explanations and cartoons are used to simplify the concepts and to clearly outline how the KLP relates to lives of ordinary community members. The Guidebook also introduces international land rights protection policies and conventions, so that community members can better understand what their rights are under international law.



Illustrations from the KLP Guidebook depicting Land Registration and Community Meetings

Land Data Management Center

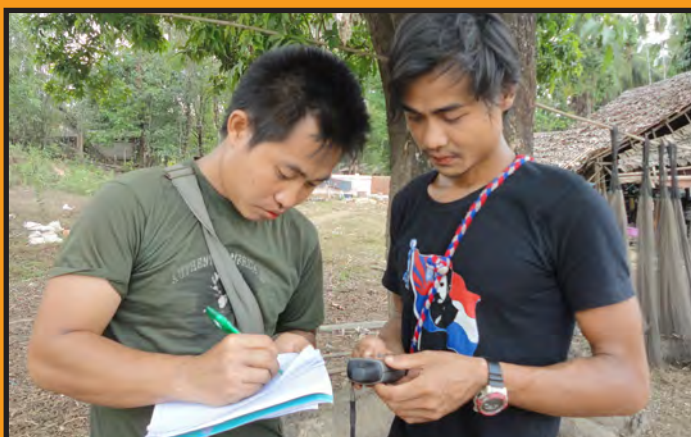
Due to the ever increasing number of lands being demarcated and registered, it was necessary to establish a Land Data Management Center in 2016 in order to compile and safeguard land data. Despite great challenges to collate and streamline the land data, great strides have been made to standardize and ensure the validity of data, in part due to the technical support of land data management experts. The latest figures (May 2017) for lands registered under the KLP are listed in the tables below:

District	Kaw Lands	Community Forests	Reserved Forests	Wildlife Sanctuaries	Family Plots		User Rights	
					Plots	Acres	Plots	Acres
Doo The Htoo		41	8		7,014	32,016	591	3,192
Taw Oo	5		4		1,889	13,377		
KlerLweeHtoo		5	6	1	5,811	49,484	697	4,770
Megui-Tavoy		11	4	1	5,396	39,183		
Mutraw	128	26	7	4	8,596	28,054		
Doolaya		42	29	4	10,246	62,734	213	
Hpa-an		22	9	5	29,578	147,454	451	2,143
7 Districts	133	147	43	15	68,530	372,303	1,952	10,105

Land Classification	Number issued	Total Area	Administered by
Family Plots	68,530	372,303	KAD
Kaw	133	682,166	CLC
Community Forests	115	116,949	KFD
Reserved Forests	67	981,730	KFD
Wildlife Sanctuaries	15	351,916	KFD
Herbal Forests	8	26,813	KFD

Examples of how the KLP and its implementation have benefitted local communities

- Communities can understand/ access/ implement the Kawthoolei Land Policy more easily than the Myanmar Land Laws. Furthermore, the KLP provides more comprehensive rights than the current Myanmar Land Laws.
- Community members have been able to use the KLP to protect their land rights when they have had land disputes.
- Community members have become more confident that their lands won't be taken away without recourse.
- Community members have gained practical experience about mapping their lands- including demarcating lands using GPS machines.
- There has been increased community cooperation in order to clearly determine land holdings and develop local land management regulations.



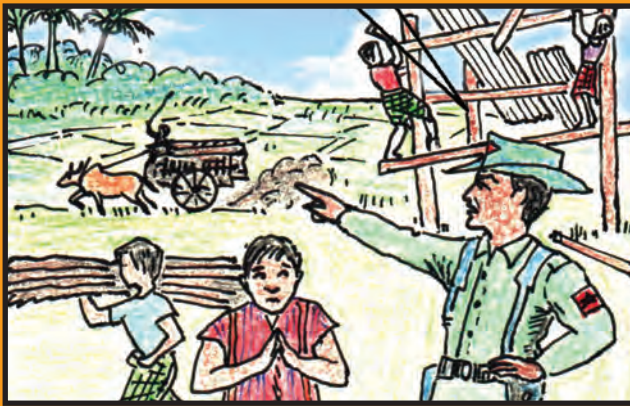
Community members practicing GPS Land Demarcation and Land Data entry



Example of a Kaw Customary Land Use Map produced using GPS coordinates

Major challenges to implementation of the KLP

- There has been continual instability and displacement of communities due to war and the continued presence of the Myanmar Army, which makes it extremely difficult to demarcate and confirm land holdings.
- KNU Departments responsible for land demarcation and registration lack trained staff. Most districts do not have enough capacity to make their own maps and manage their own data due to the multiple duties they must take responsibility for.
- There remains a great deal of confusion and contradictory information for villagers living in mixed administration areas.
- The Myanmar authorities have blocked some KLP awareness-raising workshops, and some Village Heads have received complaint letters from the Myanmar authorities about the implementation of the KLP.
- Some community members maintain a lack of trust with outsiders and authorities (including KNU, NGOs, business persons, etc.) who have provided them with information or have offered them support about land issues.



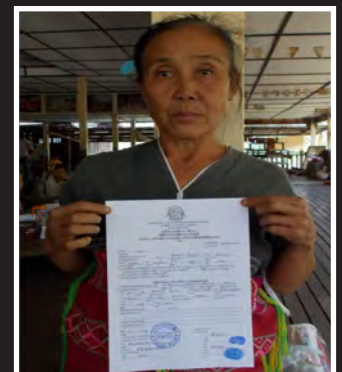
Forced relocation due to war



Forced relocation due to large dam construction

Moving forward/ priorities for future implementation of the KLP

- Targeting the registering of lands in the most at-risk areas
- Considerations and making plans for IDP/ Refugee resettlement
- Increase the demarcation of village-wide boundaries
- Continue to develop/ digitalize the Land Database and Land registration records
- Further develop the capacities and skills of the KNU officers responsible for land demarcation and registration in the KAD, KFD, and CLC
- Further develop the CLC's working structures, mechanisms, and roles/ responsibilities in line with the KLP
- Continue to develop a detailed Land Law and specific Land Rules and Regulations to clarify land registration procedures and responsible departments
- Further development of land dispute resolution mechanisms (through the Land Dispute Resolution Committee)



KNU Family Plot Land Titles issued to community members