



## **National Dialogue on Strengthening Forest Tenure Rights**

### **MONREC and Land Core Group**

Nay Pyi Taw, Myanmar

11-12 May 2017



This workshop was conducted as part of under the MRLG funded ***Strengthening Forestland Community Tenure Through Policy, Pilots and Law Project.***



## **Introduction:**

Forests are essential for the livelihoods of rural communities all around Myanmar, providing food, fuelwood, building materials, medicine, clean water, grazing land, and income. Although international experience shows that secure tenure is essential for communities to be able to protect and sustainably manage forests, communities in Myanmar currently have little or no formal recognition of tenure over the forests they depend upon.

On May 11-12, 2017, the Ministry of Natural Resources and Environmental Conservation (MONREC) and Land Core Group (LCG) hosted a national, multi-stakeholder dialogue in Nay Pyi Taw to discuss how to strengthen the recognition of forest tenure rights in Myanmar. The event was attended by Forest Department staff from national, state, and regional offices, parliamentary representatives, civil society organizations, national and international resource persons, and community representatives from around the country.

Promising mechanisms for strengthening recognition of forest tenure rights identified included:

- **Community-led forest management through customary tenure:** *Recognize customary tenure rights over forests, agroforests, and agriculture, and other land use types as an integrated whole.*
- **Community Forestry:** *Recognize commercial and subsistence community forest tenure rights, promote agroforestry, and generate income to reduce poverty, through renewable 30 year certificates in line with the Community Forestry Instruction.*
- **Community managed natural heritage and conservation areas:** *Recognize areas where communities manage and conserve the environment, both within and outside of forests, using natural and cultural protected area law and regulations.*
- **Smallholder commercial plantations:** *Grant 30 year leases to smallholders with plantations established within the permanent forest estate, and promote forest restoration, based on the Forest Law and regulations.*

This national dialogue follows regional dialogues in Mon State, Bago Region, and Tanintharyi Region, where case studies were selected that highlight different opportunities to recognize forest tenure rights, promote rural development, and protect the environment. The case studies include community conservation of limestone caves and smallholder rubber plantations in Mon State, customary land and forest management in Tanintharyi Region, and housing and land rights for communities displaced by Cyclone Nargis to reserved forests in Bago Region. The national level dialogue also identified gaps in current laws and policies that should be reviewed and amended to fit a changing national context, including increased government decentralization and democratization.

Further multi-stakeholder dialogues will be held to explore these themes using the selected case studies. These dialogues are part of a broader process under the *Strengthening Forestland Community Tenure Through Policy, Pilots and Law Project* funded by the **Mekong Region Land Governance project (MRLG)**.



*Review of Tenure Rights in Myanmar's Forest Policy*

The dialogue reviewed Myanmar's forest policy, starting from its history in the colonial era until the present day. Key policy lessons from presentations include:

- Recognition of community forest tenure rights is essential for fulfilling the key imperatives of Myanmar's National Forest Policy,
- Social justice must be integrated into forest targets;
- Integrated landscape management, where forestry, agroforestry, agriculture, and grazing land are managed together, is a goal of the Forest Department, especially for Community Forestry,
- Integrated management is a foundation of customary land tenure systems,
- Decentralization: clarify the roles of state and regional governments and line departments in recognizing customary tenure, community conserved areas, and community forestry,
- Consider decentralization, the peace process, and other national processes, and
- Harmonize policies across ministries and work together on landscape management.

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## Overview of Forest Tenure Rights in Myanmar

Presented by Salai Cung Lian Thawng

Forest cover in Myanmar is officially around 42%. Reserved Forest (RF), Public Protected Forest (PPF), and Protected Areas (PAs) together cover about 31% of the total land area of Myanmar. Forests outside of the permanent forest estate (PFE) and PAs<sup>1</sup> are considered unclassified or public forests. In unclassified forests, land is managed according to the VFV Land Law, and forest products are managed under the Forest Law.

Forest Type	Legal Framework
Forest land under FD administration (PFE): RF, PPF, PAs	Forest Law Wildlife Law
Unclassified/public forest	VFVL Law (land) Forest Law (products)
Community Forest	CFI
Private Forestry	Forest Law

Table 1 Forest legal framework

Community forests (CF) recognized using the Community Forestry Instruction (CFI 2016) can be recognized within or outside the PFE. Granting a CF certificate on land outside the PFE requires coordination with other line departments and is a lengthy process.

Although customary rights are practiced across the country, there is little recognition of these tenure rights. Customary tenure rights are explicitly recognized in the National Land Use Policy (NLUP) but not yet in laws or in practice, including in the Forest Law, Wildlife Law, and Vacant, Fallow, and Virgin Land Law. When RF, PPF, and PAs are established, they are supposed to consider existing rights, but there are many issues in practice where rights, including customary tenure, are not recognized.

*Communities that are the most forest dependent have the least legal support and recognition of tenure rights to the resources that they depend upon.*

Forest Tenure Rights in the Formal System	
Access and Withdrawal Rights	RF, PPF, Unclassified Forest for subsistence use allowed according to section 17 of the Forest Law, but without implementation on the ground, or a clear mechanism for implementation
Management Rights	CF, Firewood Plantation, Private Forest
Exclusion Rights	CF, Firewood Plantation, Private Forest
Alienation Rights	Cannot sell, mortgage, or inherit.
Duration of rights	Plantations and CF are both renewable 30 years use rights
Extinguishability of Rights	State ownership according to the 2008 Constitution, Land Acquisition Act Rights to due process and compensation for loss of forests are not in place

Table 2: Source: Salai Cung Lian Thawng. 2017. National Forest Tenure Dialogue Presentation.

<sup>1</sup> Sometimes Protected Areas are not considered part of the Permanent Forest Estate, so PAs are listed additionally for clarity



### National Targets and Local Justice

The National Forestry Master Plan (2001-2013) and the National Biodiversity Strategy and Action Plan (NBSAP) set targets to expand RF and PPF to 30% of the national land area, and PAs to 10% of the land area. These three forest categories currently cover about 31% of the country, so where will the additional 9% of land be found to meet this target?

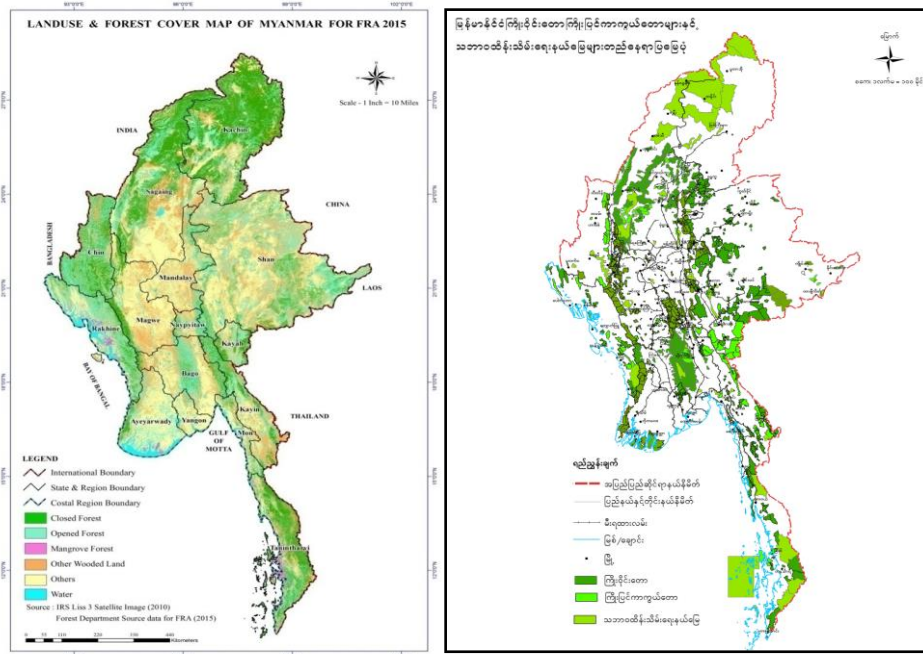


Figure 1 Maps of 1) Land use and forest cover and 2) Established PFE + Pas

What are the implications of the national targets for local justice? As can be seen above in Figure 1, most of the remaining forest areas that are not already within the PFE or a PA are in remote ethnic areas. PFE and PA expansion would take place in customary land, where people are dependent on forests but where their rights are not recognized. Forest management must consider local justice and social justice. Expansion of the PFE and PAs must also link with the peace process and not increase conflict and incorporate transitional justice.

### Recommendations:

- Forest management must be linked with the peace process and demonstrate awareness and understanding of conflict issues
- Ensure social justice for people managing customary land
- Secure transitional justice during the transition from an authoritarian regime to democracy and from conflict to peace
- Improve coordination between different sectors with different and sometimes contradicting targets
- Recognizing forest tenure is a massive task that will require political commitment, concerted effort, and a clear mechanism
- This mechanism must be developed through an inclusive, transparent, multi-stakeholder process





## **Mechanisms for Recognizing Community Forest Tenure Rights**

Panelists discussed four models for recognizing forest tenure rights under current Myanmar law and policy, which are summarized below in Table 1.

<b>Mechanism</b>	<b>Description</b>
1. Customary Tenure	Customary management of an integrated area of forests, agriculture, and other land use types. One area may include multiple villages with close historical relationships. Different groups, from the household to the village, hold tenure rights over different resources. Managed through customary institutions including village councils, with rules upheld through the customary justice system. Recognition of customary tenure, including over forests, is in line with the National Land Use Policy.
2. Community Forestry	A CF certificate grants renewable, subsistence and commercial 30-year use rights to a CF User Group. The Forest Department is guided by the CF Instruction to implement CF.
3. Community Conserved Areas	Community conserved areas are found across Myanmar but are not yet fully recognized in protected area laws and regulations. This type of area would be distinct from other existing protected areas and cultural site designations because the community holds the authority to make management decisions. Community Conserved Areas could be recognized through the Protection of Wildlife and Conservation of Natural Areas Law associated regulations.
4. Smallholder plantations	Smallholder farmers who have established plantations within the permanent forest estate, either in RF or PPF, may be granted 30-year leases. These leases are granted under the Forest Law.

*Table 3: Tools for recognizing community forest tenure rights*

### **Mechanism 1: Community led forest management through customary tenure**

Communities across Myanmar manage their forests, water, agricultural land through customary tenure systems. Customary tenure systems include rules for who can cultivate land and collect forest products, including protections for watersheds and sacred forests. Customary tenure systems also include institutions that make and enforce these rules, including through public meetings and village committees.

Customary tenure is recognized in the National Land Use Policy (2016). Harmonizing land laws, including the Farmland Law, Vacant Fallow and Virgin Land Law, and the Forest Law, among others<sup>2</sup> will be a central responsibility for the National Land Use Commission, that has been tasked with implementing the NLUP.

The following two presentations show this model of forest tenure recognition. The first case study is of integrated forest and land management using customary tenure system in Kamoethway area, Dawei District, Tanintharyi Region. The second is a case study of how forests are managed within Naga customary tenure systems.

<sup>2</sup> Over 30 laws have been identified during the NLUP drafting process to be harmonized with the NLUP.



## Community-Driven Natural Resource Management for a Sustainable Future

Presented by Saw Frankie Abreu, TRIP NET

Local communities in Thanintharyi Region are protecting and sustainably managing the forests, water, soil, and natural environment that they depend upon for their livelihoods and that are part of their cultural identity. These initiatives started with a network of 12 villages in Dawei, the Rays of Kamoethway Indigenous Peoples Network (RKIPN), who have documented their local knowledge, revived their traditional system of protecting the environment, and established new initiatives to protect their water and forests from outside threats. Communities across Tanintharyi have also started to implement these initiatives.

### Local initiatives:

- Enhancing public ecological knowledge through local knowledge-based research
- Monitoring forest and river ecosystems
- Conducting forest rehabilitation
- Establishing People’s Protected Conservation Areas (People’s Parks)
- Ensuring food security

These communities have established working groups that conducted research using traditional and local knowledge of their resources and situation, including for wild forest vegetables, trees, fish, medicinal plants, and the villages’ socio-economic situation. Based on this local knowledge research, these communities have documented a land use plan for the Kamoethway river basin with rules and regulations for each land use type. Their management is rooted in their customary system, their cultural and ethical relationship with the forest, and their commitment to protecting their land and resources for future generations.

RKIPN has established nine forest types, including watershed, herbal medicine, and wildlife conservation forests. Communities have also established people’s parks, including fish conservation zones, a community protected area at Kalapa Swamp, and a protected watershed forest at Then Byin, Myeik district. The communities along Kamoethway river have already seen fishing populations revive after a few years of establishing their fish conservation zone. Community members regularly monitor the river and forests, to assess ecosystem health and identify any issues to address through public discussion as a method of adaptive forest management. Rehabilitation activities include making fire breaks and planting trees.

Communities ensure their food security by growing diverse crops, including rice and many local varieties of vegetables, in rotational agriculture systems. They clear the same forests using an integrated rotational system, using natural ecological processes to replenish the soil.

Challenges include: that people living in remote areas continue to live in fear due to experiencing decades of armed conflict during their lives, drivers of deforestation that threaten their livelihoods, lack of FPIC from both development projects and conservation projects, unclear policies, lack of public information, and limited community access to forest resources.

### Questions for further discussion:

- How can a community-driven forest tenure model be integrated into Myanmar’s Forest Policy?
- What next steps need to be taken to develop a Forest Policy that prioritizes community-driven forest tenure in Myanmar?
- What would Myanmar’s Forest Policy look like if it included community forest tenure rights?
- What are the most important characteristics of a community-driven forest tenure model?



## Case Study: Naga Customary Forest Management

Presented by *Sunsih Shi, Makury Naga Youth Federation*

The Naga customary tenure system differs in detail between tribes but share methods for sustainably managing and protecting the forests they depend upon. The President of the Makury Naga Youth Federation, Sunsih Shi, explained the general types of forest management and tenure, summarized in Table 3. These forests are managed within an integrated system that includes grazing land, agroforestry, and agriculture including rice terraces. The flexibility of the Naga customary system enables multi-functional landscape management that allows multiple uses on the same land.

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*“For Nagas, forests are our market, our hospital, our everything. We have a system to manage and sustain our forests”*

*-Sunsih Shi, MNYF*

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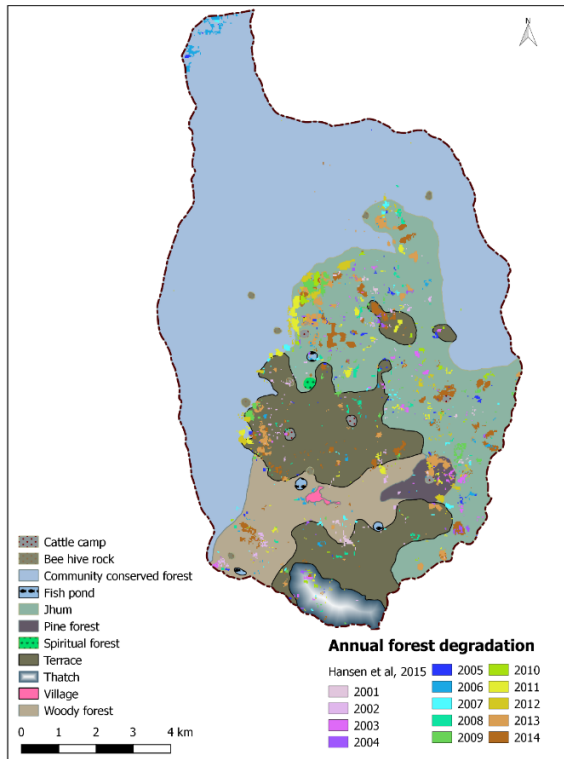
Type of Forest	Tenure	Management
Community managed Forest	Community	These may be strictly protected sacred or watershed forests, or forests where food, medicine, and timber are collected by members of the community. Timber can be extracted only for local construction and only with permission from the village council. Clearing these forests is prohibited.
Woodlot	Household	Households establish woodlots of pine, mixed hardwoods, and/or bamboo stands using a variety of useful local species. Households coordinate pine woodlot management on a rotational system.
Sacred Forest	Community	Sacred forests are often strictly protected by the community, while are managed with regulations about what can be extracted.
Jhum	Community	An agriculture system where forest is allowed to regenerate after a cropping season, then cleared again in rotation. This rotation allows soil to regenerate, controls some pests and weeds, and maintains a patchwork of secondary forests across the landscape. Jhum is essential for food security and nutrition in many villages, and is the basis for important cultural and religious practices. In Naga customary systems, households maintain the right to cultivate the same areas throughout each rotation, unlike in other customary systems where households reallocate land each time an area is cleared again in the rotation.

Table 4: A Summary of Naga Customary Forest Tenure Types

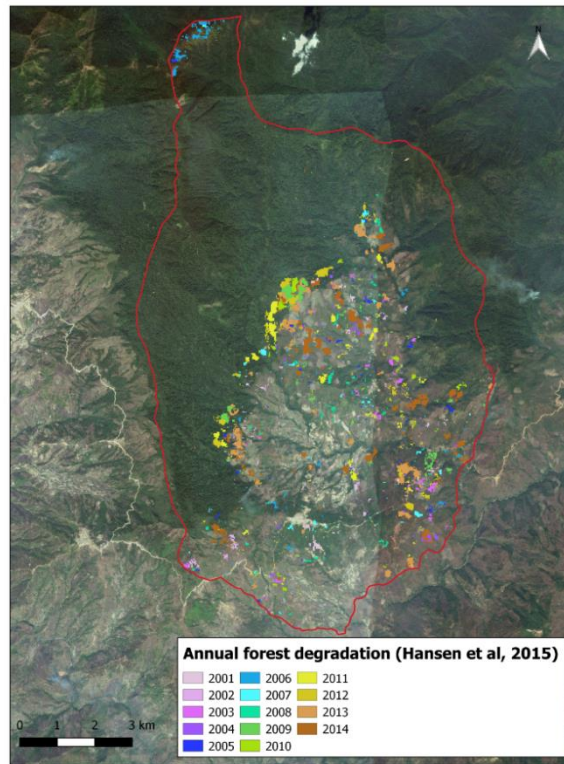
Forest rules are enforced through customary institutions, including village councils, and the customary justice system, which provides a framework for resolving disputes and setting penalties for breaking rules. Land is clearly demarcated and claims are well-established, with boundary markers between the land of different villages and between land use types within village land. Boundaries are demarcated with mountain ridges, streams, stone markers, and plant.



**Kuki Village Map, Lashi Township**



**Kuki Village Map, Lashi Township**



Remote sensing provides evidence that the community managed forests in Layshi Township have been protected over the last decade. Participatory land use mapping combined with forest cover change data (Hansen data from Global Forest Watch) shows that areas of *jhum* are cleared each year, but the *jhum* areas do not expand into the forest and do not cause deforestation.

*Source: RRtIP. Land and Forest Governance in the Naga Village Republic.*

Recognizing customary tenure includes recognizing communities right to manage land according to customary practices and traditional knowledge. This includes recognizing customary rights over farmland and fallow land being used for rotational agriculture, which is also sometimes called shifting cultivation or swidden cultivation.

During the dialogue, participants had divergent understanding of how shifting cultivators manage land, the impacts of shifting cultivation, its current status, and its importance for livelihoods and biodiversity. The following presentation addresses the impacts and values of shifting cultivation, common misperceptions, the current legal framework, and the need to decriminalise and support this form of rotational agroforestry.



## **Decriminalising Agroforestry: Shifting cultivation in Policy and Practice**

*Presented by Dr. Oliver Springate-Baginski, University of East Anglia*

Shifting cultivation, also called swidden cultivation, is a sophisticated, multi-functional, locally-adapted, traditional agroforestry practice that cultivates a diversity of crops and trees in a rotational system. Millions of Myanmar citizens benefit from shifting cultivation for food security, cultural integrity, and ecosystem services.

In spite of its importance for livelihoods, culture, and the environment, shifting cultivation is criminalized by hostile laws rooted in misperceptions and colonial era biases. Land and forest categories are designated and administered separately, without legal or administrative space for agroforestry or for integrated landscape management. The resulting tenure insecurity is a threat to sustainable shifting cultivation when land is allocated as PFE, PA, or agricultural or other concessions and farmers lose access to land.

### *Shifting cultivation in policy and law*

- *Myanmar Forest Policy 1995*: "Discourage shifting cultivation practices which are causing extensive damage to the forest."
- *Farmland Law 2012*: Allows for settled agricultural land to be registered to individuals with Form 7, but does not recognize rotational fallowing or customary institutions.
- *Forest Law 1902, 1992*: The focus of the Forest Law is to exclude "encroachers" who are dependent on forests and to manage those forests so that the state and private contractors can extract timber for revenue. In practice, forests have been cleared according to revenue targets rather than sustainably harvested.
- *VFV Land Law 2012*: Facilitates a legal basis for land grabs to transfer land managed by communities, including shifting cultivation land, to the private sector. The intention of this law is to "increase productivity" but results in the opposite.

### *Why is there a bias against shifting cultivation in law and policy?*

Some of this bias is based on misunderstanding, which stems from a lack of familiarity with shifting cultivation practices, and misapplication of lowland agricultural assumptions onto uplands. An aversion to fire as a visible and obvious impact also leads to misunderstandings about the impact of the system. Hostile policies and perceptions are also rooted in colonial biases against upland farming and the colonial legal framework designed to claim fallows and forests for the state.

A coherent system of agriculture and forest land that is managed under customary tenure systems is artificially split within government into separate forest and agriculture administration systems. Classifying and administering land as either forest or agriculture leaves no room for agroforestry systems, especially shifting cultivation. Forest departments consider shifting cultivation as degraded forests and agricultural departments consider them not intensive enough. There is agroforestry department or (until recently) a ministry of ethnic affairs to champion traditional agroforestry practices including shifting cultivation.



*Addressing common misconceptions about shifting cultivation*

- ⊗ *Shifting cultivators encroach on forest land:* Case studies in Myanmar and across the region document that farmers prefer to clear secondary forests closer to the village over older forests, and shifting cultivation is typically practiced in a rotation over the same patches of land.
- ⊗ *Shifting cultivation destroys forests:* Sedentary agriculture and logging destroys forests.
- ⊗ *Shifting cultivation causes climate change and air pollution:* Scientific studies confirm that shifting cultivation does not contribute to climate change in any significant sense compared to alternative land uses. The majority of greenhouse gas emissions come from coal, natural gas, and oil, 15% comes from land use change, and 7% from agriculture. Lowland rice farming is a significant contributor to greenhouse gas emissions from agriculture, while in shifting cultivation carbon is released but also sequestered during the full rotational period.

<b>Land use</b>	<b>Initial impact of land use change from primary forest</b>	<b>Biological diversity</b>	<b>Productivity and beneficiaries</b>
Natural primary forest	N/A	Very high	Range of ecosystem services and NTFP to a range of beneficiaries
Shifting cultivation (swidden)	Reduced forest density to secondary forest	High	Range of food, wood & NTFP to farming citizens
Settled agriculture	Deforestation	Low to very low	Food to farming citizens
Timber extraction from natural forests	Low degradation in theory, Medium to high degradation in practice	High to medium (variable)	Timber to foresters/govt & merchants
Tree plantation	Deforestation and replacement with monoculture	Very low	Timber & poles to foresters & merchants (if successful)
Agri-business plantations	Deforestation	Very low	Commercial commodities to merchants

*Figure 2 Impacts of land uses*

Shifting cultivation has produced a rich diversity of agricultural crops that would otherwise be lost. Not recognizing shifting cultivation places many people at risk of being impoverished.

Problems with shifting cultivation, including increased weeds, declining yields, and reduced fallow periods are often a result of obstructive policies rather than obstacles in the environment or population pressure. Fallow periods may be reduced because of restricted access to land, as some areas are designated as RF, PPF, and PAs, or are granted to companies for logging or agribusiness. When tenure is not secure, investing in land by planting trees or soil management becomes risky in case the land is taken.



Research has shown that the transition from shifting cultivation to intensified perennial and annual cash crops, leads to significant decline in livelihood security and ecosystem services. This transition also had negative impacts on soil organic carbon, cation-exchange capacity, and aboveground carbon stocks.<sup>3</sup>

*Recommendations:*

- Constitutional decentralization
- Administrative decentralization to enable a more responsive land administration
- Recognize, endorse, and legally protect shifting cultivation/agroforestry as a legitimate, productive, sustainable land use
  - Moratorium and review of land concessions
  - VFV Law should become an agroforestry law and secure tenure
  - CF is neither suitable or wanted
  - Swidden agroforestry needs a distinct policy, law, and supportive agency
- Recognise customary authority and tenure, including over fallow land
- Promote trees across the landscape for both local and global benefits, rather than 'REDD+' regulatory mechanisms for global ecosystem services as the expense of local needs and services

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<sup>3</sup> Dressler, K. et al. 2017. The impact of swidden decline on livelihoods and ecosystem services in Southeast Asia: A review of the evidence from 1990 to 2015. For more resources see: ICIMOD. 2004. Shillong Declaration; IIRR 2001 Shifting cultivation (los Banos); Kerkhoff, E.E. 2006. Debating shifting cultivation in the eastern Himalayas: Farmers innovations as lessons for policy (ICIMOD).



## **Case Study from India: The India Forest Rights Act**

*Keynote speaker: Madhu Sarin, Campaign for Survival and Dignity, RRI Fellow*

The Forest Rights Act was created to recognize the rights of Indigenous peoples to manage and protect their customary forests.

### *Historical Context*

India's constitution mandated decentralization of forest governance, and included protections for Indigenous cultures, governance systems, and resource rights. At the same time, the establishment of state forests and protected areas with extinguished communal tenure. Indigenous communities became "encroachers" on their ancestral lands. Centralized management, progressively stringent laws, serious land conflicts and disputes with communities, and sweeping declaration of non-forest areas imposed inappropriate management and denied forest dependent people access to forests. From this crisis emerged Joint Forest Management (JFM) and a shift towards a more participatory approaches to forest management.

### *Joint Forest Management: "We decide, you participate"*

JFM did not confer rights to communities, only conditional entitlements. Authority to make decisions remained centralized, while responsibilities were devolved to communities. The MOUs between FD and village institutions were based on administrative orders, had no legal status, and were not enforceable. JFM failed. It destabilised existing community institutions, delegitimised customary management, continued to generate conflicts with communities including evictions and poverty creation, and remained fixated on replacing diverse, multi-functional local forest management with a system focused on timber and tree plantations. The FRA was spearheaded by an alliance of grassroots movements, academics, and professionals following large-scale evictions from forest lands.

### *The Forest Rights Act*

The FRA recognizes community rights including "responsibilities and authority for sustainable use, conservation of biodiversity, and maintenance of ecological balance." The FRA recognizes pre-existing statutory rights to forests. It restores democracy to the forests by reclassifying state forests to Community Forests, for all categories of forest land. The FRA established Community Forests as a new forest category with rights to protect, regenerate, and conserve community forest resources. The Village Assembly, comprising all resident adults, is the authority for recognizing these rights. Decisions are made by village assemblies, with a minimum quorum of 50% with at least 1/3 being women, or through traditional institutions. These assemblies elect committees to prepare management plans, including elders, women, and traditional healers.

The FRA acknowledges the historical injustice done to forest dwelling communities when their customary rights were not recognized. The Ministry of Tribal Affairs is responsible for implementing the FRA. Over 34.6 million ha and 200 million people, including almost 90 million tribal citizens, potentially benefit from the FRA. CF Rights have been recognized over 1 million ha to date, and many communities have initiated CF Rights management, including biodiversity conservation, community enterprise, and restoration of natural forest and grassland.

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## Mechanism 2: Community Forestry

### Community Forestry Instruction and the current situation in Myanmar

*Presented by U Sein Moe (AD), CF Unit, FD, Community Forestry National Working Group*

The Community Forestry Instruction (CFI) was first approved in 1995. The national target for CF is 919,000 ha. Within the Forest Department (FD), a CF Unit has been established to support CF. The CF National Working Group (CFNWG) is a multi-stakeholder group including the FD and CSOs and was also formed to promote CF. Discussions hosted by the CFNWG starting in 2014 and a public consultation in June 2016 led to revisions of the CFI. The revised CFI was adopted in 2016. Key revisions included adding commercial community enterprise, since previously CF could only be managed for subsistence use.

According to the CFI, a CF User Group can be granted a CF certificate, which gives 30 year use rights, renewable, to the group to manage a forest area according to a management plan. The group also forms an executive committee to manage the CF area.

The goals of CF include environmental protection, poverty reduction, income generation, job creation, and climate change mitigation. The new approach to CF is a landscape approach, integrating forests, agriculture, and grazing land and managing it as a system. Community Forestry can be used to recognize tenure over forests used for different goals. The main forest types are:

1. Sustainable Production Forests
2. Protection Forest
3. Religious Forest
4. Conservation Forest
5. Indigenous/Traditional Forest

There are different models of community forestry internationally, which grant different types of rights and responsibilities to communities. A community may have authority delegated to manage the forest under a strictly defined management plan developed by or with the Forest Department.

Generic type of CBF Regime	Bundle of rights					Duration of rights
	Access	Withdrawal	Management	Exclusion	Alienation	
1. Delegate	√	NWFPS				<b>Not defined</b>



2. Share	√	NWFPs	√			<b>Fixed by Mgt plan</b>
3. Partly Devolve	√	NWFPs	√	√ (limited)		<b>Fixed by Mgt plan</b>
4. Fully Devolve	√	NWFPs & Timber	√	√		<b>Fixed by Mgt plan/ regulatory framework</b>
5. Own	√	NWFPs & Timber	√	√	√	<b>Indefinite unlimited</b>

Figure 3 Types of tenure rights in community forest management. Where does Myanmar's CFI fit?

### **Community forestry in Southeast Asia: Allowing it to deliver on its potential**

*Presented by David Gritten, RECOFTC*

Community forestry will make sustainable forest management a reality by putting local people at the head of forest decision-making and management. Community forestry improves local livelihoods, reduces deforestation, and strengthens good governance. In ASEAN, there are more than 218 million forest dwelling and Indigenous people who live with and base their livelihoods on the forest.

In Thailand, less than 10% of the original area of coastal mangroves remains standing today. Baan Pred Nai community has restored and protected 1669 ha of mangrove forests since 1987. Forest conservation groups have grown into a network that covers 6 sub-districts with a joint forest management plan.

### **Capacity Gaps in Commercialisation of community forestry**

*Presented by Dr. Maung Than, RECOFTC Myanmar*

CF in Myanmar is not delivering on its potential. RECOFTC has been working to identify what is holding CF back and addressing those obstacles. RECOFTC's assessment, including a capacity gap assessment in 20 villages in Rakhine state, found the following challenges:



- Limited availability of quality resources, because existing forests are degraded due to over-exploitation for timber, fuelwood, charcoal, and other NTFPs
- The local communities' control rights and tenure over resources remains very weak
- CF related rules and regulations are not well in place in all the studied villages
- Traditional governance practices are prevalent in CF management activities. If the statutory system is enforced, it will undermine community management.
- Weak capacity of local community on the principles, rules and operations of CF due to limited exposure to trainings and workshops
- CF User Groups often do not have sufficient funds to sustain their CFs. Forest products harvested from CFs were mostly sold in local markets in raw, unprocessed forms.

### *Recommendations*

- Assist CF user groups to seek funding sources
- Conduct market and value chain research with local communities
- Create enabling environment for CF community enterprises, including supportive policies, financial services, training, education (including accounting and business skills), paralegal support, infrastructure services (electricity, transportation, telecommunication), access to market information, and extension services

The discussion after this panel highlighted that CFs are often initiated as part of an NGO development project, and do not continue after project ends. For longer-term impact, building a sense of ownership by the community from the start of the project is essential. So are trainings to increase the skills and leadership capacity of community members. The discussion also considered how to include inheritance rights in forest areas, and the need to recognize inheritance broadly so that it can be flexible to recognize different social and religious conventions.

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## **Mechanism 3: Community managed natural heritage and conservation areas**

### **Community conservation and Protected Areas**

*Presented by Julia Fogerite, LCG consultant*

Indigenous and community conserved areas cover much of the world's best protected centers of biological and cultural diversity. The importance of these territories and areas conserved by Indigenous peoples (internationally known as ICCAs) for conservation is increasingly recognized, including by the Convention on Biological Diversity (CBD).

Effective, equitable, and just conservation requires recognizing these community conserved areas, and recognizing the right and responsibilities of communities to protect and sustainably manage them. Establishing protected areas on land that is managed through customary tenure undermines effective local governance and threatens both livelihoods and the environment. Instead, the PA system should work in partnership with local communities and recognize customary tenure systems.

#### *Recommendations:*

##### *1. Recognize community conserved areas*

Recognize areas that communities are already conserving and sustainably managing through customary tenure systems. ICCA recognition includes both customary management and governance, including customary institutions like village councils and justice systems. Local communities that no longer practice customary tenure may also wish to establish community conserved areas. Recognition of customary tenure rights within law and policy would also recognize ICCAs. A less systematic approach would be to recognize ICCAs as a type of protected area in the conservation of wildlife and protected areas law.

##### *2. Diversify types of conservation areas*

Recognize ICCAs within PAs that have already been established. Develop management plans, including use zones, in collaboration with local communities. Manage protected areas through co-management systems, including PA management boards, to include community voices at each stage of decision-making. Establish a legal framework to recognize protected landscapes with a mosaic of land uses, balancing nature, culture, and human well-being in harmony with cultural and spiritual values.

Recognizing ICCAs and diversifying PA management and governance are included in Myanmar's National Biodiversity Strategy and Action Plan (NBSAP) and are essential for effective and just sustainable forest management and biodiversity conservation.



	Government Governance National/Sub-national	Shared Governance/ Co-management	Private Governance Individual/NGO/ Company	Community Governance
Scientific Reserve	<div style="background-color: #4CAF50; color: white; padding: 10px; border-radius: 10px; text-align: center;">           Diversify how these types can be managed, and pilot co-management arrangements         </div>			
National Park				
Nature Reserve				
Wildlife Sanctuary				
Geo-physically Significant Reserve				
Marine National Park		Co-management of near-shore with State and Regional Fisheries Laws		Locally Managed Marine Areas
Botanical and Zoological Gardens			NGOs, community organizations, or private sector?	
Community Conservation Areas				

Table 5 Overview of Myanmar's PA system

## Case Study: Community conservation of limestone caves in Mon State

*Presented by U Khine Aung, community leader*

Pharbaungtaung, a limestone karst mountain formation that rises above the landscape in Kyaikmayaw Township in Mon State, has been protected by the surrounding villages under their customary system. The cave complex houses Buddhist statues and is managed by a monastery at the base of the karst mountain. They are also home to bats, birds, snakes, and other wildlife.



The 14 villages around the mountain came together to protect it from the threat of mining, including an exploration permit to a mining company, by forming the Pharbaungtaung Cave and Mountain Range Association. These predominately Karen communities have protected the mountain together through culture and custom. They are now seeking a mechanism within the legal framework that will allow community-led conservation and sustainable management of the area to preserve both its cultural and ecological values.

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## **Mechanism 4: Smallholder Plantations and forest-dependent communities**

### **Smallholder Rubber Certification**

*Presented by U Aye Aung, Secretary, Mon RPPA*

In Mon state, many small-scale rubber producers were unable to receive titles for their rubber plantations because they were located in areas that had also been designated as PFE. These rubber producers received 30-year renewable leases over their rubber plantations. They also restored forest areas. The discussion about this case study highlighted questions about the inheritability of these rubber plantations.

### **Land tenure and housing rights for villages within Reserved Forest**

*Presented by U Zaw Win Myint, Director, Forest Department, Bago Region*

In Bago Region, there are different types of communities living within PPF and RF areas. Some moved to the area to work on road and hydropower dam construction. Other villages are climate change refugees that came to the area after their homes in the Delta were destroyed by Cyclone Nargis in 2008. What kind of tenure rights should be recognized for these communities?

In 2013, Presidential order 13/1/7 [2013] was issued to degazette PFE where villages with over 50 households were living. CF were established over upland agricultural plots managed by the village residents.

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## **A Review of Forest Policy and Law**

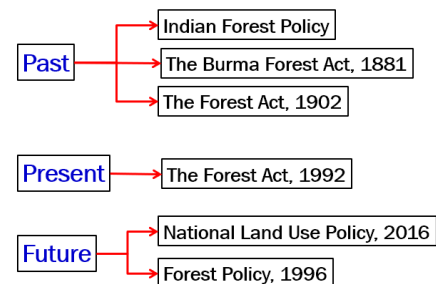
### **History of Forest Law and Policy**

*U Mg Mg Nyunt, LCG consultant*

The current legal framework has roots in colonial era laws, starting with the Burma Forest Act 1881 and the Indian Forest Policy of 1894.

The Forest Act 1902 established that land is at the disposal of the crown, and that all rights are extended by the king.

Forest settlement instructions circular 1927 4<sup>th</sup> February establishes the responsibilities of the boundary Demarcation Officer, including to post



*Table 6 Source: U Mg Mg Nyunt*



notification of forest gazettement in public places, and establishes community rights-of-way and rights to water, pasture, and forest produce. The Boundary Act has instructions on public participation. The Taxation levy 1909 allows cultivation within forest area, and tax is collected by FD instead of other departments.

The 1919 circular no. 43 of 1919 instructions regarding Forest Villages demonstrates that forest tenure within RF was a problem for the colonial government as well, stating that when a RF is established, an “enclave is made for the express purpose of retaining an existing village: notwithstanding which the village disappears, as the inhabitants find the conditions under which their presence is tolerated unduly onerous”. The objective of these Instructions was to keep the villages there to supply labor for the FD for reforestation after logging operations. It states that villages within forests have to register with and is managed by the Office of Home Affairs, but the FD has ultimate authority.

Next came the Forest Act 1992, followed by the Forest Policy 1995, and the circular on standard operating procedures.

The British government policy wrote that forest dwellers can clear land and cultivate, and if they cultivate for more than 10 years it is their land. Even in the British area they recognized ancestral land tenure. The country is democratizing, and must recognize community rights to live and manage resources. It is not enough to give a paper to the village head, how can people truly be involved in the management and conservation process?

## **Land Resource Opportunities in the Existing Forest Law**

*Presented by Rob Obernforf, JD, USAID LTP*

Flexibility and creativity are essential to maximize opportunities under this period of tremendous change. Myanmar currently has a great opportunity for the formal recognition of land resource tenure rights and to delegate authority to the local level in the forest sector. A flexible and creative interpretation of existing legal tools could be used to create opportunities to recognize legitimate land tenure rights. Interpretation and implementation of the law are important components of change, in addition to revised or new laws.

Articles 13 and 15 of the Forest Law establish the authority of the Director General of the FD to establish a village firewood plantation on reserved forest, public protected forest, or land at the disposal of the Government (VFV land). There is no limitation in the law on the area of land that can be designated as a village firewood plantation, or the amount of time it can be transferred to the village. Community Forestry is implemented under the Community Forestry Instruction, and though it is not specifically included in the Forest Law, the Law can be interpreted in a way that supports Community Forestry.

The Minister can change a category of forest or de-gazette the forest under Article 7. De-gazettement could be implemented more creatively, not just for villages with 50 or more households, and not just over village settlement lands



and paddy lands. Land Use Certificates could be issued for households or as joint tenure certificates in the name of a village or community association.

Creativity, leadership, and flexibility can be used to formally recognize land resource tenure security for smallholder farmers and communities. Formal recognition will support inclusive and sustainable economic growth and the truly local, grassroots level.

## **A Review of Myanmar’s Forest Policy**

*Presented by U Tun Paw Oo, Myanmar Forest Association (MFA)*

A forest policy is a negotiated agreement between the government and other stakeholders that sets out a shared vision for forests and the strategies for achieving shared goals. The policy should incorporate society’s needs and wider development goals. The forest policy must be reviewed and revised periodically and effectively have “no beginning or end-point.”<sup>4</sup> The policy is for society, not for the forestry administration.

### *Forest Policy Review and Impact Assessment*

It needs to be recognized that with a dynamic population, forest policies cannot remain static. Therefore, forest policy should be reviewed and revised periodically to take cognizance of the changing socio-political environment as well as to determine the strengths and weaknesses of the strategies implemented in order to facilitate identification of future strategy options.

-Myanmar Forest Policy 1998, page 54, section 8

The Forest Policy (1995) has 5 policy imperatives:

1. Protection
2. Sustainability
3. Providing for Basic Needs
4. Efficiency
5. Participation and Public Awareness

*In 1995, an excellent law emerged that sought to guide the people, rather than control them*

The Policy contained 38 policy measures, 50 strategies, and 93 actions. Topics include land use, forest management and protection, forest restoration, forest industry and trade, research, planning, public participation (forest extension and education), and inter-sectoral coordination.

<sup>4</sup> FAO. 2010. Developing Effective Forest Policy, A Guide.



There are many plans related to the forest sector, including the National Forestry Master Plan, the Dry Zone Greening Plan, the REDD Readiness Roadmap, the NBSAP, the Environmental Policy and Action Plan, climate change plans including the NDC, and NAPA.

Myanmar Forest Association organized two workshops on forest policy in 2016. The recommendations from these consultations include:

- The forest policy must be reviewed and reformed according to changes in the economic, social and environmental context
- The policy should focus on people, be transparent, and disclose information
- Good governance and law enforcement are needed
- Coherent Policy and Rule of Law, for effectiveness, efficiency, auditing, and monitoring.
- Tax exemption for importing raw material
- Provide for the basic needs of the local people at an affordable price, aside from providing opportunities for entrepreneurs through open tender system.

For the Forest Policy to be effectively implemented, the following components must be in place:

1. Appropriate organizations with clear responsibilities (including FD, MTE, and DZGD)
2. Finance (sufficient funding in national and state/regional budgets, from bilateral funding, and from other sources)
3. Participation from the citizens of Myanmar (rural and urban residents, CSOs, CBOs)
4. Intersectoral coordination and harmonization of other policies

## Conclusion

This national dialogue provided an important opportunity for experts to share and discuss the issues, opportunities and challenges relating to the recognition of forest tenure rights in Myanmar. In addition to presentation, the event provided an opportunity for group discussions where attendees were able to reach agreement on several key issues, including that:

- The NLUP and the laws related to land and forests must be harmonized,
- Climate change must be considered in the development of policies and laws relating to land,
- Customary tenure must be recognised in policy, law and procedures,
- National laws should allow flexibility and variation at the state/regional level so they can be adapted to local contexts





- Shifting cultivation must be recognized, legally endorsed, and protected as a legitimate land use

There was also agreement on a number of questions that remain to be answered:

- How can people who have been displaced by conflict, natural disasters, and climate change secure their livelihoods and be supported to sustainably manage the forests they depend upon?
- How can cultural and environmental values be managed, and the complexity of areas be effectively recognised under CF?
- What is the difference between CF and customary tenure?
- How can government and civil society ensure that IDPs and refugees can return to their villages? What support do they need to return?



In closing the event, the facilitator U Shwe Thein (Executive Director, LCG) offered a few closing remarks, and emphasized the need for all laws to be harmonious. For this to be done effectively, all related laws must be revised in an all-inclusive process with public consultations, where the tenure rights of local people and forest dwelling persons are recognised. U Shwe Thein reiterated the importance of considering climate change and the rights of communities who rely on shifting cultivation for their livelihoods when revising laws and regulations. He reminded the participants that ultimately, responsibility and accountability are key in order to be able to take positive steps forward.

The dialogue provided a forum for government, civil society, and communities to review the current mechanisms for recognizing community forest management in the country, bringing together legal analysis and lessons from the ground. These cases, selected through regional dialogues in Mon State, Tanintharyi Region, and Bago Region, provided positive examples of community and government efforts to recognize forest tenure, and reviewed the challenges and lessons from those initiatives. The dialogue underlined the need for strengthened collaboration, communication, and partnership between the Forest Department and communities in order to protect and sustainably manage forests. Further dialogue between communities, government, and civil society at the local, state and regional, and national levels is one essential component of developing an effective, equitable, and people-centered forest sector in Myanmar.



## Appendix I: National Dialogue Agenda

11 May 2017	
8:45-9:00	<b>Registration</b>
9:00-9:35	<b>Opening Ceremony: Welcome &amp; Opening Remarks</b> Opening by Director General of MONREC Welcome by U Shwe Thein, Land Core Group
9:35-10:15	<b>Photo Session and Tea Break</b>
10:15-11:00	<b>Keynote Presentation</b> Madhu Sarin (CSD) <i>Forest Tenure Rights in India and the Forest Rights Act</i>
11:00-12:00	<b>Session 1: Overview of Regional and National Forest Tenure</b> Review how different countries in the South and Southeast Asia recognise forest tenure rights for communities, and how they relate to Myanmar's context. Moderator: Glenn Hunt (LCG) <ul style="list-style-type: none"> <li>• Salai Cung Lian Thawng (Pyoe Pin) <i>National Overview of Forest Tenure in Myanmar</i></li> <li>• David Gritten (RECOFTC) <i>Community Forestry in Southeast Asia: Allowing it to deliver on its potential</i></li> <li>• Madhu Sarin (CSD)</li> </ul>
12:00-1:00	<b>Lunch</b>
1:00-2:00	<b>Session 2: Community Approaches to Forest Management</b> Case studies from Tanintharyi Region, Bago Region, and Shan State showing how communities manage forests using customary land tenure systems. Moderator: Madhu Sarin (CSD) <ul style="list-style-type: none"> <li>• Frankie Abreu (TRIP NET) <i>Community-driven natural resource management for a sustainable future</i></li> <li>• Sunsih Shi (MNYF) <i>Naga customary tenure and forest management</i></li> <li>• Dr. Oliver Springate-Baginski (UEA) <i>Decriminalizing Agroforestry: Shifting cultivation in policy and practice</i></li> </ul>
2:00-3:00	<b>Session 3: Community Conservation and Tenure in Forest Areas</b> Community management of natural heritage and conservation areas, and tenure of communities living within forest areas. Moderator: Dr. Oliver Springate-Baginski (UEA) <ul style="list-style-type: none"> <li>• U Khine Aung (Community Leader) <i>Community conservation of limestone caves in Phapaungtaung Township</i></li> <li>• Julia Fogerite (LCG) <i>Community conservation and protected areas</i></li> </ul>





	<ul style="list-style-type: none"><li>• U Zaw Win Myint (Director, FD Bago Region) <i>Land tenure and housing rights for villages within Reserved Forest</i></li></ul>
<b>3:00-3:20</b>	<b>Tea Break</b>
<b>3:20-4:20</b>	<b>Session 4: Community Forestry and Forest Enterprise</b> Lessons from Myanmar's experience with community forestry, smallholder enterprise, and the importance of forest tenure for livelihoods and development. Moderator: Salai Cung Lian Thawng (Pyoe Pin) <ul style="list-style-type: none"><li>• Dr. Maung Than (RECOFTC) <i>Reflections on community forestry in Myanmar: lessons from efforts to scale up CF</i></li><li>• U Sein Moe (AD) <i>Community Forestry National Working Group in Myanmar</i></li><li>• U Aye Aung (Secretary, Mon RPPA) <i>Smallholder rubber certification</i></li></ul>
<b>4:20-5:00</b>	<b>Summary &amp; Wrap-Up</b>
<b>6:00</b>	<b>Dinner</b>



12 May 2017	
9:00-9:15	<b>Recap of Day 1</b>
9:15-10:30	<p><b>Session 5: Panel on Law and Policy</b></p> <p>Examine the current legal framework related to forest law and identify gaps and opportunities to recognize forest tenure rights more effectively. Moderator: U Tint Swe (FD)</p> <ul style="list-style-type: none"> <li>• U Mg Nyunt (LCG) <i>Forest legal assessment</i></li> <li>• U Tun Paw Oo (Myanmar Forest Association) <i>Results of consultations on forest policy</i></li> <li>• Rob Oberndorf (USAID LTP) <i>Tenure opportunities in the current forest law</i></li> </ul>
10:30-10:50	<b>Tea Break</b>
10:50-12:00	<p><b>Group Discussion</b></p> <p>Moderator: U Shwe Thein (LCG)</p> <p>Presentation: U Zaw Soe (FD) <i>Strengthening Forest Tenure Project Overview</i></p> <p>Group Discussion: In small groups, participants will identify the key issues for strengthening forest tenure rights in Myanmar</p>
12:00-1:00	<b>Lunch</b>
1:00-2:45	<p><b>Group Discussion</b></p> <p>Group Discussion and Presentations: Groups will identify what changes need to be made to strengthen forest tenure rights and who should be involved in making those changes and will present their results.</p>
2:45-3:10	<b>Tea Break</b>
3:10-4:40	<p><b>Group Discussion and Closing Plenary</b></p> <p>Group Discussion and Presentation: Groups will develop key action points and priorities for the next phase of the project to strengthen forest tenure rights and share their recommendations in a plenary discussion.</p>
4:40-4:50	<b>Closing Remarks</b>