

**Karen National Union (KNU)
Land Policy
March 2014**

Table of Contents

PREAMBLE.....	1-2
CHAPTER 1: PRELIMINARY.....	2-3
<i>Article 1.1 Objectives.....</i>	<i>2-3</i>
<i>Article 1.2 Nature and scope.....</i>	<i>3</i>
CHAPTER 2: GENERAL POLICY MATTERS.....	3-8
<i>Article 2.1 Basic principles.....</i>	<i>4-5</i>
<i>Article 2.2 Principles of implementation.....</i>	<i>5-6</i>
<i>Article 2.3 Rights and responsibilities.....</i>	<i>6-7</i>
<i>Article 2.4 Policy, legal and organizational frameworks related to land governance.....</i>	<i>7-8</i>
CHAPTER 3: RECOGNITION AND ALLOCATION OF TENURE RIGHTS AND DUTIES.....	8-20
<i>Article 3.1 Basic Principles.....</i>	<i>8</i>
<i>Article 3.2 Definitions.....</i>	<i>8-10</i>
<i>Article 3.3 Safeguards.....</i>	<i>10-11</i>
<i>Article 3.4 Customary tenure system.....</i>	<i>11-12</i>
<i>Article 3.5 Informal tenure.....</i>	<i>12-13</i>
<i>Article 3.6 Communal land.....</i>	<i>13-14</i>
<i>Article 3.7 Government-Managed Public Purpose Land.....</i>	<i>14</i>
<i>Article 3.8 Regulating Use Rights.....</i>	<i>14-17</i>
<i>Article 3.9 Contract farming.....</i>	<i>17-18</i>
<i>Article 3.10 Investment.....</i>	<i>18-20</i>
CHAPTER 4: CHANGES TO TENURE RIGHTS AND DUTIES.....	20-25
<i>Article 4.1 Basic principles.....</i>	<i>20-21</i>
<i>Article 4.2 Restitution.....</i>	<i>21-22</i>
<i>Article 4.3 Redistribution.....</i>	<i>22-23</i>
<i>Article 4.4 Rescission.....</i>	<i>23-24</i>
<i>Article 4.5 Readjustment.....</i>	<i>24-25</i>
<i>Article 4.6 Investment.....</i>	<i>25</i>
CHAPTER 5: ADMINISTRATION OF TENURE.....	25-28
<i>Article 5.1 Registration.....</i>	<i>25-26</i>
<i>Article 5.2 Valuation.....</i>	<i>26</i>
<i>Article 5.3 Taxation.....</i>	<i>26-27</i>
<i>Article 5.4 Regulated spatial planning.....</i>	<i>27</i>
<i>Article 5.5 Resolution of tenure rights and tenure rights related disputes.....</i>	<i>27-28</i>
CHAPTER 6: IMPLEMENTATION.....	28-29
<i>Article 6.1 Training.....</i>	<i>28</i>
<i>Article 6.2 Monitoring & evaluation.....</i>	<i>28-29</i>

PREAMBLE

This Karen National Union (KNU) land policy addresses what kinds of rights, held by which categories of claimants, and shall be secured through tenure reforms. It aspires to do so in a manner that will not add to possibilities of manipulation and confusion, but instead promote in Karen Land (hereafter “Kawthoolei”) an enduring peace grounded in social justice. It thus 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 aspires toward greater self-determination in the context of a decentralized federal Union of Myanmar.

Land policies are never neutral. They necessarily transform the status quo either by reinforcing it or undermining it to varying extents and degrees. Therefore, what approach a given land policy takes is crucial. For Kawthoolei, an approach is needed that prioritizes two aspects. First, that makes socially-legitimate customary occupation and use rights, as they are currently held and practiced, such as for upland swidden cultivation, community forestry and grazing, the point of departure for both their recognition in law and for the design of institutional frameworks for mediating competing claims and administering land, forests, water, fisheries and associated natural resources. Second, such an approach must also recognize that many Karen peoples, against their will, have been alienated from their homelands and deprived of their customary occupation and use rights as a result of past and current conflict, and thus the land policy and tenure reforms must serve to redress this situation.

In Kawthoolei, the lives and livelihoods of many, especially marginalized and vulnerable peoples and village communities, depend on secure access, with effective control and sustainable use of, land, forests, water, fisheries and associated natural resources. Effective access to and control of land, forests, fisheries, water and their related natural resources is crucial for constructing rural livelihoods, for laying the foundations for social inclusion and empowered political participation especially in development-related decision-making, and for ensuring cultural and collective identities. Full, meaningful and effective access to and control of these resources is central to peoples’ existence, well-being and survival. Effective access and control is understood here as the recognized right to use and benefit from land and other closely associated natural resources over time, and to participate in making informed decisions about how these are used and for what purposes.

How people, communities and others gain and retain the recognized and socially legitimate right to occupy and use land, forests, water, fisheries and associated natural resources is defined and regulated by peoples’ societies and customary village communities through socially legitimate systems of tenure, both formal and informal. Tenure systems determine who has what rights, to which land, forests, fisheries, water and other natural resources, for how long and what temporal periods, and for what purposes. Tenure systems may be based on written policies and laws, as well as unwritten customs and practices.

In line with international human rights standards, this policy supports good governance through a socially legitimate tenure system that prioritizes the occupation and use rights of marginalized and vulnerable peoples and village communities, and emphasizes the social and ecological functions of land, forests, fisheries, water and related natural resources.

This policy aims to stimulate and promote system-wide the progressive realization of human rights, environmental protection, sustainable livelihoods, and a just and peaceful future for all members of human society in Kawthoolei.

After the KNU was formed on July 16, 1949, the Kawthoolei Government was established with several departments functioning under its mandate, prominent among them the forestry and agriculture departments. KNU's first land policy was ratified during KNU's 9th Congress in 1974, with the policy principally based on the slogan of "farmers not to transfer their farmlands to others". However, after General Ne Win of the Burma Socialist Program Party (BSPP) seized power in the 1962 coup, Burmese civilians' lands and rental of the leased lands were confiscated and nationalized by the Burmese government. For Karen civilians to be able to use their lands independent of Burmese government law, the KNU thus passed their land policy. But by the mid-2000s KNU's land policy became outdated and less applicable, so KNU's head of the agriculture department revised and updated the policy in 2005 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. For the existing land policy to be more relevant and useful for Karen civilians and the current political context, regular meetings and workshops have been organized. The result has been this land policy document to reflect the current times.

CHAPTER 1: PRELIMINARY

Article 1.1 Objectives

- 1.1.1** With this land policy, the Karen National Union or KNU (hereafter "the Government") strives to uphold international human rights standards, to promote the welfare of all Karen peoples and long-standing resident village communities and to protect local food production systems and ecosystems throughout Kawthoolei. With regard to land, forests, fisheries, water, and associated natural resources, the specific objectives of this policy are as follows:
- 1.1.2** To recognize, protect, prioritize and promote the tenure rights of Karen peoples and long-standing resident village communities, with emphasis on the occupation and use rights of the poor, marginalized and vulnerable and with special attention to the rights of women and youth, and to protect them from any loss of enjoyment of these rights and of benefits of use.
- 1.1.3** To provide for different types of tenure and their related rights, rules, duties and restrictions on ownership, occupation, use and management practices in the context of the just and peaceful development and welfare of human society.
- 1.1.4** 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.
- 1.1.5** To recognize, prioritize and promote the rights of restitution of refugees and displaced persons who have been forced from their lands, livelihoods and homes.

- 1.1.6 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.
- 1.1.7 To prioritize and promote a sustainable environment and sound ecological agricultural and aqua-cultural practices.
- 1.1.8 To establish an affordable and accessible land registry system that accurately records and certifies the socially-legitimate tenure rights including customary tenure practices of resident peoples and village communities.
- 1.1.9 To establish an appropriate, accessible and effective system for addressing and remedying tenure-related grievances and disputes.
- 1.1.10 To establish the respective duties and roles for all of the relevant and appropriate KNU departments and agencies – including Karen Agriculture Department (“KAD”), Karen Forest Department (“KFD”), Karen Fisheries Department (“KFiD”), Karen Mining Department (“KMD”), Karen Interior Department (“KID”), and Karen Justice Department (“KJD”) – with respect to this policy.

Article 1.2 Nature and scope

- 1.2.1 This policy establishes rules and regulations to support the just and legitimate, peaceful and ecological governance of tenure of land, forests, fisheries, water and related natural resources in Kawthoolei.
- 1.2.2 The provisions of this policy shall prevail and be given effect over any inconsistent provision of the laws of Burma/Myanmar or any of its political subdivisions.
- 1.2.3 The policy recognizes native peoples, customary village communities and other long-standing residents of Kawthoolei and their associated customary occupation, use and stewardship practices with regard to land, forests, fisheries, water and biodiversity.
- 1.2.4 This policy is to be interpreted and administered in a manner consistent with international human rights principles and standards.¹
- 1.2.5 This policy is in line with KNU goals seeking a future decentralized federal union as the policy outlined below is implicitly dependent on land management powers implemented at the state and township level, accessible to and in accordance with the customary laws of the local peoples.

CHAPTER 2: GENERAL POLICY MATTERS

¹ This policy makes reference to various international human rights instruments including, *inter alia*, the Universal Declaration of Human Rights, the International Conventions on Economic, Social and Cultural Rights and on Civil and Political Rights, as well as other relevant instruments such as the ILO Convention No.169, the Convention on Biological Diversity, the UN Declaration on the Rights of Indigenous Peoples, the Right to Food, the Right to Water, the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (the “Pinheiro Principles”), and the FAO-Tenure Guidelines.

Article 2.1 Basic principles

- 2.1.1** The following principles are essential to contribute to good governance of tenure in occupation and use of land, forests, fisheries, water and related natural resources and therefore must be adhered to:
- 2.1.2** 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.
- 2.1.3** 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.
- 2.1.4** 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 success of this land policy, since past conflicts left unresolved will constrain, if not undo, its success in the long run.
- 2.1.5** Safeguard socially-legitimate tenure rights against threats and infringements; protect socially-legitimate tenure rights holders against the arbitrary loss of their occupation and use rights, including forced evictions that are inconsistent with international human rights law.
- 2.1.6** Promote and facilitate the enjoyment of socially-legitimate tenure rights; take active measures and meaningful public investments to promote and ensure that the people are able to attain and enjoy the full realization of their tenure rights.
- 2.1.7** Provide access to justice to deal with infringements of socially-legitimate tenure rights; provide effective and accessible means to everyone, through judicial authorities or other customary approaches, to resolve disputes over tenure rights; and provide affordable and prompt enforcement outcomes.
- 2.1.8** Provide just compensation where tenure rights are taken for socially-legitimate public purposes.
- 2.1.9** Prevent tenure disputes, violent conflicts and corruption; take active measures to prevent tenure disputes from arising and from escalating into violent conflicts; endeavor to prevent corruption in all forms, at all levels, and in all settings.
- 2.1.10** Ensure respect of human rights and socially-legitimate tenure rights by business enterprises; ensure that businesses are not involved in abuse of human rights or undermining socially-legitimate tenure rights; take additional steps to protect against such abuses by business enterprises that are owned or controlled by Government, or that receive substantial support and service from Government agencies; and provide access to effective judicial remedies

for negative impacts on human rights and legitimate tenure rights by business enterprises.

Article 2.2 Principles of implementation

- 2.2.1** The following principles of implementation are essential to contribute to good governance of tenure of land, forests, fisheries, water and related natural resources and therefore must be observed:
- 2.2.2** Human dignity: recognizing the inherent dignity and the equal and inalienable human rights of all individuals.
- 2.2.3** Non-discrimination: no one should be subject to discrimination under law and policies as well as in practice.
- 2.2.4** Equity and justice: recognizing that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote social justice with equitable tenure rights and control of land, forests, fisheries, water and associated natural resources, for all, with special emphasis on women, youth, poor, vulnerable and marginalized peoples.
- 2.2.5** Gender equality: Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. Government must ensure that women and girls have equal tenure rights and access to land, forests, fisheries, water and related natural resources independent of their civil and marital status.
- 2.2.6** Holistic and sustainable approach: recognizing that land, forests, fisheries, water, and associated natural resources and their uses are interconnected, and adopting an integrated and sustainable approach to their administration.
- 2.2.7** Consultation and participation: engaging with and seeking the support of those who, having socially-legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.
- 2.2.8** Rule of law: adopting a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under international human rights law and instruments.
- 2.2.9** Transparency: clearly defining and widely publicizing policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all.
- 2.2.10** Accountability: holding individuals, public agencies, and non-state actors responsible for their actions and decisions according to international human rights principles and the principles of the rule of law.

- 2.2.11** Continuous improvement: Government must improve mechanisms for monitoring and analysis of tenure governance in order to develop evidence-based programs and secure ongoing improvements with regard to the overall vision and objectives and basic principles of this policy.

Article 2.3 Rights and responsibilities

- 2.3.1** Government must ensure that all its actions regarding tenure and its governance are consistent with international human rights law.
- 2.3.2** All parties must recognize that no tenure right is absolute. All tenure rights are limited by the human rights and occupation and use rights of others and by the measures taken by Government necessary for public purposes. Such measures must be determined democratically and by law, solely for the purpose of promoting general welfare and consistent with international human rights obligations. Tenure rights are also balanced by duties, including the long-term protection and sustainable use of land, forests, fisheries, water and related natural resources.
- 2.3.3** Government must provide legal recognition for socially-legitimate tenure rights, including customary occupation, use and related practices not currently protected by written law. Government must define through widely publicized rules the categories of rights that are considered legitimate, with special emphasis on socially- legitimate occupation, use and related practices, and provide all persons, including those who against their will, have been alienated from their homelands and deprived of their customary occupation and use rights as a result of past and current conflict, with a degree of tenure security which guarantees equal legal protection against arbitrary evictions, forced evictions, and harassment and other threats, and ensures that their legitimate tenure rights are fully realized and restored and not otherwise extinguished or infringed.
- 2.3.4** Government must remove and prohibit all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity, and lack of access to economic resources. Government must ensure equal tenure rights for women and men, including their right to inherit and bequeath these rights.
- 2.3.5** Government must provide non-discriminatory and gender-sensitive assistance where people are unable through their own actions to acquire tenure rights to sustain themselves, to gain access to the services of implementing agencies and judicial authorities, or to participate in processes that could affect their tenure rights.
- 2.3.6** Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of tenure of land, forests, fisheries, water and associated natural resources must not only take into account rights that are directly linked to occupation and use of resources, but also broader civil, political, economic, social and cultural rights. In doing so, Government must respect, protect and ensure the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists, rural workers, rural women and rural youth and must observe international human rights principles when dealing with individuals and associations acting in defense of land, forests, fisheries, water and related natural resources.

- 2.3.7** Government must provide access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights, and must provide effective remedies, which may include a right of appeal, as appropriate. Such remedies must be promptly enforced and may include restitution, indemnity, compensation and reparation. Government must strive to ensure that vulnerable and marginalized persons have access to such means. Government must ensure that any person whose human rights are violated in the context of tenure has access to such means of dispute resolution and remedies.
- 2.3.8** Government should welcome and must facilitate the participation of all occupants and users of land, forests, fisheries, water and related natural resources, especially the poor, vulnerable and marginalized in order that they become fully involved in a participatory process of tenure governance, inter alia, formulation and implementation of policy and law and decisions on territorial development.

Article 2.4 Policy, legal and organizational frameworks related to land governance

- 2.4.1** A Land Committee will be established with a long-term mandate under the KAD to address all issues related to this KNU land policy and its implementation, including in relation to cross-departmental and transboundary issues, and the tenure system established herewith, consistent with the aforementioned guiding principles and principles of implementation, especially the principle of continuous improvement.
- 2.4.2** The membership of this Land Committee will be comprised of the following, with gender diversity as possible:
- One (1) representative from each of the following KNU departments: KAD, KFD, KFiD, KMD, KID, and KJD for a total of 6 government members;
 - One (1) each from the CBO/NGO sector for a total of six (6), but with three (3) of these coming from the border and two (3) coming from inside Burma/Myanmar;
 - One (1) land rights expert.
- 2.4.3** The organizational structure of the Land Committee will be as follows:
- KAD head will serve as the Land Committee Chair;
 - The Land Committee Secretary and the Land Committee Treasurer will be selected from the committee by the CBO representatives;
 - Decisions will be based on majority vote.
 - There may also be an advisory board to guide the committee on technical matters, and this advisory board will serve in a strictly advisory capacity without any role or power in decision-making.
- 2.4.4** This Land Committee will have (at least) three Working Groups, whose heads will be selected by the six (6) CBO/NGO representatives:
- Overall tenure system management and governance, including but not limited to issues related to land classification, use and planning;
 - Tenure rights documentation, demarcation, registration and mapping, including but not limited to issues related to tenure rights of migrants, returning IDPs and refugees;

- Tenure dispute processing and conflict resolution, including but not limited to grievances and complaints related to any changes to tenure rights related to restitution, redistribution, rescission, readjustment, and investment, including valuation and compensation issues.

2.4.5 The Working Groups must involve the relevant local customary authorities (“Master of the Kaw”) when carrying out their work and responsibilities and in any decision making related to specific local cases.

CHAPTER 3: RECOGNITION AND ALLOCATION OF TENURE RIGHTS AND DUTIES

Article 3.1 Basic Principles

3.1.1 The land, forests, fisheries, water and related natural resources of Kawthoolei belong to the people, and are managed by the Government. Government must manage all this, which is the peoples’ heritage, in light of broader social, economic and environmental objectives and consistent with international human rights law. The Government must constantly update tenure information on land, forests, fisheries, water and related natural resources it manages by creating and maintaining accessible inventories. Such inventories should record the agencies responsible for administration as well as any socially-legitimate tenure rights held by individuals, indigenous peoples and other long-held village communities.

3.1.2 The Government must develop and publicize policies covering the occupation and use of land, forests, fisheries and water and associated natural resources that are retained by the public sector and should strive to develop policies that promote equitable distribution of benefits of their use. The administration of, and any transactions concerning, these resources should be undertaken in an effective, transparent and accountable manner in fulfillment of public policies.

3.1.3 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. The peoples’ investments of labor and knowledge in the making of land and livelihoods must also be recognized and prioritized by the Government and by public investment to ensure that the people are able to secure, enjoy and fully realize over the long term the tenure rights accorded in this policy.

Article 3.2 Definitions

3.2.1 *“Kaw”*: Communal land, forests, fisheries, water and related natural resources that are occupied, used and governed under the communal stewardship and tenure arrangements of a particular village community. This encompasses lowland agricultural fields (such as paddy and orchards), designated community forests, grazing lands and upland swidden cultivation areas – including when fallowed – that have been allocated as such by the village community. It must be recognized that customary rules and regulations are fluid and dynamic over time, and can vary and change from village to village and from area to area. 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 upland swiddens and fallows, among other categories.
- Land, forests, fisheries, water, and related natural resources occupied and/or used by individual households – home lot, home gardens, upland swiddens and fallows, orchards, and lowland paddy, among other categories.

3.2.2 *Government-Managed Public Purpose Land (GMPPL)*: refers to land areas of the natural landscape that are managed by the Government in fulfillment of a clearly declared public purpose or ecological service, as determined through transparent and accountable decision-making processes. In Kawthoolei there are three types of government owned public purpose land, namely: Periodic Land, Reserve Land, and Public Land.

- *Periodic land*: Lands that are now or hereafter designated by KAD, in cooperation with the Land Committee and with the consent of customary authorities, as in or near waterways that periodically form based on water flow or rain.
- *Reserve land*: Lands that are now or hereafter designated by the Karen Forest Department (“KFD”) as “Reserved Forest”, “Unreserved Forest”, “Wildlife Protected Areas”, “National Park Areas”, together with buffer zones adjacent to such Reserved Land.
- *Public land*: Lands that are now or hereafter designated by KAD as used for the public infrastructure purposes such as roads, bridges, government building, schools, hospitals, office buildings for nongovernmental and community organizations and such other commonly considered public use infrastructure.

3.2.3 *Informal tenure*: refers to situations where occupants and users, especially from marginalized and vulnerable people and communities, such as IDPs and refugees, whose land use practices are not yet recognized by Government and customary authorities.

3.2.4 *Cultivation Rules*: refer to the rules and regulations governing cultivation promulgated by KAD, in cooperation with the Land Committee, including (i) a requirement that land should not be used for speculation and should be used to contribute to the resilience of local food production systems; (ii) a requirement that upstream water uses not adversely affect downstream water users; and (iii) the prohibition on the use of chemical pesticides, herbicides and fertilizers without prior explicit permission from KAD.

- 3.2.5** *Use Rights Transfer Rules:* refer to the rules and regulations governing the transfer of use rights, including (i) a requirement that the land not contain Periodic Land; (ii) a requirement that the new user has understood and agreed to abide by the Cultivation and other rules set forth herein; (iii) a requirement that the use rights transfer agreement be signed by both parties and filed with the Registry and that the transfer agreement be disclosed to and approved by KAD, in consultation with the Land Committee and with the consent of customary authorities prior to the transfer; (iv) a requirement that the land be described by written description or reference to a map; and (v) a determination by KAD that prior to the transfer of any use rights, the original user has in good faith attempted to contract with: first, to a relative from the same village who is qualified; second, to a non-relative in the village who is qualified; and third, to the person, if qualified, currently employed as a laborer on the farm.
- 3.2.6** *Inheritance Rules:* refer to the rules and regulations governing the inheritance of use rights, including (i) a requirement that the transfer by inheritance has been approved by KAD, in consultation with the Land Committee and with the consent of customary authorities, and written evidence of the inheritance be provided to KAD and recorded in the Registry, (ii) a restriction prohibiting the person who has inherited from transferring the use rights to the land to a person who is not qualified or using the land as collateral for financing, and (iii) a requirement that the person inheriting the land has understood and agreed to comply with the Cultivation Rules and other rules set forth in this policy. The Inheritance Rules shall be applied by KAD in a gender-sensitive manner protective of the rights of women and in a flexible manner to allow use by occupants and users, especially from marginalized and vulnerable people and communities, such as IDPs and refugees, whose land use practices are not yet recognized by Government and customary authorities.

Article 3.3 Safeguards

- 3.3.1** Where possible, legal recognition and allocation of tenure rights of individuals, families and communities should be done systematically, in order to provide impoverished, marginalized and vulnerable peoples and communities with full opportunities to acquire legal recognition of their tenure rights. When recognizing or allocating tenure rights with regard to Communal Land and/or Government-Managed Public Purpose Land, Government should:
- 3.3.2** Establish safeguards to avoid infringing on or extinguishing the occupation and use rights of others, including socially-legitimate tenure rights and subsidiary tenure rights, such as gathering rights, even when these are not currently protected by Government or customary law.
- 3.3.3** Give due consideration to peoples and local village communities that have traditionally used the land, forests, fisheries, water and related natural resources. Policies must take into account the tenure rights of others and anyone who could be affected must be included in the consultation, participation and decision-making processes. Such policies must clearly show and ensure that the allocation of tenure rights does not threaten the livelihoods of people by depriving them of their socially-legitimate access to these resources.

- 3.3.4** First identify all existing tenure rights holders, whether formally recorded or not. Indigenous peoples and other village communities with customary tenure systems, smallholders and anyone else who could be affected must be included in the consultation process. Government must provide access to justice if people believe their tenure rights are not recognized or respected.
- 3.3.5** Ensure that women and men enjoy the same rights in the newly recognized tenure rights, and that those rights are reflected in records.
- 3.3.6** Ensure that people whose tenure rights are recognized or who are allocated new tenure rights have full knowledge of their rights and also their duties. Where necessary, Government should provide support to such people so that they can enjoy their tenure rights and fulfill their duties.
- 3.3.7** Carry out allocation of formal occupation and use rights in transparent, participatory ways, using simple procedures that are clear, accessible and understandable to all. Information in applicable languages should be provided to all potential participants. Newly allocated tenure rights should be recorded with other existing tenure rights in a single recording system or linked by a common framework.

Article 3.4 Customary tenure system

- 3.4.1** Land, forests, fisheries, water and other related natural resources may have social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with customary tenure systems. Government must recognize, respect and always take into account these non-monetized values for peoples and village communities with customary tenure systems.
- 3.4.2** Government must recognize and protect the legitimate tenure rights of indigenous peoples and other communities with customary tenure systems. Such recognition should take into account the land, forests, fisheries, water and other related natural resources that are used exclusively by a community and those that are shared.
- 3.4.3** Information on any such recognition must be well-publicized in an accessible location, in an appropriate form that is understandable and in applicable languages.
- 3.4.4** Indigenous peoples and other communities with customary tenure systems must not be forcibly evicted from ancestral lands.
- 3.4.5** Full and effective participation of peoples and communities in decisions regarding their tenure systems must be promoted through their local or traditional institutions. Government must clearly and actively strive for full and effective participation of all members of affected communities, including vulnerable and marginalized members, when developing policies and laws related to tenure systems of indigenous peoples and other communities with customary tenure systems.
- 3.4.6** Where constitutional or legal reforms strengthen the rights of women and place them in conflict with custom, all parties must clearly and actively strive to cooperate to accommodate such changes in the customary tenure systems.

- 3.4.7** Government must protect indigenous peoples and other communities with customary tenure systems against the unauthorized use of their land, forests, fisheries and water by others.
- 3.4.8** Where a village community does not object, Government should assist to formally document and publicize information on the nature and location of land, forests, fisheries, water and other related natural resources occupied and used by the village community. Where tenure rights of indigenous peoples and other communities with customary tenure systems are formally documented, they should be recorded with other public, private and communal tenure rights to prevent competing claims.
- 3.4.9** Government should respect the approaches used by people and communities with customary tenure systems to resolving tenure conflicts within communities. For land, forests, fisheries, water and other related natural resources that are used by more than one village community, means of resolving conflict between these communities should be strengthened.

Article 3.5 Informal tenure

- 3.5.1** Informal tenure refers to situations where occupants and users, especially from marginalized and vulnerable people and communities, such as IDPs and refugees, whose land use practices are not yet recognized by Government and customary authorities.
- 3.5.2** Where informal tenure to land, forests, fisheries, water and other related natural resources arises, Government and customary authorities must acknowledge it in a manner that respects existing formal rights under this policy and in ways that recognize the reality of the situation and promote social, economic and environmental well-being. In particular, Government must acknowledge the emergence of informal tenure arising from involuntary, forced, or distress migrations.
- 3.5.3** Government and customary authorities should develop policies to address situations of informal tenure in a way that facilitates access to formal tenure rights either by the Government and/or customary authorities, including through resettlement where necessary and appropriate, and in a manner consistent with international human rights standards.
- 3.5.4** Government and customary authorities must ensure that all actions regarding informal tenure are consistent with their existing obligations under international law and applicable instruments, including as appropriate to the right to food, to water and to adequate housing.
- 3.5.5** Whenever Government and customary authorities provide legal recognition to informal tenure, this must be done through participatory, gender-sensitive processes. In doing so, Government and customary authorities must pay special attention to peasant farmers and small-scale food producers and the related local food production systems. These processes should facilitate access to legalization services. Government and customary authorities should strive to provide technical and legal support to communities and participants.

- 3.5.6** Where it is not possible to provide legal recognition to informal tenure, Government and customary authorities must prevent forced evictions.

Article 3.6 Communal land

- 3.6.1** Communal Land is not limited to the land resources therein, but also the related forest and aquatic resources. Communal Land may thus include community forests and woodlands; lakes, rivers and wetlands; swidden, garden, pasture and rangeland; and other areas designated as such for local household and village food and non-food material production, for cultivation of medicinal plants, for ecological purposes, as well as for burial and other spiritual purposes.
- 3.6.2** Occupation and use rights of members of the village community only are permitted in Communal Land, and may be individual household or collective, as determined by the village community through the appropriate village institutions and transparent and accountable decision-making processes.
- 3.6.3** The customary tenure rights and practices of many people and communities in Kawthoolei depend on recognition and protection of Communal Land. In cooperation with the Land Committee and with the FPIC of the village community and customary authorities, the KAD will recognize, certify and record in the relevant registry all communal land in Kawthoolei.
- 3.6.4** All parties must recognize and protect the customary household and collective occupation and use rights, duties and practices that are intrinsic to a village's Communal Land and customary tenure system.
- 3.6.5** Each village community shall determine the allowable individual household and collective occupation and use of its communal land, and within its communal land may designate specific areas for specific uses, including agriculture, forestry, fisheries, grazing and mixed uses. If the village community so desires and declares, any member who is allocated communal land to grow food for his or her family may be required to pay a fair tax to the community. The KAD, in cooperation and consultation with the Land Committee and with the FPIC of customary authorities and all members of the village, should clarify, document and certify who has what rights to which areas designated as communal land, for how long and what temporal periods, and for what purposes and with what duties.
- 3.6.6** In cooperation with the 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.
- 3.6.7** In the case of overlapping spatial boundaries between two or more village communities, KAD, in cooperation with the Land Committee and with the FPIC of customary authorities, shall consult with all affected people and communities and reach consensus with the communities on the exact location of boundaries. If a village community desires to adjust the boundaries of its communal land area, it shall consult with KAD and the Land Committee and with the relevant customary authorities and all peoples that may potentially be affected. Any adjustment shall require the approval of KAD and

the Land Committee and the relevant customary authorities and the FPIC of any adversely affected peoples. If consensus cannot be reached and the village community still desires to proceed with the adjustment, the issue should be subjected to a mutually agreeable form of mediation. If adversely affected by an adjustment, the affected peoples shall receive fair and just compensation from the Government.

- 3.6.8** No communal land or any portion thereof shall be used at any time in any way in any development project or in any investment initiative without the FPIC of the peoples or village communities who could be affected.

Article 3.7 Government-Managed Public Purpose Land

- 3.7.1** *Periodic land*: Lands that are now or hereafter designated by KAD, in cooperation with the Land Committee and with the FPIC of customary authorities, as in or near waterways that periodically form based on water flow or rain. Periodic land has crucial social, hydrological and ecological functions that must serve the general public welfare, as determined by the Land Committee with the FPIC of customary authorities. Only under clear conditions of the strictest nature, to be determined by the Land Committee, may usufruct rights and responsibilities to Periodic Land be allocated to qualified people or communities.
- 3.7.2** *Reserve land*: Lands that are now or hereafter designated by the Karen Forest Department (“KFD”) as “Reserved Forest”, “Unreserved Forest”, “Wildlife Protected Areas”, “National Park Areas”, together with buffer zones adjacent to such Reserve Land. Reserve land has crucial social, hydrological and ecological functions that must serve the general public welfare, as determined by the Land Committee with the FPIC of customary authorities. In compliance with applicable KFD regulations and only under clear conditions to be determined by the Land Committee and with the FPIC of customary authorities, and only when it will not undermine its social and ecological functions and the general public welfare, Reserve Land may be allocated for agricultural uses to qualified people or communities.
- 3.7.3** *Public land*: Lands that are now or hereafter designated by KAD as used for the public infrastructure purposes such as roads, bridges, government buildings, schools, hospitals, office buildings for nongovernmental and community organizations and such other commonly considered public use infrastructure. Public Land has crucial social, hydrological and ecological functions that must serve the general public welfare, as determined by the Land Committee with the FPIC of customary authorities. Only under clear conditions, to be determined by the Land Committee and with the FPIC of customary authorities, and only when it will not undermine its social and ecological functions and the general public welfare, may use rights and responsibilities to Public Land be allocated to qualified people or communities.

Article 3.8 Regulating Use Rights

- 3.8.1** The occupation or use of land, forests, fisheries, water and related natural resources is pursuant to approval and certification of such occupation or use by KAD, in cooperation with the Land Committee and with the FPIC of the village community and customary authorities. Such right of occupation or use will be recorded in the relevant Registry.

3.8.2 The right of occupation or use is limited to a person who is 18 years or older who has not been convicted of any violation of law and who is determined to be:

(i) primarily resided in Kawthoolei since before 1988 other than for periods of interruption caused by being a refugee or internally displaced person or interruption due to incidental travel;

(ii) resided in Kawthoolei after 1988 and who has performed public services for the benefit of the indigenous people of Kawthoolei; or

(iii) a resident of Kawthoolei and has evidence of prior occupation or use rights in a parcel of land based on preexisting evidence acceptable to KAD, the Land Committee, village community and customary authorities;

(iv) a husband and wife with shared occupation or use rights and recorded as such who [together] meet any of the above criteria.

3.8.3 Any right of use shall be subject to a strict ceiling or such size limits as KAD shall set, in consultation with the Land Committee and with the FPIC of customary authorities. The right of use limit is up to 20 acres for wet rice farming and between 2 to 5 acres for silt land farming based upon a determination of the sustainable fertility of the silt land. In consultation with the Land Committee and only with the FPIC of village community members and customary authorities, and only if adhering to the vision and basic principles of this policy, KAD may permit the 20-acre limit to be exceeded up to a maximum of 50 acres in circumstances warranted by existing patterns of use or by addition of a small area of adjacent land that is not large enough to support separate farming. In calculating the maximum permitted area of land that can be used by a person under this policy, any other land used or leased by that person, directly or indirectly, must be counted towards the maximum. Any person seeking an expansion of the 20-acre limit must apply to KAD, in cooperation with the Land Committee and with the FPIC of customary authorities, and must provide a full account of his or her other land, water, fisheries and forest areas where he or she already has acquired interests in and/or occupation or use rights. Failure to do so will automatically nullify the said application.

3.8.4 Right of occupation or use by a business or commercial farming enterprise shall not be more than 50 acres. The calculation of the maximum permitted area of land that can be leased under this policy to a person or company must include a full account of any and all direct or indirect interests in and/or occupation or use rights by that person or company of any and all other land in Kawthoolei, which will be counted towards the maximum landholding limit or ceiling. Failure to provide such an accounting will automatically nullify the person or company's tenure rights in Kawthoolei.

3.8.5 Any person who obtains the right of occupation and use of land, forests, fisheries, water and other related natural resources in Kawthoolei shall have the following rights and responsibilities:

- the right and responsibility to cultivate the land, including cultivation for long-term or short-term planting and installation of irrigation or

other farm-related means intended to protect their farms, in compliance with the Cultivation Rules;

- the right to transfer occupation and use rights to another person, in compliance with the Use Rights Transfer Rules;
- the right to transfer occupation and use rights of the land through inheritance, in compliance with the Inheritance Rules;
- rent rates for an occupation and use right shall contain terms that are negotiated by the parties in consultation with and with the approval of KAD, in consultation with the Land Committee and with the FPIC of customary authorities, or KFD for Reserved Areas; and
- each of the above shall be considered a condition of occupation and use rights which, if violated, subjects the right to rescission.

3.8.6 If KAD determines that a parcel of land has been occupied and/or cultivated by a person for a continuous period of three years or more, acting with the permission of the village community and customary authorities in which the land is located, the person who has cultivated the land shall have a right to formally request use rights to the land from KAD. The KAD, in consultation with the Land Committee and with the FPIC of customary authorities, may grant such rights if the person qualifies.

3.8.7 The term of occupation and use rights shall expire on the first to occur of: (i) the tenure rights holders death; (ii) the date that is 20 (twenty) years from the date the tenure rights become effective; or (iii) upon termination for improper use according to Government policy, as determined by KAD, in consultation with the Land Committee and with the FPIC of customary authorities. However, if there is more than one tenure rights holder from the household, the tenure rights shall not terminate by death until the last of the named rights holders have deceased. If tenure rights are not exterminated during the allowed first term, then the term can be extended twice, the first time for up to 10 (ten) years and the second time for up to 5 (five) years. Extensions are subject to the prior approval of KAD, in consultation with the Land Committee and with the FPIC of customary authorities. Any expiration or extension of tenure rights shall be recorded in the Registry.

3.8.8 If a tenure rights holder fails to comply with his or her tenure rights obligations or the provisions for tenure rights regulations set forth in this policy, the tenure rights may be terminated by KAD, in consultation with the Land Committee, the use rights holder and customary authorities. If termination occurs, a record thereof shall be filed with the relevant Registry. If the tenure right is for commercial or business purposes and the tenure rights holder has not promptly commenced or continuously pursued productive use of the land, forests, fisheries, water and related natural resources in a manner that fulfils its social and ecological functions and contributes to the social welfare of the affected communities, the tenure rights may also be terminated by KAD.

3.8.9 The right to occupy and use land, forests, fisheries, water and related natural resources are subject to certain general reservation of rights and restrictions in favor of the Government, in consultation with the Land Committee and with the FPIC of village communities and customary authorities. These include the following:

- the right to mine subsurface mineral resources located under the land so long as (i) the mining is conducted in compliance with all legal

requirements governing mining and the environment, (ii) any material disruption of the use rights holder's use of the surface of the land is avoided, and (iii) any damage cause to the surface or soil condition of the land is repaired or restored and the use rights holder is given fair compensation for any loss of use or value to the land due to the mining operation; and

- the prohibition of harvesting of teak or other similar valuable wood without prior permission of the KFD and in compliance with the applicable regulations of KFD.

3.8.10 In the case of the Government allocating use rights to extract minerals or timber and other natural resources or the production of crops, then the community whose use rights were impinged upon should receive a certain percentage of the profits generated, as determined by the relevant departments, in consultation with the Land Committee and customary authorities, and with consensus with the local community.

3.8.11 These rights and restrictions on the peoples' tenure rights are strictly subject to the overall vision and basic principles of this policy, as well as to international human rights standards, and finally to the precautionary principle, namely, the obligation to:

- protect Communal Land from any ecological harm that might result from either mining or wood harvesting and related activities; and
- ensure that no harm comes to any socially-legitimate tenure rights, including customary and informal tenure rights not yet recognized by law, as a result of either mining or wood harvesting or other resource extractive or productive activities.

3.8.12 A person who obtains tenure rights from KAD shall be required to contribute to local food production systems and support living practices that serve the general and specific social and ecological welfare. If there exists a food shortage period declared by the Government, reallocation of use rights will prioritize persons unable to provide for their own food because their principal occupations are not farming or they are women and children who do not have families who farm.

3.8.13 Any use rights holder who is found by KAD to have transferred use rights on terms contrary to the provisions of this policy may, upon notice and an opportunity to be heard, have his or her right to use the land, forest, fisheries, water and related natural resources associated with this right suspended or revoked by KAD, and have any use rights entered into that is in violation terminated by KAD.

Article 3.9 Contract farming

3.9.1 The Government should regulate and monitor formal contract farming arrangements to ensure that risks are minimized and benefits maximized for farmers.

3.9.2 The Government should provide easy and affordable access to credit for farmers so that they do not have to rely on local brokers or moneylenders at high interest rate that unnecessarily increases risk and the debt cycle.

3.9.3 In enacting further laws or policies governing land use, the Government, through the Land Committee, will further study the issue of “contract farming” to determine what further provisions should be adopted to insure that contract farming is conducted in a manner that benefits farmers and recognizes, protects and fulfills obligations under international human rights law and instruments.

Article 3.10 Investment

3.10.1 Investment in agriculture involves the commitment of multiple resources (including natural, human, social, cultural, physical and financial), by Government as well as village communities and individual households that serve multiple purposes, e.g., building up soil fertility, sustaining cultural practices and rituals, generating opportunities for the next generation of rural youth, etc. Accordingly, investment in agriculture involves much more than the mobilization of financial capital in order to generate a profit.

3.10.2 Investment, public or private, which ignores the imperatives for peace and social justice, present and future public welfare, social reproduction and which are subsidized by vast ecological debts, cannot be considered sustainable.

3.10.3 Responsible investments do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights. They should strive to further contribute to this policy’s vision and objectives, to poverty eradication, to food security and sustainable use of land, forests, fisheries, water and related natural resources, and to the increased resilience of individual households and village communities; to rural development as envisioned by the people; to the survival and strengthening of local food production systems; to the creation of dignified employment based on decent wages; to the construction of rural livelihoods; and to the realization of international human rights principles and standards.

3.10.4 This policy prioritizes positive agricultural investments, namely those that prioritize marginalized, poor and vulnerable peoples and village communities in building rural futures based on economically viable, ecologically sound and culturally appropriate farming practices, and the respect of occupation and use rights defined in this policy with regard to land, forests, fisheries, water and related natural resources.

3.10.5 KAD, in consultation and cooperation with the Land Committee, village communities and customary authorities, shall prioritize, lead and encourage public investment in farming and agricultural practices in Kawthoolei that support, protect and reinforce peasant farmers’ own investments, including of local indigenous knowledge and customary farming practices, and utilize various “best practices” as follows:

- mixing crops, planting fruits and vegetables and diversifying from a dependence on rice as the only crop; and
- adoption of agro-ecology and farming methods designed to improve productivity, environmental sensitivity, soil viability and food production systems

3.10.6 The Government will engage in a process to further develop what agro-ecology best practices mean for Kawthoolei and those people who are

cultivating, involving KAD, the Land Committee, local customary authorities and civil society organizations.

- 3.10.7** Where appropriate and in accordance with the stated vision, aims and principles of this policy, Government, through the Land Committee and in consultation with customary authorities, may consider larger scale investments in the form of development projects and initiatives. The feasibility and appropriateness of such larger scale investments and development projects and initiatives will be determined through close scrutiny by the KAD, in consultation and cooperation with the Land Committee and customary authorities.
- 3.10.8** Prior to the initiation of any large scale investment or development project, Government, through the Land Committee, will ensure that independent environmental, social, health and human rights impact assessments are conducted and concluded and their results widely publicized and taken into account in accordance with the rights, responsibilities and requirements of this policy and with the standards set forth from time to time by the International Association for Impact Assessments ("IAIA").
- 3.10.9** Without limiting the scope of the requirement for compliance with IAIA standards, each impact assessment process shall include (a) public participation throughout the process, (b) analysis of scenarios that take into account the accumulation of possible impacts from other ongoing or contemplated projects, (c) information about the costs and benefits of the project and the means of assuring the delivery of contemplated benefits, and (d) means for the affected public to voice their opinions throughout the steps of the process.
- 3.10.10** No investment or development project shall be permitted to proceed in a manner that encroaches or interferes with the individual household or collective tenure rights of peoples or village communities without their free, prior and informed consent (FPIC). No such investment or development project shall be permitted to proceed in a manner that forces relocation of people without their free, prior and informed consent. Only those investment or development projects that receive certification by KAD and the Land Committee, with the consent of village communities and customary authorities, will be permitted to proceed.
- 3.10.11** As part of the environmental and social assessment process, the impacted land area shall be delineated on a land survey with an overlay on such survey of different land and forest categories and uses (e.g., Reserved Land, Public Land, Communal Land, etc.) within the impacted area. Such impact survey shall be at a scale that is easily readable and at a level that enables spatial and temporal boundaries to be readily discernable.
- 3.10.12** Fair consideration shall be given to any person or community that is relocated and/or who suffers a loss of tenure rights or adverse affects to their ways of lives, livelihoods, health, cultural or traditional values or sense of community. Any dispute arising from or related to any investment or development project or initiative shall be subject to judicial review.
- 3.10.13** Communities affected by the investment shall receive a certain percentage of the profits, as determined by the Government, in consultation

with relevant departments, Land Committee, local authorities, and affected villagers

- 3.10.14** No large-scale investment or development project or initiative will be permitted to proceed if it lacks compliance with this or any other applicable laws or policies covering development, environmental, social, health and human rights impacts.
- 3.10.15** Proposed joint ventures for development projects are subject to the prior approval of the Government, through the Land Committee, and village communities and customary authorities. No request for approval shall be entertained unless the request is accompanied by sufficient information for the Land Committee and customary authorities, to assess the (a) terms of the joint venture, including terms related to control and management of affairs, (b) proposed benefits to the people most likely to be affected by the activities of the joint venture and (c) anticipated adverse effects of such activities on the environment and the lives of affected people and communities.
- 3.10.16** No person, private or sovereign entity shall be permitted, directly or through indirect means, to participate in any joint venture for a development project absent approval by the Government through the Land Committee.
- 3.10.17** In cases where the person, private or sovereign entity is from a foreign country, then special regulations, requirements and review of their application, additional to the requirements already stated in this policy, may be undertaken by the Land Committee. The Land Committee, in consultation with customary authorities, will develop and determine, as well as widely publicize these special regulations, requirements and review procedures, at the soonest possible time and prior to the granting of use rights to any foreign person or entity.
- 3.10.18** Agreements for any investments are required to clearly define the rights and duties of all parties to the agreement and to clearly specify the terms of the agreement, of which these must include the right to review and re-negotiate the terms in recognition of changing circumstances and conditions and in accordance with the stated vision, aims and principles of this policy.

CHAPTER 4: CHANGES TO TENURE RIGHTS AND DUTIES

Article 4.1 Basic principles

- 4.1.1** This part addresses the governance of tenure of land, forests, fisheries, water, and related natural resources when existing rights and associated duties are transferred or reallocated as a result of restitution, redistribution, rescission or readjustment measures. Such measures will be undertaken by Government in order to fulfill the vision, objectives and principles of this policy and its related obligations.
- 4.1.2** In line with international human rights standards, this policy supports good governance through a socially-legitimate tenure system that prioritizes the occupation and use rights of marginalized and vulnerable peoples and village communities, and emphasizes the social and ecological functions of land, forests, fisheries, water and related natural resources. This policy aims to

stimulate and promote the progressive realization of human rights, environmental protection, sustainable livelihoods, and a just and peaceful future for all members of human society in Kawthoolei.

- 4.1.3** No tenure right is absolute. All tenure rights are limited by the human rights and occupation and use rights of others and by the measures taken by the Government necessary for public purposes that are in keeping with the vision, aims and principles of this policy. Such measures must be determined democratically and by law, solely for the purpose of promoting general welfare and consistent with international human rights obligations. Tenure rights are also balanced by duties, including the long-term protection and sustainable use of land, forests, fisheries, water and related natural resources.
- 4.1.4** Whenever any reallocation or transfer of the tenure rights identified in this policy is being considered, the Government 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.
- 4.1.5** Prior to the initiation of any change in tenure rights, Government will ensure that independent environmental, social, health and human rights impact assessments are conducted and concluded and their results taken into account in accordance with the rights, responsibilities and requirements of this policy and with the standards set forth from time to time by the International Association for Impact Assessments ("IAIA"). Impact assessments shall include (a) public participation throughout the process; (b) analysis of scenarios that take into account the accumulation of possible impacts from other ongoing or contemplated projects; (c) information about the costs and benefits of the project and the means of assuring the delivery of contemplated benefits; and (d) means for the affected public to voice their opinions throughout the steps of the process.
- 4.1.6** Areas of particular cultural, religious or environmental significance, or where the land, forest, fisheries, water and related natural resources in question are particularly important to the livelihoods of the poor, marginalized or vulnerable, will be subject to careful evaluation according to the stated vision, aims and principles of this policy before any changes in associated tenure rights is allowed to occur.

Article 4.2 Restitution

- 4.2.1** It is recognized that many people in Kawthoolei have against their will been displaced by war and other factors and have become refugees and internally displaced persons (collectively, "IDPs"). In certain situations their homes and land have been occupied by migrants and other newcomers.
- 4.2.2** Occupation and use rights made or permitted under this policy will be administered in a manner that complies with the internationally recognized Pinheiro Principles, taking into account the primacy of the right of IDPs to have their lands be restored to them. The definitions in this policy shall be applied in a manner consistent with the Pinheiro Principles.

- 4.2.3** Where possible, the original parcels or holdings will be returned to those who suffered the loss, or their heirs. Where the original parcel or holding cannot be returned, the KAD, in close consultation with the Land Committee, will decide on an appropriate alternative with consensus from local authorities and village community of those impacted.
- 4.2.4** The Government will set aside other land in townships to use for the purpose of providing alternative land plots for those that are not able to return to their original land plot, for whatever reason. This consensual process will be facilitated by the KAD and the Land Committee at the township level, in consultation with local customary authority and the returning IDPs and refugees being restituted.
- 4.2.5** The Government has the authority to temporarily transfer use rights to currently unoccupied but previously used land while the original occupants are gone in order to maintain agricultural productivity and offer use rights to those that are in need in the area, in this case returning IDPs and refugees. If the original occupant returns before the temporary use rights holder's use rights have expired (maximum 20 years), then KAD, in consultation with Land Committee and with consensus from customary authorities and the original occupants, will find a suitable alternative land plot for the original occupants until the use rights holders' use rights have expired for the original occupants land plot. Meanwhile, the original occupant will qualify to receive the land taxes paid by the new use rights holder, instead of to the KAD as done before the original occupant returned.
- 4.2.6** Government will develop gender-sensitive, clear, transparent processes for restitution. Information on restitution procedures will be widely disseminated in applicable languages. Claimants will be provided with adequate assistance, including through legal and paralegal aid, throughout the process. Progress of implementation should be widely publicized.

Article 4.3 Redistribution

- 4.3.1** Where a high degree of concentration is combined with a significant level of rural poverty attributable to lack of access to land, forests, fisheries, water and related natural resources, redistributive reform can be a crucial measure toward fulfillment of the basic vision and objectives of this land policy. Redistribution will be undertaken and carried out in a way that protects, respects and fulfills human rights and is consistent with international human rights standards. Redistribution will prioritize rural working poor and landless and near-landless, marginalized and vulnerable people and communities, and will guarantee equal treatment of men and women and their equal access to land, forests, fisheries, water and related natural resources.
- 4.3.2** Prior to any redistribution, Government will clearly define and widely publicize the objectives and clearly indicate which areas are to be subject to redistribution. The intended beneficiaries, such as families including those seeking home-gardens, women, informal settlement residents, pastoralists, historically disadvantaged groups, marginalized groups, youth, indigenous peoples, gatherers and small-scale food producers, will be clearly defined and this information widely publicized.
- 4.3.3** Government will develop and implement clear policies and programs to make

the redistribution process and its outcomes sustainable. Government will undertake policies and programs that assist beneficiaries, whether village communities, collectives or individual households, to earn an adequate standard of living from the land, forests, fisheries, water and related natural resources for which they acquire occupation and use rights as a result of redistribution. Government will revise policies that might inhibit the achievement and sustainability of the intended effects of the redistributive reforms.

- 4.3.4** Government will ensure that any land redistribution it undertakes will provide the full measure of support required by beneficiaries, such as access to credit, crop insurance, inputs, markets, technical assistance in rural extension, farm development and housing. The full costs of redistribution initiatives and programs, including costs of support services, will be identified in advance and included in relevant budgets.
- 4.3.5** The Government providing credit to improve agricultural productivity, without unnecessary debt and cultivators not needing to rely on moneylenders or brokers, needs to be further discussed by the relevant authorities and civil society.
- 4.3.6** Government will implement redistributive reforms through transparent, participatory and accountable approaches and procedures. All affected parties will receive full and clear information on the reforms, and will be accorded with due process and just compensation. Beneficiaries will be selected through open processes and will receive tenure rights that are publicly recorded. Access to means of resolving disputes will be provided for.
- 4.3.7** Government will monitor and evaluate the outcomes of its redistribution programs and initiatives, including associated support policies and their impacts on access to land, forests, fisheries, water and related natural resources, on food security of both men and women, on human rights, and on environmental health and biodiversity. Where necessary, Government will introduce corrective measures.

Article 4.4 Rescission

- 4.4.1** The powers of the Government to rescind and vacate occupation and use rights that have been granted, registered and recorded, and contained herein (the “Rescission Power”) shall be in addition to any other powers of the Government to take land, forests, fisheries, water and related natural resources for public purposes, including taking these for nonpayment of taxes.
- 4.4.2** The Rescission Power shall be exercised by KAD, in consultation and cooperation with the Land Committee and with the consent of customary authorities, and in a manner consistent with procedural due process of law, including fair notice and an opportunity to be heard prior to rescission. The grant of tenure rights hereunder is conditioned on compliance with all rights and responsibilities, duties and obligations required by this policy. Accordingly, the rescission of tenure rights based on a violation of these requirements shall not give any party any right to compensation.
- 4.4.3** To the extent tenure rights in land, forests, fisheries, water and related natural resources become available to the Government through exercise of its

Rescission Power, the Government will use its best efforts to identify and prioritize new occupants and users to whom (re)distribution of these rights will promote and fulfill the stated vision, aims and objectives of this policy and in a manner consistent with international human rights standards and obligations.

- 4.4.4** Government will exercise its power of rescission only where tenure rights to land, forests, fisheries, water and related natural resources are required to promote and fulfill the stated vision, aims and objectives of this policy, in a manner consistent with international human rights standards and obligations. They should respect all legitimate tenure right holders according to this policy, especially impoverished, vulnerable and marginalized groups, by acquiring the minimum resources necessary and promptly providing just compensation.
- 4.4.5** Government will ensure that the planning and process for rescission are transparent and participatory. Anyone likely to be affected will be identified, and properly informed and consulted at all stages. Consultations, consistent with international human rights principles, shall provide information regarding possible alternative approaches to achieve the public purpose, and shall use strategies to minimize disruption of livelihoods.
- 4.4.6** Government will ensure a fair and socially-legitimate valuation process consistent with international human rights standards and instruments, with the consent and participation of customary authorities, and explicitly taking into account that land, forests, fisheries, water and related natural resources have social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with customary tenure systems. Government will ensure a prompt and just compensation according to the outcomes of this process, including of any related resettlement and associated costs.
- 4.4.7** Where evictions are considered to be justified for a public purpose as a result of expropriation of land, fisheries and forests, Government will conduct such evictions and treat all affected parties in a manner consistent with international human rights standards and instruments and obligations to respect, protect and fulfill human rights.
- 4.4.8** Government will, prior to eviction or shift in land use which could result in depriving individuals and communities from access to their productive resources, explore feasible alternatives in consultation with the affected parties, with a view to avoiding, or at least minimizing, the need to resort to evictions.
- 4.4.9** Evictions and relocations must not result in individuals being rendered homeless or vulnerable to the violation of human rights. Where those affected are unable to provide for themselves, Government will take appropriate measures to provide adequate alternative housing, resettlement or access to productive land, fisheries and forests, as the case may be.
- 4.4.10** Where the land, fisheries and forests are not needed due to changes of plans, Government should give the original rights holders the first opportunity to re-acquire these resources. In such a case the re-acquisition should take into consideration the amount of compensation received in return for the expropriation.

Article 4.5 Readjustment

- 4.5.1** Where appropriate, Government may consider land consolidation, exchanges or other voluntary approaches for the readjustment of parcels or holdings to improve the layout and use of existing parcels or holdings, including for the promotion of food security and rural development in a sustainable manner, or to make possible desirable public infrastructure development.
- 4.5.2** Government will ensure that all actions are consistent with international human rights standards and instruments, and ensure that those whose occupation and use rights are affected are at least as well off after the readjustment compared with before.
- 4.5.3** Government will establish appropriate safeguards in accordance with the stated aims and requirements of this policy in projects using readjustment. Any individuals, communities or peoples likely to be affected by a project will be contacted and provided with all relevant information in applicable languages. Technical and legal support will be provided. Participatory and gender-sensitive approaches should be used taking into account rights of indigenous peoples. Environmental safeguards will be established to prevent or minimize degradation and loss of biodiversity and to support changes that foster good land management, best practices and reclamation.

Article 4.6 Investment

- 4.6.1** Government will promote a range of production and investment models that do not require or result in the large-scale transfer of occupation and use rights, and that do not require that tenure rights holders give up their power to decide how the land is used and for what purposes. In the case of indigenous peoples and their communities, Government must ensure that all actions are consistent with their existing obligations under the International Labor Organization (ILO) Convention (No 169) concerning Indigenous and Tribal Peoples in Independent Countries and under the United Nations (UN) Declaration on the Rights of Indigenous Peoples.
- 4.6.2** When investments have the potential to cause large-scale transfer of individual household and collective occupation and use rights, Government must ensure and widely publicize the results of prior independent assessments on the potential positive and negative impacts that those investments could have on human rights, tenure rights, food security and the progressive realization of the right to adequate food, livelihoods, health and the environment. Government will ensure that any and all socially-legitimate tenure rights, livelihoods and claims, including those of customary and informal tenure, are systematically identified and protected. Government has the duty to ensure that socially-legitimate tenure rights are not compromised by such investments, whether public or private.

CHAPTER 5: ADMINISTRATION OF TENURE

Article 5.1 Registration

- 5.1.1** A tenure rights registry (the “Registry”) shall be established under the supervision and management of KAD with offices at such places within Kawthoolei as are designated from time to time by KAD. Each Registry office shall, for the area it covers, be the depository for all the land records required

by this policy to be filed and maintained at an appropriate Registry office.

- 5.1.2 Each Registry office is intended to have a regularly updated map of the area covered by the respective office showing the land in the area and its designated uses, such as Reserved Land, Communal Land and Public Land, and, as the same are progressively made available, the specific locations of approved titles for the area.
- 5.1.3 Each Registry office shall maintain an index that facilitates the examination of land records on deposit with the office. All records maintained at Registry offices shall be public records and be kept in safe condition and good order.
- 5.1.4 KFD and KAD, through the Land Committee, shall coordinate and cooperate as needed to insure that each Registry contains records of their respective land designations and decisions permitting different uses.
- 5.1.5 Records in the Registry shall be available in both the Karen and Burmese languages.
- 5.1.6 Registry Fees shall be determined by KAD and be set in amounts that will contribute to the self-financing of the Registry, provided that fee reductions or waivers shall be made available to persons who cannot afford regular fees.
- 5.1.7 It is intended that the Registry will progressively become a comprehensive depository for records of actions affecting land tenure rights. Accordingly, whether expressly stated or not, all records of matters affecting tenure rights in land are intended to be recorded in the relevant Registry offices.

Article 5.2 Valuation

- 5.2.1 The right and responsibility to determine valuation of land, forests, fisheries, water and related natural resources for the purposes of this policy is vested in the Land Committee. The Land Committee, in consultation with KAD, the people and customary authorities, will identify and undertake a plan and process to determine the Government's valuation policy in a manner and with an effect that is consistent with the present policy's vision, aims and principles.

Article 5.3 Taxation

- 5.3.1 Taxes owed to the Government shall be assessed on formally occupied and used land and shall be due and payable by the use rights holder.
- 5.3.2 Taxation shall be assessed based on the area of land occupied and used.
- 5.3.3 In addition to Taxes assessed based on land area, (a) for agricultural land that is not cultivated by absentee land right holders and agricultural investors, the taxing authority may assess a "weed" tax on such terms as it deems advisable, although fallow lands by swidden cultivators will not be held under the same measure as periods of no cultivation are an important part of the rotation cycle; and (b) for land that is cultivated, the taxing authority may assess Taxes based upon land area and/or production.
- 5.3.4 Taxation shall be assessed for taxing periods and payable on schedules established by the taxing authority. The taxing periods and schedules may

differ for different areas of Kawthoolei to take into account differences in local conditions and situations.

- 5.3.5** In assessing Taxes the tax rates for each taxing period shall be established periodically by the taxing authority.
- 5.3.6** Payment of Taxes may be collected in the form of money or produce at market price of the crop at time of harvest, as determined by the taxing authority.
- 5.3.7** Large mono-crop farms will be taxed by KAD at 5 percent of total harvest. Smallholder mixed, multi-use cultivation plots will be taxed by KAD based on land size per year, as determined by the taxing authorities.
- 5.3.8** The taxing authority shall adopt such forms, regulations and procedures as it deems advisable to implement a fair, transparent and just taxation system and an efficient means of timely collecting Taxes, including setting delinquency rates and fees for unpaid Taxes, procedures for aggrieved taxpayers to petition for relief, and procedures to confiscate land rights for unpaid taxes.

Article 5.4 Regulated spatial planning

- 5.4.1** The Land Committee, in consultation with the people and customary authorities, shall have the right and responsibility to determine if and when a regulated spatial planning agenda is needed for Kawthoolei, and to develop this agenda in a systematic, transparent, consultative, and timely manner that is consistent with the overall aims and principles of this policy.

Article 5.5 Resolution of tenure rights and tenure rights related disputes

- 5.5.1** Implementing this policy may require resolutions of disputes over land tenure rights between villages or between villagers of the same village.
- 5.5.2** Disputes arising between village members shall, to the extent possible, be resolved consistent with that villages' customs. Where customary authority is not able to resolve the conflict, then villagers shall go to the temporary Land Conflict Resolution Committee established on a case-by-case basis to resolve the particular land conflict. The committee will be composed of 5 to 7 people in total: local customary authority figure, the village administration head, 1-2 KAWU members (if applicable), and one representative each from woman's organization and youth organization. In consultation with the KNU official at the applicable administration level, villagers will first approach authorities at the village level, and if not yet resolved, then will take the case to the next higher administration level, in this case the village tract, then township, then district levels. At township administration level and above, villagers, with legal representation by the KAD, will submit their case to the Government's legal court system, which will also involve all other related departments (KJD, KFD, KMD, KFiD). At all administration levels, villagers and authorities will consult with the Land Committee and Karen Agricultural Worker Union (KAWU).
- 5.5.3** With respect to disputes between villages, a local land dispute committee shall be established consisting of the leaders of the affected villages and representatives of the Karen Agricultural Worker Union (KAWU), under the

Federation of Trade Union of Kawthoolei. The committee should strive to achieve consensus and a fair balance of the competing claims, utilizing customary law to the extent relevant and appropriate. If consensus is not achieved, or in townships that does not yet have such a Union, the matter may be referred to a dispute resolution committee, such as within the Land Committee, KAD and/or court at the township level.

- 5.5.4** All disputes should be resolved in a fair, gender-sensitive and accessible manner, free of conflicts of interests by the parties charged with the responsibility to resolve disputes.
- 5.5.5** Land tenure disputes involving claims by many people and that cannot first be resolved by customary authorities and the KAD with the Land Committee shall be initiated at the Township Level Court. If the dispute involves a large business or commercial project, the dispute should be referred for resolution to the District Level Court and then to the Central Court.
- 5.5.6** While a dispute resolution process is pending, no action shall be taken to issue a grant of use rights with respect to the disputed land.

CHAPTER 6: IMPLEMENTATION

Article 6.1 Training

- 6.1.1** To further the implementation of the matters included in this policy, the Government should develop plans for expert consultation and training in the establishment of land registries, including training programs for the personnel who will administer the Registries and personnel involved in documentation preparation and mapping and surveying.
- 6.1.2** It is recognized that transforming from a largely informal land tenure system to a more formal system is complex. Accordingly, it is a responsibility of the Government to prepare and conduct educational campaigns among the people and to plan for the training of lay legal assistance to help individuals participate and have the advantages of a more formal system.
- 6.1.3** To the extent that resources permit, States should ensure that competent bodies responsible for land, forests, fisheries and water have the human, physical, financial and other forms of capacity. Where responsibilities for tenure governance are delegated, the recipients should receive training and other support so they can perform those responsibilities.

Article 6.2 Monitoring & evaluation

- 6.2.1** Issues will naturally arise that need to be further investigated, evaluated, monitored and then responded to. The Land Committee's land dispute working group shall take the lead role, in cooperation with the KAD, customary authorities and civil society organizations, to quickly respond to issues that need resolution and on-going monitoring and evaluation.
- 6.2.2** States should monitor the outcome of allocation programs, including the gender-differentiated impacts on food security and poverty eradication as well as their impacts on social, economic and environmental objectives, and introduce corrective measures as required.

6.2.3 The Land Committee will be the focal point for allegations of corruption through their complaints mechanism, in cooperation with the KAD, customary authorities and civil society organizations.

END