



Landesa[™]
Rural Development Institute

Center for Women's
Land Rights



CEDAW Secretariat
OHCHR - Palais Wilson
52, rue des Pâquis
CH-1201 Geneva
Switzerland

Supplementary Information Concerning Women's Land Rights in Myanmar Submitted to the 64 Pre-Sessional Working Group (November 2015)

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This submission seeks to supplement the government report by providing field-based research on women's land rights in Myanmar to highlight a persistent gap between law and practice. It is based on a joint report by Landesa, an NGO dedicated to securing land rights for the rural poor with experience in over 50 countries, and Namati, a global organization dedicated to legal empowerment, titled, *Recommendations for Implementation of Pro-Poor Land Policy and Land Law in Myanmar: National Data and Regional Practices* (October 2015).¹

I. Women's Land Rights are Key to Gender Equality

Ensuring women's rights to the land they till and inhabit constitutes a foundational aspect of gender equality as envisioned under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Secure rights to land are often a precondition for women's ability to realize myriad human rights enshrined in CEDAW and other international human rights treaties. Land rights for women have been linked to greater sustainable development, economic livelihood, equality, adequate living conditions, housing, education, health, freedom from violence, and participation in decision-making at all levels. (See graphic on Strengthening Women's Land Rights, below).

CEDAW Article 14(2) instructs states to facilitate equal participation in and "benefit from rural development," and in particular, women's right to "equal treatment in land and agrarian reform." Article 15(2) mandates equal rights to women "to administer property" and Article 16(1)(h) extends equal rights to "both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property" interpreted to include land. Moreover, even where states have adopted progressive laws, they must still – under Article 5(a) – "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary...practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"² and as such prevent women from access and control over resources and land.

In its General Recommendation 21 on Equality in Marriage and Family Relations, this Committee clarified that "[t]he right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family."³ It further stressed that "[i]n countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed."⁴ The more recent General Recommendation 29 on the Economic Consequences of Marriage, Family Relations and their Dissolution, reinforces that states should eliminate any "exemptions that would serve to protect or preserve discriminatory laws and

practices with regard to family relations” such as those related to distribution of marital property and inheritance.⁵

Numerous Concluding Observations have subsequently affirmed the Committee mandate to instruct state parties to ensure legally-enforceable land rights for women facilitated by meaningful participation of rural women in land reforms,⁶ effective monitoring mechanisms for the implementation of land reforms, adequate remedies for land disputes involving women,⁷ and abolition of all barriers restricting women’s access to land, particularly in rural areas.⁸

II. Recent Land Reforms Fall Short of Ensuring Women’s Equal Rights to Farmland

In Myanmar, 70% of women live in rural areas, and the majority of them rely on agriculture for their livelihoods.⁹ In the agricultural sector of Myanmar, women comprise a significant and increasing percentage of the labor force.¹⁰ Yet women rarely have secure tenure to the land on which they base their livelihoods. Recent efforts to create more secure land rights for all in Myanmar have fallen far short of ensuring that these rights for women farmers apply equally to those of their male counterparts.

Myanmar is undergoing a major transition, with reform of the legal framework around land among the issues at the top of the agenda. Over the last year, the government has developed and conducted wide public consultations on a draft National Land Use Policy. While the last public draft (Sixth Draft, publicly released in June 2015) includes provisions on gender-equal land rights, such as equal rights to hold individual or joint landholder rights and to inherit land tenure and management rights, the Policy has not yet been adopted, and even once it is, it will take substantial time to turn the policy into implementing legislation.¹¹ Importantly, the Sixth Draft of the National Land Use Policy indicates that the policy is intended to comply with the Convention on the Elimination of All Forms of Discrimination Against Women (para. 73).

Currently, land in Myanmar is governed under a complex framework of laws. Earlier attempts at revising this framework introduced two new land laws in 2012: the Farmland Law and the Vacant, Fallow and Virgin Land Management Law.¹² The Farmland Law introduced a land registration process that, though facially neutral, discriminates on the basis of gender in practice. Notably, for example, the current farmland registration form includes space for only one name, generally the head of household, who is usually a man. As a result, due to lingering gender bias and custom, farmland continues to be primarily registered in the name of men only, excluding women’s interests from the registration certificates to the land they farm, rendering them vulnerable to losing access to and use and management of the land they rely on for livelihood for themselves and their family.

Information gathered by 30 community-based paralegals who are working to help farmers secure land tenure in seven out of 14 states and divisions in Myanmar demonstrates that gender equality problems are evident in the registration of farmland:¹³ Across hundreds of land registration attempts undertaken, 84% of land registration certificates are in men’s names only. The overwhelming majority of those men (93%) are married but did not include their wives’ names on the land use certificate. That this low level of female land registration presented across all seven states and divisions where Namati paralegals work suggests that the lack of female land registration transcends ethnic differences and is linked, rather, to gender equality issues.

The potential for joint registration of land use rights to provide women greater security of their livelihoods has been further hampered by lack of public information about laws that include provisions ensuring gender equality and lingering gender bias by land registration officials. Community paralegals have reported instances of trying to include names of both husband and

wife on applications for farmland registrations, only for that form to be rejected by the local land administration for failing to be properly completed.

During separate and joint fieldwork by Namati and Landesa, persons interviewed in Myanmar often claimed that women's land rights is not a serious concern as women are treated equally in law and in practice, and that the need for joint registration, for example, is not a pressing one. A common assumption expressed about registration that includes women's names is that a married woman does not need to fear a loss of land tenure or overall economic security because she will be provided for by her husband (who holds tenure security). In reality, the land tenure insecurity women face occurs not only during the marriage – where the woman may have less say in the use or sale of the land, or in its passage to herself or to her children through inheritance – but also in many orbits outside of marriage, both for single women and in women-headed households. It is not only married women who are unable to register farmland in their names: single, widowed, divorced or separated women likewise rarely get land use certificates registered under their name.

Lacking a public system that provides gender-disaggregated data on land use certificates, there are no accurate national statistics about the number of land use documents in women's names. While according to the 2015 census, women head 24% of households in Myanmar,¹⁴ initial research suggests only a miniscule percentage of farmland registrations are in the name of unmarried women. These disparities in farmland registration, both for married and unmarried women, illustrate gender disparities in the implementation of the Farmland Law.

III. Proposed Questions for the Government

Given that rural women still face discrimination with regard to land registration and titling, the Committee might consider presenting the following requests to the government:

- Please provide gender-disaggregated data on land use certificate registration under the 2012 Farmland Law. What measures have been instituted to ensure women's names are included on farmland registration documents? What awareness raising and training programs have been instituted to ensure officials, including on the local level, implement women's equal rights to register farm and other land?
- Please provide information on the steps taken to ensure that women in rural areas have access to information on land registration procedures, and what mechanisms and redress are available when women's attempts to jointly register land are refused.
- Please provide information about measures envisioned to track gender-disaggregated data on land use certificate registration, and any other land registration schemes.

IV. Proposed Recommendations

The following proposed recommendations are based on previous Committee General Recommendations and Concluding Observations:

- Establish effective monitoring mechanisms for the implementation of the Farmland Law and ensure that land use certificates bear the names of women including through joint registration;¹⁵
- Establish and maintain clear and accessible mechanisms for land administration and management to protect women's secure rights to land;

- Eliminate all barriers restricting women's access to land, particularly in rural areas, and ensure that the mediation and settlement of land-related disputes affords women effective remedies.¹⁶
- Ensure rural women's participation and representation in all aspects of land related laws, policies and programs, including land-related decision-making bodies, legal aid, and registration initiatives.
- Collect comprehensive data on the *de jure* and *de facto* enjoyment of women's secure rights to land.¹⁷



A BETTER WORLD

STRENGTHENING WOMEN'S LAND RIGHTS

PROSPEROUS

Women with strong property and inheritance rights earn up to **3.8 times more income**



NOURISHED

Children whose mothers own land are up to **33% less likely to be severely underweight**



EDUCATED

Families where women own more land devote **more of their budget to education**



SAFER

Women who own land are up to **8 times less likely to experience domestic violence**



RESILIENT

Where women's property and inheritance rights are stronger, women's **individual savings are up to 35 percent greater**



HEALTHY

Children in households where women own land are up to **10% less likely to be sick**



PROSPEROUS and RESILIENT data points: Peterman, A. (2011). Women's Property Rights and Gendered Policies: Implications for Women's Long-term Welfare in Rural Tanzania. *The Journal of Development Studies*, 47(1), 1-30.

EDUCATED data point: Doss, C. (2006). The effects of intrahousehold property ownership on expenditure patterns in Ghana. *Journal of African Economies*, 15(1), 149-180.

NOURISHED data point: Allendorf, K. (2007). Do Women's Land Rights Promote Empowerment and Child Health in Nepal?. *World Development*, 35(11), 1975-1988. Chicago

SAFER data point: Agarwal, B., & Panda, P. (2007). India. Toward freedom from domestic violence: the neglected obvious. *Journal of Human Development*, 8(3), 359-388.

HEALTHY data point: Menon, N., van der Meulen Rodgers, Y., & Nguyen, H. (2014). Women's Land Rights and Children's Human Capital in Vietnam. *World Development*, 54, 18-31.

Landesa is an NGO dedicated to securing land rights for the rural poor. Landesa has worked in over 50 countries and has helped over 110 million families gain legal land rights, using a combination deep research, collaborative law and policy design, dedicated advocacy, and tailored evidence-based interventions.

Landesa’s Center for Women’s Land Rights advises on standards, policies, and tactics, and pilots innovative solutions for strengthening women’s land rights globally.

www.landesa.org

Namati is a global NGO dedicated to building a global movement of grassroots legal advocates who work with communities to advance justice, including by actively cultivating a global community of legal empowerment practitioners, pursuing and evaluating innovative legal empowerment programs, and addressing issues of pressing global significance.

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¹ The report is available at <http://www.landesa.org/our-research/land-policy-myanmar>.

² See also, General recommendation No. 28 (47th sess., 2010) - The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 31 (“States parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”)

³ CEDAW Committee, General Recommendation No. 21 (13th sess., 1994) Equality in marriage and family relations, para. 26; see also, CEDAW Committee, General recommendation No. 27 (47th sess., 2010) - Older women and protection of their human rights, para. 48 (“Laws and practices that negatively affect older women’s right to housing, land and property should be abolished. States parties should also protect older women against forced evictions and homelessness); para. 52 (“States parties must repeal all legislation that discriminates against older widows in respect of property and inheritance, and protect them from land grabbing.”)

⁴ CEDAW Committee, General Recommendation No. 21, para. 27.

⁵ General recommendation No. 29 (54th sess., 2013) - Article 16 - Economic consequences of marriage, family relations and their dissolution, para. 11.

⁶ E.g., Bolivia, 2015.

⁷ E.g., Vietnam, 2015.

⁸ E.g., China, 2014.

⁹ Myanmar Census 2014: The Union Report Volume 2 (2015).

¹⁰ Myanmar State Report to CEDAW (2015), para. 99.

¹¹ Government of the Republic of the Union of Myanmar, National Land Use Policy (6th Draft), 2015, available at <http://www.fdmocaf.gov.mm/eng/sites/default/files/Documents/English%20Version%286th%20draft%29.pdf>.

¹² Farmland Law, 2012, unofficial translation in English available at <http://faolex.fao.org/docs/pdf/mya139026.pdf>;

The Vacant, Fallow and Virgin Lands Management Law, 2012; unofficial translation in English available at http://www.burmalibrary.org/docs13/VFVLM_Law-en.pdf.

¹³ This project is further detailed at <http://www.landesa.org/our-research/land-policy-myanmar>.

¹⁴ Myanmar Census 2014: The Union Report Volume 2 (2015).

¹⁵ E.g., Vietnam, 2015.

¹⁶ E.g., China, 2014.

¹⁷ E.g., Uzbekistan, 2010.