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AN ASSESSMENT OF LAND TENURE REGIMES AND WOMEN'S LAND RIGHTS IN TWO REGIONS OF MYANMAR

Elizabeth Louis, Laura Eshbach, Beth Roberts, & Naw Dah Htee
Landesa, US & Myanmar
elizabethl@landesa.org

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Abstract

While formal laws and some customary systems in Myanmar recognize the equality of women's rights within households, evidence suggests a complex picture in which the bundle of rights enjoyed by the male members of a household may not be equally available to women, a picture complicated by the context of Myanmar, with its variations in regional ethnic geopolitics fueled by landlessness, migration, conflict, and displacement. This paper reports on findings of two qualitative gender assessment case studies conducted in 2016 and 2017 in Bago and Tanintharyi regions of Myanmar to contribute to evidence on women's land rights in Myanmar and help bridge the gaps in knowledge on 1) how women in Myanmar experience their bundle of rights to land: 2) what legal, social, economic, and cultural constraints women face; and 3) what mechanisms can be put in place to take into consideration these constraints as women access their land rights.

Key Words: Customary Tenure; Gender-Responsive Framework; Myanmar; Qualitative Assessment; Women's Land Rights

Introduction

Of the diverse and varied situations regarding land rights for women in Myanmar, little is documented and disseminated. While formal laws and some customary systems recognize the equality of women's rights, evidence suggests a complicated picture in which the bundle of rights enjoyed by the male members of a household may not be equally available to women. The context of Myanmar, with its variations in regional ethnic geopolitics fueled by landlessness, migration, conflict, and displacement, as well as its complex and sometimes contradictory tenure regimes, demands a nuanced understanding of the particular contexts in which women's rights to land are impacted. Without a clear understanding of the bundle of rights women have and the ways in which women obtain land rights, policies and programs can reinforce existing inequalities or may even work against the interests of women.

This paper uses a gender-responsive land rights framework to examine findings of two exploratory qualitative gender assessments conducted between 2016 and 2017 in Bago and Tanintharyi regions of Myanmar. With funding from USAID's Tenure and Global Climate Change (TGCC) program, Landesa, a non-profit focused on land rights, worked with the Tetra Tech-led Burma Land Tenure Project (LTP) to conduct a gender and land use assessment of LTP's participatory mapping and community resource documentation pilot in Bago. Landesa later independently conducted an assessment in Tanintharyi. Methods for the qualitative gender assessments included focus group discussions (FGDs) with women and men from village tracts, key informant interviews with village leaders and representatives from local civil society organizations (CSOs), and informal conversations with others familiar with the villages.

Our findings highlight the complexity of land rights in Myanmar, where overlapping and sometimes, contradictory customary and formal regimes exist. The gender-responsive framework used to analyze land rights demonstrates that land rights in Myanmar are subject to some insecurity on a number of dimensions: quality, legitimacy, enforceability, and participation. In most cases, women's land rights are less secure than those of men. In both case studies, rights are not of sufficient *quality*, and women's rights to the land are of lower quality than are men's. Although the National Land Use Policy recognizes that men and women within the household have equal rights to land held by the household, there is a lack of clarity in the formal law about which rights are *legitimate*. That the quality of rights is not sufficient and rights are not clearly understood impacts their *enforceability*, with potentially larger negative impacts for women. Women are not equal to men in their *participation* on decisions relating to the land or in claiming their land rights.

This paper helps to bridge gaps in knowledge on 1) how women in Myanmar experience their bundle of rights to land; 2) what legal, social, economic, and cultural constraints women face; and 3) what

mechanisms can be put in place to take into consideration these constraints as women access their land rights.

This paper is divided into six sections. The background provides a brief overview of Myanmar's current land issues and women's land rights in Myanmar. The next section describes the gender-responsive framework used to analyze our findings from the gender assessments. This is followed by a brief description on the methods used for data collection. The following two sections present the main findings of our two case studies. In the last section, we conclude with important takeaways from the assessments and recommendations for more gender-responsive policies and mechanisms to increase women's participation.

Background

Land is central to the livelihoods of both women and men in Myanmar. Agriculture, forestry, and aquaculture comprise the largest employment sector in the country, formally employing almost half (47.4%) of employed women with many more women working as self-employed farmers (Government of Myanmar, 2016). Most agricultural land is held under the control of men, with only 15% of agricultural landholders being female (Government of Myanmar, 2003).

Emerging from a half century of military rule, the government of Myanmar faces a legacy of large-scale land confiscations for development and resource extraction projects, which alienated millions of rural households from their lands without due process or compensation (Woods, 2015). Government agricultural policies that included paddy quotas also led to widespread land dispossessions, particularly in the paddy-growing delta regions (Boutry et al., 2015). More recently, with economic liberalization to attract foreign investment, large-scale investments by corporate stakeholders have led to more land contestations, negatively impacting many rural households (Scurrah et al., 2015; Franco et al., 2016). While the government seems committed to resolving land conflicts, critics hold that large-scale investments to create employment, improve agricultural value chains, and ensure national food security through increased paddy production are a higher priority than securing smallholders' rights (Scurrah et al., 2015).

Comprehensive documentation of Myanmar's varied land systems and the complexities of formal, informal, customary, communal, and individual land rights of women, men, and households are scarce. A discussion of gender equality in the context of land conflict and land rights more broadly is also underexplored in Myanmar.

Most stakeholders dealing with land rights in Myanmar, including policymakers and rural men and women farmers, assert that there is gender equality in land rights and access in Myanmar (Faxon, 2015). Most studies examine land rights at the household level, assuming that rights given or claimed by a household are shared by all members of the household. With the exception of a few qualitative case studies in a few regions and a couple of surveys, evidence on women's land rights is thin (Eshbach & Louis, 2016; Faxon, 2015; Faxon et al.; 2015, Louis & Eshbach, 2016; Namati, 2016). The few studies that exist suggest a more complicated picture in which women's access to land is often determined by their positions as daughters, wives, and widows and that women, in many cases, do not enjoy equal rights to land (Eshbach & Louis, 2016; Faxon, 2017; GEN, 2012; Louis & Eshbach, 2016; Namati, 2016; Namati & Landesa 2015; TNI, 2015).

For the most part, Myanmar's policies and laws include gender-neutral language and do little to recognize and address the particular contexts that enable or constrain women's rights to land (Boutry et al., 2015; Namati, 2016; TNI, 2015). Despite gender-neutral legislation, the formalization of land rights favors men in practice. For example, under the 2012 Farmland Law, land classified as agricultural land is eligible for registration and an accompanying Land Use Certificate (LUC), also known as Form 7, issued to the head of the household, usually a man (Eshbach & Louis, 2016; Namati, 2016; Namati & Landesa, 2015). The procedures to register and transfer land are complex, with different bodies holding contradictory powers and required review by several different actors and different levels. This renders the transaction costs of land registration high for rural communities, with women more disadvantaged than men (OECD, 2014; TNI, 2015).

Women's lack of participation in the public sphere also negatively impacts their access to land. They are underrepresented in the local governance institutions that make decisions about land at the community level (Minoletti, 2014; Minoletti, 2016; Namati, 2016; UNDP, 2015). Women are also much less likely than men to attend and actively participate in meetings regarding relocation or other changes in the use or ownership of land, disadvantaging women in terms of access to information (TNI, 2015).

Within rural households, women and men often work the land together, and many couples make decisions about the land together. However, men are primarily regarded as heads of households and, more often than not, hold the primary land rights for the household (Namati, 2016; Namati & Landesa, 2015). Men are also more likely to make decisions regarding land use, sale of produce, and the use of household income without agreement from his spouse than a woman would be able to do without the consent of her spouse (Eshbach & Louis, 2016; Louis & Eshbach, 2016).

Landless and land-poor men and women also have rights to land that need to be better understood. Landlessness is high, with estimates of rural landlessness range from 25% to 50%, with higher levels in Ayeyarwady and other delta areas (MSU & MDRI/CESD, 2013). Among those who have land, over 80% of the farming households are smallholders who have less than 10 acres (Government of Myanmar, 2010). While small and medium farmers have suffered from land takings, rendering many households landless, little evidence exists on how these have impacted landless rural households and women in particular. Research in Myanmar and other Southeast Asian contexts highlight that landlessness results in out-migration, affecting men and women differently. Women are often left behind and become de-facto heads of households. They are burdened with agricultural labor and housework, but often lack the kind of access to credit and services that male household members have (Hall et al., 2011; World Bank 2015).

A Gender-Responsive¹ Framework for Secure Land Rights

Security of land rights can be assured or undermined through a number of factors or dimensions. Thus, in assessing the relative security of land rights in a particular situation, one must assess several of these factors, understanding that the set of circumstances and relative land rights security may be different for women than it is for men.

In the following case studies, the authors will present a picture of women's land rights in two regions of Myanmar by applying a gender-responsive land rights framework that underscores the gendered differences in the way women and men access, use, and control land. Land rights go beyond the right to "own" land, and must provide for progress toward non-discriminatory holding of the full bundle of rights, including use, access, control, transfer, exclusion, inheritance, and all decision-making about land and land-related resources. Realization of the right to land includes gender-responsive laws and policies to facilitate women's equitable land rights, and the eradication of gender-based discrimination in custom and practice.

This framework accounts for key elements of gender-responsive land rights: quality, legitimacy, participation, and enforceability. The UN Working Group on the Issue of Discrimination Against Women in Law and in Practice, informed by input from Landesa, defined these elements in its recent position paper on women's land rights (UNWG DAW, 2017):

¹ "Gender-responsive" means that rather than only identifying gender issues or working under the "do no harm" principle, an approach will substantially help to overcome historical gender biases, to "do better," in order for women to truly engage and benefit from these actions.

- **Quality:** The scope of land rights is clearly defined and must include all forms of tenure exercised by women and men, including ownership, access, and use. Land rights should be granted for a clear and (ideally) extended period of time. Land rights must not be terminated or limited due to gender-based legal, cultural, or religious norms, and should be immune from changes in social status and family or community dynamics (e.g., marriage, divorce, widowhood, new village leadership).
- **Legitimacy:** Women's equal rights to land must be guaranteed by law apart from customary, religious, community, and familial recognition, and should accord with relevant international law pertaining to gender equality and land governance. Governments must take all appropriate measures to harmonize *de jure* and *de facto* rights; to ensure full implementation of laws; to ensure that administrative services are available, accessible, affordable, and accurately reflect law and policy; and to eliminate discriminatory social, cultural, customary, or religious beliefs and practices that annul or diminish women's enjoyment of these rights. Civil society and other advocates should address cultural and social norms that limit women's rights to land at the ground level, taking care to understand gendered community dynamics.
- **Enforceability:** Governments must ensure that women are fully informed of their land rights and that they have access to justice to enforce them without discrimination, including in official bodies, courts, and other relevant dispute resolution bodies, such as customary institutions. Access to dispute resolution or enforcement mechanisms must not be subject to extra permissions that apply on gender, social condition, or other status. Land rights enforcement and dispute resolution processes must be available, accessible, affordable, and gender responsive.
- **Participation:** Women must be included in policymaking bodies regarding land ownership and use, and in land governance and management bodies and agencies at national, regional, local, and household levels. Meaningful and full participation of women is required; relative to men, women's input and interests are equally voiced, valued, and evidenced in outcomes.

Assessment Methods

Landesa conducted two qualitative assessments, which were exploratory in nature with the objective of uncovering as much information about women's land rights as possible using limited resources while also maintaining a reasonable level of rigor. The findings from this exploratory research could be used to help develop theories and hypotheses for future confirmatory research (Reiter, 2013).

In Bago, the gender assessment was conducted at the pilot site for the USAID-funded and Tetra Tech-led Burma Land Tenure Project (LTP), for a participatory community resource documentation intervention in an effort to explore how the National Land Use Policy could guide the recognition of community land and resource tenure as well as effective land use planning at a localized level. Landesa's gender assessment of that site was aimed to examine more closely the gender dimensions of land use and tenure arrangements within the village tract to better inform the project in shaping interventions in a more gender-responsive manner. The full report of that assessment is available at Eshbach & Louis, 2016.

Landesa independently conducted a gender assessment in Tanintharyi to inform its land-related programs in the region. In Tanintharyi, the team used a purposeful sampling strategy based on accessibility to the area as well as established relationships between Landesa and local government officials.

[Figure 1: Map]

Data collection methods for both case studies included Focus Group Discussions (FGD), Key Informant Interviews (KII), informal discussions, and field observations. Landesa conducted four FGDs with women in Bago as well as KIIs and follow-up conversations with village men, village leaders, and representatives from local CSOs. In Tanintharyi, the team conducted a mixed-gender FGD, followed by a women-only group. KIIs were conducted with village and village tract administrators, local political party officials, and staff of local CSOs who had knowledge on land rights, women's empowerment, and land policies in the area.

The FGDs aimed at collecting detailed and nuanced information on women's access to land as well as intra-household and intra-generational dynamics in land access. Other topics covered included land use, livelihood activities, gendered dimensions of labor, access to conflict resolution, and information on agricultural activities. The KIIs focused on land governance and broader land use and planning issues at the village and regional levels, land disputes, and concessions, among other things.

[Table 1: Data Collection by Region]

Case Study 1: Bago Region

Village Tract 1 is situated on the western side of Bago Region. Bago Region is one of Burma's two primary rice production areas and is also known for teak and petroleum resources. There are four main villages in the village tract, with each village having between 450 and 580 residents. Three villages have predominately ethnic Bamar residents and one includes predominantly ethnic Kayin residents with some Bamar arrivals in the last 20 years.

Officially, Village Tract 1 is predominately forestland lying mainly within "unclassified forest" areas under the jurisdiction of the Ministry of Agriculture and Irrigation (MOALI). "Unclassified forest" falls under the 2012 Vacant, Fallow and Virgin (VfV) Lands Management Law, under which individuals and organizations can apply to the government for 30-year renewable use rights to carry out agricultural, mining, or other projects on that land. Over the last ten years, some of this VfV land within the village tract has been granted to private companies as agricultural concessions. Previously, the villagers had used this land for grazing, shifting cultivation, agroforestry, and collection of forest products.

One village is located entirely within "reserve forest" under the Ministry of Natural Resources and Environmental Conservation's (MONREC) jurisdiction. "Reserve forest" can also be made available for agribusiness concessions, but generally goes through a de-gazettement process first (Woods, 2015). Some of the land in all four villages has been reclassified as agricultural land in recent years, allowing farmers to register that land under the 2012 Farmland Law.

The main types of land uses in Village Tract 1 are (1) agricultural paddy and "garden" land, which the villagers cultivate; (2) village settlement land, where the villagers reside, keep small livestock, and grow kitchen gardens; (3) taungya land, where villagers practice shifting or rotational cultivation and agroforestry (although this land has become less available in recent years); and, (4) communally held forest and pasture lands, which the villagers use for collecting firewood and other forest products and for grazing livestock, although they have largely lost access to such areas through government land concessions.

The main livelihood activity is agriculture, growing food both for household consumption and for sale. The main crops in these four villages are paddy, beans, and sesame. Households also own livestock, including cows, buffalo, chickens, and pigs. Households without enough land to support the family engage in additional economic activities, including carrying out agricultural wage labor; collecting bamboo and making handicrafts; operating small grocery shops; renting out cows or buffalo for plowing;

working locally operating ferries or taxis; and doing local construction or handy work. There is some migration out for economic opportunities, most often single men or women for relatively short periods.

Are women's land rights in Village Tract 1 of sufficient quality?

Overall, the land rights of the villagers in Village Tract 1 are not of sufficient quality, and women's rights to the land are of lower quality than are men's. The communities and the residents within them do not have clearly defined rights to most of the land. Each of the types of land is subject to different laws and rules governing access and use rights. While respondents generally considered taungya land, forest land, and pasture land to be communally held by the villages, most of these lands are in unclassified forest. Thus, much of the land that the villagers have used throughout the villages' history was officially categorized as unused (VfV land) and eligible for the government to use for another purpose or to grant to others for use.

About ten years ago, all four villages in the Village Tract lost access to land as a result of government-negotiated land deals that provided the land to private agribusiness investors. A majority of the taungya land accessed by three of the villages was lost in these concessions, leaving a majority of the households without access to any land to cultivate. In the other village, the concessions had included both some of the flat land that the villagers were using for paddy cultivation as well as hillside forestland that the village used for taungya. Additionally, the concessions included land that the villagers had used for grazing and collecting firewood and other forest products. The loss of grazing land has led to a situation in which the villagers do not have adequate food for their livestock.

Both women and men respondents reported that they do not feel secure on their land and that they fear losing additional land in future land concessions. These concessions have affected both women and men, but the loss of access to the forestland has been particularly hard on women, as they are primarily responsible for collecting firewood and their collection and sale of non-timber forest products served as extra income for the family. For example, the women of one village have completely lost access to the Community Forest where they previously had collected firewood. Now, they have to walk two miles to another forest to collect firewood and report that it is dangerous because of wild elephants and other wildlife and they must go in groups. In another village, the loss of the land has curtailed women's ability to contribute extra income to the family in the dry season through foraging for vegetables and bamboo. The women reported that this means that the family has less money for children's education and that more men are migrating out for work during the dry season.

For those who have agricultural land, villagers seemed to have better defined rights. Under the 2012 Farmland Law, all land officially classified as agricultural land is eligible for registration and issuance of a Land Use Certificate (LUC, or Form 7). The rights to use and transfer Form 7 land are clearly stated in the Farmland Law and on the Form 7 document itself. Respondents reported that only those pieces of land that were present on the government's cadastral maps are being formalized. Those whose lands are not in the cadastral maps are not registered. Households have tax receipts which may be considered evidence of land use for a period of time when such evidence is required (i.e., applying for Form 7 or in considering a land dispute), but is not definitive proof of long-term use rights. Less than 25% of the residents in these three villages have Form 7 paddy land. In a fourth village about 50% to 60% of the households have Form 7 paddy land. Most of these Form 7s are in the names of the men of the households (see more on this below).

Women's rights to land in Village Tract 1 become blurrier when considering the lack of clarity around the customs and practice of dividing property upon change in marital status or through inheritance. Practices around inheritance and division of land in case of separation, divorce, or abandonment are unclear and seem to be handled according to unwritten norms within the community. Based on the number of potential situations that the village leaders have never encountered and the lack of consistent responses, these seem to be taken on a case-by-case basis.

Village residents may marry someone from within their own village or someone from another village nearby. Within the village tract, there was no clear matrilineal or patrilineal practice. Rather, most reported that where a newly married couple moves depends upon the family circumstances. For instance, if the husband's family has a lot of land and few children while the wife's family has little land and many children, they would likely move to the husband's village. But if the wife's family has more available resources, they would likely move to her natal village. When a couple is married, both spouses have rights to use the other's land. However, if that land is registered in the name of only one of the spouses (see more on this below), it would stay in that person's name. For instance, if a woman inherited a plot of paddy land from her deceased parents, had the Form 7 transferred to her name, and then married, that land would stay in her name, but her husband would have some rights to use it while they are married and, potentially, to inherit the land if his wife predeceases him.

When asked about divorce, separation, or abandonment, women in the village tract had little experience to answer about what would happen to the land. Divorce is relatively uncommon, and when it has happened, it has generally been between couples from different villages. In those cases, if the couple separates, the spouse that had relocated will generally go back to his or her natal village, regardless of gender.

Respondents said that a person would have rights to land within his or her natal village, as if he or she had never left. As the research team asked about more complicated situations, such as a couple from the same village or a couple with children, the respondents were unsure as to what would happen. Some thought that the land should be split 50/50. Others thought it depended on the side of family from which the land came, or whose fault the separation was. Still others thought that, where there were children involved, there should be a presumption in favor of the woman keeping more of the land.

Opinions also varied on to what a second spouse of a divorced or widowed person would be entitled ~~to~~. For instance, respondents said that if a man divorced and got half of the marital property (which came from his first wife's family) and then he remarried, he could not gift the land to his new wife because this land should go to the children of his first marriage. Thus, if this was the couple's only land and the husband died, the second wife would get nothing. If the man also had children with his second wife, this became more complicated. If the husband did not have children with his first wife, he would be free to gift the land from his first marriage to his second wife.

Matters of inheritance seemed more straightforward and gender equitable. Respondents reported that all paddy and garden land is inheritable. Likewise, household plots on village settlement land are inheritable. Individuals typically inherit land from their parents or their spouse. When asked directly, most agreed that if a spouse dies, the surviving spouse would inherit the deceased spouse's land automatically. However, the answers were less consistent when asked about hypothetical situations, suggesting that in reality the inheritance pattern depends on the specific circumstances.

When bequeathing land to their children, the villagers had differing opinions over how the land should be divided. Most respondents reported that they would split their land equally amongst all of their children, and that this would be the arrangement even if some of their children had married and/or if some of their children had moved out of the village. Other respondents reported that they would like their sons to inherit more land than their daughters, because their sons would be household heads. One respondent wanted to give one of her sons more of the land because she thought he did more to care for the family. In one of the villages, some of the respondents favored their daughters in inheritance, particularly where the family did not have enough land to divide.

Are women's land rights in Village Tract 1 legitimate?

Much of the lack of clear definition about land rights, which undermines the quality of the rights, stems from a lack of clarity in the formal law about which rights are legitimate. Although the 2016 National

Land Use Policy expresses a commitment to recognize customary land use tenure systems, no new laws have yet been passed to formalize and operationalize this recognition apart from some effort through the Forestry Department to recognize some communities' customary rights to some forest land through the 2016 Community Forestry Instruction. Thus, for the people in Village Tract 1, their customary rights to the taungya land they had previously used are not formally recognized under the existing laws.

For women, the formal law generally recognizes women's and men's equal rights to land. Although there are no provisions in the 2008 Constitution referencing women's equal rights to property or land, it guarantees equality to all citizens, prohibits discrimination on the basis of sex, and, in a gender-neutral way, guarantees rights to private property and inheritance. Most of Myanmar's land laws employ gender-neutral language, and the National Land Use Policy explicitly recognizes that men and women within the household have equal rights to land held by the household.²

However, in the case of Form 7 agricultural land, women's equal rights to the land have been undermined by the exclusion of their names on the land documentation. Almost all Form 7s within the village tract are in the names of the male heads of household. While a woman's name can be on the document instead of a man's name, it is usually not, unless it is a woman-headed household. A few women-headed households in Village Tract 1 have Form 7s in their names³.

There was little knowledge among the respondents about whether women could ask for their names to be included, and they had mixed opinions on whether government officials would resist including a woman's name on the Form 7 if she were not the only head of household (either by the family requesting that it be in the woman's name only or by putting two names on the form rather than one). Some of the women thought that the government would allow it if they requested it. Others were not sure what DALMS officials would do if they requested that a woman's name be added.

However, some of the women reported that there has been improvement in their knowledge about changing the name on Form 7 over the last year as the LTP pilot had been implemented in the village tract. In the past, they did not know that they could change the name on a Form 7 when a woman's husband passes away, and some women now know the procedure to change the name; one woman reported that she had done so after her husband died. The men from the KIIs did caution that some of the

² Note that while the land laws are gender neutral, the formal laws around the division of property upon change in marital status and inheritance create a more complicated picture around the legitimacy of women's equal rights to land. For more on this topic, see Eshbach & Roberts, 2017.

³ There are many names on these documents, typically. But they are in the "other members of household" section, instead of the head members.

women may be mistaken about having the Form 7 in their names and that in some cases, the woman's name may be an "added" name or an endorsement, rather than the Form 7 officially being in her name.

The women respondents were not sure if having their name on the Form 7 would increase their tenure security within the household because they believe that their husbands would consult with them on big decisions about the land, such as sale, lease, or mortgage. However, they felt that including their names would allow them to conduct their land affairs, including accessing credit, when the male household head is away or ill. Currently, if a family needs money, the woman cannot access formal credit if her name is not on the Form 7. The women reported that if an older woman's husband died, she would change the name of the Form 7 to that of her adult son rather than her own.

Are women's land rights in Village Tract 1 enforceable?

The questions of the legitimacy of rights due to conflicting laws and policies or having one's name left off of registration documents present challenges to the enforceability of women's land rights in Village Tract 1. However, the respondents had relatively little experience in testing the enforceability of their land rights.

For disputes within the villages, respondents reported that land-related disputes are relatively rare. When disputes do occur, they are usually boundary disputes between neighbors. In these sorts of disputes, the parties would try to negotiate directly with the help of the village leader who acts a mediator or arbiter. The villagers would also go to the village leader to address issues such as crop damage by livestock or outsiders cutting timber in the village forest. Respondents said that, on occasion, villagers might go directly to DALMS or the Forest Department with a land-related problem, but it is usually the village leader who interacts with these officials. Even though women say that they can go to the village head with problems, it is mainly men who interact with government officials.

The women knew of only one case in recent years that went to court, an inheritance case in which one daughter tried to sell the deceased parents' land without the consent of her sisters and brother. Taking a case to court is rare due to distance (the court is about ten miles away in the township seat), cost, and time (resolution through the courts may take many months or years).

In the case of the government land concessions to agribusinesses, the villagers found their rights to the land to be largely unenforceable. The villagers are largely unaware of the processes under which this land was transferred, whether it was "sold" by some unknown actor or whether 30-year use rights were granted

to the companies by the government under the VFV Lands Management Law. The villagers said that they were not involved in any consultation or consent process for the concessions and received no compensation. People lodged complaints with the village leaders and the village tract administrator, but the village leaders have little to no guidance on what to do or how to proceed, and so they have taken no action to address the land concessions. Two of the village heads reported that they would like to take the matter to court, but they do not know the procedure or where to start. In one village where paddy land was taken, the villagers collectively made a complaint to the Forest Department through the village leader, and the paddy land was returned almost immediately.

Do women in Village Tract 1 have sufficient participation?

At the household level, women's participation in decision-making varies. While respondents said that men and women usually make decisions together, they also said that many decisions, particularly around land and agriculture, are ultimately taken by the man. For the sale or lease of land, most of the women agreed that a husband must consult with his wife on these decisions. However, they conceded that in some cases, where the husband is very dominant, he may make this decision on his own. It would be impossible for a woman to make this sort of unilateral decision "because no one would be willing to buy it." This is particularly true if the Form 7 is in the husband's name, as she would not have the legal authority to sell the land without her husband. In the case of women-headed households, the respondents agreed that women would be able to make these decisions on their own, with or without agreement of male relatives. But in reality, they said, some families would get involved in these decisions.

In the village tract, women and men work on agriculture together, although men more often take the primary role in certain agricultural tasks, such as plowing and clearing land, while women more often take the primary role in household work, cooking, and child care. Many respondents pointed to this gendered division of labor as a factor that contributes to women having less decision-making power within the household on land-related matters.

Women have limited participation in community decision-making. While most of the women said that they are never completely excluded from community meetings (i.e., "we can listen," even if not invited), women are often not invited to participate or cannot attend because of lack of access to safe transportation or too many duties within the household. Even when they are invited to participate, women do not necessarily feel comfortable speaking up in such fora. Some of the reasons that respondents cited for the low level of women's participation include that women are "timid" and have a lower level of education

(particularly historically), and that men are in charge of the household business and so they speak for the whole household at such meetings.

Residents of this village tract rely heavily on their village leaders to register land, solve disputes within the community, and liaise with government departments and officials. Women rarely hold leadership positions within the community. All of the village leaders within this village tract are men. None of the respondents had ever heard of a woman being a village leader or administrator. There were differing opinions on what would happen if a woman was the village leader. Some thought that no one would listen to a woman village leader. Others thought it did not matter if the village leader was a man or a woman as long as that person was fair and just. While most agreed that it would be in principle a positive development for women to be more involved in community decision-making, respondents had mixed opinions on the feasibility of achieving increased women's participation in practice.

Case Study No. 2: Tanintharyi Region

The assessment in this region covered two villages in a township in Dawei District. Much of the land in Tanintharyi is forest reserve land, which comprises 18% of total land area in Myanmar (Woods, 2015). Both villages simultaneously practice some forms of customary tenure as they navigate the formal system.

Villagers reported the main types of land uses are: (1) orchard land; (2) taungya land; and (3) village settlement land. On orchard land, the villagers grow betel nut, cashew, sesame, and coconut as well as perennial crops, such as oil palm and rubber, which the government subsidizes. Most residents prefer to engage in mixed cropping rather than exclusively perennial crops.

Depending on the official classification, orchard lands can be formalized either as community forests with Community Forest Certificates (CFC) held communally by the community, or as individual household agricultural land holdings in the form of Land Use Certificates (LUC, also known as Form 7). CFCs, available under the 1992 Forest Law and the 2016 Community Forest Instruction, allow communities greater freedom to engage in intercropping, secure long-term rights for plantations (palm oil, rubber, and sesame are all common), and facilitate environmental conservation. To establish a CFC under the Community Forest Act, a Management Committee and a Forest User Group (FUG) must be formed. While some communities have pursued a CFC, residents prefer LUCs if their land qualifies. Unlike the rights under a CFC, LUCs make use rights transferable.

Residents also use the land that extends into the hills around the village for shifting or rotational cultivation, or taungya. Villagers use village settlement land to build houses, grow subsistence kitchen gardens of vegetables and betel nut, and house livestock.

The residents of Village 1 have occupied the land since they were displaced from a village about ten miles away about 19 years ago. They fled their previous home because of forced labor conscriptions: the men to transport rations for the military and the women to build a railroad in Dawei District. Although some members of the community eventually returned, many stayed in Village 1 because the land was of higher quality than the land in their original village and access to the local school was better.

Village 1 was established on reserve forest land, but, in 2013, MONREC released some of the land as village settlement land. Villagers reported that in 2005, before the land was released, DALMS had demarcated the villagers' land and issued a Form 105, which was later rescinded.

The village is predominantly matrilineal, and men who marry into the village are considered members of the community. Village 1 has some land available for allotment for new residents or for current residents who bring a spouse to the village. Respondents reported that anyone (regardless of gender) who moved to the village could also acquire land by buying it from the village, with permission from the current occupant of the land. House plots can be purchased from this area for 100,000 kyats (approximately \$75 USD).

Most of the land in Village 2 is outside the forest reserve, but villagers are uncertain of the official land classification. There are approximately 4,000 acres in this village. About 2,500 acres are for the village, with about 2,100 acres designated as Community Forest and the remainder divided into plots held by village residents. Individualized plots range in size from around four to ten acres. Wealthy plantation holders, the military, and the government hold and have demarcated the other 1,500 acres of land around Village 2, leaving residents unable to access additional land and to provide land for new households.

Of approximately 173 households in Village 2, 81 households are completely landless, lacking even the land on which to have a house. Some landless families are currently borrowing land, some are dependent on their parents, and some residents have migrated to other areas. All respondents in the FGD in Village 2 were landless, although all respondents' parents had some land. One family previously held ten acres but had sold off half the land because they could not make it productive. They also reported that inheritance practices favor sharing equally among children. However, end-of-life healthcare and funerals present significant expenses that lead many to sell off land rather than children inheriting it.

Are women's land rights in these villages of sufficient quality?

Rights are clearly defined at the village level, within the village, by the village committee, rather than by independent interaction of village members with land administration agencies. For women, this means that land is accessed predominantly through male relatives, and they do not interact directly with formal land administration agencies. Most women access and use land alongside their husbands. Women seem to have clarity on which land is available for their use, and to feel secure in their ability to access, use, and benefit from the land, and to be certain about guidelines for transfer of rights through lease, share-cropping, or sale.

In general, when women or men are divorced or separated, the village administrator and other respected elders and witnesses within the village would facilitate negotiations for division of land between the couple. Considerations would include the sources of land, as well as the number of children the couple has and who will have custody of the children. It was not clear how equitable this process would be, and respondents had no examples. For example, in Village 1, respondents report that men are considered to hold the land, but if marriage ends (through death, migration, or abandonment), then the wife would own the land until the children are old enough to claim it and cultivate it. They have no experience with what might happen if a wife died with no children, or if women's rights were vulnerable or diminished if they were childless and their marriage ended.

Are women's land rights in these villages legitimate?

Residents of both villages expressed the need for greater tenure security to protect against external threats. The reasons for this differed between villages, and it was not clear that tenure insecurity was more acute for women, though women's access to land is derivative of men's in both villages, and women's voices are almost wholly absent from negotiations with government agencies or formal landholders who are not village residents.

Being on reserve forest land, the only route to formalization for most land in Village 1 is a CFC. The residents perceive that a CFC will protect them against encroachment from trespassers, acquisition by companies, or seizure by the government or armed groups. They currently have no recourse when trespassers harvest timber on their land. They also want to formalize the land where they are cultivating sesame and this can be accomplished under a CFC. Women's rights to the land in this context are mostly derivative; they are not the primary cultivators, are not considered to hold the land, and are not equally represented either in village leadership or in the FUG Management Committees.

In Village 2, the residents are in the process of formalizing their rights to Community Forest on land that was granted by the Forest Department for this purpose. The Forest Department granted approximately 2,160 acres of reserve forest. The Management Committee they have formed has five members, and the FUG has 87 members, each designated as a head of household. Most frequently, the head of household is the man; if a husband dies, his wife becomes head of household.

Are women's land rights in these villages enforceable?

In both villages, women deferred to their husbands or the village administrator for land matters. They reported a high level of trust in the village administrator's ability to handle disputes and did not appear concerned about intra-household or intra-village disputes. Most concerns were external, and because women are not the primary holders of legal rights, their ability to pursue justice or to establish their right to a particular plot appeared limited to the level of authority of the village administrator. Men dominate interactions with government agencies, and so while women could conceivably exercise legal rights, they would likely seek support from male members of their family or community to navigate any formal process or defer to men to address any claims or disputes. Women who were active on the Management Committees of the FUGs serve as a counter-example to land management as an exclusively male domain, albeit in a community setting; female members of the Management Committees were relatively less vocal than men (both in the mixed FGD and in the women-only group) about their roles in the process of obtaining a CFC. Given the communal setting and strong social norms that favor male leadership, it is difficult to determine women's freedom to exercise their rights apart from men.

Regarding division of land between a divorcing or separating couple in Village 2, it was reported that if they are not satisfied with the decision, they could appeal the case to the Township Justice Office (Attorney General's Office). It was not clear whether the appellate process would be the same for women and men, or whether women would face any additional barriers relative to men.

At the community level, Village 2 is in the process of contesting some previous land decisions, with mixed success in enforcing their rights over land previously seized. Around 2010, DALMS released about 100 acres of formerly seized land to original villagers, posting a notice that Myanmar citizens could apply for an LUC for some portion of that land. Landless families requested land for house plots from the village administrator, who in turn applied for this land on behalf of landless villagers. However, some powerful non-community members have claimed the land, and the law does not specify that local people should be prioritized. The village administrator has submitted a complaint to the Regional Review Committee for Confiscated Land and Other Land concerning the land available for LUCs, which he fears

will not go to village residents due to corrupt processes. There are three other notable disputes over previously seized land: two are pending at the regional level and the other resulted in the military releasing 286 acres back to the village.

Do women in these villages have sufficient participation?

Women have generally low participation in community-level decision making regarding land in these villages. In Village 1, women comprised 20% of FUG leadership: one woman had been elected to both five-member Management Committees. Husbands generally attend FUG meetings on behalf of the family. Wives may attend if their husbands are not available, or sometimes entire families will attend the meetings together. It was not clear if entire families would attend for specific purposes, or whether this is the custom of some families, but not others.

Women's participation in community meetings is relatively new. Respondents reported that women could not join public meetings until around 2013, when NGOs and the government started specifically inviting women. However, for community meetings, they still can only come if their husbands cannot attend. They used to be afraid to come to any meetings, even when invited, but now they are much more comfortable, and they speak up; this was true for both young and older respondents. Respondents also reported that, regardless of who attends the meeting, people within households share information with each other.

Respondents resisted the idea of women interacting with government agencies or offices. None of the respondents had done so, and they would not want to, both because they do not feel that the government supports them, but also because they view this as their husbands' role. If their husbands asked them to go to a government office, they would do it, but they would not be comfortable doing so and would not want to.

Over the last three years, three NGOs have held trainings on women's rights in the area. As a result, women respondents reported that their conception of their right to participate in community meetings and to be active in civic life has developed. They report seeing some changes in men's attitudes. However, they say government agencies do not encourage them to participate or interact beyond attending community meetings.

In Village 2, women are the majority of those present at public meetings because many men have migrated for work. Married women can participate in public meetings on behalf of their families or with their husbands. The women reported that they are involved in women's groups., that women participate

fully in religious ceremonies, and the village committee encourages women to participate in community meetings with government officials.

Conclusion

Our gender assessments in Bago and Tanintharyi highlight some important takeaways:

Based on these two case studies, both rural women and men in Myanmar lack tenure security over much of the land that they have used and relied upon for many years. Rights over such land are ill-defined and legitimacy is unclear. Particularly when faced with a land rights challenge from certain actors, enforceability of land rights may also be lacking.

Women tend to face factors that make their land rights even more insecure: their names are not included on land documentation, potentially undermining the legitimacy of their rights; the picture of how land is shared and divided upon marriage and separation or through inheritance is unclear, undermining the quality of their rights; and they often face additional barriers to enforcing their land rights because of the often derivative nature of their rights and their limited interactions with government officials. Women's limited participation in decision-making over land, at both the household and community levels, presents an additional barrier to women's land tenure security.

Intra-household nuances of land rights and tenure security are challenging to assess in Myanmar, especially because the enduring narrative amongst policymakers, local government officials, and even men and women in rural households is that women and men have equal rights to land. Studies examining women's land rights suggest that it is important to think about differentiated access to land within households. The implications of not understanding how women use and access land within formal and customary regimes and what areas remain ambiguous could result in further marginalization of women's rights to land.

Women are more knowledgeable about customary regimes than they are about formal rights. Customary and formal tenure regimes, when they exist in parallel, often overlap and sometimes contradict each other, negatively impacting the quality of rights of men and women. Because women usually need a male intermediary to access their rights, women are at a disadvantage in claiming their rights in these situations. Furthermore, the plurality of land legislation lends itself to confusion, making it harder for women and men to claim their rights.

As rights are formalized, women who may have enjoyed more equal rights under customary regimes may be at a disadvantage if legal documents default to the principal male in the household. At this crucial juncture in Myanmar's land formalization, it is important to anticipate how a shift from customary to formal tenure regimes could impact women. Lessons from formalization of rights in other geographies, such as Rwanda and Ethiopia, highlight that formalization may make land more valuable, which in turn may lead to a concentration of rights to the "official" rights holder who is usually the principal male in the household, thereby negatively impacting women's land access.

Intra-household disputes are usually adjudicated by customary norms using local leaders. Most of these leaders are men, and women have no other option but to abide by their decisions. Some women do understand that the decisions made by village administrators can be appealed. However, because women typically do not interact with land officials and are not represented within local government bodies, women are at a disadvantage to men in claiming their rights.

Based on the findings of this gender assessment, we make these recommendations detailed below for further policy and legal reform:

1. Comprehensive data on the *de jure* and *de facto* enjoyment of women's secure rights to land should be collected. The data should be used to identify the particular vulnerabilities of women heads of households with relation to land access and land use and to create laws and policy targeted at supporting them.
2. Village leaders, as the primary dispute resolvers within the village and the gateway for villagers to access government departments, should have additional training on women's land rights under the law as well as best practices in solving land disputes.
3. Amendments to the 2012 Farmland Law and rules to allow joint registration of agricultural land and establish effective monitoring mechanisms for implementation should be advocated. Laws should be revised, and clear and accessible mechanisms for land administration and management should be established and maintained in order to implement the land tenure and management rights that women have as stated in the National Land Use Policy (particularly, section 75). Similarly, laws should be revised to adequately recognize customary land use tenure systems as stated in the 2016 National Land Use Policy.
4. 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, should be ensured.

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TABLES

Table 1: Data Collection by Region

	<i>Research Sites</i>	
	Bago Region Case Study 1	Tanintharyi Case Study 2
No. of Villages	4	2
<i>Methods</i>		
FGD	4	3
KII	3	4

FIGURES

Figure 1: Map of Gender Assessment of Land Rights Case Study Sites

