
VULNERABLE LAND, VULNERABLE WOMEN

Gender Dimensions of Land Grabbing in Myanmar



Goldman School of Public Policy, University of California, Berkeley

The Global Justice Center

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EXECUTIVE SUMMARY

Land grabs, which refer to land being taken without due process or fair compensation, were first legalized in Burma (as Myanmar was then known) in 1894. The legal framework that the British established in 1894 remains to this day and has, throughout history, perpetuated a system through which millions of acres of farmland have been confiscated and re-allocated by the government. Land often goes through various cycles of allocation, re-confiscation and reallocation after being grabbed. As the new government attempts to address previous land grabs, this complex history of ownership combined with a lack of land titling and documentation makes it extremely challenging to identify legitimate claimants seeking return of land or compensation. Land grabs have only increased in recent years with Myanmar's nascent integration into the global economy and land reforms that have re-classified large areas of land as vacant or fallow land. Concurrent trends, including a spike in global land prices, agricultural sector reform, vertical integration of the food supply chain and increased demand for land from Myanmar's primary trading partners, has exacerbated this problem. Foreign corporations, military-affiliated holding companies, and domestic cronies¹ have benefited massively. The main losers are women. Because of systemic discrimination in Myanmar's political, legal and economic systems, women are more vulnerable to having their land grabbed and are more negatively affected when it is taken.

Globally, women's access to land has been positively linked to agricultural efficiency, gender equality and various other development indicators. The importance of equal access to land for women has not been recognized by or incorporated into policy or practice in Myanmar. Women's access and ownership of land is highly insecure because of customary practices, unequal political representation, discriminatory economic policy and numerous other factors. Laws and customary rights around inheritance make women vulnerable to loss of land. Almost all local government officials responsible for land administration are men, resulting in policies and practices that disproportionately favor men. Women lack agency in decisions around land and are more vulnerable to land grabs. While laws themselves may grant equality to women, in practice this does not manifest into equitable outcomes. Importantly, the complex and often contradictory legal framework around land increases the importance of connections to local administrators rather than legal rights.

Evidence suggests that land grabs harm women disproportionately. Without access to land, women traditionally have fewer employment opportunities than men. They are more likely to enter exploitative professions in the absence of land. Because of a significant gender wage gap and unequal access to credit, women also have less wealth than men, and thus face greater difficulty weathering economic shocks like loss of land. Moreover, women are less likely than men to hold land titles, which are necessary to prove prior ownership and be eligible for compensation for confiscated land. The lack of land titles makes it more challenging for women to seek redress when their land is grabbed.

To address the systemic drivers that make women more vulnerable to and negatively impacted by land grabs, a combination of policies that tackle the problem from political, legal and economic angles are needed. A 50% quota for women on local Land Use Committees, combined with political training is the first proposed step in political reforms. This needs to be followed by instituting a 50% quota in Parliament. From a legal perspective, it is recommended that local administrators be empowered to resolve disputes around land grabs to reduce the load on the Committee for Confiscated Farmland and Other Lands and localize this resolution process. Additionally, as outlined in the newly enacted National Land Use Policy, customary practices around land ownership should be recognized, but also updated to reflect the international standards of gender equity described in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This involves reforming inheritance laws and enabling more women to have power in their families by allowing registration of joint heads of households. Finally, as an economic policy reform, the government must prioritize investment in smallholder farmers over large-scale agribusinesses. The Government of Myanmar can achieve its agricultural modernization and efficiency objectives, at least in the short term, while also reducing the frequency of land grabs, by supporting smallholder farmers. This policy would support small farmers through targeted financial products, infrastructure development and enhanced extension services. This policy can be coupled with programs and policies to support women's economic security and reforms that encourage the expansion of the manufacturing sector, while ensuring labor rights standards. Finally, in addition to the political, legal and economic reforms, it is recommended that the Myanmar government conduct an analysis of the impact of land grabs on the population and publicly release data that is disaggregated by gender and by region.

LIST OF ACRONYMS

ASEAN Association of Southeast Asian Nations

CEDAW Convention on the Elimination of All Forms of Discrimination Against Women

EU European Union

EAO Ethnic Armed Organizations

FAO United Nations Food and Agriculture Organization

GAD General Administrative Division

GJC Global Justice Center

GSPP Goldman School of Public Policy, University of California, Berkeley

GOM The Government of Myanmar

KHRG Karen Human Rights Group

MADB Myanmar Agricultural Development Bank

MIMU Myanmar Information Management Unit

MIC Myanmar Investment Commission

MOAI Ministry of Agriculture and Irrigation

NGO Non-Governmental Organization

NDI National Democratic Institute

NLD National League for Democracy

NLUP National Land Use Policy

ROSCA Rotating Savings and Credit Associations

SEZ Special Economic Zones

UN United Nations

UNDP United Nations Development Programme

METHODOLOGY

Criteria for Analysis

This report evaluates policy alternatives addressing the political, economic, legal, and cultural structures that lead to gender-based inequities during and after land grabs. Alternatives are analyzed based on their effectiveness in achieving better outcomes for women facing land grabs, along with cost-benefit efficiency and political feasibility.

Analytical Strategy

The initial analysis attempted to identify whether there is a relationship between the Myanmar regions with the highest recorded incidents of land grabbing and indicators representing economic, educational, political and healthcare attainment for women in those regions. However, after parsing data from many sources, including the 2014 Myanmar Household Survey, the Myanmar Ministry of Agriculture and Irrigation, Myanmar Information Management Unit baseline dataset, Open Development Myanmar, Forest Trends, the Food and Agriculture Organization of the United Nations, and the United Nations Development Programme (UNDP), it became clear that both the availability and reliability of quantitative data from Myanmar are poor. Decades of isolation, combined with the fact that government actors are usually involved in land grabs and data collection, means that there is insufficient data to demonstrate relationships between the variables of interest. What data does exist appears to be incomplete, contradictory, and/or unverifiable. This challenge was not ours alone; Myanmar is often left out of cross-national comparisons due to data limitations. For example, the UNDP was unable to calculate a Gender Development Index rating for Myanmar due to the lack of relevant data. Myanmar is one of only two countries in South or Southeast Asia not included in the Gender Development Index.

Given the limitations of quantitative data concerning land grabs in Myanmar, this analysis utilizes cross-national data to evaluate the impact of land grabbing on gender equality indicators in comparable nations and couples those findings with qualitative sources from Myanmar in order to evaluate the impact of land grabs on women in Myanmar. Cross-national analysis includes countries from Asia and Africa with political, economic, social, or natural resource indicators comparable with those of Myanmar.

Qualitative Data Sources

The quantitative data sources have been supplemented with qualitative analysis, including literature review, expert consultation, legal analysis, and a survey designed to provide more information about the impact of land grabs on women's lives in Myanmar. The survey, drafted by the research team from the University of California, Berkeley and distributed by the Global Justice Center, resulted in responses from two women's rights organizations in Myanmar. Survey questions are included in Appendix A.

OBJECTIVES

This research aims to contribute to the existing literature on the gender dynamics of land grabs and feed into Myanmar's policy discourse around the National Land Use Policy (NLUP). Ultimately, this research aims to demonstrate that gender cannot be ignored in policy discussions around land use policy. This research is particularly relevant given prevailing skepticism among political leaders, including key voices like U Shwe Mann, of the importance of explicitly considering gender equality in the NLUP.

In addition, this research hopes to inform programs that strengthen women's economic security, amplify their voices in society, and protect them from discriminatory policies and practices related to land.

The policy recommendations listed herein align with the objectives outlined in the 2011 "National Strategic Plan for the Advancement of Women (2013-2022)", which was a long-term plan designed by the Ministry of Social Welfare to achieve the advancement of women. The action plan explicitly recommends research be conducted on "disparities between women and men", "women's equal inclusion in land and agrarian reform", and "the challenges women face accessing economic opportunities, their economic needs . . . and access to resources".²

The objectives of this analysis are to:

- Assess the factors that make women more vulnerable to land grabs and result in women being disproportionately impacted by land grabs.
- Offer policy recommendations that reduce the frequency of land grabs, lessen women's vulnerability to land grabs, and/or strengthen women's position when their land is taken.

BACKGROUND & CONTEXT

Historical context for Myanmar and land grabs

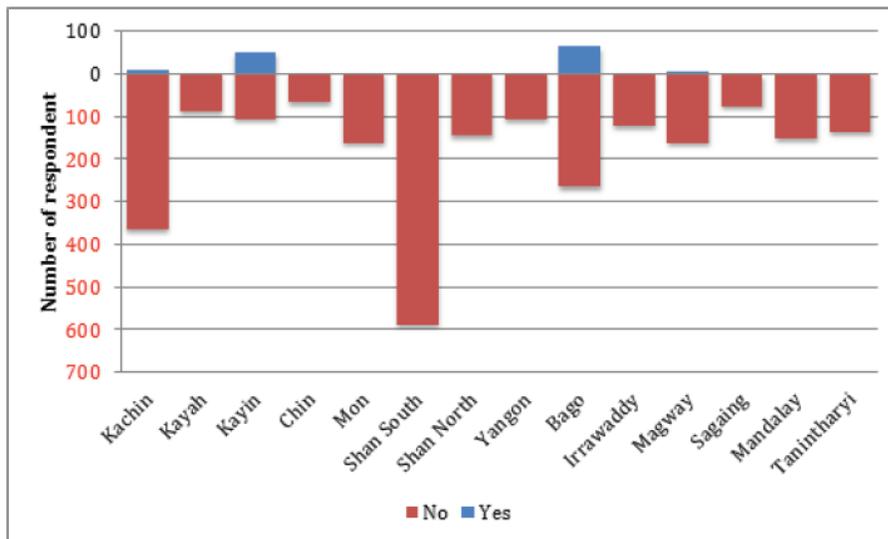
Myanmar's complex land issues date back to its colonial period (1824-1948). During that time, British, Indian and Chinese money lenders primarily controlled the land of central Burma, resulting in high levels of indebtedness and landlessness for Burmese farmers. The British established land use policies to simplify tax-collection and to enable transfer of land from "unproductive" farmers to more productive farmers. Under the 1894 Land Acquisition Act, the British introduced the concept of "waste land" for land not under active cultivation, which included fallow land under cyclical cultivation. This was the moment when land grabs were made legal in Burma. The law was vaguely worded, allowing for land to be confiscated and re-allocated by the state for more productive use with little to no justification. This law, passed in 1894, is still in effect. As a backlash to foreign control of Burmese natural resources, land was nationalized upon independence in 1947 by the democratically elected government of U Nu. From 1947 until the 1990s, land was exclusively held by the state. Land could not be purchased, traded, used as collateral, or otherwise controlled by individuals.

During the socialist period (1962-1990), under the autocratic rule of U Ne Win, the state maintained ownership of all land. Large tracts were confiscated and re-allocated at the will of the single-party state. Economic mismanagement under U Ne Win helped to galvanize protesters for the "8888 Uprising" on August 8, 1988, which left thousands of protesters dead in the streets of Yangon. In response to the protests, the military took control of the government and, in hope of demonstrating a shift in economic policy, began to privatize land in the mid-1990s. This did little to improve economic conditions in Myanmar. The monetary and banking systems collapsed in the late 1990s and again in the early 2000s. Nonetheless, as land became available to foreign investors, speculation resulted in a spike in land values. Given the uncertainty of the banking system, the collapsing value of the national currency, the kyat, and increased land values, land grabs became more frequent.

There is limited reliable data on the scope of land grabs in Myanmar, but researcher Kevin Woods reported in 2014 that there have been a total of "5.2 million acres of private agribusiness [grabs] . . . of this [5.2 million acres], more than 3 million acres" were taken between 2011 and 2014.³ A 2015 report by Global Witness similarly reports that, "by 2013, 5.3 million acres of land . . . had been leased to investors for agriculture".⁴ To put that in perspective, the 2014 Myanmar Household Census indicates that there are roughly 31 million acres of agricultural land in Myanmar. The 5.2 million acre estimate only accounts for agricultural land grabs. Including land grabs for the construction of infrastructure or development projects, or simply for the transfer from one household to a more favored or powerful individual would yield a much larger estimate.

From the 1990s until today, land has been conceded to foreign corporations, military-affiliated holding companies, or crony entities affiliated with the regime without due process or fair compensation. As *Table 1* below shows, the land rights organizations Land in Our Hands found that land is often taken without prior notice.⁵ It has often been leased out to affiliated corporations, sub-

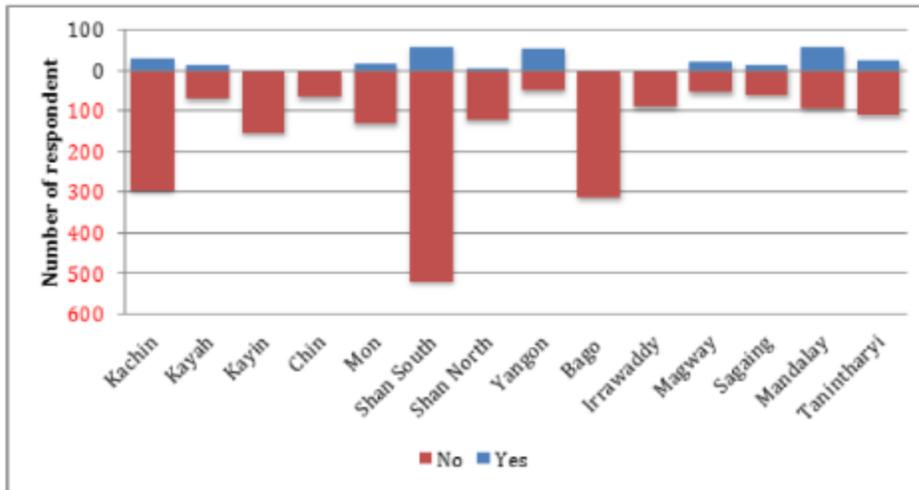
Table 1: Was respondent informed that the land would be confiscated prior to confiscation?



leased to local leaders, and sub-leased several more times to farmers who cultivate the land. If a farmer or owner of the land failed to meet set production quotas, temporarily suspended cultivation of the land, or simply fell out of favor with the regime, the land could be confiscated and re-allocated. Currently, as the new government attempts to address past land grabs, identifying legitimate claimants is extremely challenging. As a result of the complex and corrupt history, and lack of land titling documentation, numerous individuals will claim a single plot of land as their own. Further complicating the problem, the current system is governed by more than 70 overlapping and often contradictory laws. Given the political prominence of this issue, the Thein Sein-led government established the Farmland Investigation Commission in 2012 to review past complaints of land grabbing. According to figures released in 2015, 30,000 cases were submitted to the Commission, yet only about 4% were found to justify compensation.⁶ The land rights NGO Namati reports that about 335,000 acres of urban and farmland were returned.

Land grabs have increased in recent years as the nation has undergone political transition and economic global integration. Large-scale land grabs have increased 170% since 2010. With new legislation that classifies millions of acres of land as vacant, fallow or virgin and available to foreign investors, the problem will likely worsen if unaddressed.⁷ According to 2015 research by Land in Our Hands, only in a minority of cases are farmers compensated when their land is taken (see *Table 2* on the next page).⁸ Exacerbating the problem is the fact that between 23.6%⁹ and 50%¹⁰ of farmers in Myanmar lack titles to their land, which is a requirement in seeking redress for land grabs.

Table 2: Number of respondents who received compensation



2016 National Land Use Policy

The NLUP intends to form a unifying foundation to reform the complex system of land governance in Myanmar and increase land tenure security for farmers, women, ethnic communities and other vulnerable groups.¹¹ Various civil society organizations, NGOs, and academic institutions were involved in the creation of this policy and it was formally adopted in January 2016 after consultation with the public. In letter, the NLUP is gender neutral, and outlines equal rights for men and women.¹² It attempts to increase the involvement of women in local land governance by mandating women's involvement in local Land Use Committees.¹³ However, specifics of the role women will play or the selection process are not specified, which leaves open the possibility that women may occupy cursory or token positions. The NLUP also includes language recognizing customary land laws that give ethnic communities greater autonomy and control over their land.¹⁴ However, it fails to tackle the inherent discrimination against women in these customary laws.

Military/ethnic issues

A report supported by the EU and the UK Department for International Development found that “two thirds of the world’s civil wars and conflicts in progress [in 2014] have been estimated to be related to contested land claims”.¹⁵ Myanmar reflects this global trend. Land claims undergird virtually all ongoing conflicts between ethnic armed groups and the Myanmar military.

Since winning a landslide election in 2015, the Daw Aung San Suu Kyi-led National League for Democracy (NLD) has prioritized bringing an end to the world’s longest-running civil war between the Tatmadaw (Myanmar’s military) and ethnic minority armed organizations (EAOs). The Thein Sein-led government signed ceasefire agreements with eight of the 15 largest EAOs before the NLD was elected in 2015. Talks between the new government and EAOs began in August 2016, but fighting has only escalated since then.¹⁶ Over the decades of fighting, land grabbing has been used as a tool of

war and counterinsurgency.¹⁷ The Tatmadaw takes land controlled by ethnic communities in order to move populations, limit EAO funding sources such as opium farms, and to assert dominance. Land has been regularly grabbed by the government and transferred to former insurgents, Myanmar military representatives, or affiliated corporate entities. According to 2015 research by Land in Our Hands,¹⁸ the military is responsible for land confiscation in more cases than any other entity (see *Table 3* below).

Table 3: Who is responsible for the confiscation of their land according to respondents

	Number of respondents	Percentage of total
Military	1268	47.7%
Government department	500	18.8%
Company	370	13.9%
Local authority	154	5.8%
Foreign company	118	4.4%
Military with government department and company	35	1.3%
Military with government department	35	1.3%
Government department with local authority	26	1%
Individual	26	1%
Ethnic armed group	23	0.9%
Government department with company	10	0.4%
Military with company	10	0.4%
Unknown	7	0.3%
Blank	75	2.8%

The military or Border Guard Force¹⁹ will often confiscate land but require farmers to continue to farm the land. A portion, if not all, of the agricultural output is provided to the soldiers for food or for them to sell, as a “leasing fee”. In some cases, the land is then resold by the military to corporations. Based on a survey conducted for the production of this report, this practice is prevalent in the southeast of the country, but other research indicates that this takes place throughout ethnic majority states.

The cessation of land grabs would not only improve conditions for women, but it would also help GOM to achieve two of its other stated objectives: achieve peace with the EAOs and decentralize governance. Ethnic communities demand land tenure security as a fundamental part of a peace agreement.²⁰ An end to land grabs and establishment of secure land rights was explicitly included in the ceasefire agreements between the Tatmadaw and the Karen National Union in 2012, and is an underlying problem that is driving conflict for many of the EAOs. Ensuring equitable land rights for ethnic minority populations is a requirement for the development of a peaceful federal democracy.

Background on gender and land in Myanmar

Over the past twenty years, the development literature has focused heavily on the importance of women’s access to land and its effect on agricultural efficiency, gender equality, childhood health outcomes, and educational attainment, among other developmental indicators. Nonetheless, like in many developing nations, the research findings have not manifested in practice or policy in Myanmar.

Land rights held by women are susceptible to loss to male family members because of customary rights or inheritance that prioritizes men. Researcher Hilary Faxon reports that in a workshop hosted by the Gender Equality Network in Myanmar, “women from ten different ethnic groups reported that customary land inheritance was always male”.²¹

In Myanmar, even when women own land, they are highly vulnerable to land grabs. Survey respondents from southeast Myanmar reported that land confiscation was the human rights abuse most commonly experienced by women. Furthermore, research conducted by the Karen Human Rights Group in southeast Myanmar found that single women reported a heightened sense of vulnerability with regard to land grabbing.²² There is also reason to believe that women are at greater risk of losing their land because they lack agency in decisions around land. Village Tract and Ward Administrators, who implement and enforce land law at the local level, are nearly all men. Of the 16,785 Village Tracts or Ward Administrators, only 42 are women, accounting for less than 0.25% of the total.²³ Even though the 2008 Constitution guarantees equal rights to women before the law, including in land rights, women still experience systemic discrimination.

SCOPE & IMPACT OF THE PROBLEM

Evidence from developing economies indicates that women are more vulnerable to and disproportionately negatively impacted by land grabbing. In many parts of the world, women systematically lack agency in decisions that affect their lives and livelihood.²⁴ They are less likely to hold land titles, making them more likely to have their land taken.²⁵ Once land has been taken, women have fewer employment opportunities in the non-agricultural workforce than men. Women represent a majority of the agricultural workforce globally, producing more than half of the world's food, and depend heavily on land for economic security.²⁶ Women also have, on average, lower levels of wealth than men, making them generally less equipped to manage economic shock, like loss of land, than men.²⁷ While data is limited on the vulnerability to and impact of land grabs on women in Myanmar, research reveals concerning trends that align with findings in other nations.

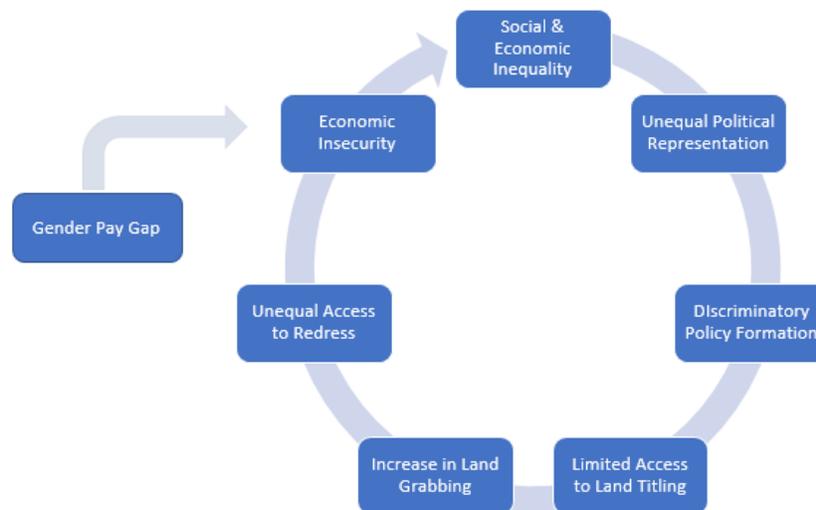
- *Land Titling & Redress:* Women face discrimination in obtaining land titles. A study found that of male-headed households in central Myanmar, “6% were landless, while out of the households with female heads, 20% were landless”.²⁸ Namati found that “over 15% of female clients do not have land possession documents. Among male clients it is only 5%”.²⁹ Namati’s research also shows single women are especially vulnerable to loss of land because they are less likely to hold a title to their land³⁰ and have more limited access to the male-dominated Village Tract Land Use Committee, which issues land titles. Given that a land title is legally required by GOM to receive compensation for a land grab, this disparity may make it more difficult for women to seek redress and compensation for land grabs.
- *Discriminatory Customary Practices:* Numerous ethnic groups in Myanmar follow customary practices that discriminate against women. Customary inheritance practices are particularly gender inequitable. In many cultures, male relatives are given preference over female relatives for inheritance of land.
- *Economic Insecurity:* Women earn “20% less than what men earn for the same work”³¹ in Myanmar, which could limit wealth accumulation and make it more difficult for Myanmar women to manage the shock resulting from loss of land.
- *Employment Opportunities in the Absence of Land:* When agricultural land is confiscated from a smallholder farmer and conceded to large agribusiness, it is typically converted to more capital-intensive production. There are fewer jobs overall and those that are available are mechanical jobs that are male-dominated. According to a study by the Burma Lawyers Council, “in land development projects, such as construction or mining, often only men are hired, suggesting that large-scale developments do not always offer employment opportunities for women”.³² The same study indicates that women who lose access to land because of land grabs may be forced into exploitative work, like the “sex industry, in order to survive”. Because of familial obligations, women are less able to migrate for work, compounding the problem. Myanmar has yet to develop its manufacturing sector, which typically employs a higher percentage of women than men. In the absence of alternative employment, women who previously relied on their land’s natural resources for income generation are disproportionately harmed, in terms of income generating opportunities, by land grabs.

CAUSES OF THE PROBLEM

The unequal way that land grabs impact women and men is a symptom of structural inequality in Myanmar. In the arenas of political representation, economic opportunity, and law, women face higher barriers to access than men. Detailed outlines of Myanmar’s gender inequalities in political representation, legal framework, and economic opportunities are available in the *Policy Alternatives and Recommendations* section of this report.

Gender Inequality in Political Representation

In Myanmar’s recent history, the presence of prominent women in civil society and government has obscured the reality of political and social inequality of men and women. While the 2008 Constitution explicitly forbids discrimination on the basis of sex, it also codifies and reifies discrimination by stating that “nothing shall prevent the appointment of men to the positions that are suitable for men only”.³³ Women play a very limited role in national and regional governance.³⁴ In education, women are required to achieve higher test scores than men to be admitted into professional schools such as medicine and engineering.³⁵ Gender-based disparities in vulnerability to and impact of land grabs is both a source of inequality and a product of other forms of inequality (particularly in political representation) in Myanmar. The vicious cycle of gender inequality in Myanmar can be characterized by the following model:



Unequal political representation at the national and local levels result in land titling policies and practices that benefit men, both formally and informally. These policies and practices leave women vulnerable to land grabs and limit their avenues for redress. Paired with uneven distribution of wealth and limited opportunities for employment outside of the agriculture sector, loss of land results in greater economic insecurity for women than for men. This dynamic exacerbates the gender imbalances in social and economic power, which are key factors in deriving political power in Myanmar.

Gender Inequity in Rule of Law / Legal Issues

In Myanmar, there is a stark contrast between the letter of the law and practical realities. In many cases, the law itself provides for gender equity in matters of land and property ownership, but things are different in practice. For example, the NLUP does not mandate that the head of a household must be the one to register land. It simply states that it needs to be “an agricultural household (or) member of the household; head of household (or) a member of the household”.³⁶ However, it is common practice to register land in the name of the head of the household, who is usually male. Additionally, as explained above, most of the officials who apply the law are male, leading to policies and practices that disproportionately favor men.

Gender inequity is also evident in inheritance, which is governed by customary laws. In many cultures, male relatives are given preference over female relatives when inheriting land. For example, in Chin culture, women “do not own property”.³⁷

Economic Drivers of Land Grabs

The key underlying challenge of interest in this analysis is the high frequency of land grabs in Myanmar. Land grabs, which take place without due process or fair compensation, negatively affect all farmers, and disproportionately affect women. The surge in land grabs in recent years has been driven by a global spike in land and food prices, as well as Myanmar-specific economic and political conditions. A global increase in food prices increased the value of land in the mid-2000s. In recent years, land values have increased as a result of advancements in agricultural technology that have made agriculture more profitable. Improved management practices and use of technology that have reduced the cost of managing large plantation farming have also driven up demand for large plantations. Demand for biofuels such as palm oil, which require large swaths of land, has had a similar effect. Increased urbanization, globally, which has increased the percent of the world that relies on purchased rather than self-cultivated food, has also driven up the value of agricultural production and the value of land. Various demand-side factors that have prompted corporations to increase control of the production process of their food rather than outsource to farmers has also resulted in corporations purchasing large plantations, driving up prices. In Myanmar, global economic integration has been the main driver of land grabs since the 1990s and, to a greater extent, since 2010. So-called “idle land” is now available to global investors. The government’s policy to promote agricultural modernization through large-scale agricultural projects has played out via land transfers from smallholder farmers to large agribusiness plantations. Increased demand for land from Myanmar’s key trading partners, especially Singapore, Thailand and China, has also contributed to the frequency of land grabbing.

EXISTING FRAMEWORKS IN MYANMAR AROUND LAND RIGHTS & LAND USE

Domestic laws, including newly reformed laws

More than 70 laws govern land use and tenure in Myanmar. Below are a selection of the key laws relevant to land grabbing:

- *The Constitution of the Republic of the Union of Myanmar* (2008) identifies the government as “the ultimate owner of all lands and all natural resources.”³⁸
- *The Farmland Act* (2012) creates a local land administration body and a system of land registration for land use certificates, which establishes the right to sell, lease, pawn or exchange land.
- *Vacant, Fallow, and Virgin Land Act* (2012) defines vacant, fallow and virgin land and establishes a Central Committee to grant permits to utilize such land, with the agreement of the Myanmar Investment Commission (MIC). The MIC is a government-appointed body that reviews investment proposals.
- *The Foreign Investment Act* (2012) defines the way in which land concessions should take place. Foreign investors are required to pay the current local market price plus damages to previous owners of the land, as well as compensation for resettlement. The Act outlines the substantial role of the MIC in permitting land use and lease, subleasing, clearing land, and mortgaging land. The Act stipulates that land may not be granted to an individual or company for longer than 50 years.
- *The Land Acquisition Act* (1894) grants the government the right to acquire land that the government deems it needs for “public purposes”.

While customary land laws are mentioned in the NLUP, they are still yet to be legally recognized. There is a precedent in Myanmar for codifying customary law. The following laws declare that customary religious law shall govern succession, inheritance and marriage.

- *Burma Laws Act* (1898) allows Buddhists, Hindus and Muslims to follow the laws of their religion in matters of succession, inheritance, or any other religious institution, except when it is opposed to the law of the land, or enacted laws.³⁹
- *Christian Marriage Act* (1872) allows Christians to follow the laws of their region for marriages, except when it is in conflict with enacted laws.⁴⁰

Myanmar’s obligations under International Law

Myanmar is a signatory to various international treaties and conventions such as the Convention on the Elimination of All Forms of Violence Against Women (CEDAW). Pursuant to CEDAW, Myanmar is

obligated to eliminate any gender discrimination with respect to land ownership and management by enacting appropriate legislation and policy measures. In terms of particular measures, Myanmar must ensure equality before the law between women and men in terms of contracts, marital and family property rights, and inheritance, and it must address land inequalities of rural women.

Conflict-related land violations against women are covered in part by CEDAW and also generally by the 4th Geneva Convention. Under the Geneva Convention, Myanmar is prohibited from appropriating or destroying private land during conflict and from transferring or displacing civilians unless it is militarily necessary. Other obligations of Myanmar under CEDAW are outlined in detail in Appendix B.

POLICY ALTERNATIVES & RECOMMENDATIONS

The negative impacts of land grabs on women are a symptom of political, legal, and economic structure in which women have fewer opportunities and are less valued as members of society than men. Without addressing Myanmar's structural gender-based inequality, any policy recommendation seeking to solve women's vulnerability to land grabs will only treat the symptoms, and not the underlying problem itself. Therefore, the policy alternatives considered here primarily aim to address structural barriers to women's equality, without which policies targeting land grab reform will not be effective in the long run.

Political Reform

Burmese leader Aung San Suu Kyi represents the force of change in Myanmar and the shifting role that women are playing in political leadership across the globe. While some argue that Suu Kyi's image masks the reality that most Burmese women lack opportunities for political engagement due to customary practices, Suu Kyi's situation also reveals the legal barriers to political representation that Burmese women face, in addition to the oft-cited cultural and social challenges. Though she is the President of the ruling NLD party, Suu Kyi is constitutionally banned from holding the office of President of Myanmar. By including a clause in the 2008 Constitution barring Burmese with foreign spouses or children from serving as President, the military government targeted Suu Kyi, whose husband was British and whose children are dual-nationals. The result is that one of the world's most famous symbols of female political power is legally excluded from her nation's highest office, due to the nationalities of her late husband and sons.

Burmese women represent only 13% of elected seats in Hluttaw, Myanmar's Parliament. That number drops to 9.7% when including the 166 seats that are reserved for appointed legislators who are members of Tatmadaw, the Myanmar Armed Forces.⁴¹ Of the nine Association of Southeast Asian Nations (ASEAN) countries with an elected parliament, Myanmar ranks second to last for political representation of women. The constitutionally mandated military appointments to the Hluttaw are one example of how official policies have discriminatory impacts on women. Until 2013, Burmese women were only permitted to serve in administrative or nursing positions in the Tatmadaw,⁴² effectively excluding them from appointments to the parliamentary seats reserved for the military elite. In 2014, the number of women among the Tatmadaw's 166 reserved seats rose from zero to two, making the Hluttaw seats reserved for the military 98.8% male.⁴³

Women are even systematically excluded from public office, not only by the military, but by the NLD. In a statement to the *Myanmar Times*, a NLD spokesperson said that "the reason the party had not put forward more female candidates was that many of the women were 'green' and 'inexperienced'" and that "cultural and religious traditions in Myanmar meant women were not confident in political situations".⁴⁴

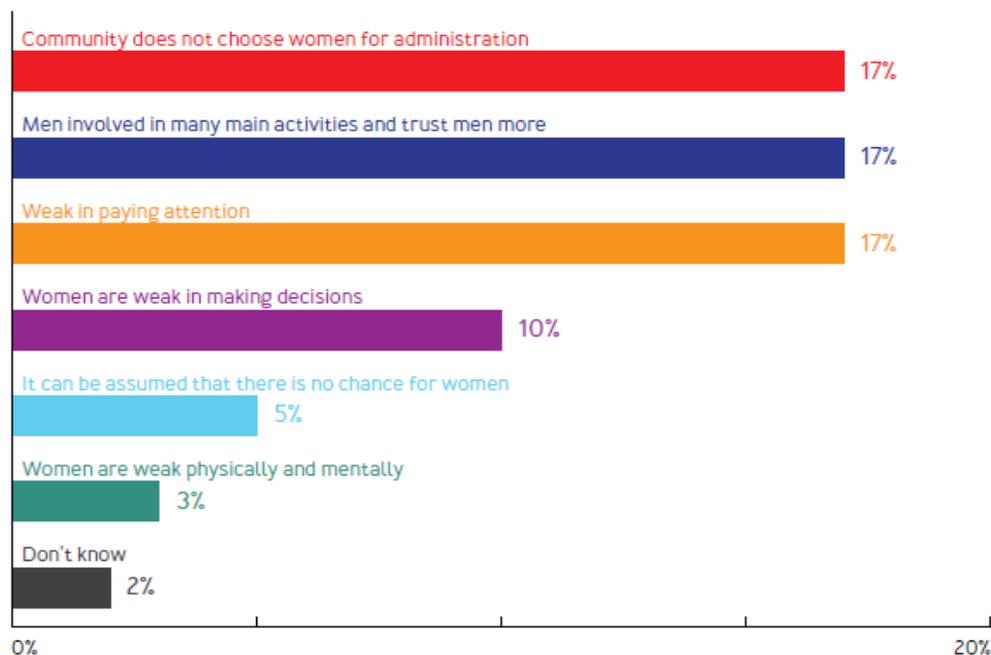
“When men talk a lot, they will bring more profit.
When women talk a lot, they will bring more damage.”

- Traditional Kachin Saying⁴⁵

Parallel issues exist in the executive branch of the national government. For the seven Cabinet ministries that play roles in agriculture, land use and development, none have female ministers or deputy ministers at the helm. In fact, Aung San Suu Kyi is the only female cabinet minister in the current government.⁴⁶

Compounding the problem of gender imbalance at the parliamentary and cabinet levels is the absence of women in administrative roles in local and regional governments. Data published in the 2016 report *Gendered Aspects of Land Rights in Myanmar: Evidence from a Paralegal Framework* shows that the rates of women in positions of power are even lower at the ward, township, and state levels than at the national level, with not a single woman serving as a Township Administrator in all of Myanmar. Only 42 of Myanmar’s nearly 17,000 Ward and Village Tract Administrators are women. This lack of representation plays a particularly vital role in land use issues, as “it is the Village Tract/Ward Administrator who must provide recommendations to the Township authority for land registration and all other land-related matters”.⁴⁷ A survey by the UNDP reveals the influence of traditional gender roles and gender stereotyping in decisions regarding political representation in Myanmar. The below results⁴⁸ came from interviews with Township and Ward Administrators and reflect what they perceive to be the reasons why there are so few female Township and Ward Administrators.

Table 4: Reasons provided for why there are so few female VT/WAs (multiple answers possible). Most common responses are reported here.



In recognition of the contradictions of the current patchwork of land laws, the government of Myanmar formed the National Land Resource Management Central Committee, which in 2016 enacted a National Land Use Policy (NLUP) to establish an overarching framework for “harmonization and implementation of existing laws related to land”. Calling it an “umbrella land law that can be practically used to resolve land resource related issues,”⁴⁹ NLUP will “promote people’s participation and collaboration particularly ethnic nationalities, women and smallholder farmers in decision making related to land and natural resource management”⁵⁰ and “to ensure equal opportunities for men and women over land resources, tenure rights and participatory decision making”.⁵¹ NLUP requires a systematic assessment to evaluate whether “women’s land rights are properly recognized and women may participate in land use decision making processes”.⁵²

This structural shift for local land use policy administration that will come under the new NLUP could represent an opportunity for women to increase their involvement in local land governance, as the policy dictates that local Land Use Committees “shall comprise women”. The policy does not, though, specify the role that women will play, the size of that role, or the selection process. Without clear legal guidelines, at this early stage of National Land Use Policy implementation, it remains unknown whether women will actually be able to influence land use decisions and policy implementation decisions as full and equal members of the local Land Use Committees.

Impacts of Political Representation

Research shows that the failure to achieve gender parity in political representation has policy consequences. CEDAW, to which Myanmar is a signatory, states that “When women are not broadly represented in the senior levels of government or are inadequately or not consulted at all, government policy will not be comprehensive and effective”.⁵³ The policy outcomes can be both subtle and explicit.

Two laws enacted in 2015 by the Myanmar Parliament reflect how legislation without representational input from female elected officials results in laws that discriminate against women. Passed in the face of widespread protest by women’s groups, the Population Control Law requires women in certain regions of Myanmar to “space the birth of their children 36 months apart”.⁵⁴ The President, with the cooperation of local governments, holds the power to choose the regions, opening up the possibility that ethnic minority women will be specifically targeted by the law. The Myanmar Buddhist Women’s Special Marriage Law, also known as the Interfaith Marriage Law, regulates the marriages of Buddhist women to non-Buddhist men, implementing restrictions without any parallels for Buddhist men marrying non-Buddhist women.⁵⁵ The implications are far-reaching, as Myanmar is a Buddhist majority nation. The *Myanmar Times* calls the law a “hugely retrograde step for women’s rights” and reports that “women’s rights representatives have objected to this law, and again they have been ignored.”⁵⁶ These explicitly sexist laws, which infringe on the rights of women to have autonomy over their own lives, were passed in Parliament where men hold over 90% of seats.

Cross-national research shows improvements in governance related to women holding official positions of power, whether that be at the local or parliamentary level. In 2010 testimony to the U.S. House of Representatives Committee on Foreign Affairs, National Democratic Institute President Kenneth Wollack noted that, worldwide “there is strong evidence that as more women are elected to office, there is also a corollary increase in policy-making that reflect priorities of families, women, and ethnic and racial minorities. Women’s political participation has profound positive and democratic impacts on communities, legislatures, political parties, and citizen’s lives.”⁵⁷ This international research is backed up by studies conducted in Myanmar. A 2014 report, *Women’s Participation in the Subnational Governance of Myanmar*, demonstrates that participation of women, who “typically have greater knowledge than men on a variety of issues,” in government “increases compliance with the decisions/rules that are made”.⁵⁸ Interviews conducted by ActionAid suggest that “female decision-makers in Myanmar may be more responsive to the priorities of women citizens than male decision-makers are” and “women’s presence on the [village-level] committees acted as a deterrent to male corruption” though the report notes that the evidence is limited in scope and “further study of this issue is needed”.⁵⁹ The Metta Development Foundation reports that in Myanmar, “the higher the level of female participation from the communities they are working in, the more successful the projects tend to be”.⁶⁰

Another positive consequence of gender parity in government is that women “contribute a gender perspective to public policy-making”.⁶¹ While male policymakers may contend that a “gender-neutral” policy will lead to gender-neutral outcomes, this is often not the case. The Food and Agriculture Organization of the UN cites the gender-neutrality of Myanmar’s 2012 Farmland Law as a reason that land-specific government programs have few “female beneficiaries,” and states that “affirmative action must be taken to build gender equity” and mainstream “gender concerns in land administration”.⁶² In India, research shows that “the gender of government officials in specific positions affects the types of public goods they provide; namely, leaders invest more in issues directly relevant to the needs of their own genders”.⁶³ Since men and women in Myanmar face distinct circumstances in the context of employment opportunities, cultural expectations, and access to justice, “gender-blind” laws can exacerbate existing inequalities.

The disproportionate vulnerability to and impact of land grabs on women has roots in inequitable national land law and local administration of land policy. In order to improve outcomes for women facing land grabs, one strategy is to increase political representation of women in Myanmar’s government at every level. This section offers analysis of policies intended to improve structural conditions for women’s political equality through parliamentary quotas, quotas for land use councils, and political education and training for women.

Alternative: Establish Quotas for Women in Parliament

Research indicates that women in power will “raise issues that others overlook . . . [and] seek to end abuses that others ignore”.⁶⁴ Seeking to increase female representation in government and reap the benefit of greater gender equality in political representation, countries from Afghanistan to Rwanda have instituted quotas to require a certain number of parliamentary seats to be represented by

women. As of 2015, more than 120 countries have some form of political quota based on gender, whether that be a requirement for parties to include women candidates in their primaries or, as in Afghanistan and Rwanda, parliamentary seats that are reserved for female members. Research suggests that the increase in reserved seats for women results in more women involved in politics, above and beyond the level mandated by the quotas, as “quotas have inspired women to come forward who might never have thought about standing as candidates before”.⁶⁵ Of the ten countries with highest proportion of women in national parliaments, eight have some sort of gender-based quota,^{66 67} and in 2012, “nine out of the top 10 countries which witnessed the highest growth in the number of women MPs in their lower house of parliament had used quotas”.⁶⁸ As noted by the Council on Foreign Relations, “quotas bring women’s voices into political systems where they are otherwise excluded, short-cutting a process that can naturally take generations”.⁶⁹

If overall parliamentary representation for women is not paired with parallel requirements at the committee level, international research indicates that women members of Parliament are often relegated to working on “soft issue” portfolios that “reflect traditional understandings of what is suitable for women” like education, healthcare, and social welfare.⁷⁰ “Often these are also less prestigious and powerful appointments,” according to the United Nations Development Programme’s *Essays on Gender and Governance*.⁷¹

Instituting quotas to require 50% female participation in Myanmar’s Parliament with proportionate representation across legislative committees will increase political representation among women in Myanmar, increasing their political power in government, and strengthening their voice in land law decisions. This policy would be implemented by requiring political parties to nominate only women to half of all parliamentary seats. This quota would apply to both elected seats and seats reserved for the Tatmadaw.

Analysis

While cross-national research on gender parity in political representation has not focused on land use policy, it can be expected that when female Parliamentarians work on legislation related to land use, the policy developed will tend to be more sensitive to the disproportionate effects of land grabs on women. This would include both women’s vulnerability to having land taken from them, and the negative impacts women face after land is taken. Therefore, the effectiveness of this policy to improve outcomes for women facing land grabs is contingent on the requirement that committee membership reflect overall parliamentary makeup.

However, female representation alone may not lead to the desired policy improvements. It is possible that “kinship ties” may counteract some of the gender equity gains of this policy, as politically powerful families are able to nominate wives or daughters to serve as proxies representing the interests of their families. Women nominated as proxies will be more likely to be urban and high-income, and less likely to represent the interests of women vulnerable to having their land taken from them, which may minimize the effectiveness of this policy in achieving better outcomes for rural, low-income women facing land grabs. Additionally, without political education and training,

many women, traditionally excluded from political power, may not have the resources or skills to powerfully advocate for better laws or influence their colleagues.

The fact that quotas currently exist for the Tatmadaw could create either an opening or a barrier for the approval of gender-based quotas. On one hand, the military quotas establish a precedent for reserving a certain number of seats for a particular segment of society. On the other hand, a policy requiring seats to be reserved for women would conflict with the existing quota for military representation, with incumbent military members of Parliament likely unwilling to relinquish positions of power to make room for reserved seats for women. Among both Tatmadaw and civilian members of Parliament, there will likely be unwillingness for male members to cede their coveted assignments to powerful committees to women. The current gender makeup means that legislation creating quotas would have to be supported by the current majority of male members of Parliament, which may not be politically realistic. As a counterargument to the expected opposition from male members of Parliament, particularly Tatmadaw members, parliamentary quotas would likely achieve praise from the international community and would represent a step towards satisfying Myanmar's obligations under CEDAW, the Beijing Platform for Action, and the Millennium Development Goals. All three call for improved representation of women in legislative bodies.

Alternative: Establish Quotas for Women on Local Land Use Committees

Under the current system governing land decisions, the Myanmar government and the Tatmadaw have “the ultimate decision power” in the words of the Karen Human Rights Group (KHRG), which represents the Karen ethnic minority group.⁷² On the local level, the decisions are generally carried out by Township or Village Tract Administrators, positions appointed by the General Administration Department under the Ministry of Home Affairs, a military-controlled agency. As of March 2016, there are no female Township Administrators and only 42 of the 16,785 Village Tract or Ward Administrators are women, effectively excluding women from local land use decisions. The Tavoyan Women's Union, a Burmese non-profit representing women of the Tavoyan minority ethnic group, substantiated the numbers, stating that “no women are involved”⁷³ in most decisions regarding land grabs. This system results in women who are vulnerable to land grabs not being consulted before the confiscation of their land and often not reporting or seeking redress after land has been taken. “Some women reported the reason . . . being [afraid] of repercussions. For others, this could have been based on the barriers that they knew they would face when accessing formal justice mechanisms.”⁷⁴ KHRG shares a story from Naw L, a 53-year-old woman in the Eastern Bago Region: “The township do not let us to meet with them who confiscated the land, so maybe they are just abusing the military power in some way by thinking that we do not dare to complain to them [about] the way that [the] military is living on our land. If they give us a chance to meet with them, then we can discuss about the land.”⁷⁵

In creating a framework of local Land Use Committees to bring the dozens of distinct land use laws and agencies into alignment, the NLUP mandates female involvement in the Committee decision-making process, but does not prescribe how that will occur. This alternative proposes gender parity on the newly established local Land Use Committees, instituting a quota for 50% of Committee seats to be reserved for women. NLUP's language describing selection of the committee membership is

vague and selection criteria will be determined by the forthcoming implementing rules of the policy, however, quotas can be worked into any method of election or appointment for committee members. Quotas for Land Use Committees will ensure that Myanmar meet the gender-related obligations set forth in NLUP. While many NGOs advocate for a one-third threshold for gender-based quotas, a Metta Development Foundation report based on research conducted in Myanmar notes that, “in villages where half of the population is female, a one-third quota for committee membership may reinforce the impression that women’s opinions count less than men’s”.⁷⁶

Analysis

Relative to quotas at the parliamentary level, quotas for local Land Use Committees are a more direct way to target gender inequities of land policy. While these committees will not be writing legislation, they will be enforcing and administering laws at the ground level, as well as informing future policy through the reporting requirement of the National Land Use Policy. This approach is likely to be effective in ensuring that women are treated more fairly on issues of land registration, support of land stewardship, and fair compensation when land is taken for the purpose of economic development. The Namati report on the influence of female paralegals in local land administration offers evidence that the women on local Land Use Committees will address the unique challenges that women face in dealing with land grabs. As with parliamentary quotas, “kinship ties” may counteract some of the gains of this policy, as politically powerful families are able to nominate wives or daughters who may not have political aspirations of their own and instead serve as proxies representing the interests of their families. However, since these Committees are locally-oriented, women serving on them are more likely to be representative of their community’s interests and demographics than a female member of Parliament, serving in the urban capital of Naypyidaw.

The political feasibility of this alternative is higher than that of parliamentary quotas, because these local Land Use Committees are being newly established, and therefore, there are not incumbent male members vulnerable to losing their seats. The influential Myanmar Farmers Association also supports gender quotas for local Land Use Committees.

Alternative: Institute Training to Promote Political Inclusion for Women

Quotas alone will not be able to solve the male domination of land use policy development and implementation and its corollary negative impacts on women.

The National Democratic Institute (NDI) reports that “superficial efforts to increase the number of women involved in politics that offer no real qualitative influence or decision-making powers are unlikely to produce any new or immediate benefits”.⁷⁷ In Myanmar, members of NLD leadership have expressed doubt that women have the requisite confidence and experience to run for office, a common theme globally. NDI reports that “this may be especially pronounced in post-conflict states where women tend to be sidelined from transitional processes unless political parties actively recruit women members to their ranks”.⁷⁸ This cross-national trend is borne out by field research in

Myanmar, where a 2016 report states that “after the preliminary 2012 cease-fire, women’s roles seem to have changed. Village leaders and village secretaries became men . . . we can see that the role of women in that sector [village leadership] is getting diminished.”⁷⁹

The consequences of low confidence and training among women run deep. After being elected as village leader in 2013, a 35-year-old Karen woman lacked the confidence to accept the position, explaining “I replied that, ‘I can’t do it, I can’t read and I have never gone to school,’ she said. They said, ‘Go and take the salary.’ And I replied, ‘No . . . I wish to quit from the village tract leader position. I don’t want to do this.’”⁸⁰

Recognizing the many diverse barriers that keep women from political office, an alternate solution to the lack of political representation of women in Myanmar is administration of workshops to encourage women’s political participation and develop leadership skills. Without proactive outreach to women in rural and ethnic minority communities, parties are likely to choose female members of the political elite to run for seats, leaving out female representatives of the rural, poor, and ethnic minority communities most likely to be impacted by land grabs. Without leadership training, many women may not have the skills to be successful once elected or appointed to office. Qualitative research shows that at the community level, women in Myanmar “tend to participate ‘in numbers only’ in the committees established to implement local initiatives . . . It took us extra effort to hear women’s voices in meetings involving both women and men . . . But in the women-only group interview we conducted, women of all age groups proved to be as articulate and informed as men.”⁸¹

This policy proposal creates a political education and training program to encourage women to think of themselves as capable of government service, develop leadership skills, learn about the political process, and access tools for policy analysis, communication, and advocacy. The program aims not only to help women access elected office, but also to be effective once in office.

In some countries with publicly funded political parties, like Brazil, Korea, and Panama, the state requires parties to allocate a percentage of their public funding to “activities that contribute to the political development of women”.⁸² Since political parties in Myanmar do not receive public financing, this capacity-building strategy can be implemented at a low-cost by the government in partnership with international NGOs, such as the UN Women’s Program, the International Republican Institute, The Asia Foundation, and NDI, which have focused extensively on increasing the caliber and diversity of women candidates for office through political education and training. NDI has found that “women’s political participation results in tangible gains for democracy, including greater responsiveness to citizen needs, increased cooperation across party and ethnic lines and more sustainable peace”.⁸³

Analysis

The implementation of training programs to promote inclusion of women in the political process will likely result in a higher proportion of qualified and compelling female candidates from diverse backgrounds running for public office. And by explicitly targeting women from backgrounds not usually considered for political involvement, this policy would counteract some of the “kinship”

challenges encountered in the policy alternatives proposing quotas. However, in order to meet the objective of addressing gender-based disparities in land grabs in Myanmar, there are myriad necessary steps, each with their own barriers, to get from administering a political training workshop to ensuring women are not disproportionately harmed by or vulnerable to land grabs. While these workshops may result in more equitable political representation, the causal effect on the disproportionate impact of land grabs is more tenuous. The obstacles that occur between the training and the election of women, including recruiting female candidates, campaigning for their election, and defeating the opposing candidate to win a seat in Parliament, all in a cultural context that may not recognize women as appropriate or eligible for positions of political power, are numerous. Since “men’s lack of awareness and engagement to encourage female participation and representation”⁸⁴ was found to be one barrier keeping Burmese women from exercising their land rights, the education of men on the rights of women may play a role in these workshops as they evolve. This policy alternative is more politically feasible than quotas because many women’s political empowerment programs are already functioning, and because the education and training of women is less threatening to men in power than direct quotas that put men’s own seats in jeopardy.

LEGAL REFORM

Alternative: Recognize Customary Land Laws & Gender Equality

Customary laws have historically governed various aspects of life for ethnic communities including marriage, succession, inheritance and land. While ethnic group's marriage, succession and inheritance traditions are granted legal recognition by GOM, customary land laws are not.⁸⁵ The use of these customary laws by ethnic groups has also meant that land ownership is poorly documented and official land titling has only occurred recently. This has made it easier for land to be grabbed, and more difficult to retrieve land once it is taken. Research by Land in Our Hands, a land rights advocacy group, found that a majority of people whose land was grabbed owned the land through customary land rights.⁸⁶ Documenting and codifying these customary laws and giving them legal recognition can help farmers retrieve previously grabbed land, and reduce land confiscations in the future.

This analysis proposes both recognition of customary land laws *and* strengthening women's access to and tenure of land, which could be perceived as a contradiction given that customary laws often obviate women's access to or tenure of land. The GOM should respect customary laws, but require reform of those laws to ensure equal access and tenure rights for men and women. Customary laws will be reviewed to assess if they are compliant with the Constitutional guarantee of non-discrimination and with Myanmar's international obligations under CEDAW. While the NLUP acknowledges the importance of recognizing customary land laws, it fails to address this issue. The forthcoming implementing rules for the NLUP and any subsequent legislation must do so.

Reform Inheritance Laws

One important step in updating customary laws is modifying inheritance laws. After the death of a married man, land owned by the married couple is often taken over by his male relatives. Additionally, when land passes to children, frequently only the sons receive a share. These practices prevent women from inheriting land and exacerbate existing gender inequalities. This proposal seeks to reform inheritance laws so that, after the death of one spouse, land passes on to the other spouse by default. The laws would also be modified to ensure that daughters are included during familial distribution of land. When land is distributed among children, the legal inheritance would be structured to default to each child receiving an equal share, unless otherwise specified in a will.

Register Joint Heads of Household

In Myanmar, the decision-making power of households most often lies with men. With the exception of families of widows, men are almost exclusively officially registered as heads of households. This hinders the ability of women to act on behalf of her husband or children. Additionally, even though joint ownership of land is allowed, in practice land is generally registered to the head of the household. This alternative recommends the addition of a "Joint Head of Household" category to government forms. For married couples, this can also be the default option so that the names of both

partners are recorded as heads of household. This step will help ensure that both spouses have equal legal decision-making power and promote gender equality.

Analysis

This alternative respects traditional land ownership procedures that make it easier for people to protect their land or get compensation for conceded land. Modifying inheritance laws also gives women greater rights around ancestral land, and consequently promotes more gender-equitable land ownership. The potential challenge lies in ensuring that ethnic communities accept changes to their customary laws that bring them into alignment with international standards of gender equality. This can be tackled by educating women about their rights and ensuring that women are involved in the process of modifying inheritance laws.

The second part of this policy, registering two heads of households for married couples, works towards rectifying the skewed decision-making power in households. Currently, only heads of households are invited to official meetings regarding land and relocation. The only women who typically attend these meetings are widows, who have become heads of their households in the absence of men.⁸⁷ Being the head of a household also has an impact on land ownership by women. Though the NLUP explicitly states that joint registration of land is possible, in practice it is only registered to the official head of household, as corroborated by the legal organization Namati⁸⁸ and the Tavoyan Women's Union.⁸⁹ Therefore, registering two heads of married households will promote registration of land by women, at least as joint owners. A study by the FAO in Ghana has shown that women who own land have greater decision-making power.⁹⁰ This can also translate into larger benefits for the family. Research in Pakistan by the World Bank has shown that households where women have greater decision-making power spend more on education and clothing and eat more nutritious food.⁹¹

Politically, recognition of customary land laws is not easy to achieve. For many decades, the military has refused to grant autonomy to ethnic groups, stating that it would lead to fragmentation of the country.⁹² In the current political scenario, the Tatmadaw control 25% of seats in Parliament, and consequently have great influence. Since recognition of customary laws would give greater autonomy to ethnic minorities, this alternative may receive significant political opposition.

Additional opposition comes from the wealthy "crony companies" that have been a major driver of land grabs in recent years. Recognition of customary land rights would make it easier for farmers to protect their land and receive compensation for grabbed land. This would make it more expensive for companies to grab land. Since these companies have great political influence, they would add significantly to the opposition against this alternative.

One potential positive impact of modifying laws to uphold human rights standards is that it could improve the Myanmar Government's image in the international community. This may make it more attractive for the government. However, given the massive opposition that is likely to come from the military and crony companies, achieving recognition of customary land laws presents a significant challenge.

Alternative: Empower Local Administrative Bodies to Resolve Land Disputes

Land in Myanmar has been grabbed for reasons such as state-sponsored agricultural projects, industrial development projects, military settlements, land speculation by individuals, and more recently by privately owned businesses. In most cases, local communities have very little influence over these decisions. In fact, very few judicial remedies currently exist to reduce land grabbing, help people retrieve their land, or ensure adequate compensation for land that is taken.

One step the NLD has taken in this direction was setting up the Central Committee on Confiscated Farmlands and Other Lands in 2016 to resolve the massive and constantly increasing number of backlogged land grab cases. However, this committee, which is chaired by Vice President U Henry Van Thio, has faced complaints regarding conflicts of interest. Allegations have been raised that the people currently in charge of settling land grabbing cases themselves may have been previously involved in land grabbing.⁹³ Therefore, there is a lot to be done to ensure fair resolution of land disputes.

Under this alternative, local administrative bodies would be empowered to resolve disputes and award compensation. This can lead to a faster judicial process and help reduce land grabs. These administrative bodies have to be representative of the local community, with participation of women and ethnic minorities. This will also ensure that these bodies are familiar with customary land ownership laws, and help guarantee a fair and equitable process. Since these administrative bodies will comprise of people from the community, this will lead to greater local participation and increased accountability.

Analysis

Local administrators would have greater familiarity with local customs of land ownership, and would be able to resolve disputes around land more fairly. The greatest benefits from empowering these administrators would go to local communities who could seek fairer and faster compensation for grabbed land. Since local administrators will generally be better judges of local land value, letting them decide compensation for previously grabbed land will help people receive a fair price for their land.

The fact that the land confiscation committee was set up displays that the government is taking steps towards rectifying land grabs. Delegating some of the responsibility to local administrators would decentralize power, which may be difficult with the Tatmadaw presence in the Parliament. The military would be likely unwilling to relinquish control over land to local administrators. Thus, this policy may be difficult to institute politically.

ECONOMIC REFORM

Alternative: Invest in Smallholder Farmers to Stem Land Grabbing

The underlying economic justification for land confiscation and concession goes like this: by transferring land from less productive farmers (smallholders) to more productive farmers (large-scale agribusiness), Myanmar will enjoy an increase in agricultural output, greater economic efficiency, and modernization of its agricultural sector. Foreign agribusiness will bring with it technology, international best practices, capital, access to global markets and job opportunities to Myanmar, which will spill over into the economy beyond the agricultural sector. This was the prevailing policy of GOM during military rule and continues to hold under the NLD-led government. In recent years the government has brokered land concessions with the Bangladesh Joint Trade for large-scale farming in Rakhine State;⁹⁴ Kuwaiti investors to conduct contract farming in Mandalay, Magwe and Shan States;⁹⁵ Singaporean investors to develop a large coffee plantation;⁹⁶ a Korean firm, Daewoo, to develop a large plantation in Twante;⁹⁷ and a Malaysian firm, Felda, to develop a rubber plantation and processing plant in Tanintharyi, among others.⁹⁸

Contrary to the assumptions underlying this GOM policy, evidence from other developing nations in Sub-Saharan Africa and Southeast Asia shows that agribusiness is in fact less productive, results in fewer job opportunities, hastens environmental degradation, and disproportionately hurts the economic security of women.⁹⁹ Research from across Sub-Saharan Africa indicates that while "large-scale land investment may improve some macroeconomic indicators of development, [it] actually [results] in undermined public resources, environment and social costs to the host country, and loss of livelihood or lost economic opportunities for citizens".¹⁰⁰ As land prices have surged globally, investors have purchased land as an asset to be traded rather than cultivated. Land Matrix, which monitors land grabs around the world, reports that only 7.8% of land that has been confiscated and conceded for large-scale farming globally is actively being cultivated.¹⁰¹

Rather than transferring land to agribusiness, GOM could instead support smallholder farmers to achieve its objective of agricultural modernization and efficiency. By supporting smallholders through financing, skills-building, insurance programs, extension services, infrastructure development, and research, Myanmar may be able to achieve its productivity goals without having to grab land from smallholder farmers and transfer it to agribusiness for plantation farming. According to a 2010 study by the FAO, the International Institute for Environment and Development, and the International Fund for Agricultural Development, "there is plenty of evidence that suggests that, where put in a condition to work, smallholders are able to produce competitively and seize new market opportunities".¹⁰²

Given that land grabs disproportionately harm women, reducing support to agribusiness and decreasing the number of land concessions made to agribusiness will disproportionately benefit women. By promoting smallholder farmers, Myanmar may also avoid other harmful effects of large-scale agriculture, in particular environmental degradation.

Agricultural Modernization through Fiscal Policy and Financing Reform

Under this alternative, GOM would provide financial and tax incentives, combined with import tax relief, that incentivizes farmers to buy agricultural technology. To encourage purchase of and research in agricultural technology and machinery, the MADB should develop favorable loan schemes for smallholder asset financing. To reduce the financial burden of technological investment, the government and its development partners should support smallholder farmer collectives and joint-ventures. A version of this set of policies was implemented in Brazil and it resulted in smallholder farmers adopting mechanized farming techniques. This led to an increase in agricultural production. As an indirect outcome, the agriculture machinery industry in Brazil has grown from a net importer to global leader in the machinery sector. Providing financial incentives and risk-reduction mechanisms for farmers to purchase agricultural technology could also stimulate intermediary manufacturing markets, strengthening the economy more broadly. Finally, the MADB should reorient its financing strategy to prioritize the demands of smallholder farmers over agribusiness. This will require consultation with smallholder farmers, but would likely require the MADB to offer flexible payment and leasing plans to lessen the burden of up-front machinery investment. The MADB should also expand the proportion of its lending that is available for equipment loans, which is very low relative to comparable nations, as well as conduct financing reform to ensure equal loan access to rice and non-rice farmers, and men and women. This must be paired with institutional reform of the MADB, where access to “land and rural credit is controlled by a few powerful individuals”.¹⁰³

Strengthen Smallholders’ Economic Security through Insurance and Loan Programs

As stated above, support farmer’s collectives and joint-ventures that reduce financial risk and enable greater access to credit. GOM, in partnership with development partners and the private sector, should broaden the availability of micro-credit and introduce financial technologies (e.g. peer-to-peer loans, mobile banking, digital transfers, etc.). The International Finance Corporation estimated in 2013 that micro-credit demand in Myanmar was close to \$1 billion globally, while supply was about \$238 million.¹⁰⁴ Internet penetration has grown from 2% to 90% in Myanmar since 2013 and 60-80% of cell phones are smartphones, which offers an opportunity for significant micro-credit roll-out.¹⁰⁵ The MADB and other creditors should bundle financing with insurance and information, sent via SMS text messaging, on agricultural methods and weather advisories. This approach has been utilized by Kenyan mobile money platform, M-Pesa, which developed an innovative mobile technology platform to support asset financing in emerging markets. Via the MADB, GOM should invest in government-administered crop insurance products that prioritize the needs of small-scale and diversified farms. Expanding access to such insurance would particularly benefit women who, according to a recent study, “are disproportionately vulnerable to climate change risk and have low adaptive capacity” when their crops fail.¹⁰⁶

Expand Extension Services & Invest in Rural Infrastructure

Investment in agricultural research is shown to have a high rate of return when compared to other public investments.¹⁰⁷ Nonetheless, Myanmar's expenditure on agricultural extension services is remarkably low compared to neighboring countries. When services are provided, they are often disconnected from agricultural research.¹⁰⁸ The Ministry of Agriculture and Irrigation (MOAI) should expand extension services and link them with research institutes, and reduce costs of providing services by utilizing information and communications technology. At the global level, "women receive only about 5 percent of agricultural extension services", therefore MOAI should target extension services at women and women's farmer associations.¹⁰⁹ GOM should undertake a significant rural infrastructure development initiative. This has been shown to positively improve outcomes by lowering the cost of inputs and consequently lowering the cost associated with production and sale. A 1986 study of 58 countries found that a "10% increase in road infrastructure investments was responsible for an average 5.4 percent increase in agricultural output and a three percent increase in yields".¹¹⁰ Myanmar has one of the "lowest quality logistics and transportation systems in ASEAN".¹¹¹ High transportation costs greatly hold down potential growth across sectors and particularly harm farmers in hard to reach regions of the country. Finally, NGOs and lenders should develop an online portal (accessible through mobile devices) through which farmers can view crop prices, browse credit opportunities, learn about their legal rights, and analyze market trends.

Incentivize Public and Private Sector Research and Development (R&D)

Myanmar has one of the lowest levels of private R&D investment in the agricultural sector among the ASEAN nations. This can be attributed, at least in part, to the fact that Myanmar is "one of three Southeast Asian countries where plant variety rights are still not in place".¹¹² It is essential that the Government strengthen patent protections and promote judicial independence to incentivize private sector agricultural research.

Analysis

This bundle of policies achieves the objective of reducing the number of land grabs. By reorienting governmental policy away from large-scale plantation farming and toward smallholder farmers, the demand for large swaths of land decreases significantly. Land confiscations may still take place to make way for industrial zones, urban sprawl, development projects, or military use, but given the number of concessions that are made to agribusiness for plantation farming, this portfolio of policies would considerably reduce the number of land confiscation. Since women are most adversely affected by land grabs, this policy would disproportionately benefit women. This bundle of policies does not, in its current form, address gender inequality in land titling and ownership, or access to land. It also does not provide support to women who have already lost their land. It is designed to exclusively address the underlying problem of land grabs.

Assuming no discrimination against ethnic minorities in access to financing, access to insurance, extension services, infrastructure development and other public programs, this alternative would benefit all smallholder farmers equally. This is, of course, an unrealistic assumption given that services have been more readily available for the Bamar majority than Myanmar's ethnic minority communities in the past. Therefore, it is reasonable to assume that Bamar farmers will benefit more under this policy than ethnic minority farmers, but that all farmers will benefit. The cost of this set of alternatives will be borne by agribusiness companies that will lose investment opportunities.

The primary benefit of this policy would be a reduction in the number of land concessions that take place. Given trends observed in other developing countries, there is reason to believe that this policy will also result in an increase (at least in the near term) in agricultural output. Women would be less likely to become economically vulnerable. There are other benefits of this proposed policy, including increased governmental legitimacy. Implementing this policy would demonstrate that the government is accountable to its people rather than investors. This would help generate trust in the government, which is becoming increasingly unpopular. Similarly, this may help to address an underlying cause of inter-ethnic conflict, which has resulted in civil war and, more recently, inter-religious conflict. Land grabbing has been a tool to control and assert dominance over ethnic minorities by the Bamar-led government for decades. Reducing the number of land grabs would interrupt a vicious cycle of confiscation of ethnic minority land that has fueled conflict.

This program will require significant public investment in infrastructure, extension services, and judicial reform, which may require the government to raise revenue. Deeper analysis needs to be done to determine whether the cost of this public investment will be larger than the revenue that the government currently forgoes by offering tax incentives to investors and agribusiness companies. In the long term, this policy could result in economic inefficiency. While in the short run, smallholder farms are more efficient, in the long run, if agriculture policy is crafted to incentive sustainable and efficient cultivation, and to disincentivize land speculation, large-scale capital-intensive agriculture may become more productive. The GOM will need to make significant reforms, though, if they are to capture agricultural economies of scale. Given current conditions, however, evidence suggests that prioritizing smallholder farming over large-scale agribusiness is more productive and sustainable.

According to issue area experts consulted for this analysis, the current administration is committed to agricultural modernization through large-scale farming. There is limited understanding of why the administration is taking this position, but it is difficult to imagine that a significant policy shift will take place given the lack of government transparency and accessibility of key leaders. Nonetheless, there is widespread opposition to land grabbing and large-scale farming among civil society, farmer's associations and the public. The administration has stated that it is committed to land reform in the near term, making the next few years a strategic window through which a policy that supports smallholder farmers could be proposed. The international community, which has been an influential voice in shaping certain policies, has expressed concerns regarding land grabs. Given the various influential actors opposing land grabs and in support of smallholder farmers, there is reason to believe that the current administration could be swayed.

Alternative: Strengthen Women’s Economic Security

Under this alternative, GOM will strengthen women’s economic security in order to amplify women’s voice in community decisions and women’s agency over their own land, and to alleviate the shock of land grabbing. This alternative aims to address women’s vulnerability to land grabs and the disproportionately negative effects of the land grabs. It is centered around access to financing, economic literacy and empowerment, and employment opportunities. This policy could be seamlessly paired with the “Training to Promote Political Inclusion of Women” alternative considered above.

Across the developing world “evidence reveals that it is more difficult for rural women to access credit”.¹¹³ This holds true in Myanmar where some sources of “formal lending prefer to make loans available to the head of household, which in Myanmar are mostly men”.¹¹⁴ Women, therefore, depend heavily on the informal credit market, microfinance institutions, or Rotating Savings and Credit Associations (ROSCAs; known as *su jay* in Myanmar) for financing, which are underdeveloped in Myanmar. Lack of mobility and low levels of financial literacy also limit women’s access to finance, which is an essential catalyst for economic growth and financial security. Although married women often gain access to financing through their husbands, evidence suggests that women have vastly different economic priorities than men.

Women in Myanmar are not equal participants in consultations and decision-making processes related to land. Women are, therefore, more vulnerable to loss of land, and have limited defenses against other actions that may affect their economic security. The section on political participation above outlines how women lack representation in key decision-making bodies from the Hluttaw (National Parliament), which write land use laws, to Village Tract and Ward Administrators, who grant land use certificates. Local administrators, who are mostly men, are “likely to overlook specific details of land management that can only be understood through women’s farming experience and will tend to reflect men’s needs and interests”.¹¹⁵

When agricultural land is taken by large agribusiness, it is often converted to more capital-intensive production. In this case, there are fewer jobs. The jobs that *are* available are often mechanical jobs that are considered “male jobs”. A 2013 study by Oxfam found that in the aftermath of a corporate land grab, “women are excluded from everything except the most menial paid employment, even when their need for cash to purchase food has become greater due to the combination of land loss and rising food prices”.¹¹⁶ Compounding the disemployment effect of land grabs on women, “men are more able to migrate for employment” than women because of traditional practices in which women care for the home, children and elderly.¹¹⁷ Women experience a disproportionate disemployment effect as a result of the loss of their land because they account for more of the agricultural sector, the company that has taken the land typically utilizes more capital-intensive production which lessens demand for women laborers, and they are less able to migrate for work than their male counterparts.

The FAO has found that closing the gender gap in access to land and financing, technology, extension services, and education “could increase production on women’s farms in developing countries by 20 to 30 percent” and could reduce the number of hungry people by “100-150 million” globally.¹¹⁸ This

alternative aims to narrow this gap to improve women's economic security and achieve these productivity gains.

Promote Equal Access to Financing

GOM should reform lending policies and practices that exclude women from accessing credit, as well as support the development of the microfinance and ROSCAs sectors, which disproportionately serve women. The World Bank found in 2012 that 83.4% of individuals who received their first loan from a microfinance institution were women.¹¹⁹ Supporting the development of this sector would increase the likelihood that women have access to financing.

Invest in Essential Empowerment Skills & Resources

To support women who are threatened by or have experienced land grabbing, GOM should support women's empowerment programs that focus on negotiations, economic literacy and vocational training (this action must be paired with increased political representation, as outlined in the Political Reform section). Within the formal education system, the government could support occupational choice for women by eliminating gender-specific quotas that benefit men, and offering scholarships, mentorship programs and training opportunities to women that expand occupational choice. Another way to improve outcomes for women is for GOM to establish community support centers where women can meet female paralegals who advise victims of land grabs on how to seek redress and compensation, attend educational workshops on financial literacy, land rights, or negotiations, and find information on available financial services. Finally, GOM should provide employment transition assistance in cases of justifiable land concessions that cause a loss of employment.

Analysis

This alternative aims to address women's economic vulnerability, which is a product *and* cause of women's increased likelihood of losing land. It equips women with skills, knowledge, and connections to lessen the negative impact of land grabs. The skills-building components are designed to expand access to resources that enable women to better represent their interests when threatened by land confiscation. The ultimate aim of the skills-building component is to close the gap between men and women in their vulnerability to losing land. This policy does not address the underlying economic drivers of land grabs. It is unlikely to significantly reduce the number of land grabs.

The cost to the government of implementing this policy is relatively modest. Education programs and paralegal services can be offered on top of existing extension services to farmers or other community services. The government can partner with international development partners, to provide these services. Expanding access to credit for women would require a low-cost policy change in the MADB financing models, and a national level policy change to allow for joint land registration. To spur

growth in the microfinance sector, the government must commit resources to training for Myanmar's Microfinance Supervisory Enterprise, which has limited administrative experience.

Research indicates that the secondary benefits of women's economic empowerment are numerous. A 2013 study by the land rights organization Landesa found that when women's economic empowerment and women's access to land improves, "family health and education improves; women are less likely to be victims of domestic violence and are less vulnerable to contracting HIV/AIDS, and their participation in household decision-making rises".¹²⁰ Other research has found that women's economic empowerment and economic security results in improved outcomes for children,¹²¹ the agriculture sector,¹²² and the economy as a whole.¹²³

Under this policy, women of all ethnic groups will have access to the same resources and support. Given that services will be provided by the government, which is dominated by the Bamar ethnic majority, it is reasonable to expect that ethnic minorities will face discrimination in distribution of services.

This alternative may face opposition from political insiders despite having widespread support from civil society. Political leaders, including the influential leader U Shwe Mann, have indicated a reluctance to incorporate language on the importance of women's economic empowerment in the new National Land Use Policy, claiming that constitutional guarantees of non-discrimination are adequate. Daw Aung San Suu Kyi has at times indicated support for such programs, but political support seems to be limited. Women's economic empowerment programming, including programs related to access to credit, are a priority for virtually all of Myanmar's donor countries. For example, the \$400 million Livelihoods and Food Security Trust Fund (LIFT) program, which provides microfinance and economic support targeting rural women, is funded by a donor coalition of thirteen of the world's largest bilateral donors. Nonetheless, economic development, in general terms, appears to be of primary concern for the current administration (how the benefits of development are distributed between men and women is secondary). This alternative will only be politically feasible if the case can be made that women's economic security is inextricably linked to the broader economic strength of the nation.

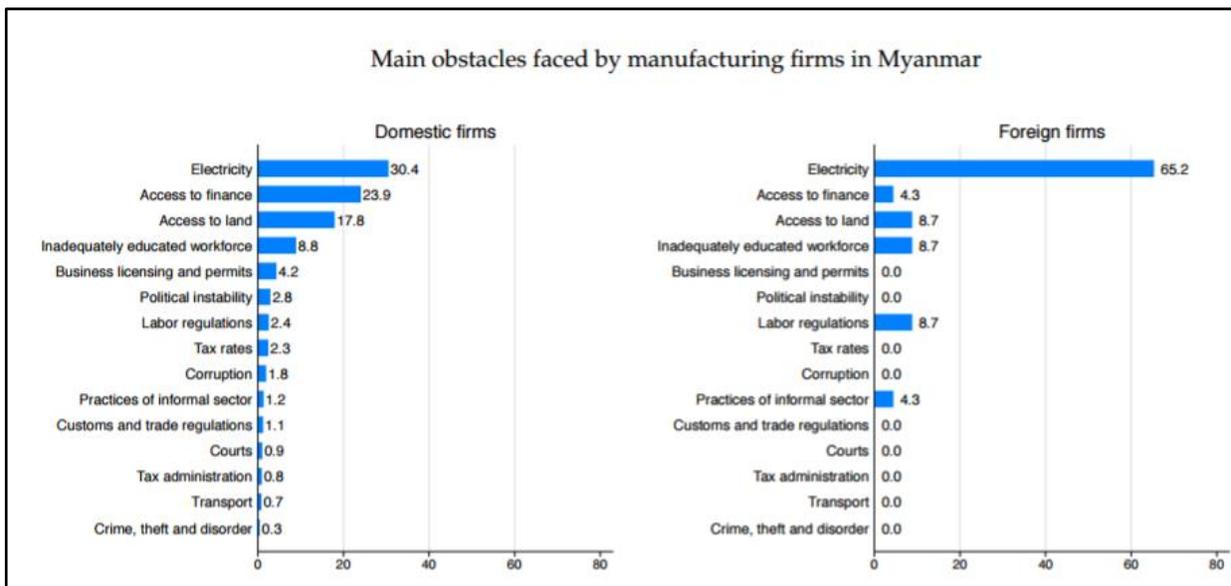
Alternative: Expand the Manufacturing Sector

As highlighted above, women are disproportionately negatively impacted by land grabs in part because of limited employment opportunities in the absence of land. Large-scale plantation farming is typically more capital-intensive, resulting in fewer jobs. The jobs that are available often require workers to use machinery. These jobs go primarily to foreign nationals from the corporation's nation of origin, who have experience working with the equipment, or to Burmese men. Research by Oxfam in Sub-Saharan Africa found that because of these factors, "in competition for jobs, especially the better jobs, women are less likely than men to gain a foothold".¹²⁴ More generally, Myanmar's sizeable economic development over the past few years (\$4.1 billion in 2013-2014 alone) is concentrated almost entirely in the oil, gas, mining and hydropower sectors, which generate few jobs for low-skilled workers.¹²⁵ Survey respondents from southeast Myanmar indicated that when their land is

taken, women either migrate to Thailand or transition to positions such as day laborers. Respondents also indicated that “some of the women are [in] jail” because they protested the loss of their land.¹²⁶ Without employment alternatives, women are also more economically vulnerable than men because of unequal distribution of wealth, which allows men to more easily weather economic shock. While there is limited information on the real wealth gap, recent research found that female agricultural workers make, on average, 20% less than their male counterparts.¹²⁷ To address this, GOM could accelerate manufacturing sector expansion. The manufacturing sector is characterized by higher-yields, greater economic stability, increasing returns to scale, and human capital accumulation.¹²⁸ In addition, based on data from 2010, women account for roughly 60% of manufacturing jobs in Myanmar.¹²⁹ By expanding this sector, women will have greater employment opportunities. This alternative does little, if anything, to reduce the problem of land grabbing. By addressing women’s limited employment options when their land is taken, it treats a symptom of the problem, rather than the underlying problem.

To accelerate expansion of the manufacturing sector, Myanmar must overcome its low level of productivity. Myanmar’s Total Factor Production, which is a measure of the productive efficiency of labor and capital, is half that of neighboring Thailand and one of the lowest among comparable nations.¹³⁰ That means that given the same inputs, Thai firms produce twice as much as Myanmar firms. Limited availability of human capital and technology, underdeveloped infrastructure, onerous government requirements, permits and quotas, and contractual friction resulting from a weak legal system, have driven up the cost of production in Myanmar and held down productivity of firms based there (see *Table 5* below).¹³¹ Myanmar is ranked 170 out of 190 nations in the World Bank’s *Ease of Doing Business* index in large part because of these factors.¹³² The Asian Development Bank reports

Table 5



that Myanmar’s infrastructure, “including rural roads, telecommunication systems, and the energy grid all rank as the least developed among the ASEAN countries.¹³³

Myanmar should continue to liberalize its trade policy to promote foreign investment that brings with it new technologies, international best practices, technical know-how, and managerial expertise. GOM should undertake a significant infrastructure development initiative that focuses largely on energy and transportation sectors. GOM should also conduct comprehensive judicial reform that includes new arbitration rules that reduce the cost of doing business in Myanmar and attract manufacturing firms.

Analysis

Given the existing gender breakdown of employment in the manufacturing sector, expanding the manufacturing sector will likely offer employment opportunities to women and will strengthen women's economic security. This alternative may not meet its intended objective, though, of providing alternative employment for women who have lost their land and may ultimately benefit urban women because of limited mobility for rural women. Women in rural areas are also less able to migrate to manufacturing jobs, which are typically situated near urban areas, because of (1) familial obligations to care for the home, children and the elderly; (2) the high cost of travel caused by poor infrastructure in rural areas; (3) the absence of financial technology to transfer earnings from urban to rural areas; and (4) high housing costs in urban areas (Yangon, in particular). Additionally, certain ethnic and religious minority communities do not enjoy full freedom of movement. In many areas, Muslim women are required to request permission to travel. Myanmar's one million Rohingya Muslims are prohibited from leaving Rakhine State and most are confined to detention camps in Northern Rakhine State.¹³⁴ Women from these communities would therefore be unable to access manufacturing jobs. This alternative also does little to help prevent land grabbing in any meaningful way. It is a reactionary policy under the assumption that land grabbing will continue.

As was highlighted above, the benefits of developing the manufacturing sector are numerous. Benefits include increasing returns to scale and higher yields. If manufacturing development is well-managed, it can contribute to the development of input markets in Myanmar. Foreign investment in manufacturing could bring technologies and international management expertise that could spill over into the broader economy. Importantly, the manufacturing sector will help Myanmar diversify its economy away from the highly volatile commodities market and promote long-term stable economic growth. It will expand access to new foreign markets and to capital. The costs of the manufacturing sector are as numerous as its benefits. The manufacturing sector in Southeast Asia, and the garment industry in particular, is characterized by low wages, poor working conditions, and worker exploitation. A recent report on the garment industry by the Yangon-based think tank Progressive Voice finds that factory workers, "87% of whom are women", regularly work ten or more hours per day and regularly work six days per week in conditions that fall "below internationally recognized human rights and labor standards".¹³⁵ Efforts to expand the manufacturing sector must be paired with policy reforms to ensure compliance with human rights and labor standards concerning working hours, working conditions, minimum wage compliance, and freedom of association and assembly. If such reforms are not implemented alongside manufacturing sector development, efforts to strengthen the economic security of women in Myanmar could exacerbate existing problems or create new ones for women.

There is limited information to determine whether this policy would disproportionately benefit ethnic minority women or Bamar women. Most Special Economic Zones (SEZs), which are the primary location for manufacturing firms, have been built in the south of the country, in the cities of Dawei, Thilawa, and Kyaukpyu. While the Thilawa site is built in a Bamar-majority area, the Dawei and Kyaukpyu sites are built in states with large ethnic minority populations. There is little reason to believe that ethnic women would not experience equal benefit of an expanded manufacturing industry than Bamar women.

This policy would face minimal political opposition given that expanding the manufacturing sector is already a priority for the NLD-led administration. The NLD's economic policy specifically outlines its intention to develop the manufacturing sector. The plan highlights the need to develop a skilled workforce that is prepared to work in the manufacturing and service sectors.¹³⁶ The challenge to implementation of this policy will be in ensuring compliance with international human rights and labor standards.

RECOMMENDATIONS

Since land grabs are an extremely complex issue and have multifaceted impacts on women, a combination of policies that tackle the problem from political, legal and economic angles is necessary. For the political representation reforms, the proposals can be implemented sequentially and build on each other's success to have a stronger cumulative effect. Implementing female-focused political training programs is a policy starting point that does not threaten the power of male elected officials, as well as an investment that maximizes women's effectiveness once in office. By starting gender-based quotas at the local Land Use Committee level, more women will develop political experience, leadership skills, and land-related policy expertise. After this, instituting quotas for women in Parliament is likely to be more feasible since women would have a proven track record in leadership positions in local government.

The legal alternatives also work together to leverage progress and improve overall outcomes. Empowering local administrative bodies to resolve land disputes while also recognizing customary land laws will make both proposals more effective. Since local administrators will be more familiar with local customs and traditions concerning land, equipping them to arbitrate disputes will result in more informed judgments. Additionally, acknowledgment of customary laws will enable local committees resolve disputes in accordance with traditional land ownership practices. However, since the military's opposition to ethnic autonomy poses a political challenge for acceptance of customary laws, giving power to local committees is prioritized. Greater focus will be given to customary laws under a more favorable future political climate.

A similar approach, in which GOM bundles the proposed economic policies, will best help to improve outcomes for women facing land confiscation. Given that it is the most significant departure from the status quo and will do the most to address the underlying problem of land grabs, supporting smallholder farmers instead of large-scale plantation farming should be the central policy reform. GOM should work with development partners to support women's economic security. Simultaneously, GOM should continue to support the expansion of the manufacturing sector. All three alternatives can be incorporated simultaneously. Initiatives that require direct service delivery (for example, women's support centers) should be designed to ensure equitable distribution of services that emphasizes ethnic and religious minorities. It is important to note that manufacturing industry development could have a significant deleterious effect on women's lives if not paired with safeguards against human rights and labor abuses. If such protections cannot be guaranteed, this approach should be incorporated with caution or not at all.

In addition to all of these reforms, it is recommended that the Myanmar government conduct an analysis of the impact of land grabs on the population and publicly release raw data which is disaggregated by gender and by region.

CONCLUSION

Land grabs are one symptom of the systematic discrimination against women in Myanmar. Without addressing the underlying legal, economic, and political structures that keep women from having equal access to government programs, economic opportunities, legal services, and political representation, any policy attempts to resolve land grabs will lack effectiveness in the long run. The evidence of the positive impact that gender equality has on agricultural productivity, children's health and education, women's empowerment, and numerous other important development indicators is compelling. By investing in the reforms proposed here, Myanmar will not only see improved outcomes for in the lives of rural women facing land grabs, but a more equitable society with expanded opportunities and increased agency for all.

APPENDIX

Appendix A

Survey Questions

Have you worked with many people that have had land taken from them?

- Follow up: How many of the people who lost land were men and how many were women?
- Follow up: Who decides what land is taken?
 - Follow up: Are women involved in that decision?
- Follow up: Who took the land in most cases?
- Follow up: Who got the land, and what was it used for?
- Follow up: Where do men work after land is taken from them?
- Follow up: Where do women work after land is taken from them?
 - Follow up: Are women sometimes forced to enter prostitution to support their families after land was taken from them?
- Follow up: Have you worked with any women who have been the victim of sexual violence like rape or assault after their land was taken?

Are there many women on local land use councils?

Can both a husband and a wife be listed on a land title?

- Follow up: How often does this happen?

Who usually makes decisions in households — the husband or the wife?

- Follow up: Does this change once land is lost?

Can a woman get a loan in order to help her when she needs a little money?

- Follow up: Is it harder or easier for a woman to get a loan than a man?
- Follow up: Is it harder or easier for a woman to get a loan if she doesn't have land?

Do you have any data on land being taken from people that you can share with us?

Is there anything else we should know about what happens when women have land taken from them?

Appendix B

CEDAW ARTICLES RELEVANT TO WOMEN'S LAND AND PROPERTY RIGHTS[1]

The articles in Part I of the convention that apply to land rights generally address the elimination of discrimination and sex stereotypes.

Article 1 defines discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Land and property rights fall under this definition as human rights and freedoms that must be afforded to women on an equal basis as men.

Article 2 mandates that States Parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and by taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women and to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women

This provision creates the obligation to abolish unfair land property laws and enact appropriate laws and regulations that would advance women's enjoyment of land rights on equal terms to men.

Article 3 dictates that States Parties take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Under this article governments are called upon to adopt positive legislation that would promote the elimination of the gender gap in all fields. This would necessarily include taking steps to promote women's land ownership and other rights.

Article 5 obligates governments to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other 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.

Such modifications apply to changing the attitudes about female ownership of land.

Part III addresses specific areas of governance of which rural women, equality before the law and family matters all embody issues related to land rights.

Articles 14.2 (on rural women) call on all governments to take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development... (a) To participate in the elaboration and implementation of development planning at all levels; (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

This provision directly speaks of eliminating discrimination in land rights and uses by women in rural areas and obligates states to create conditions conducive to development and enjoyment of their land rights.

Article 15.1 provides that governments shall accord to women equality with men before the law, the same legal capacity and give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

Article 16.1 mandates taking all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ... (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

This provision is meant to protect women from discriminatory ownership and inheritance laws with respect to all property, including land.

PROVISIONS FROM CEDAW GENERAL RECOMMENDATIONS RELEVANT TO WOMEN'S LAND AND PROPERTY RIGHTS[2][3]

There are many instances where land ownership discrimination is addressed in the general recommendations. It follows a similar pattern to that of the convention and is found under generally battling discrimination, family relations and inheritance, conflict and rural women. Below are excerpts from relevant recommendations.

Recommendation 3 on the role of education and public information programs to reduce stereotypical representations of women urges "all States parties effectively to adopt education and public information programs, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women."

Recommendation 9 on statistical data concerning the situation of women recommends that "States parties should make every effort to ensure that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women in the particular sector in which they are interested."

Recommendation 19 on violence against women highlights that “lack of economic independence forces many women to stay in violent relationships.”

Recommendation 21 on equality in marriage and family relations states that:

- “When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband’s or a male relative’s concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner and precludes her from the legal management of her own business or from entering into any other form of contract. Such restrictions seriously limit the woman’s ability to provide for herself and her dependents.”
- The rights provided in Article 16(1)(h) “overlap with and complement those in article 15(2) in which an obligation is placed on States to give women equal rights to enter into and conclude contracts and to administer property. Article 15 (l) guarantees women equality with men before the law. The 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.”
- In countries that are “undergoing a program 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.”
- In most countries, “[], any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman’s practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.”
- There are countries that “do not acknowledge that right of women to own an equal share of the property with the husband during a marriage or de facto relationship and when that marriage or relationship ends. Many countries recognize that right, but the practical ability of women to exercise it may be limited by legal precedent or custom. Even when these legal rights are vested in women, and the courts enforce them, property owned by a woman during marriage or on divorce may be managed by a man. In many States, including those where there is a community-property regime, there is no legal requirement that a woman be consulted when property owned by the parties during marriage or de facto relationship is sold or otherwise disposed of. This limits the woman’s ability to control disposition of the property or the income derived from it.”
- In some countries, on division of marital property, “greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets. Financial and non-financial contributions should be accorded the same weight.”

- In many countries, “property accumulated during a de facto relationship is not treated at law on the same basis as property acquired during marriage. Invariably, if the relationship ends, the woman receives a significantly lower share than her partner. Property laws and customs that discriminate in this way against married or unmarried women with or without children should be revoked and discouraged.”

- Reports of States parties should include “comment on the legal or customary provisions relating to inheritance laws as they affect the status of women,” as “there are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband’s or father’s property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased’s property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.”

Recommendation 25 on temporary special measures provides guidance on the concept of substantive equality, highlighting that “the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming under-representation of women and a redistribution of resources and power between women and men.” The General Recommendation encourages States to adopt temporary special measures to accelerate the equal participation of women in, inter alia, economic, social, and cultural fields.

Recommendation 27 on older women and protection of their human rights addresses property inequalities providing that:

- Under some statutory and customary laws, women do not have the right to inherit and administer marital property on the death of their spouse. Some legal systems justify this by providing widows with other means of economic security, such as support payments from the deceased’s estate. However, in reality, such provisions are seldom enforced, and widows are often left destitute. Some laws particularly discriminate against older widows, and some widows are victims of “property grabbing.”

- States parties should enable older women to seek redress for and resolve infringements of their rights, including the right to administer property, and ensure that older women are not deprived of their legal capacity on arbitrary or discriminatory grounds.

- 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.

- States parties have an obligation to repeal all legislation that discriminates against older women in the area of marriage and in the event of its dissolution, including with regard to property and inheritance.

- States parties must repeal all legislation that discriminates against older widows in respect of property and inheritance, and protect them from land grabbing.

Recommendation 29 on economic consequences of marriage, family relations and their dissolution lays out obligations to ensure equality in property ownership and disposition among spouses during and after marriage:

- States parties should provide for equal access by both spouses to the marital property and equal legal capacity to manage it. They should ensure that the right of women to own, acquire, manage, administer and enjoy separate or non-marital property is equal to that of men.

- States parties are obligated to provide, upon divorce and/or separation, for equality between the parties in the division of all property accumulated during the marriage. States parties should recognize the value of indirect, including nonfinancial, contributions with regard to the acquisition of property acquired during the marriage.

- States parties should provide for equal formal and de facto legal capacity to own and manage property. To achieve both formal and substantive equality with respect to property rights upon the dissolution of marriage, States parties are strongly encouraged to provide for:
 - » Recognition of use rights in property related to livelihood or compensation in order to provide for replacement of property-related livelihood.

 - » Adequate housing to replace the use of the family home.

 - » Equality within the property regimes available to couples (community property, separate property, hybrid), the right to choose property regime, and an understanding of the consequences of each regime.

 - » Inclusion of the present-value computation of deferred compensation, pension or other post-dissolution payments resulting from contributions made during the marriage, such as life insurance policies, as part of the marital property subject to division.

 - » Valuation of non-financial contributions to marital property subject to division, including household and family care, lost economic opportunity and tangible or intangible contributions to either spouse's career development and other economic activity and to the development of his or her human capital.

 - » Consideration of post-dissolution spousal payments as a method of providing for equality of financial outcome.

- States parties are obligated to adopt laws of intestate succession that comply with the principles of the Convention. Such laws should ensure: » Equal treatment of surviving females and males. » That customary succession to use rights or title to land cannot be conditioned on forced marriage to a deceased spouse's brother (levirate marriage) or any other person, or on the existence or absence of minor children of the marriage. » That disinheritance of the surviving spouse is prohibited. » That "property dispossession/grabbing" is criminalized, and that offenders are duly prosecuted.

Recommendation 30 on women in conflict prevention, conflict and post-conflict situations addresses the need to protect women's right to land in in conflict:

- The Committee observed that equal access to property, as guaranteed by article 16 (1)(h), is particularly critical in post-conflict situations, given that housing and land are crucial to recovery efforts. Women's limited and unequal access to property becomes particularly damaging in post-conflict situations, especially when displaced women who have lost husbands or close male relatives return to their homes to find that they have no legal title to their land and, as a result, no means of earning a livelihood.

- The Committee recommends that States parties adopt gender-sensitive legislation and policies that recognize the particular disadvantages that women face in claiming their right to inheritance and their land in post-conflict contexts, including the loss or destruction of land deeds and other documentation owing to conflict.

- States should provide protection against the displacement of indigenous, rural and minority women with special dependency on land

- The Committee noted that women in rural areas are often disproportionately affected by inequitable access to land and natural resources. Similarly, their situation in conflict settings presents particular challenges with regard to their employment and reintegration, given that it is often exacerbated by the breakdown of services, resulting in food insecurity, inadequate shelter, deprivation of property and lack of access to water.

Recommendation No. 34 on the rights of rural women includes provisions on equality in property ownership and management:

- States parties should ensure that rural women are equal before the law and have the same legal capacity as men in civil matters, including to conclude contracts and administer property independent of their husband or any male guardian.

- States parties should harmonize personal status and family laws with article 16, in line with general recommendations No. 21 (1994) on equality in marriage and family relations and No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution, guarantee that rural women have equal rights in marriage, including to marital property upon divorce or death of their spouse.

- States parties should take all measures, including temporary special measures, necessary to achieve the substantive equality of rural women in relation to land and natural resources, and design and implement a comprehensive strategy to address discriminatory stereotypes, attitudes and practices that impede their rights to land and natural resources.

- States parties should pay special attention to customary systems, which often govern land management, administration and transfer, in particular in rural areas, and ensure that they do not discriminate against rural women. They should raise awareness about rural women's rights to land, water and other natural resources among traditional, religious and customary leaders, lawmakers, the judiciary, lawyers, law enforcement authorities, land administrators, the media and other relevant actors.
- States parties should ensure that legislation guarantees rural women's rights to land, water and other natural resources on an equal basis with men, irrespective of their civil and marital status or of a male guardian or guarantor, and that they have full legal capacity. They should ensure that indigenous women in rural areas have equal access with indigenous men to ownership and possession of and control over land, water, forests, fisheries, aquaculture and other resources that they have traditionally owned, occupied or otherwise used or acquired, including by protecting them against discrimination and dispossession.
- States parties should strengthen customary and statutory institutions and mechanisms for defending or protecting women's rights to land, water and other natural resources.
- States should ensure that land acquisitions, including land lease contracts, do not violate the rights of rural women or result in forced eviction, and protect rural women from the negative impacts of the acquisition of land by national and transnational companies, development projects, extractive industries and megaprojects;
- States should obtain the free and informed consent of rural women before the approval of any acquisitions or project affecting rural lands or territories and resources, including those relating to the lease and sale of land, land expropriation and resettlement. When such land acquisitions do occur, they should be in line with international standards, and rural women should be adequately compensated;
- States should adopt and effectively implement laws and policies that limit the quantity and quality of rural land offered for sale or lease to third States or companies.
- States parties should give priority to rural women's equal rights to land when undertaking land and agrarian reforms and consider it a specific and central objective of land reform. They should:
 - (a) Ensure that land and agrarian reform programmes integrate gender-specific goals, targets and measures, and advance both formal and substantive equality, for example through joint titling, and require the wife's consent for the sale or mortgage of jointly owned land or for engaging in financial transactions linked to the land;
 - (b) Recognize and include rural women's equal rights to land in any land distribution, registration and titling or certification schemes;
 - (c) Formally recognize and review indigenous women's laws, traditions, customs and land tenure systems, with the aim of eliminating discriminatory provisions;

(d) Develop and implement measures, including temporary special measures, to enable rural women to benefit from the public distribution, lease or use of land, water bodies, fisheries and forests, and from agrarian reform policies, rural investments and the management of natural resources in rural areas. Landless rural women should be given priority in the allocation of public lands, fisheries and forests.

- States parties should address housing as part of overall rural development and ensure that measures are developed in consultation with rural women. Such efforts should be made in line with international housing rights standards, including the basic principles and guidelines on development-based evictions and displacement and should contain strong measures to protect rural women effectively from forced eviction by State and non-State actors.

CEDAW JURISPRUDENCE

Communication No. 48/2013.[4]

In this case two widows from Tanzania submitted a communication against the Republic of Tanzania regarding discriminatory inheritance laws. After their husbands died, they were evicted from their property by their in laws pursuant to customary laws governing their ethnicity.

The Committee found that, as stated in its general recommendation No. 21, the rights provided in article 16 (1)(h) overlap with and complement those in article 15 (2) in which an obligation is placed on States parties to give women equal rights to administer property. It was its view that the right of women to own, manage, enjoy and dispose of property is central to their financial independence and may be critical to their ability to earn a livelihood and to provide adequate housing and nutrition for themselves and for their children, especially in the event of the death of their spouse.

It noted that, although Tanzania's Constitution includes provisions guaranteeing equality and non-discrimination, it failed to revise or adopt legislation to eliminate the remaining discriminatory aspects of its codified customary law provisions with regard to widows. The Committee considered that the State party's legal framework, which treats widows and widowers differently in terms of their access to ownership, acquisition, management, administration, enjoyment and disposition of property, is discriminatory and thereby amounts to a violation of article 2 (f) in conjunction with articles 5, 15 and 16 of the Convention.

The Committee found that Tanzania, by condoning customary laws on inheritance and property rights, denied the authors equality in respect of inheritance and failed to provide them with any other means of economic security or any form of adequate redress, thereby failing to discharge its obligations under articles 2 (c), 2 (f), 5 (a), 13 (b), 15 (1), 15 (2), 16 (1) (c) and 16 (1) (h) of the Convention.

It considered that Tanzania violated the rights of the authors under articles 2 (c), 2 (f), 5 (a), 13 (b), 15 (1), 15 (2), 16 (1)(c) and 16 (1)(h) of the Convention, read in the light of general recommendations Nos. 21, 28 and 29.

Communication No. 19/2008[5]

In this case an indigenous woman in Canada was effectively evicted from her home by her abusive partner after she sought help at a battered women's shelter. As a board member of their housing authority, he fraudulently removed her name from the ownership documentation with the complicity of the agency. They had previously acquired the property pursuant to a government scheme for indigenous people. Her partner was not indigenous and was only able to be a co-owner with an indigenous partner.

The Committee concluded that the complainant established a distinction based on the fact that she was an aboriginal woman victim of domestic violence, which she clearly submitted in her first lawsuit against her partner, and that such violence had the effect of impairing the exercise of her property rights. In its general recommendation No. 28, the Committee states that intersectionality is a basic concept for understanding the scope of the general obligation of States parties contained in article 2 of the Convention. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned (para. 18). Accordingly, the Committee found that an act of intersectional discrimination has taken place against the author.

The Committee also concluded that Canada failed to ensure that its agents provide effective legal protection by respecting the Agreement for Purchase and Sale, and failed to ensure that the new Assignment of Lease, on which the author's name was not included, was declared null and void.

The Committee noted that the author was a victim of domestic violence, that her partner tried to stop her from working, thus limiting her ability to lead an independent economic life; and that she was evicted from her home while seeking protection from domestic violence in a battered women's shelter. The Committee further observes that when her name was removed from the Assignment of Lease, the Northwest Territories Housing Corporation did not take her contribution into consideration or inform her of the removal. These facts considered together indicate that the rights of the author under article 16, paragraph 1 (h), of the Convention had been violated.

CONCLUDING OBSERVATIONS ON THE COMBINED FOURTH AND FIFTH PERIODIC REPORTS OF MYANMAR to CEDAW[6]

Economic and social benefits

The Committee noted the State party's efforts to develop strategies for poverty reduction through income-generating activities and access to microcredit. It is concerned, however, that some customs and traditions affect the social lives of women and their access to economic resources. It is further concerned at the lack of information on the participation of women in the formulation of economic development plans and at their limited access to credit and loan facilities.

The Committee recommended that the State party intensify its efforts aimed at poverty reduction and sustainable development by facilitating the participation of women in the formulation of economic development plans and their access to credit and loan facilities. It also recommends that the State party further intensify its efforts to eliminate all customs and traditions that negatively affect women's access to economic resources. The Committee requested the State party to provide in its next periodic report information on [] proper legal remedies for women to contest the granting of concessions and/or to obtain adequate compensation for loss of land.

Rural women

The Committee noted the State party's efforts aimed at promoting rural development, including the issuance of farmland use certificates to women. The Committee is concerned, however, at the low participation of rural women in decision-making, in particular in the formulation of policies, and their limited access to education, employment and health care. It also noted with concern reports of forced evictions from land, mainly by the military, with that land then granted to foreign companies under concession.

The Committee recommended that the State party ensure effective consultations with affected communities before granting concessions to companies or third parties for the economic exploitation of lands and territories traditionally occupied or used by women, and that it secure the free, prior and informed consent of the women affected.

GENEVA CONVENTIONS PROVISIONS RELEVANT TO CIVILIAN LAND GRABS

Grave breaches of texts such as the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War are particularly clear in prohibiting activities involving arbitrary displacement and the destruction or appropriation of property. For instance:

Art. 33 No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited

Art. 49 ...Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.....The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies

Art. 53 Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered necessary by military operations

Art. 147 Grave breaches ... shall be those involving any of the following acts, if committed against persons or property protected by the present Convention:extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

In addition, Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (1977) further strengthens these principles: Art. 17 (1) The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. Art. 17(2) Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

There are no specific provisions on land; however there are general obligations that which can be applied to land grab issues.

In Art. 3 of the section entitled General State regulatory and policy functions states are called on to protect human rights by (a) Enforcing laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assessing the adequacy of such laws and address any gaps; (b) Ensuring that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights; (c) Providing effective guidance to business enterprises on how to respect human rights throughout their operations; (d) Encouraging, and where appropriate requiring, business enterprises to communicate how they address their human rights impacts.

The commentary notes that guidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.

Art. 5 states that States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

Art.6 provides that States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

Article 7 addresses business in conflict affected areas. It provides that States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by: (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships; (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence; (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation; (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Art 9 can also apply to land confiscations for investment purposes. It provides that States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.

Art 12 deals with the duties of businesses under international law. It sets forth that the responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work

The commentary adds that depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.

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