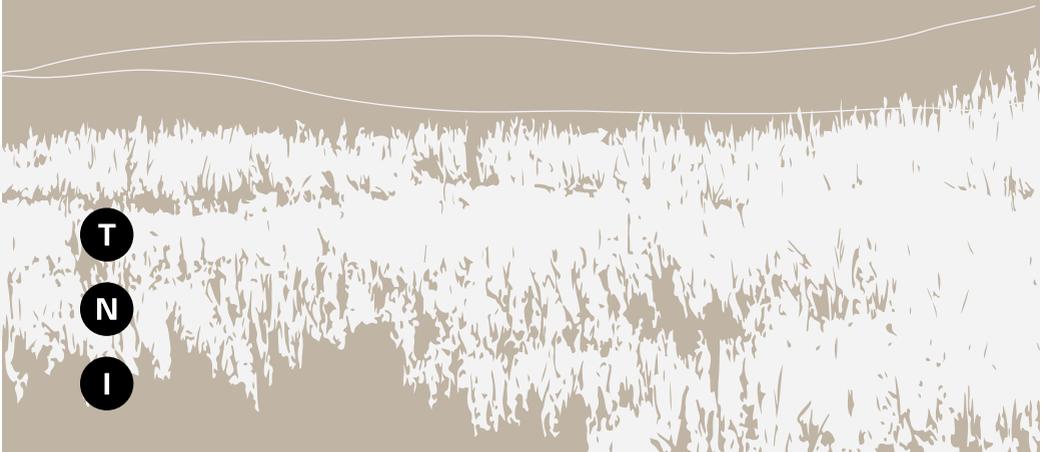


TRANSNATIONAL INSTITUTE

# LINKING WOMEN AND LAND IN MYANMAR

## RECOGNISING GENDER IN THE NATIONAL LAND USE POLICY

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## Introduction

The draft National Land Use Policy (NLUP) that was unveiled for public comment in October 2014 intends to create a clear national framework for managing land in Myanmar<sup>1</sup>. This is a very important step for Myanmar, given the fundamental importance of land policy for any society – particularly those with recent and complex histories of political and armed conflict and protracted displaced populations. With 70% of Myanmar’s population living and working in rural areas, agriculture is a fundamental part of the country’s social and economic fabric. The majority of these are small-holder farmers, whose land rights are currently under threat. The situation is particularly dire for the country’s ethnic minority groups, who make up an estimated 30% of the population.

Establishing an inclusive land use policy-making process that allows for - and encourages - full and meaningful participation for *all* rural working people is essential for ensuring a policy outcome that is widely and effectively accepted by society.

The land use policy draft under discussion here has a national scope, and will likely have a long-term impact. Therefore it is of crucial importance to the future prospects and trajectories of agriculture and the lives of those engaged in the sector, with impacts not only upon how land is used, but also upon who will use it, under what conditions, for how long and with what purposes. Ensuring that *all members* of Myanmar’s rural communities are considered in the making of the policy, so that their needs are represented and their rights are upheld, is critical to its legitimacy and efficacy in providing a basis for democratic access and control over land and associated resources.

This policy brief will focus upon the potential gender implications of the current policy draft and offer some suggestions as to how it might be improved to promote and strengthen women’s land rights within the Myanmar context.

## Why Should we Consider Gender and Land?: Outlining the Need for Gender Recognition within Land and Resource Use Policies

Protecting and securing women's access to land is crucial for a number of reasons. Firstly, the vital contribution of women to generational and societal reproduction can be supported by securing their land access. In many ways, women are the thread that holds rural communities together, be it through raising and feeding their families, managing their households, or tending to their crops and animals. The critical role that women often play in raising the future generations, raises a distinct set of concerns that women must deal with. Therefore, ensuring their access to, and control over, necessary productive resources like land is critical to ensure a prolific and healthy future society; this contribution ought to be recognised and supported through national policies.

Secondly, studies show that security over land can have important impacts on the social stability and security of women and their families as well as their economic and political independence. As the impacts of land access can supply women with the negotiating power and leverage to raise their concerns, its value to women must be recognized as far greater than material. For instance, there are a number of studies demonstrating that women who own land are less vulnerable to domestic violence.<sup>2</sup> Rasghida Manjoo, Special Rapporteur on Violence Against Women emphasises that: "(T)he ability of rural women to protect themselves from violence requires the realisation of their socio-economic rights, particularly those regarding land, property and inheritance. Inequality and sex-based discrimination with regard to land ownership and its effective control, is the single most critical contributor to violations of the economic, social and cultural rights of women among the agrarian economies of most developing countries."<sup>3</sup>

Thirdly, ensuring women's access to land can further enhance the important economic role they play at the household, local, and national level. Some studies stress that securing women's land and property rights leads to increased agricultural productivity.<sup>4</sup> For example, the FAO estimates that if women had the same access to productive resources as

men, they could increase yields on their farms by 20–30%.<sup>5</sup> Meanwhile, the Convention on the Elimination of Discrimination of Women (CEDAW) highlights “the significant roles which rural women play in the economic survival of their families”.<sup>6</sup> In other words, women without their own land generally lack access to the finance and credit needed to invest in their businesses<sup>7</sup>, which not only impacts their ability to support their families financially, it can also have negative effects on their independence, their safety and personal aspirations, as well as impede the full realization of their human rights. Landlessness in situations marked by high degrees of land concentration, poverty, and hunger is clearly a problem that affects both women and men, albeit in different ways according to their respective roles, responsibilities and ability to take decisions regarding their lives.

Fourthly, the policies of ethnic exclusion and discrimination by successive military governments have greatly negatively impacted Myanmar’s ethnic minority women, and access to land is vital for their survival and that of their families. They are among the most vulnerable and marginalized populations groups in the country, especially in conflict affected areas. Myanmar’s ethnic minority population is estimated at some 30%, and over 20% of the total population practices upland cultivation. Upland tenure is insecure, as the current land laws do not recognize customary tenure.<sup>8</sup> It is crucial that the new land policy addresses these inequalities.

Fifthly, after decades of civil war and military rule, a democratic land policy that addresses past injustices, including eviction and displacement of people due to armed conflict, is central to the national peace process, and the inclusion of women within this, necessitates a special recognition of the links between women, land, and peace. As most of the conflict has taken place in ethnic minority regions, the land policy should ensure to take the land rights of ethnic minority women into account, including that of internally displaced persons and refugees in neighbouring countries.

Therefore, in order for rural women in Myanmar to have equal chances at achieving full realization of their human rights and recognition of their invaluable contributions to society, it is crucial that their access to and control over land be given priority. The combination of being

more independent, less vulnerable, and within a position of power over the future trajectory of the country, should be harnessed in order to ensure women are supported in bringing forth their perspective on how to shape the future society. The social, political, economic, and cultural significance of land makes it a necessary intervention point to ensure that women's voices are considered. The NLUP can open a venue through which to legally inscribe this recognition and protection.

## The Current Situation of Women in Myanmar

In Myanmar as elsewhere, women's contributions to society and the need to protect and enable the position of women economically, socially, and politically, globally women's rights are still devalued. As the human rights organization Foodfirst Information and Action Network (FIAN) has pointed out, "Women work as farmers in their own farms, as unpaid workers on family farms and as paid or unpaid laborers on the farms and plantations of others. In addition, while women are increasingly responsible for the production and processing of food as farmers, fisherwomen, forest gatherers and waged agricultural workers, *they do so with very little legal protection in their access to natural and productive resources and in the workplace* (emphasis added)".<sup>9</sup> Women in Myanmar face more discrimination and more barriers than men in accessing or owning land, participating in consultations and decision-making processes regarding land, and in utilising dispute mechanisms. There are many reasons for this, including social or cultural inequality caused by internalised gender roles, limited education, skills and abilities, or lack of time or money.<sup>10</sup> These gender-related barriers are highlighted in various publications, which can be referred to for a more in-depth discussion of these issues.<sup>11</sup> Myanmar's ethnic minority women are particular excluded from such processes due to conflict, discrimination, cultural and language barriers among others.

Women's lack of participation in decision-making processes is not only an issue related to land administration. It is engrained within political processes and representation, impacting all public bodies in Myanmar. Currently only 4% of Myanmar's State and Regional Parliament

representatives are women, while local governments include just 3%.<sup>12</sup> If the land management, administrative and decision-making bodies reproduce this pattern to include only men, then the decisions made are likely to overlook specific details of land management that can only be understood through women's farming experiences and will tend to reflect men's needs and interests rather than those of women and families. It is also a basic human rights principle that all individuals have the right to participate in decision-making processes that affect their lives and well-being. Given the important productive and social-reproductive roles that women play in agricultural communities, ensuring that their voices and expertise are represented in land policies is vital. Special recognition for ethnic minority women will be crucial to ensure their equal access to these processes, that will have such great impact on their lives.

Therefore, ensuring women's equal participation in decision-making processes is fundamental in establishing a national land use policy that supports a strong, healthy, peaceful and ethnic inclusive society, ensures sustainable economic growth, and contributes to the full realization of women's human rights. This does not require the inclusion of women at the expense of men, but rather recognises that supporting women is beneficial to society as a whole. Non-discrimination and equal rights for both genders must be at the core of any credible and widely accepted policy on land management.

## Key issues between the English and Burmese drafts of the policy

As this political brief is concerned with the treatment of women's rights with respect to land tenure and land management within the recent NLUP draft, it is first important to note that, there are some notable differences in provisions for addressing gender inequality discussed in the Burmese and English drafts of this policy. It is important for there to be consistency between both versions and gender equality should be an explicit focus. In particular, the Burmese version does not specifically call for equal rights between men and women, while the English version does.

In addition, the clause highlighting research on women's land tenure is not mentioned at all in the Burmese version. That said, it is understandable that translating key legal concepts can be complicated and inexact, and thus it is difficult to assure the use of gender-conscious language in both languages which comprehensively addresses and defines gender equality.

## Key issues in the draft NLUP

This short briefing intends to highlight how the draft policy can be enhanced by the inclusion of a deeper analysis of the complex links that exist between gender and land. This would be a positive step toward assuring the full protection of both men and women. In order to do this effectively, the NLUP should consider how an individual's social position can create barriers to their inclusion in decision-making processes, and may impact their access to the mechanisms that assist in dispute negotiations and land registration. The NLUP should also consider how changes in land use may impact men and women differently, and how preexisting societal perceptions of gender are implicit in how these changes play out.

TNI recommends that the following aspects of the policy be further developed in order to ensure that gender equality is more appropriately addressed through the NLUP:

### I Gender equality must be thoroughly defined in order for translation into practice to be feasible

The English version of the draft NLUP highlights the basic protection of gender equality (para. 10 b). It states: "(I)t shall provide equal rights in all sectors for women for land use and secure land tenure". The Burmese version calls for equality, but does not specify that this equality applies to both men and women. Additionally, this clause does not provide clear guidelines for methods that can help ensure equal rights become a reality in practice.

The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO Voluntary Guidelines) provide a fuller definition of gender

equality and could be used by the Land Use Allocation and Scrutiny Committee to further expand this basic principle. The Guidelines state that gender equality ensures: “the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary.”<sup>13</sup> The FAO Guidelines also make reference to equity and justice, notably mentioning that: “equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote equitable tenure rights and access to land”.<sup>14</sup>

In the context of Myanmar, this is a crucial issue to consider. Many research papers highlight the many differences that exist between Myanmar men and women in regard to land access and their involvement in land-focused decision-making processes. The NLUP should clearly state what “positive action” will be undertaken to accelerate de facto gender equality in Myanmar, with the understanding that the specific types of actions anticipated should be geared to the particular inequality being addressed (further discussed below). In general, the NLUP should focus on promoting women’s distinct right to land, as well as promoting the effective recognition of women’s right to be involved in land management and facilitating their participation in decision-making processes, and the government should clearly commit the resources that will be needed to enable the implementation of the necessary provisions in this regard.

The FAO Voluntary Guidelines also support the principle of non-discrimination that is set out in the CEDAW, and which the Government of Myanmar has already ratified. This principle instructs that there should be no “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 of rights by women.”<sup>15</sup> The NLUP would benefit from adopting this principle in a manner that applies to all of its provisions, by including this as an underlying principle of implementation. This will ensure that the policy does not contribute to the unequal treatment of men and women and that it prioritises equitable land management and socio-economic growth devoid of the stereotypes

and prejudices that still often exist in practice. Examples of actions that may be taken to uphold the principle of gender equality are below.

## II Women should be well-represented in all of Myanmar's land-focused decision-making bodies, from village to national levels

The draft NLUP provides no measures to facilitate women's participation or representation in the National Land Use Council or in any of the village, township or district bodies that make decisions regarding land (paras. 15 - 18). Assuring women's equal participation in the National Land Council would make it a leader among Myanmar's administrative bodies in terms of gender equality and the development of processes and procedures facilitating equal access to land for women and men. This should include representatives of women from ethnic minority groups.

Women's representation in public and political life in Myanmar remains extremely low. Women hold just 4.6% of parliamentary seats and are notably absent from local decision-making bodies. Many reports highlight the barriers faced by women in attaining leadership positions.<sup>16</sup> In order to rectify this, the NLUP must create spaces allowing women, including women of all ethnic nationalities, to participate, not only in the National Land Council, but in other administrative bodies as well, such as Farmland Administrative Bodies. Additionally, the NLUP should introduce a quota system that assures a certain percentage of women are involved in its development and implementation. However, it should also recognise that, independently, a quota system is not a reliable way to assure women's full representation. Therefore, the policy would be further strengthened by highlighting methods that can be used to address some of the barriers women face as community representatives – challenging the widely held belief that decision-making is the domain of men, challenging social prejudices by raising awareness among men and women of the potential benefits of gender equality and building confidence in women to realise their capabilities for participation. These are long-term actions, which will require changes in social attitudes and

a significant amount of time to achieve real results, but a well-designed and implemented policy would be an excellent starting point for gender-sensitive decision-making processes to take shape in Myanmar.

### III The Land Use Allocation and Scrutinisation Committee should take specific action to ensure the voices of rural women are part of the draft NLUP consultation process

The current NLUP consultation process would benefit significantly from the full participation of women, specifically those in rural areas. This should include women from upland and isolated ethnic minority regions. CEDAW, which the Government of Myanmar has ratified, requires state parties to ensure that women have an equal right to be involved in the formulation of government policy.<sup>17</sup> CEDAW also specifically calls for rural women to participate “in the elaboration and implementation of development planning at all levels.”<sup>18</sup>

As it is often difficult for women in Myanmar to express their views in fora where men are present, due to cultural norms that prescribe women to refrain from speaking in public and to defer to men instead. For this reason, consultation with rural women would be most effective if a separate forum was established where they could express their opinions freely and openly. Factors impacting the large number of rural women, many of whom are ethnic minority women, living in remote areas should also be considered and addressed, notably, the time and distance required for them to travel from their homes to a meeting point, as well as the responsibilities they would have to temporarily leave behind, such as caring for their families and farms. The specific challenges faced by ethnic minority women, whose lands have been arenas of inter-ethnic conflict for decades, resulting in dispossession, destruction and disuse of land, need to be given explicit consideration and active efforts must be made to provide space for them to sculpt national level policies.

Furthermore, given the centrality of land as a site of conflict and displacement and that reconciliation processes within post-conflict areas are directly wrapped up in discussions of land rights, positive actions must

be made to include women refugees and IDPs within the consultation process. Navigating the gender dynamics associated with displacement and return, including the particular experiences and psychological or health needs of women who have been displaced that may pose a barrier to their participation, and/or the negotiation of gender roles and reconstruction of social relations that may occur during and after displacement, warrants careful consideration to ensure that this group is actively included. These are important factors to be considered, as they could prevent some women from being able to take part in the consultation.

Another issue that should be considered is the general and legal literacy of rural women. Literacy is often particularly low in rural areas where families cannot afford school fees for children, and thus they often take up employment at a young age. Furthermore, some women in ethnic regions are not fluent in Burmese language, and in some cases do not speak the language at all. A TWU study shows that rural women generally drop out of school around the age of 14 and have very low levels of literacy.<sup>19</sup> Additionally, academic research in the 'dry zone' of Central Myanmar shows that while there were no illiterate male heads of households in their study, about 8% of female heads are illiterate.<sup>20</sup> In the absence of effective programs to address the low literacy rates of rural women in particular, this becomes a basic barrier to women's participation in public policy consultations. Therefore, the current policy consultation process should include provisions for connecting with these groups, such as providing oral briefings of the content of the policy by radio or in local meetings, providing versions of the policy in ethnic languages and providing illustrated versions of the policy.

## IV Consultations on land use changes must be meaningful and inclusive for men and for women

The NLUP calls for "Granting Concession on or the Lease of State-owned Lands" and "Procedures Relating to the Land Acquisition, Compensation, Resettlement and Rehabilitation" (paras. 35- 44), and current trends in Myanmar show that land use management must also take into account

large-scale acquisitions for industrial agricultural or commercial use. In addressing the management of these processes, it is particularly important to have women participate in consultations, as they are especially vulnerable to losing access to land as the result of deals with companies and agribusinesses, due to insecure land ownership. This insecurity can be caused by their land being informally or customarily owned, a lack of negotiation power or literacy, or because land titles are in the name of their husband or another male family member. It may also be related to them having temporarily fled from their land due to armed conflict, which may have resulted in loss of land ownership and their traditional land currently being used or designated to be used for other purposes, including industrial free-trade zones. This issue is of particular relevance to women and men from ethnic minority groups.

The NLUP should also take into account that men and women might use land differently, particularly communal lands. The current land classifications of the draft (para. 19 - 20) do not protect communal lands, meaning that women could be at risk of losing access to resources that are crucial to their livelihoods. This also emerges in the section on zoning (art. 28 - 32) where a particular effort is needed to ensure that women's land use is protected. Research in Dawei shows that a mapping consultation process, which excluded women, led to forestland being separated from the village area, despite its importance for the livelihoods of local women.<sup>21</sup> This accentuates the importance of discussing land use with all members of the community, as well as to consider land ownership and titling that is sensitive to the crucial role of common lands.

To understand participation, it is worth referring to the FAO Voluntary Guidelines, which provides a comprehensive definition. According to these Guidelines participation is: "engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes."

Within the framework of the Guidelines, full participation in a society is not achieved unless representatives of all affected individuals<sup>22</sup> are included in discussions and decision-making processes and throughout all points of the process. Thus, in regard to land, women are part of this category of impacted persons, and the NLUP would increase its credibility significantly by assuring the full and complete participation of all affected groups. A TWU report<sup>23</sup> highlights that women are notably absent from local level consultations regarding changes in land use, which is evidenced by the processes through which the Deep Sea Port project in Dawei emerged. The TWU's research highlights that generally only male heads of households are invited to meetings concerning land and relocation issues. Only widowed women, who have become the heads due to the absence of a man in their households, are invited to join these meetings. The NLUP must redress the exclusionary nature of these processes by creating mechanisms that are sensitive to local power structures and provide platforms in which all individuals feel they can express themselves freely, and without negative repercussions.

Among this group of impacted persons whose participation within consultation processes on land is critical, are women refugees and IDPs, most of whom are from ethnic minority groups. Given the centrality of land as a site of conflict and displacement and that reconciliation processes within post-conflict areas are directly wrapped up in discussions of land rights, positive actions must be made to include women refugees and IDPs within consultations. Navigating the gender dynamics associated with displacement and return, including the particular experiences and psychological or health needs of women who have been displaced that may pose a barrier to their participation, and/or the negotiation of gender roles and reconstruction of social relations that may occur during and after displacement, warrants careful consideration to ensure that this group is actively included and able to participate meaningfully.

Paragraphs 21 - 28 of the NLUP, which highlight land information management and land use mapping, should also include strategies for allowing women to participate fully in these processes, especially mapping of their lands (para. 23).

## V FDI and contract farming provisions must consider women's equal participation in the economy

Provisions regarding the development of FDI and contract farming should be established with consideration for the future development of agriculture and other industries in Myanmar, and how men and women participate in this development. One study shows that women in Myanmar earn daily wages that are approximately 20% less than what men earn for the same work.<sup>24</sup> Other studies highlight that 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.<sup>25</sup> In addition, when women lose their ability to earn a living from their land and have access to few alternatives, they become particularly vulnerable, and in some cases may be forced into the sex industry in order to survive.<sup>26</sup>

The draft NLUP would benefit from examining the human rights consequences of the changes in land use in Myanmar. In addressing the long-term gender rights impacts of this policy, measures such as equal pay requirements in concession or contract farming agreements should be included. In broader terms, the NLUP should address how – and how well—women within the specific areas where they reside will be able to earn a living if they move away from traditional livelihood models, as well as whether contract farming or industrial development will indeed offer sustainable incomes for women and their families, and whether and how these options will contribute to the full realization of women's human rights. It is unlikely that the impact upon women will be uniform and thus this examination should examine a range of factors such as a woman's age, skill sets, location of residence in regard to other opportunities, and extent of an economic support network within their community or ethnic nationality group.

## VI The NLUP must include provisions for resolving conflicts between customary law and women's land rights

The FAO Guidelines state that in situations where “constitutional or legal reforms strengthen the rights of women and place them in conflict with custom, all parties should cooperate to accommodate such changes in the customary tenure systems.” In “recogniz(ing) and protect(ing) the traditional rights, land use and land tenure right of ethnic nationalities”, the draft NLUP should state how it will resolve conflicts between its commitment to protecting customary land practice and its commitment to gender equality, so that there is no uncertainty about the standard that is expected to be met in practice. It should elaborate, for instance, how it intends to implement the recognition of women's land rights in relation to inheritance. Furthermore, efforts taken to consult the leaders of ethnic nationalities (para. 70-71 and 77) should be sensitive to whether there is an absence of women within these local positions of power.

Outlining a particular procedure for addressing such conflicts will help strengthen the legitimacy and power of the policy by demonstrating that even seemingly incompatible issues can be addressed in a harmonious manner. It will also demonstrate the commitment of the Government of Myanmar to uphold its ratification of CEDAW and its agreement to adhere to the FAO Voluntary Guidelines. This is a complex process, but a well-managed and highly participative approach would accentuate Myanmar as an international example in the resolution of land conflicts.

## VII The NLUP must ensure that men and women share the same right to accessing the productive benefits of land

The draft NLUP provides one full section that includes gender-specific protections in relation to land (para. 78). This paragraph describes

the right for women (according to CEDAW) to inherit and succeed land, to participate in community discussions around land, to be allocated land, and to engage in land management. While this section is a good starting point for ensuring equal access to land in Myanmar, it needs to go beyond simply *establishing* rights and removing basic barriers to the process of realising those rights to actively encourage and protect them. The FAO Guidelines stipulate that it is the state's responsibility not just to allocate equal rights, but also to assure these rights are visible, enforced, and enjoyed in practice. The NLUP can achieve this by elaborating further on the steps that must be taken to assure the implementation of these rights in everyday governmental and societal actions.

Myanmar's Farmland Law 2012 calls for the establishment of a land use certificate that assures the right to sell, to exchange, to use land for collateral, to inherit, and to lease that particular piece of registered land.<sup>27</sup> The spectrum of rights set out in this Farmland Law is much more comprehensive than the rights discussed in paragraph 78 of the draft NLUP. As such, the policy should be used as a first step toward ensuring that women are assured these same rights, in combination with the guarantees set out in the CEDAW.

A study in Magway and Mandalay highlights the importance of the role that women play in ensuring their families' food security and welfare, noting that "(w)omen's ability to benefit from economic opportunities determines the ability of family members, especially children, to prosper."<sup>28</sup> As such, having the possibility to use land as a means for accessing credit is extremely important for economic growth, particularly in regard to women being extended the right to use their land as collateral to acquire bank loans. This is not only beneficial for the continued movement of the economy; it also allows women to demonstrate their skills and attributes as business owners, which in turn is beneficial for the development of their personal safety, ambitions and independence.

The NLUP should also outline more clearly how it will ensure that women have equal ownership of land and access to the land registration processes provided under national Law. The current

policy provides the right for women to 'be allocated land and land management' (para. 78c), but it would be strengthened by setting out concrete ways to assure these rights translate into practice.

An academic study on gender and rural poverty in Magway shows that of the households surveyed with male heads, 6% were landless, while out of the households with female heads, 20% were landless.<sup>29</sup> It also showed that in households that did own land, those headed by a woman owned an average of 2.6 acres, whereas those headed by a man owned an average of 4.4 acres. Research also shows that discrimination often exists against women who are trying to secure ownership of their land. In Mandalay and Magway, women rarely own land and despite the crucial farm work they were involved in, other members of their communities usually consider them casual labourers, instead of farmers.<sup>30</sup> The same study also notes that land inherited by women is in many cases registered in the name of their husbands.<sup>31</sup> A forthcoming study by Trocaire and the Land Core Group (LCG) also recounts examples where local SLRD bodies issued titles in the name of the male head of the household alone, even when those titles were applied for under joint spousal names.<sup>32</sup>

This research demonstrates that obtaining ownership of land is more difficult in practice for women than for men and this policy (NLUP) needs to take steps to actively redress the status quo. Paragraph 78 of the draft NLUP should state specific strategies for women to own and register land, such as through the provision of land certificates issued under joint names. It should also establish effective methods for countering some of existing difficulties women face in legally owning their land. The NLUP should determine how to promote women's involvement in land management at the household level and to facilitate women's access to land registration mechanisms. Some examples include paralegal support for female farmers, education on land registration systems, and public information campaigns that challenge local prejudices and support the idea of women as landowners. In addition, the NLUP must assure that land dispute mechanisms are gender-sensitive and easily accessible to women, as this is a requirement in the FAO Voluntary Guidelines that the Government of Myanmar has agreed to implement.<sup>33</sup>

## VIII Monitoring and Evaluation processes must be implemented in order to continuously observe levels of gender equality

The Monitoring and Evaluation principles provided in paragraph 81 of the NLUP do not establish concrete measures to ensure that the rights presented by this policy will be ensured in practice. The policy should include the collection and analysis of gender-disaggregated data on all issues concerning land management and ownership, the composition of local and national bodies administering land, and should also consider how changes in land use and large-scale land acquisitions are affecting the quality of life of women and their families. If there is no Monitoring and Evaluation conducted specifically on these issues, it will be difficult to assure that gender equality is being strived for in practice. Monitoring should be implemented on an on-going basis, with a full evaluation of the resulting data occurring every year.

### Recommendations:

TNI would like to make the following recommendations to the Land Use Allocation and Scrutiny Committee to be considered in the next review of the National Land Use Policy.

1. Ensure that the Burmese and English versions of the policy are identical; that they both are fully and explicitly anchored in human rights principles and include gender-sensitive language, and that they both focus on the provision of equal rights between men and women. The policy should also include a provision to specify which version will be considered as the binding agreement.
2. Take specific steps to ensure that all rural women regardless of ethnic identity or literacy level understand the draft NLUP and can be fully involved in the current consultation process. This can include oral/radio versions of the policy, illustrated versions, translation of the policy into local languages and separate consultations for men and women, which allow both to share their ideas and suggestions freely.

3. Assure that it goes beyond simply stating women's land rights on paper and establishes and guarantees them in practice. The first step lies within the wording of the policy itself, which should set out how these rights will be ensured. The second step is to implement processes that will translate these rights into practical methods on the ground, as well as a vigorous Monitoring and Evaluation system which measures progress on women's access to land and involvement in decisions-making. At the very least, this should include aggregated gender-specific data on the ownership and control of use of land, on participation in land management bodies, on participation in local consultation meetings, on land use changes and how these affect women's employment opportunities, and on separate consultations with men and women to determine their knowledge and understanding of land issues. The third step would be commitment of sufficient resources to develop in-house expertise on gender and land rights issues so that decision-making bodies are capable of implementing the NLUP in a gender-sensitive manner. This would include a dedicated dispute mechanism for people to use in case they are unable to claim the rights they should have under the policy.

4. Determine specific resolution strategies for situations in which customary land tenure rights conflict with gender equality and ensure that gender equality takes precedence. These strategies should clearly demonstrate the government's commitment to human rights and the internationally agreed upon principle of gender equality at a national level. They should also set out coherent processes that ensure all involved parties can reach an amicable resolution in which both men and women may access land equally.

5. Consider how future developments in Myanmar, including contract farming and industrial growth, will impact the human rights of female workers. Among others, this means establishing clear provisions to ensure that women will not suffer detrimental effects as a result of such developments and are involved in all decisions made regarding the use of, and possible investments on, their land. Furthermore, specific protections should be created to ensure women do not lose land to large-scale land acquisitions.

6. Take specific measures to ensure that the mechanisms for land registration, land planning, and land disputes are non-discriminatory and gender-sensitive and allow men and women to benefit equally from these services. These mechanisms should include quotas for female representation in land bodies, joint land titles for women (which requires both individuals to sign off on land management decisions), methods for facilitating land registration that cater to illiterate individuals, and ensuring the equal participation of men and women in official meetings on land disputes.
7. Increase the number of female representatives in the National Land Council and ensure that the voices of women from all ethnic nationalities are well represented in local, township, district and regional land bodies.
8. Expand the definition of gender equality so that it addresses current issues in Myanmar and focuses on taking "positive action" to accelerate de facto gender equality, especially in empowering women to be involved in land management and decision-making processes.
9. Adopt the principle of non-discrimination as a basic principle of implementation so that it applies comprehensively to all aspects of the policy, with the intention of promoting an overall land management system that addresses the stereotypes and prejudices that still exist in practice.
10. Assure that in consultations with communities, women are given space to fully participate and feel that their opinions are taken seriously. Specific mechanisms to promote the inclusion of rural women from all ethnic nationalities within consultations concerning land management issues should be taken. Such consultations must consider local power structures, how accessible the meeting locations are, children and household responsibilities that may prevent participation, and create an environment in which all participants can voice their opinions without negative repercussions. This may include creating separate forum for

men and women to participate as well as providing child care,(?) and transportation to ensure that women are able to attend.

11. Extend the full spectrum of rights to all rural women as they are set out in the farmland law, including the right to sell, right to exchange, right to use land as collateral for loans, right to inherit, and right to lease the land. Ensuring women can access credit through their land is especially important for business development and both local and national economic growth.

12. Acknowledge the importance of a democratic, inclusive land tenure system to the ongoing ceasefire negotiations and national peace process as well as the returned refugees and IDPs, and accordingly, include women representatives from all ethnic nationalities within this process so that gender-specific land issues are considered throughout the process.

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## Endnotes

- 1 In 1989 the then military government changed the official name from Burma to Myanmar. They are alternative forms in the Burmese language, but their use has become a politicised issue. Myanmar is mostly used within the country and in international diplomacy, and is now also starting to be more commonly used in the English language abroad. For consistency, Myanmar will be used in this report.
- 2 Caroline Sweetman, 'How Title Deeds Make Sex Safer: Women's Property Rights in an Era of HIV,' From Poverty to Power: Background Paper, 2008, Oxfam.
- 3 Rasghida Manjoo, Special Rapporteur on Violence Against Women, UN Commission on the Status of Women (56th Session).
- 4 See: Mayra Gomez and Hien Tran, 'Women's Land and Property Rights and the Post-2015 Development Agenda,' for the Global Thematic Consultation on 'Addressing Inequalities: The Heart of the Post-2015 Development Agenda and the Future We Want for All, 2012.
- 5 United Nations Food and Agriculture Organisation (FAO), The State of Food and Agriculture: 2010-2011, 2011.

- 6 CEDAW, 1979, Art.14.
- 7 'Delivering prosperity in Myanmar's DryZone', 2014, Oxfam.
- 8 U Shwe Thein (Chair of Land Core Group and Policy & Communication Coordinator CARE Myanmar), 'Recognition and Protection of Customary Tenure', Powerpoint presentation at Workshop on 'Opportunities for Development-Oriented Drug Control in Myanmar', organised by Central Committee for Drug Abuse Control (CCDAC) and the Transnational Institute (TNI), Nay Pyi Taw 21-22 January 2015.
- 9 Denisse Cordova and Cornelia Helmcke, 'Women Agricultural Workers and the Right to Adequate Food and Nutrition', FIAN International for Hands Off the Land, 2014, p.3.
- 10 'Giving Women a Chance', 2012, ActionAid.
- 11 See for further reference: 'Giving Women a Chance', 2012, ActionAid; 'Women and Leadership in Myanmar', 2013, Oxfam, Trocaire, Care, ActionAid.
- 12 'Giving Women a Chance', 2012, ActionAid.
- 13 FAO Voluntary Guidelines on Land Tenure, 2012, Sec 3B(4).
- 14 FAO Guidelines at Sections 4.6, 4.7, 6.1.
- 15 CEDAW, Art. 1.
- 16 'Giving Women a Chance', 2012, ActionAid.
- 17 CEDAW, Art. 7(b).
- 18 CEDAW, Art. 14(a).
- 19 'Hopeless', 2014, Tavoy Women's Union (forth-coming).
- 20 D. Kyaw and J. K. Routray, Gender and Rural Poverty in Myanmar: A Micro Level Study in the Dry Zone Journal of Agriculture and Rural Development in the Tropics and Subtropics, Volume 107, No. 2, 2006, 103-114.
- 21 'Research on Land and Gender,' 2014, Trocaire/LCG (forthcoming).
- 22 It should be noted that not all affected people are self-consciously part of groups – whether social groups or organized CSOs, and how to include them is a practical issue. Some people may be so marginalized that they do not see themselves part of any group.
- 23 'Hopeless', 2014, Tavoy Women's Union (forth-coming).
- 24 'Delivering prosperity in Myanmar's DryZone', 2014, Oxfam, p12.
- 25 "A grim perspective for Burmese of women", Burma Lawyers Council 2010 <http://www.socialwatch.org/sites/default/files/B15Burma2010eng.pdf>
- 26 Ibid.
- 27 Farmland Law, Art.9.
- 28 'Delivering prosperity in Myanmar's DryZone', 2014, Oxfam, p17.
- 29 D. Kyaw and J. K. Routray, supra.
- 30 'Delivering prosperity in Myanmar's DryZone', 2014, Oxfam, p12-14.
- 31 'Delivering prosperity in Myanmar's DryZone', 2014, Oxfam, p18.
- 32 'Research on Land and Gender', Trocaire/LCG 2014 (forthcoming).
- 33 See 25.3 FAO.

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*This publication is also part of TNI's work in the MOSAIC project.*

The MOSAIC project addresses the challenge of democratic land governance in the specific context of the intersection of climate change mitigation strategies, such as REDD+, and large-scale land acquisitions or land grabbing, and how the intersection produces conflict. The project uses research and advocacy to contribute towards achieving democratic land governance and transforming conflict and explores how international governance instruments shape these processes.

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