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Gendered Aspects of Land Rights in Myanmar II: Evidence from Paralegal Case Work

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Acknowledgments

Khin Htet Wai, Namati's Myanmar Program Officer, and Ashley van Waes, Namati's Global Network Associate researched and authored this brief, with support from the Namati team. The author may be reached at khinhtetwai@namati.org and myanmar@namati.org. Vivek Maru, Erin Kitchell and Tim Millar were editors for this and we thank them for their tremendous support.

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Executive Summary

Land reform in Myanmar is integral to ensuring the nation's development is both sustainable and inclusive. The recent and complex history of land confiscation, acquisitions, and conflict has permeated every aspect of life for many smallholder farmers, leaving them to rebuild and reclaim their livelihoods.¹ While progress has been made to empower smallholder farmers under the National Land Use Policy, formal and informal land governance and tenure systems remain overwhelmingly administered and controlled by men. Rural women have been left out of local decision-making and discourse around land governance.² The recent land reform and current land laws have not taken the necessary measures to ensure women's access to land. Better-targeted policies and approaches to implementation are needed to ensure women benefit equally from land reform efforts in Myanmar.

Namati offers this brief to illustrate how gender affects the lives of smallholder farmers and the paralegals supporting them in Myanmar. We return to this topic as an update to our April 2016 brief, titled "Gendered Aspects of Land Rights in Myanmar," to further reflect on the experience of Namati's community-based Paralegal Land Rights and Governance Program.³ Namati has a database of more than 4500 cases, and this casework data underpins this policy brief. In addition, field research was conducted in Bago and Shan to provide further qualitative context and to explore the relationship between customary systems and women's land rights.

It is an excellent time to return to this topic as the new, NLD-led government has implemented some reforms since 2016 and is in the process of drafting and implementing a series of significant new land laws which should be in line with the National Land Use Policy.

This policy brief explores the land administration and governance system and its effects on women's land rights, gendered barriers in patriarchal cultures and customary practices, and the role of paralegals in expanding women's land rights and increasing women's participation in land governance. We conclude this brief with recommendations for the Myanmar government and civil society.

¹ Namati has worked on over 570 land grab cases since 2013. Our experiences have revealed that land grabs brought detrimental impacts to every aspect of farmers' lives. See example, "Streaming Institutions to Restore Land and Justice to Farmers in Myanmar", Namati, 2016.

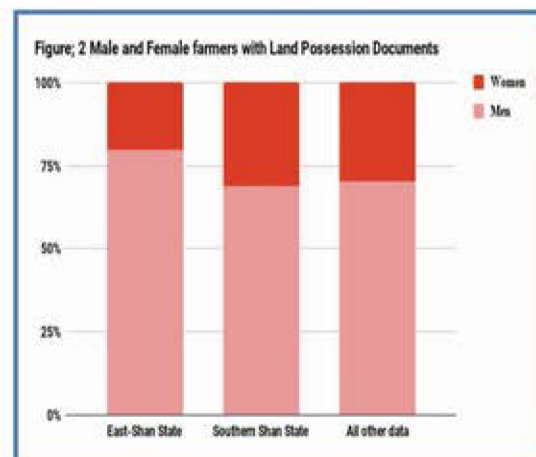
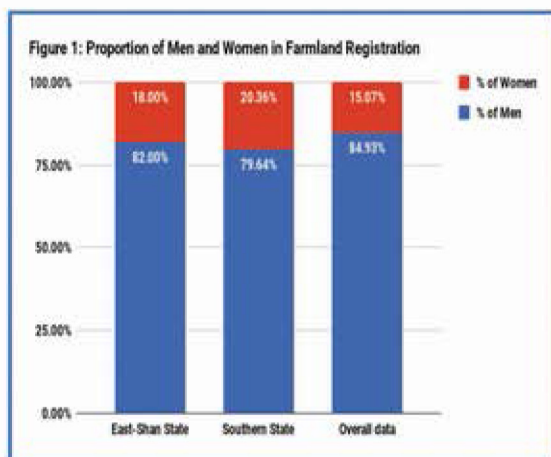
² This is not to argue that women are not involved at the policy- and law-making levels, but the focus of this brief is to look at local land governance and decision-making at the District Level where the majority of land issues can be decided.

³ "Gender Aspect of Land Rights in Myanmar: Evidence from Paralegal Casework", Namati, 2016.

1. Women’s land ownership and inclusion in governance structures are nearly non-existent

Men and women have equal rights to inherit and own land under Myanmar Law. However, the cultural norm is that they have distinct but complementary roles in society, which ultimately impact land ownership. Men are often the head of the household, while women primarily take on a support role. What results are the men have easier access to land registration procedures. This section explores two themes: the current levels of land registration by gender with women’s leadership roles in formal and informal land governance institutions.

1.1. While some female smallholder farmers have been able to register and title their land successfully, progress is mostly enjoyed by male farmers



Namati’s casework illustrates just how deep the disparity is: only **15.1%** of land registration cases are made by women while men are applying to register the land with **84.9%**. (See: Figure- 1). Men, therefore, hold the vast majority of land titles. We also found that men are twice as likely to have the Land Use Certificate in their name. While there is some variance between different states and regions, the gender land registration ratio predominantly favors men across all of Myanmar (see in figure 2). And yet, according to the 2014 census, 47% of the farming population is made up of women. These disparities tell a larger story: women are disproportionately vulnerable in land grabs and disputes. Without the proper land titles, women have little means to prove land ownership and ask for redress in disputes.

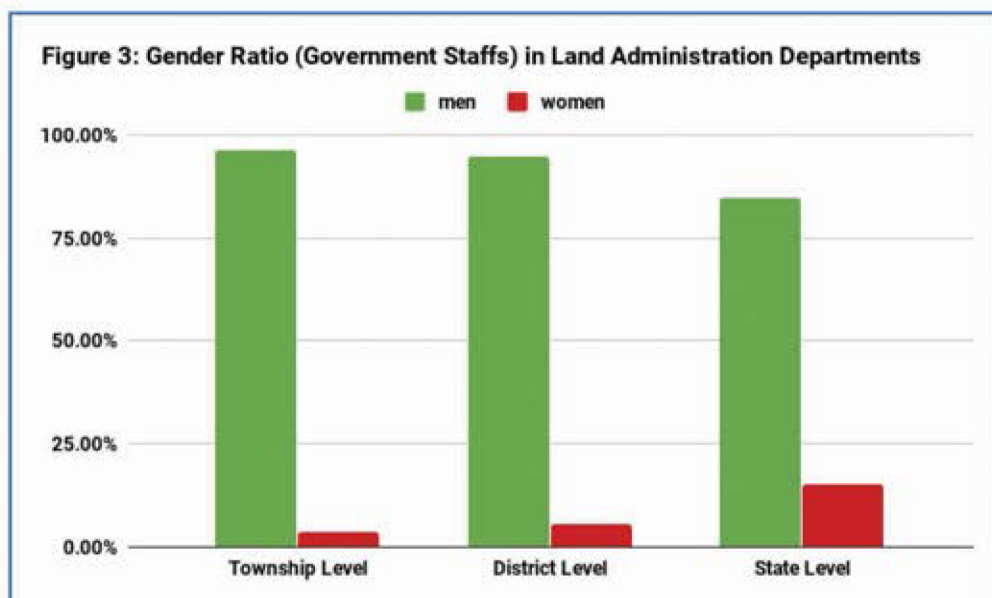
This is critical because if the overwhelming majority of land in Myanmar is registered to men, then women will face an uphill struggle to claim equality. The move towards land registration in its current state is formalizing a gender imbalance in land rights that

⁴ *Gender Equality and Women Rights in Myanmar: Situation Analysis Report, 2016.*

could have serious and far-reaching effects on the socioeconomic status of women for decades to come.

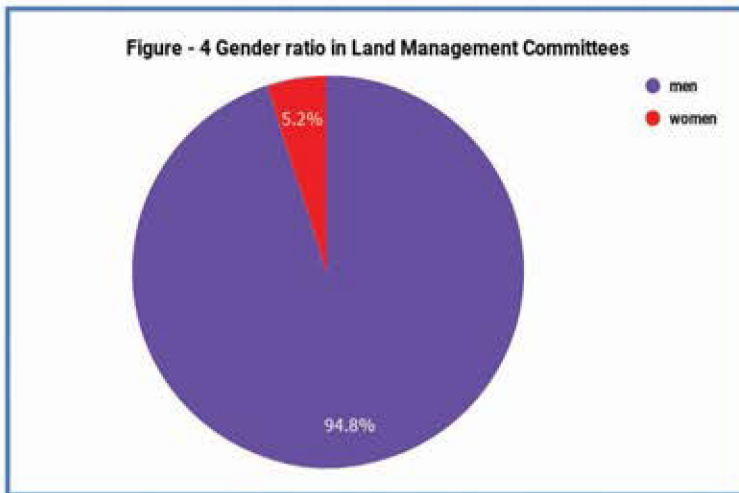
1.2 Women are noticeably absent from formal land governance structures

According to the World Economic Forum's Gender Gap Index, women's economic participation and opportunities are relatively strong in Myanmar (ranked 26th out of 144), but women's political empowerment is much weaker (132nd out of 144). Myanmar has an extremely low representation of women in decision-making bodies, with women accounting for only **12.7%** of the elected members of state and regional parliaments in 2015.⁵ Our research also reveals that gender representation ratios in land governance structures are highly skewed towards men at the Township, District, and State levels.



Namati's case data shows **94.8%** of bureaucratic positions in land institutions at the Township and District levels are held by men. Land institutions include the General Administration Department, Agriculture Department, Forestry Department, Land Settlement and Record Department, Agriculture and Irrigation Department. The percentage at the State level is slightly lower at **85%** (See Figure 3).

⁵ Minoletti, P, "Gender (IN) Equality in the Governance of Myanmar: Past, Present and Political Strategies for Change", Asia foundation, UK Aid and Australian Government 2016.



Likewise, positions at other land administration committees (Farmland Administration Bodies and Land Reinvestigation Committees) are filled by women only 5.2% of the time

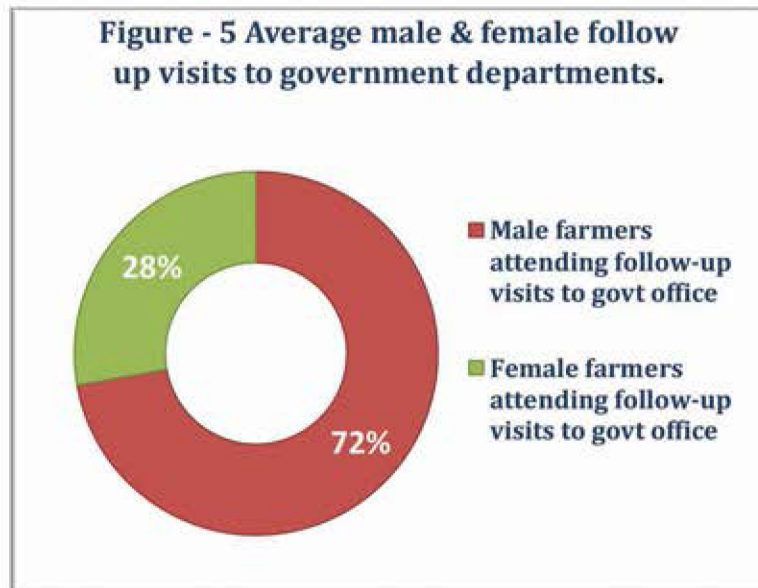
The implementation and arbitration of land laws by men may well intimidate women and create barriers that prevent them from seeking and receiving restitution from these bodies. The pattern of male domination in local decision-making bodies is even stronger at the village level.

According to the Ward or Village Tract Administration Law, the 10-household heads elect the village tract/ward administrator from among themselves. The system is as follows: the heads of household (overwhelmingly men) choose from among themselves a 10-household head (even more overwhelmingly male). This group of 10-household heads then elects the village tract/ward administrator. In practice, this electorate is highly gender unequal. This restricts women from participating in decision-making and voicing their concerns. It all but guarantees their disenfranchisement and exclusion from local decision-making bodies.

The result is that only 42 out of a total of 16,786 village tract/ward administrators are women (0.25 %).⁶ Moreover, the most powerful body controlling land administration, the General Administration Department (GAD), has a distinct lack of female township administrators.

6. UNDP Myanmar, "Leadership Journeys of Myanmar Female Village/Tract/Wards Administrator", 2015.

It is clear that the overwhelmingly male-dominated land and local decision-making bodies reflect the interests of men and, at a minimum, discourage women from raising issues important to them. This topic was raised repeatedly by women interviewed for this policy brief. Time and time again they said that they are afraid to speak up when they have to meet with male Village Administrators and other officials.



The lack of female representation in land governance system affects their experiences in land issues. Namati’s data indicates that male clients conduct follow-up visits with the government officials more than **2.5 times** as often as female clients (see figure 4).

According to our qualitative data from field research, this could be because female clients described feeling more anxious, intimidated, and reluctant to approach government officials due to language barriers, illiteracy, and a perceived power imbalance due to social and economic status.

Despite their lack of representation in decision-making roles, rural women are effective advocates when it comes to securing land rights. Our interviews revealed that both genders perceived women as having qualities that made them suitable for negotiation with government officials. Women were described as more highly-skilled at listening, learning, being more detail oriented, and having more patience than men.

A critical female voice is critical to empowering others

In Daw Maw Maw's land dispute case in Southern Shan, the military grabbed 4,000 acres and affected over 300 farmers. However, rather than keeping this land for themselves, the military sold it to private companies and to other farmers (2004-present). This forced the original owners into becoming mere tenants on their own land, paying fees and rents to the military. Protests over this event drove a man to burn himself alive and more than 50 farmers were jailed. Daw Maw Maw has been a strong voice of dissent in this process, having spent one month in jail herself. The military approached her to cut a private deal, but she stood in solidarity with the other farmers and rejected their offer. To combat this injustice, she worked closely with a paralegal on her land dispute and mobilized other community members to claim their land grievances.

She said, "At the beginning, community members in my village lacked confidence and were frightened to speak up about their land grievances. But, after seeing my commitment to the fight for justice, other farmers felt empowered and started to work with me."

She also engaged with another network of CSOs to advocate the government to resolve the case. She and other female farmers persistently wrote and visited various government departments and committees over ten times, pushing for action. She shared her knowledge about land laws with other farmers as she firmly believes that more women need to be knowledgeable and confident in the fight for land rights. **This is an ongoing case.**

II. In order to address the root of gender power imbalances, joint land registration is one possible starting point

"According to tradition, men are the breadwinners and support the family. But, we can't rely on them. If there is a divorce, it comes down to dividing the property so that we can ensure our security", responded by a Shan woman

Land is largely registered by men in their names. Villages and wards are primarily administered by men, and the land governance system is overseen by men. In the face of this, it is difficult to know where to push to start creating change.

It is Namati's view that while many other changes are necessary, such as changing government hiring practices, one place to start is to push for joint land registration. Interview data suggests that married women are keen to share land titles with their husbands, and preferred this over individual titles.

An Akha woman said, *"I prefer to have joint registration because I share all household responsibilities with my husband so that we should be equal. We are working the land together. It is only fair that he has ownership too".*

A Shan female client who received a joint Land Use Certificate commented, *"In the past, I did not know that I could add my name to the land registration document. Now I can leave my property to my children since my husband has two children from his first marriage"*

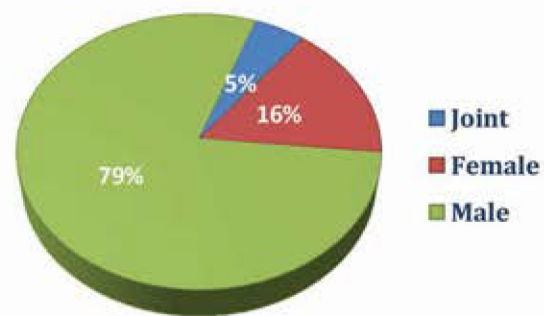
Despite women's enthusiasm, the prevalence of joint registration applications remains low: 5% of all land registration cases handled by Namati paralegals since 2016 are joint registration cases.⁷ Joint registration cases that do get resolved take substantially longer to move through the system, though we have a smaller data set on joint registration cases (See Figure 6).

According to our data, over 25 joint land registrations were successfully resolved, taking an average of 431 days to close, while land titling cases that are successfully resolved do so in an average of 203 days. Longer wait times and lower resolution rates create disincentives for couples to jointly register and pose unnecessary obstacles for women to secure titles to their land.

Interview data reveals that government officials, while not ruling out joint registration, were not sure whether women could ask for their names to be included or if they could add a woman's name to a new or existing Form-7. Our

statistics also indicate a need for more clarity around joint registration, the processes through which this happens, and a more focused effort on raising awareness at all levels. Although the 2012 Farmland Law does not prohibit joint titling, it does not explicitly allow for it either and the space for writing the name(s) on the Form-7 document is limited and suggests only one name should be entered. The law allows any member of an agricultural household that has a claim to apply for and receive a land use certificate.

Figure - 6 Applications in land registration by gender (clients)



⁷ Paralegals have taken 130 joint land registration cases since 2016.

We recommend that the **2012 Farmland Law and rules be explicitly amended to allow joint registration of farmland**. These amendments would provide for land tenure security for women which is the explicit goal of the National Land Use Policy: Equal Rights of Men and Women (Part IX). Moreover, it would bring the law in line with the intention of the 2008 Constitution which guarantees equality to all citizens and prohibits discrimination by sex.

III. Gendered barriers and patriarchal culture impact women's land rights in customary practices

This section illustrates three themes: 1) gendered barriers in customary decision-making spaces, 2) gender imbalance and power dynamics in forestry management, and 3) ethnic women's land rights under traditional inheritance systems.

3.1. Gendered barriers are prevalent in customary decision-making spaces

"All of the leaders in our ethnic group are men. We would like to see a woman leader. Perhaps we should be able to select two leaders." Akha Female Farmers Group.

The dominance of male leadership in the public sector is similarly reflected in the customary land tenure system where women are generally excluded from decision making. This affects the quality of discussion around land issues and the number of women registering land. Typically men's interests in land are more clearly acknowledged than those of women. Myanmar culture places a premium on male space and power. Cultural norms affect men's and women's opportunities for participation in public forums and community meetings where women are less likely to speak up than men, which shows there are gendered power dynamics at play. Some ethnic minorities do not allow women to control who inherits their land. In some cases upon the death of their husband, the land passes to their husband's family, often the brother, and this can leave both the woman and her children in a perilous state.

Female farmers spoke of the need to change these gender roles in the community. All eighteen communities that we interviewed had a male customary leader. These leaders have a tremendous amount of influence in the community: they mediate disputes over resources, property, marriage, family affairs, and more. They are the point person in the community for external contacts and have the power to summon gatherings among the community. For example, the owners of land have the rights to sell the land, but the approval of the customary leader is needed. Female farmers mentioned that their high workload constrained their ability to exercise decision-making authority. This is because gender norms are restrictive when it comes to

⁸ These communities included those from Akah, Lahu, Shan, Pa'O, and Danu ethnic groups.

women. Practices around inheritance and division of land in cases of separation, divorce, or abandonment are handled according to unwritten norms within the community.

A woman from the Akha ethnic group said, *"The community leader acts as mediator and listens to both sides, but often sides with the male perspective."* She continued, *"If the husband wants a divorce, but the woman does not, the husband gives his wife money to leave, and vice versa."* Participants responded that they always have to inform our village leader. All of the leaders in our ethnicity are men.

Further, women's participation in community engagement is strongly controlled by the rules and norms established by customary leaders who have the right to speak and decide on behalf of the community. Social norms give men speaking authority on behalf of women and households.

The limited decision-making power of women is seen in community level

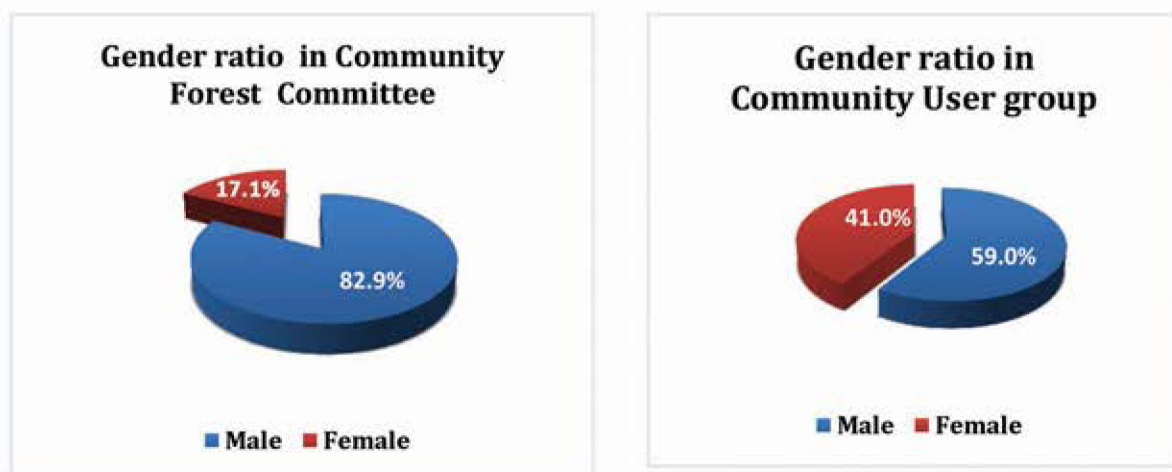


Figure 7: Gender ratio in forest users groups and forest management committees

According to field research, a clear example of the exclusion of women from the decision-making process can be seen among female farmers inhabiting Community Forest land in Shan State. This mountainous areas is predominantly used for the agri-forestry industry. These communities are managed by informal customary practices.

Interview data reveals nearly 40% of women rely on forest resources as an important source of income, as well as provide the labor for forest nurseries. However, the data clearly shows that despite being nearly 40% of all forest users, women account for less than 20% of the members of the forest management committees (See Figure 6).

Women have relatively little control over forest management because they have so little representation in the decision-making body and their voices are often ignored because of their gender. It is also important to note that over the course of the research for this brief, we did not encounter a single woman Chair of a forest management committee.

We observed that if there is a community meeting to discuss the Community Forest, the default position is to invite men. Women sometimes participate when their husbands are not around, however, if the village committee knows that her husband is at home, they ask the woman to go back home and tell her husband to come. A further reason driving woman's low participation rates in community meetings is because meeting times often conflict with their household activities. For example, many meetings are held around 8am when women are either cooking for the day, preparing children for school, or shopping in the local market.

3.2 Some inheritance rules in some ethnicities can have an unfavorable impact on women's customary land rights

Based on our research findings and conversations with female farmers, paralegals and eighteen communities from four different ethnic groups; Lahu, Akha, Shan and Burmese in Shan State and Bago Region, interview case data show that women's rights to land can be weaker under some customary practices such as inheritance rules. These rules often conflict with the provision in the National Land Use Policy, which specifically mentions that while customary practice is allowed and should be codified, nothing in these rules should abrogate human rights including the Convention on the Elimination of Discrimination Against Women (CEDAW). It is always possible that there are further sub-ethnic groups or exceptions to the general rule and this can be varied in other ethnicities.

Lahu: *"Every time we hear 'household leader,' we think of our husbands."*

The Lahu inheritance and land management systems are dominated by men. When women or men are divorced or separated, customary leaders and other respected elders within the village facilitate negotiations for division of land between the couple. It

is critical to note that there are exceptionally few women who are in these positions of power. Men are more active as they are titleholders and many women in households require family approval for land registration. Community leaders act as mediators and listen to both sides, but they more often side with the man and make decisions accordingly.

Akha: Akha women face more restrictions than other ethnic groups. According to marriage customs, men are the head of the household. They are responsible not only for protecting their wives but also for earning money for the family. Culturally, only sons can inherit property and daughters may not. When women or men are divorced, the customary male leader within the community facilitates the division of land between the couple or makes decisions for succession on the behalf of them. Considerations include the sources of land, the number of children the couple has, and who will have custody of the children. If there are children, the woman is always the primary caretaker unless the man is also interested in caring for the children. However, it has been heartening to see that the Akha community, which is served by an Akha paralegal, is becoming increasingly open to change, including allowing women to register land.

Shan: The inheritance system is more egalitarian when compared to other ethnic groups. Land is divided equally between children regardless of gender. On the other hand, parents sometimes decided to give a little bit more for the children who are poorer than other siblings in the family. However, within the Shan community there is still a lack of confidence in women because they are self-conscious about their education level and worry that their questions might be seen as irrelevant when they want to raise their voices in community discussion. Married Shan women prefer joint registration in order to ensure land tenure if there is a divorce. This is because women feel they will get a fairer division of the land if their names are on the title.

Burmese (Bamar): Property is divided equally between all children, regardless of gender. When a spouse dies, the remaining spouse inherits the property. Perhaps due to this culture of sharing property, the Bamar women we interviewed generally expressed less interest in joint registration or a desire to hold legal title to land than their ethnic counterparts. Those married women who did articulate a strong interest in registering their land were primarily concerned with their children's future — if they were to die and their husbands remarried, these women wanted to ensure that their children would still inherit their land.⁹

As noted earlier we observed that all the women interviewees we spoke to expressed that they lacked knowledge about land issues, so they felt constrained from speaking up in public forums. All interviewees were asked if they had heard about land-related laws and most of them did not know about the laws. In the case of ethnic women this was

⁹ *Gender Aspect of Land Rights in Myanmar: Evidence from Paralegal Casework*, Namati, 2016.

further compounded because of language barriers, as laws are written in Burmese and the local government carries out all its land-related activities in Burmese. According to our interview findings, only about one in five ethnic women have the ability to read and write in Burmese. It is recommended to apply joint land titles for women as it would benefit women in these ethnic groups. The government needs to consider the pathways by which information is disseminated and ensure that the gendered aspect of this is fully considered.

Additionally, the recognition of traditional land use of those ethnic minority women is essential to respecting their land tenure rights, as they rely on their customary land for their livelihoods. This is particularly true for low-income families that have no farmland. Myanmar's current laws and policies do not recognize customary land tenure, except in very limited cases, such as small areas of community forest, which also brings them under formal government titling schemes. In line with Myanmar's obligations under CEDAW, customary land rights to both common and individual land must be officially recognized and strengthened in formal land laws which explicitly enforce equality of tenure, inheritance, and all other aspects.

IV. Paralegals play an essential role in expanding women's access to land rights and increasing women's participation in land governance

This section includes four key points: 1) the role of female paralegals in community engagement and how they are advocates for women's access to formal land rights, 2) increasing women's participation in community education and women's engagement with casework, 3) serving as a model of female leadership, and 4) some barriers to consider while hiring female paralegals.

4.1 Paralegals are potential advocates in women's access to land rights

Paralegals are non-lawyers who have been trained in specific laws, procedures, and professional skills such as advocacy, mediation, and community organization. They are also known as "legal aid providers" or "barefoot lawyers" who fight for social justices. The concept of paralegals in Myanmar is relatively new, thus communities and local government officials are not always familiar with their way of working. Paralegals work by supporting communities and clients to know and use the law. They empower clients and communities by fostering legal awareness and assist clients to navigate a wide range of institutions and administrative agencies in order to resolve problems.

Marginalized groups, including women and ethnic minorities, often have difficulty in accessing administrative processes, including those relating to land tenure systems. In Myanmar, these difficulties include deep-seeded cultural norms, sexist attitudes of the overwhelmingly male-run administrative systems, and language barriers. Such barriers are compounded for women from ethnic minorities.

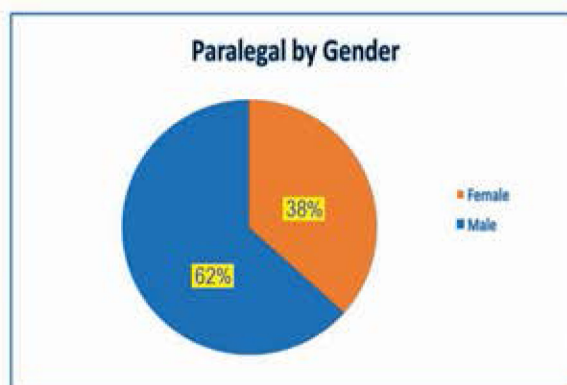
Namati's program over the last five years has demonstrated that paralegals, both male and female, are able to help marginalized groups overcome many of these barriers. This is done by building the confidence and knowledge of their clients, which empowers them to engage with the administrative process and seek remedies to the problems they face.

Myanmar's land laws are generally gender neutral. For example, this neutrality includes who may register land and under the law it is entirely possible for any individual, including a woman, to register land in her own name. However, existing gender norms overpower gender-neutral laws and maintain the status quo of male dominance over land registration.

Namati's case data shows that **85%** of all farmland is registered in a man's name and only **15%** is registered in a woman's name. Without a concerted effort to increase the number of female land registrations, gender-equal outcomes will not be a reality. To key opportunities in addressing the deeply entrenched gender disparities are increasing women's knowledge of the law as well as their involvement with legal cases. Both of these are necessary to shift the widely held view that land is a "male issue."

4.2. Female paralegals increase women's participation in community education sessions and encourage women's engagement with casework

Over the lifetime of Namati's work in Myanmar, 38% of all paralegals have been women. Although both male and female paralegals are able to support female clients, our research has shown, unsurprisingly, that female paralegals are able to play a particularly important role in supporting the cases and efforts of female clients. Female paralegals play a very important role in both of these processes.



Namati's case data shows that comparing the start of the program in 2013 with 2018, there has been a significant increase in the attendance of active female farmers at community education sessions.¹⁰ While attendance is an important first step, active participation and listening are equally important.

Interviews with the community paralegals revealed that while women are attending the sessions, they are more shy when it comes to contributing to the conversation: ***"Women listen very carefully, but they lack confidence when it comes to asking questions. We encourage women to speak up,"*** noted Dena, a female paralegal. In order to encourage female participation, some paralegals have found success by asking female attendees questions about their experience, creating sessions around topics related to the relationship of women's issues to land and other topics like domestic violence. In addition to increasing numbers of female participants in community education sessions, there has also been a corresponding increase in the number female clients.

Furthermore, we found that female paralegals encourage women's engagement with casework. Many female clients responded that working with the female paralegals have helped them to claim their own rights. Seeing female paralegals assume non-traditional gender roles have encouraged them to work through their complex land issues.

¹⁰ "Active farmers" refers to clients who are involved in over 50% of the process of seeking a solution. Generally, the paralegal easily knows who the active clients are and how they are involved in the case, as they work closely together throughout the case. Specifically, the active clients are those who follow the paralegals, usually hold discussions with the paralegals, and are involved in the actions for case progress.

Figure 8: Case Docket by Male and Female Paralegals



Case data shows that female paralegals hold a different case docket to male paralegals. (See Figure 8). As illustrated above, women are more likely to take on registration cases, including joint registration cases. Male paralegals are more likely to take on local land disputes, which are typically seen as a particularly ‘male’ preserve.

During our interviews, we found that female clients generally felt more comfortable working with a female paralegal. One Akha woman working on a joint registration case said, *“We prefer to work with female paralegals because we are comfortable with them. They keep our secrets.”* A woman from Shan ethnic group added, *“We prefer female paralegals because they are more patient and more detail-oriented when they explain the case. This helps us to easily understand the land issues.”*

4.3. Female paralegals serve as a model of female leadership

When female paralegals are successful within their communities, they serve as an excellent model of female leadership. Female paralegals noted the evolution of how their communities perceived them when first working in the community to roughly six months afterward. Typically, when a female paralegal starts work, her community is skeptical about her abilities. However, after the female paralegal starts to resolve small cases, the community takes notice and starts to trust her more. Once the female paralegal is able to resolve complex cases, the community really begins to trust her and respect her abilities.

An inspirational story of a female paralegal empowered the female farmers

Daw Win Sandar Htwe is one of Namati's senior female paralegals. She has been delivering legal aid to thousands of farmers and fighting together with her clients for land grabs in Padaung Township, Pyae District in Bago Region. She herself was a client before serving as a paralegal when 5.15 acres of her family's land was confiscated by a military unit in 1989 – part of a larger grab of 388 acres belonging 98 households and 110 famers in her community. She felt helpless and wanted to do something for justice, not just for herself but for other female clients.

In early 2012, she started to educate her village about land issues and how to claim their legal rights. She advocated to her local MP about farmer rights and pushed him to ask a question to MPs from the Military in parliament (Hluttaw). She sent complaint letters to the Farmland Investigation Commission, Farmland Implementation Committee, and to other respective government departments and institutions.

She faced many challenges when she started working on this case. “Four years ago, my community did not know what I was doing, and because I was a woman, they did not trust me. They thought that a resolution to this case was a man's matter. The community often ignored women's roles because of cultural and traditional norms. However, I was able to overcome these barriers through commitment and action that empowered other female clients to participate in land rights. Now, there are over of hundred female clients and some are empowered to serve as voluntary female paralegals. After working for four years, if there is an issue, community members come to find me and ask me for advice.”

In late 2014, 50 of the 388 acres which had been grabbed were released and registered to 12 original farmers. However, the case is still ongoing and the paralegal is still making claims for the remaining land. Though the case remains open, Daw Win Sandar Htwe speaks with pride about the work she has done and the new community leader role this case has earned her.

She is now an elected member of the New Farmland Reinvestigation Committee at the Township level, also serving as a core founding member of the Farmer Union in Padaung Township. This inspirational story illustrates that women taking on leadership positions can have a powerful effect in changing minds over women' participation in the land rights movement, as well as taking deliberate steps to promote the participation of other women.

4. When hiring female paralegals, there are a few essential barriers to consider

They said, *“Being a paralegal is a very honorable job, but serving as a full-time staff member is challenging because we have to take care of the children when our husbands are working, and also have to spend time on household chores.”*

A few former female paralegals interviewed for this brief stressed the importance of time-constraints in limiting their ability to work full time while having to balance housework and childcare.

Female paralegals continued the conversation by saying, *“Today, one person’s income is not enough to cover all expenses so I have to work to earn extra money.”*

A female paralegal said, *“I have a very tough schedule balancing paralegal work, taking care of an eight-month-old kid, and doing household chores. I even imagined quitting the job and felt stressed. I am often late to arrive home in evening since I have to use different types of transportation based on the clients’ location.”*

Female paralegals have difficulties with transportation due to security concerns and long distances while travelling to clients’ areas.¹¹ They are unable to travel far, in the evenings, or alone due to security concerns, especially when covering cases in areas with active armed conflicts.

Furthermore, being a mother of children results in a difficult schedule concerning breastfeeding. Traveling with a male non-relative is also constrained because of cultural norms. However, to have a sustainable employment model, Namati and partners have encouraged and allowed female paralegals to travel together in pairs or with relatives. Interview findings with former female paralegals reveal that they also have the willingness to share their salary with a female supporter – another way to keep female paralegals when deploying the paralegal program.

¹¹ We recruited 91 paralegals from seven States and Regions. Each paralegal must be from the area in which he or she works, and each is assigned a target area, generally covering a two- to three-hour radius from their home. The paralegals are expected to visit each village in their target area 2 or 3 times per month (depending on availability) to conduct community education sessions, interview clients on cases and land issues, and provide assistance such as advice or accompaniment to government offices to follow up on cases.

IV. Recommendations to Government:

1. ***The government should set an objective of vastly improving gender equality in land ownership in the future.*** To do this, they must set a clear target and imbed this in the National Land Law which is being drafted. This will require being inline the implementation of: the National Strategic Plan for the Advancement of Women (2013–2022), the Beijing Platform Action (BPA), and the National Land Use Policy (2016). Gender equality and women’s rights should be incorporated into institutional mandates, missions, and policies.

2. ***Quotas mandating a minimum level of gender representation in local land administration bodies should be set.*** Strengthening the quantity and quality of women’s representation in key land governance and management bodies by implementing a minimum gender quota ensuring that the gender ratio of the officials at least somewhat in line with the people they serve¹². To implement this, the government should adopt a clear guideline and instructions incorporated into institutional mandates in local land administration bodies while appointing the government officials and non- government representatives.
 - a. Namati’ case data given that **94.8%** of local land officials in government land administration departments are men, and women only represents **5.2%** in land management committees in Shan State and Bago Region, the government should put in place a quota that at least **25%** of these officials and CSOs representatives in land management committee and local land administration departments (at the District and Township level) must be women by 2022. Local land administration bodies include Farmland Administration Bodies, Land Reinvestigation Committees, General Administration Department, Agriculture and Irrigation Department, Forestry Department, Land Settlement and Record Department.

 - b. **25%** of the citizens and CSO representatives on local land governance committees must be women, including the new Technical Advisory Body of the National Land Use Council. Including more women formally in land governance institutions may help increase access to land rights for women.

¹² Please note that we do not wish to dissuade the government from setting quotas for numbers of MPs or Ministers, but the focus of this brief is on local land governance systems.

3. ***The government should ensure equality for women under customary land tenure practices in line with the National Land Use Policy (IX) that women and men hold equal land tenure and management rights.*** The Myanmar government recognizes 135 distinct ethnic groups, each with its own customs and traditions and customary land practices. In line with Myanmar obligations under the Convention of the Elimination of Discrimination Against Women, customary land rights to both common and individual land must be officially recognized and strengthened in formal land laws which explicitly enforce equality of tenure, inheritance, and in all other aspects. Namati's casework with different ethnicities such as Lahu, Akha, Shan and Burmese in different communities reveals that women's rights to land can be weaker under some customary practices such as inheritance rules.
4. ***The 2012 Farmland Law and rules should be amended to define processes for joint registration of farmland.*** These amendments would provide land tenure security for women, which are a goal of the National Land Use Policy: Equal Rights of Men and Women in Part (IX). According to Namati's data, over 25 joint land registrations were successfully resolved. However, longer wait times pose unnecessary obstacles for women to secure titles to their lands. There is a large gap between policy and practice surrounding women's land rights in Myanmar - namely, (75a) right to hold individual or joint landholder rights and the right to own property, and (75c) right to inherit land tenure and management rights according to 2012 Farmland Law. As a member of CEDAW, the Myanmar government is responsible for taking active steps to eliminate discrimination against women in all its regions and divisions. As Namati's experience shows, once women are aware of the possibility for jointly registering land, many women are keen to do so.

V. Recommendations to Civil Society:

1. ***Organizations that employ community paralegals should actively recruit female paralegals*** as they are critical advocates of women's rights, they increase women's engagement with casework, they are successful models of female leadership, and they are able to bring a different but critically important perspective to their work. This requires CSOs to set minimum targets and to ensure they offer enough flexibility and incentives to ensure women will join.
2. ***Organizations that employ community paralegals should address barriers faced by female paralegals.*** Safety and security are particularly important concerns. We recommend using name-tags and uniforms for paralegals to offer further legitimacy to their work. We also recommend considering flexible work schedules or reducing female paralegals' target areas to ensure they do not have to travel at night. Consider recruiting female paralegals' nearby townships so paralegals can accompany and assist each other while travelling.

3. ***Organizations that employ community paralegals and implement justice programs can increase the effectiveness of female paralegal projects by:***

- a. Conducting initial introductions to community and government officials when a female paralegal first starts working with a community.
- b. Hiring minority female paralegals to enhance representation of all groups and languages.
- c. Designing projects with more effective strategies that target gender inclusion and gender assessments as major project components.

4. ***Awareness campaigns should incorporate regular community education sessions*** as they are vital to women's engagement, confidence, and understanding of their rights. Such sessions will be more effective if they implement the following methods:

- a. Engaging female community members directly by asking them questions in sessions.
- b. Incorporating topics such as women's role in society, domestic violence, and other women's issues in the sessions related to land rights and tenure.
- c. Having female paralegals lead sessions or co-lead sessions as often as possible.
- d. Engaging men in order to change social norms around traditional gender roles. Engaging men is important because male attitudes crucially shape household attitudes towards women's participation in both public and private life.
- e. When organizations conduct awareness raising programs at community level, meaningful women's participation and their voices are required to ensure promoting gender equality customary decision making spaces to address gender imbalances among indigenous men and women.

Methodology

This brief relied on qualitative and quantitative research. Data from Shan is applied to explore the relationship between customary systems and women's land rights. The methods used included field-research, focus group discussions, and individual interviews. Additional information was collected from existing documents, publications, project reports and interviews with some government staff from General Administration Department and Department of Land Management. The quantitative data set analyzed for this brief was taken from Namati's database, which covers some 4500 land cases from Bago, Magwe, Sagaing, Ayeyarwaddy, Southern Rakhine taken on by paralegals working with Namati and partners in Myanmar between October 2015 and August 2018. These community paralegals are working in a limited number of townships in each state and region where Namati implements land rights projects for farmers. As such, this data set is not from full coverage though it does form a partly natural experiment. It should not be considered comprehensive or representative of all issues related to women and land rights in Myanmar.

Eight individual interviews were conducted for female paralegals with the purpose of knowing their perception on differences between male and female paralegals, customary land tenure for ethnic women and its equal opportunities for land ownership, and joint land registration issues. Eighteen focus group discussions were held with female clients in Shan State and Bago Region. This included talking to Burmese, Shan, Akhar, Lahu, Danu, and Pa'O people. Focus groups of women were conducted without the presence of any men, however a couple of group interview sessions where one male translator for minority languages was present. The focus group discussions were intended to discover the root of gender imbalances, differences between male and female paralegals, including their approaches and practices, joint land registration issues, customary land tenure for women, and their legal empowerment in land rights.

About Namati

Namati is an international NGO focused on legal empowerment. In a world where 4 billion people live outside the protection of the law, Namati is dedicated to putting the law in people's hands. Namati is building a movement of grassroots legal advocates, also known as community paralegals who work with communities to bridge the gap between the written law and its practical application in everyday of life. Namati has worked with over 40,000 active clients in eight countries to protect community lands, enforce environmental law, and secure basic rights to healthcare and citizenship. Namati draws on that grassroots experiences to seek large-scale structural reform in the law itself and in the institutions through which law is applied. Namati also convenes the Global Legal Empowerment Network, which has over 4,000 individual and 1,000 organization members, all dedicated to legal empowerment.

Namati established a program and office in Myanmar in early 2013, and partnered with local civil society organizations to implement "Community - based Paralegal Land Rights and Governance Program," which exclusively focuses on land rights and governance issues such as registration, reclassification, land grabs, applying for Vacant, Fallow and Virgin land and certification on community forest, joint land registration, and local land disputes cases. Since then, the Myanmar Program has grown to a network of 45 paralegals in six States/Regions (Shan, Rakhine, Irrawaddy, Bago, Magwe, and Sagaing). Our current partners are: Civil and Political Rights Campaign Group, Thanlwin Thitsar, and Green Peasant Institute.



Disclaimer:

The information and views set out in this policy brief are those of Namati and do not reflect the official opinion of European Union or British Council.

