

BRIEFING PAPER

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Credit: Daw Hla Pa' Zain

Groundnut farming in a Chin village in Kalay district. Both men and women work together in tending to groundnut crops⁵

Formalising Land, Marginalising Women? Norms and Customary Practices Regarding Land Rights in Dawei

In 2012 the Government of Myanmar passed the Farmland Law which introduced a process for registering land through Land Use Certificates. The change from a customary form of land governance to a system governed through a legal and administrative framework is profound and has numerous implications for women. This policy brief is based on the findings from a field study conducted by Trócaire and Land Core Group in three townships in Dawei District, Tanintharyi Region. It explores some emerging issues for policy makers to consider in light of this reform.

It should be acknowledged that the customary practices governing land tenure are varied throughout

Myanmar's ethnic landscape. The Trócaire research is limited to two ethnic communities, nevertheless, the findings clearly show the need for further investigation into women's experiences around land tenure and indicate a number of key areas for advocacy and policy reform.

Background

Placing a special emphasis on securing women's access to land is of particular importance in development processes. Through the National Strategic Plan for the Advancement of Women, the government is giving increased attention to promoting and protecting the rights of women. However, this research suggests that, at least around Dawei, farmland

registration under the 2012 farmland law might be replacing relatively gender equal forms of land-holding with formal male ownership. Trócaire surveyed residents of seven villages in three townships in Dawei District in Tanintharyi Region, Myanmar¹. The research specifically looked at norms and customary practices regarding women who inherit land from their parents and the land tenure security of women who separate/divorce, and who have been widowed.

This policy brief provides an insight into emerging patterns related to security of land tenure experienced by women in Dawei in order to gain a better understanding of the implications of the farmland law and land formalisation process.

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Why Woman and Land Matter

The government is in a strong position to promote women's access and control over land and has both an economic and social imperative to do so. Agriculture is the engine of the economy in Myanmar employing two-thirds of the population and accounting for more than one-third of Myanmar's Gross Domestic Product². Women's labour constitutes almost half of the agricultural labour force and supports crop and livestock production, as well as forestry and fisheries.

“Integrating a social norm lens approach to policy-making is an effective means to overcome systematic and structural barriers to gender equality. Yet, without factoring the role of social norms in impeding or accelerating progress towards substantive equality, the [East Asia and Pacific] region will not be able to fully benefit from such policies³.”

OECD, 2016

Key Considerations⁴:

- Women make up a key constituency with regard to the agricultural labour force.
- Access to land for women is often dependent on their relationships to men, either their father, husband or sons. Therefore their tenure security is more vulnerable.
- Experience from around the world shows that when women lose access to land, they become heavily dependent on social welfare, relatives or neighbours to take care of themselves and their families.
- When women have equal land tenure security over land with men, they are able to maintain greater economic security when their marriage dissolves for any reason.
- Studies suggest that greater economic security diminishes risk of domestic violence, and creates safer

households for women and their children.

Key Findings

The Trócaire research examined customary practices in the context of the 2012 land reforms regarding women and land in seven communities. The research notes that while the experience of each individual woman will vary according to her situation and ethnic norms within her community, the issues described here would likely have commonalities with women throughout Myanmar. This brief examines customary practices across the following three key themes identified within the research:

- a. Land inherited from parents
- b. Division of land after separation and divorce
- c. Status of widows and land registration

Land Inherited from Parents

All focus groups reported that inheritance of agricultural land is generally shared regardless of the number of the children or their gender. This custom was consistently reported and did not vary according to religious affiliation or among male or female respondents

Inheritance of land on marriage

Within Karen communities parents often allocate land to their sons or daughters at the time of marriage, but several participants noted that parents retain a degree of control over the land until a later stage. Interviews within Tavoyan communities showed that while traditionally, land is only bequeathed from parents to children when they die, nowadays land is increasingly passed to children upon marriage. Within the Tavoyan community a newlywed couple are now given the full use right over the land.

Spousal rights to inherited property

When either a husband or wife inherits land he/she customarily maintains a stronger claim over that land compared to their spouse. While rights to hold and use inherited land may be gained by both spouses equally, the right to sell land was

noted in at least one discussion to be restricted to the direct inheritor while he or she is still alive. A woman in Shin Pyan village stated that although a husband is considered a joint owner of land inherited by his wife, he is prohibited from selling this land. This implies that the direct inheritor has more to say about the management of land than his or her spouse.

In both Tavoyan and Karen communities a surviving spouse is entitled to inherit land that the deceased spouse inherited from his or her parents. However, if a husband or wife remarries, while their spouse survives they forfeit any claim to the inherited land. In that case, the children of the first marriage are considered direct inheritors. Those interviewed believe that gender had little to no influence on how and when land was given.

Separation/Divorce

Division of land following separation or divorce

The research found few cases of separation and divorce, therefore the following findings require

further investigation. In Myanmar, separation is commonly understood to be the status of a couple who are living independently of each other. A divorce is officiated by the court, however, legal separation may be officiated by the township administration body.

In the past, village administrators have also adjudicated on property division. For instance, one woman obtained a divorce at the township administration office in the presence of two representatives from the Women's Association and the parents of both spouses.

Although responses relating to the division of land were unclear and inconsistent, it was noted by men in the village of Heinzel that if a couple agreed to separate or divorce, then property would be divided evenly. Women in Heinzel village claimed that they were more likely to obtain full rights due to them under the law when a divorce was settled in court, when compared to an informal separation.

When there are children from the marriage, the absent parent is expected to provide for the children until they graduate from formal education or get married. Land may be offered in lieu of maintenance payments for the children. It was frequently stated that the spouse who looks after the children after divorce or separation is entitled to most, if not all, of the property. In Heinzel village, the men explicitly stated this amounted to two-thirds of the property. This proportion was also applied in the case of formal divorce settlement seen in Kyee Zu Daw village.

Divorce/separation due to adultery

Amongst the communities researched, there was consensus that in principle, if one spouse commits adultery, they must leave the home and the remaining party is entitled to all the marital land. In Shin Pyan, one man stated that an “adulterer/adulteress will only get the trees that he/she has planted.”

However, some women noted that in practice there was inconsistency in cases of adultery perpetrated by men and women. A woman in Nyin

“If the husband makes a second marriage we are left with nothing because our name is not included in the application [to register land].”

Woman from Myaung Pyo

Maw stated “If a husband commits adultery, it is acceptable, but if the wife commits adultery, she will lose all”. Some women also felt that this inconsistency has the potential to make women more vulnerable under the land formalisation reforms, particularly if women's names are excluded from the land certificate. In Myaung Pyo women were concerned that “if the husband makes a second marriage we are left with nothing because our name is not included in the application [to register land]”.

Widows

Due to the small sample size of widows interviewed conclusive findings could not be made regarding widows. However according to one village administrator, women's names only appeared on the land certificates if they were widows. This reflects a bias that overlooks the right of women to be considered landowners in their own right or as joint owners of marital property.

If the husband passes away, a spouse whose name is not on the successors register needs to apply to change the official farmland registration certificate to the widow's name. While officials reported that the process in this case is relatively straightforward, civil society informants indicated that in practice, the process can be both complicated and costly. A widow has to pay a fee when requesting the letter of recommendation and then pay the survey team to assess the situation on the ground. In some cases, a widow may need to go to court before the land can be declared hers. This can be an extra burden for women who are already in a vulnerable situation.



Woman Farmer in her field in Dawei Credit: Catriona Knapman

Analyses and General Conclusions

The Trócaire research has examined customary practices regarding land inheritance and division between men and women among communities and the emerging trends in the context of land formalisation reforms under the Farmland Law. It has shown how without careful consideration, such reforms have the potential to increase the vulnerability of women related to control and ownership over land.

Within Tavoyan and Karen communities the share of inheritance of land passed on from parents (at marriage and upon the death of their parents) does not favour men over women, but rather is governed by birth order. Additionally, communities understand that when land is inherited by a woman, the use of the land might be shared with the spouse but the right to sell the land stays with the woman.

Women that are separated or divorced find themselves in a vulnerable position vis-a-vis land tenure security. Cultural norms and attitudes regarding divorce and separation influence whether women are considered equal in terms of land rights and thus registered as owners. In particular, in the case of adultery there is a perception among some women that current land formalisation reforms put women in a more vulnerable position.

Although there are limited findings regarding the experiences of widows, there is some evidence to suggest that widows experience financial hardship in obtaining land registration following the death of their husband. CSO informants indicate that it is complicated and expensive for widows to register land, however further research is needed to better understand this situation.

Concluding, the research shows that customary practices offer some good examples on how to recognise different sets of rights to protect the land of women. Land Formalisation

under the Farmland Law needs to ensure that these customary protections are not diluted, but rather, strengthened. Sufficient protections should be incorporated into land formalisation mechanisms to ensure that women are not put into a more vulnerable position in the event of separation / divorce or the death of their husband.

Recommendations

The Trócaire research has identified a number of important issues that indicate the need for further investigation and research to gain a better picture of the challenges faced by women in relation to land tenure following the introduction of major land reforms in 2012. In particular, it highlights a number of key areas that could benefit from further research, namely;

- The current situation faced by women in the event of the death of a spouse, or in the case of separation / divorce, and any challenges faced by those woman to claim / register any subsequent land ownership.
- Examination of current customary practices among different ethnic groups regarding inheritance of different land, and the implications of how such practices may be affected by formal land registration processes, particularly when registration is to a single person.

Additionally, it is recommended that gender / women and land rights focused organisations and projects should consider community outreach programs that;

- Conduct awareness raising regarding the dissolution of marriage for any reason to tackle stigma and stereotypes and to ensure that women are able to claim a fair share of their land.
- Advocate for joint registration as a standard and common practice, targeted at both villagers and village tract / township officials in order to protect women in the case of dissolution of marriage. Special care should be taken to ensure that training is designed and implemented appropriately regarding literacy / illiteracy, language, and facilitation of women in traditionally male dominated settings.

Finally it is recommended that consideration be given to the following law or policy;

- Simplify the process of transferring land titles to the widowed spouse in the case the title holder passes away.
- Amend the Farmland Law to ensure that relatively gender equal customary protections are not replaced with formal male dominant ownership.
- Amend the Farmland Law or related Rules and Regulations to explicitly state that joint land registration between husbands and wives is allowed under the law as this is currently not clear.

Sources

1. Trócaire research (unpublished) primary data collection in August 2014
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