OUTLOOK ON GENDER AND LAND IN THE MEKONG REGION

Elizabeth Daley, Natalie Y. Campbell, and Jessica Lowry

January 2024
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IN THE MEKONG REGION
Acknowledgments

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<td>Association of South-East Asian Nations</td>
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<td>CDE</td>
<td>Centre for Development and Environment, University of Bern</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<td>Optional Protocol (to the CEDAW)</td>
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<td>CLTs</td>
<td>Communal Land Titles (Cambodia)</td>
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<td>CPA</td>
<td>Community Protected Area (Cambodia)</td>
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<td>DAFO</td>
<td>District Agriculture and Forestry Office</td>
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<td>DFID</td>
<td>Department for International Development (UK, now FCDO)</td>
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<td>ELC</td>
<td>Economic Land Concession (Cambodia)</td>
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<td>Environmental and Social Impact Assessments</td>
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<td>FPIC</td>
<td>Free, Prior and Informed Consent</td>
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<td>GIZ</td>
<td>Deutsche Gesellschaft für Internationale Zusammenarbeit</td>
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<td>GBV</td>
<td>Gender-based violence</td>
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<td>GLRD</td>
<td>Gender and Land Rights Database</td>
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<td>GR</td>
<td>General Recommendation (to the CEDAW)</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICRW</td>
<td>International Center for Research on Women</td>
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<td>International Land Coalition</td>
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<td>Acronym</td>
<td>Full Form</td>
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<td>LBA</td>
<td>Lao Biodiversity Association</td>
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<td>LIWG</td>
<td>Land Information Working Group (Lao PDR)</td>
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<td>Land Use Certificate (Lao PDR and Myanmar)</td>
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<td>LURC</td>
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<td>Lao Women’s Union</td>
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<td>Non-timber forest products</td>
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<td>PLIC</td>
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<td>RECOFTC</td>
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<td>United Nations Development Program</td>
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<td>United Nations Declaration on the Rights of Indigenous People</td>
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<td>UNIFEM</td>
<td>United Nations Development Fund for Women</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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<td>VAFSU</td>
<td>Village Agriculture and Forestry Subunit (Lao PDR)</td>
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<td>VGGTs</td>
<td>Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security</td>
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<td>Village Mediation Units (Lao PDR)</td>
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Executive Summary

Background

Gender equity is integral to good land governance. Gender equity ultimately emphasises fairness. Gender-equitable land governance ensures that men and women can participate equally in their relationships to land, both through formal institutions and informal land administration and management. It implies that the processes and institutions of land tenure governance are transparent, consultative, and participatory, and that the different interests, needs and priorities of all people with respect to land, regardless of their gender, are addressed. It is also essential for sustainable economic development.

This Outlook on Gender and Land in the Mekong Region identifies strategic priorities to meaningfully strengthen gender-equitable land governance across the region. The Outlook provides a basis to guide potential policy and action. It starts by framing gender and land in the Mekong region (Cambodia, Lao PDR, Myanmar, and Viet Nam) in conceptual, international, and regional contexts, and then reviews land-related policy and legal frameworks and their gender-specific provisions. This includes a look at family and inheritance laws and at land registration and titling initiatives, as well as at implementation issues. Broader land-related economic issues are also addressed, including large-scale land acquisitions and the integration of agricultural production into regional and global markets, and key institutional issues relating to participation in land governance, access to land justice and customary tenure. Emerging themes are drawn out and recommendations are offered.

Regional and International Policy Context

In recent years, gender and land issues have become hot topics on the global policy agenda. Cambodia, Lao PDR, Myanmar, and Viet Nam have broadly similar development trajectories and diverse geographies encompassing everything from mountainous forests to low-lying paddy fields. While political and economic systems vary across the region, many gender issues are broadly similar, and ethnic minority women are often the group most discriminated against.

Gender and land governance are framed internationally within the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGTs), the Sustainable Development Goals (SDGs), and the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW). All parties to the CEDAW – which include those of the Mekong region – agree to condemn discrimination against women in all of its forms and to pursue a policy of its elimination by all appropriate means and without delay. Within the Association of Southeast Asian Nations (ASEAN), the key framing policy is the 2017 Declaration on the Gender-Responsive Implementation of the ASEAN Community Vision 2025 and the SDGs, which led to the ASEAN Gender Mainstreaming Strategic Framework 2021 – 2025. Promoting women’s meaningful participation in decision-making is a key commitment of this Declaration.
Emerging Themes and Recommendations

Policy Strengthening: Policy frameworks across the Mekong region generally provide an adequate basis for gender equity with respect to land, especially in Viet Nam. Of concern is the ‘gender blindness’ of many statutory provisions in all four countries, including some constitutional provisions.

- **Recommendation:** Strengthen policy frameworks through explicit provisions for gender equality and amend Constitutions to explicitly prohibit gender-discriminatory social norms.

Customary Tenure: Customary tenure systems and practices vary significantly across the region. The practical process of defining and mapping customary tenure practices, boundaries, and governance mechanisms can be cumbersome. The late inclusion of gender concerns may constitute an unwelcome ‘add-on’ to already complex methodologies.

- **Recommendation:** To enhance efficiencies and ensure an accurate understanding of customary tenure arrangements, a fully gender-inclusive approach must be deployed from the start, with clear provisions for implementation.

Ethnic Minorities and Indigenous Rights: Across the region, many marginalised people are from indigenous or ethnic minority groups; often these are also the most vulnerable people, and women tend to be the most disadvantaged among them.

- **Recommendation:** Administrative and procedural approaches to land governance need to systematically address the vulnerabilities of ethnic minorities, especially ethnic minority women.

Legal Ambiguities: Legal frameworks across the region are ambiguous with respect to the status of customary versus statutory tenure.

- **Recommendation:** Legal ambiguities should be resolved through comprehensive legislative reform, including at the level of regulations and by-laws.

Land Investments: Evidence suggests that women receive fewer benefits and bear greater costs from concession-based land investments in the region, due to gender inequalities at household- and community-levels.

- **Recommendation:** Legal requirements for Free, Prior and Informed Consent (FPIC) and Environmental and Social Impact Assessments (ESIA) are necessary, but accountability measures and law enforcement need to be robust and sensitised to women’s inclusion and rights. Programmes to strengthen local governance capacities will be key, as will embedding measures to ensure gender-equitable participation within FPIC.

Land Administration: All countries in the Mekong region have implemented land registration and titling initiatives over the past few decades. Some initiatives have taken steps to address gender equity and women’s rights, but results have been mixed.

- **Recommendation:** Greater recognition of differences between women (and between men) is needed. Unmarried, divorced, and widowed people’s rights must be protected, while greater levels of choice are offered to married couples, in addition to encouraging joint titling within marriage where appropriate. Likewise, there is a need to review and harmonise family and land laws with regard to gender equality in property rights.
Policy-implementation Gaps: Many policies across the region, where implemented effectively, would support gender equity in land governance. However, there is a large gap between these policies and their implementation in practice. All four Mekong countries that are the focus of this Outlook face varying levels of technical and resourcing (in)capacity to implement policies and laws.

**Recommendation:** The everyday operational and procedural details of how, and by whom, laws and policies are implemented is what matters. Coordination among development partners is needed to avoid duplication of effort and promote synergies.

Participatory Land Governance: Local land governance is crucial, including the need to embed gender-equitable community participation in the processes and institutions of land management at local levels.

**Recommendation:** Accountability mechanisms are needed and must be enforced. Training, capacity building and gender sensitisation initiatives are needed to enable effective and participatory land governance that is not just representative of local elites.

Gendered Social Norms: Gender-related values, practices, belief systems, and traditions are often deeply-rooted norms that develop slowly over time. These may attenuate legal efforts to ensure gender equity with respect to land. Changing social norms, though inevitably complex, is possible.

**Recommendation:** Civil society and government can work together with local champions of change, both women and men, to promote gender-equitable values. Development partners can help with funds and technical support.

Capacity Strengthening for Action: Above all is the need to strengthen the capacity of diverse actors. Many efforts have been made to improve gender equity in land administration, land registration, access to land justice and participation in decision-making with respect to land. To date, lack of cohesion, joint-action and follow-through have undermined impact.

**Recommendation:** There is a need to foster a community of practice on gender and land at both national and regional levels in the Mekong to encourage cross-learning and experience-sharing, co-operation in advocacy on key issues, and building critical mass for meaningful change.

Forests and Climate Change: While the Mekong region is home to many forested areas, deforestation and illegal logging continue apace. In addition, some areas are vulnerable to rising sea-levels, drought, and other climate-related shocks and pressures. Women are among the most vulnerable within at-risk communities.

**Recommendation:** An ASEAN-based regional approach on gender and climate change is needed to address the negative effects of deforestation and climate change on ethnic minorities and other vulnerable communities, and the relatively more disadvantaged women among them.

Knowledge and Data Gaps: While there have been significant gains in our understanding about gender and land, much remains to be learned. A lack of comparable land data across the Mekong region, including consistent, sex-disaggregated data at national- and sub-national levels, presents a major challenge for identifying issues and tracking progress to address these issues.

**Recommendation:** Relevant, gender-disaggregated data should be developed through caref ul programme and project design at local levels, as well as within relevant national reporting mechanisms. More research is needed on the long-term impacts of policies, laws, and socio-economic change.
High Priority Recommendations

Gender equity is integral to good land governance, and gender is always important. Looking forward, priority actions are needed to:

- Improve women’s meaningful participation in community leadership and decision-making at both family and community levels;
- Widely recognise and implement women’s rights to own/inherit land on terms that are equal to those of men, and have the same powers around land use decision-making, including representation in national, sub-national, provincial, and local land management institutions and governance bodies and in decision-making about agricultural investment;
- Improve women’s capacity and understanding of land tenure issues and legal frameworks to enable them to meaningfully engage in decision-making about land;
- Ensure women’s access to land administration services and land titles in their own name (not just in joint names) despite illiteracy and socio-cultural barriers;
- Promote greater focus on issues of women’s land access and inheritance rights in ethnic minority communities, paying particular attention to rights under customary tenure arrangements;
- Encourage greater commitment at the regional level to agree about standards and indicators for monitoring gender equity of land governance and support national data collection to generate best-in-class gender-disaggregated comparative data so that progress can be tracked; and
- Cultivate a vibrant community of practice relating to gender and land in the region to support the design and implementation of measures to improve gender equity in the governance of, and access to, land.

At the level of policy and legal frameworks, all four countries could follow the recommendations relating to gender and land made by the CEDAW Committee in their most recent formal review of Cambodia. These include that they should: take steps to reallocate or distribute land to women; give special attention to indigenous, ethnic minority and rural women in informal settlements; and establish systematic gender assessments when adopting or revising laws. At the level of the land administration programme and project design and implementation, all four countries could likewise pay more attention to creative innovation and draw more on evidence-based global good practices.

There is a role for development partners to collaborate with governments and civil society in developing clear monitoring indicators and mechanisms and supporting iterative approaches. This would include being more ready to encourage the adaptation of global good practices, so that solutions are specific to national and sub-national contexts and are developed in partnership with local communities. Finding what works best in the local and national context to support gender equity in land matters will lead to better outcomes for all people in the Mekong region – young and old, women and men, married and single, rich and poor – regardless of educational attainment, disability, ethnicity or gender.
Introduction

Gender and land have become highly topical issues in global development policy agendas worldwide. The Mekong region is no exception, given the rise in agricultural production, increased land-based investments, rapid economic and social changes, and more. Cambodia, Lao PDR, Myanmar, and Viet Nam have shared broadly similar development trajectories since the end of the Indochina wars and gradual decolonisation from the early 1950s until the late 1970s. All four countries have diverse geographies, from mountainous forests to low-lying paddy fields and coastal regions. The Mekong River is often referred to as the region’s lifeblood, and historically has been central to the livelihoods of many people in each country. Governance structures vary across all four countries, but none are classic liberal parliamentary democracies, and all are distinct from their larger and more traditionally monarchist and overtly capitalist neighbour, Thailand. Media and civil society freedoms vary, and de facto ‘land grabbing’ and associated corruption is common throughout. Gender issues are broadly similar, with the most discriminated groups often ethnic minority women.

This Outlook on Gender and Land in the Mekong Region takes stock of the current situation of gender and land in Cambodia, Lao PDR, Myanmar, and Viet Nam. It offers recommendations to guide potential future policy and action by identifying key gender issues and proposing priority actions. The intended audience of this Outlook includes regional and national policy-makers and their development partners, both internationally and within local civil society. The Outlook arises out of the Mekong Region Land Governance (MRLG) Project’s work on gender over the past five years (see Box 1) and a desire to build from that into identifying key areas of focus that will help to bring about meaningful improvements in gender equity in land governance across the region.

1 In Myanmar, ethnic conflict and military rule have remained more prevalent.
Section 2 of this Outlook frames gender and land in the Mekong region within the wider conceptual, international, regional, and country context. Section 3 focuses on land-related policy and legal frameworks and their gender-specific provisions, covering family and inheritance laws, land registration and titling, and issues around implementation. Economic issues including large-scale land acquisitions (both formal concessions and de facto ‘land grabs’) are discussed in Section 4. Institutional issues of participation in land governance, access to justice and customary tenure are addressed in Section 5. Section 6 identifies emerging themes, and Section 7 prioritises recommendations for next steps. Annex 1 provides a comparative summary of key gender-and land-related legislative provisions. References are footnoted in simple format and are provided in full bibliographic format in Annex 2.

Box 1: MRLG Gender Programme

The project goal of MRLG Phase II (2018 – 2022) was that ‘Smallholder farmers, women and men, have secured equitable access to, and control over, agricultural land and forest in the Mekong Region’. MRLG works on both policy and practice change for improved land governance in Cambodia, Lao PDR, Myanmar, and Viet Nam, and regionally, in collaboration with almost 100 government and non-government actors. During Phase II, the project had a strong focus on gender across national and regional workstreams on Customary Tenure Recognition and Responsible Agricultural Investment. A Gender Strategy was implemented to guide gender-equitable practices, training and studies, with a key implementation objective being to support the emergence of a shared understanding across MRLG and its Alliance partners that gender is always important, even though the way it is addressed in different countries will often need to vary with context.

The project implemented a five-month regional blended learning programme on gender and land to build critical capacities on conceptual, policy, legal and practical issues around gender and land so as to: 1) enable identification of potential intervention points within the existing workstreams and; 2) create space for developing country-specific Gender Action Plans with Alliance partners. This should be conducted through; 3) subsequent roll-out of nationally tailored versions of the learning programme in Cambodia, Lao PDR, Myanmar, and Viet Nam.

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FRAMING GENDER AND LAND IN THE MEKONG
Framing Gender and Land in the Mekong

Conceptual Context

Gender equity is integral to good land governance. Gender equity emphasises fairness – equity – and gender-equitable governance of land tenure ensures that both women and men can participate equally in their relationships to land, through both formal institutions and informal arrangements for land administration and management. It implies that the processes and institutions for land tenure governance are transparent, consultative, and participatory, and that the different interests, needs and priorities of all people with respect to land, regardless of their gender, are addressed. Gender equity in land governance is also essential for sustainable economic development. The benefits of stronger and more equitable land rights for women and vulnerable groups include ‘improved living conditions, better nutrition and food sovereignty, better health, higher earnings and individual savings, and more’.²

² Office of the High Commissioner for Human Rights (OHCHR) 2023b, Insecure land rights for women: a threat to progress on gender equality and sustainable development.
Explainer 1: Key Gender Definitions

**Gender** is the social and political identity attached to a person’s biological sex and physical body – what it means to be a woman or a man, or an intersex, transgender or non-binary person. Although gender can be fluid and diverse, this Outlook focuses on the two main categories of ‘women’ and ‘men’ that most people fall within.

**Gender relations** are the relations between individual people based on the social and political identity attributed to their particular sex within a society. In broad terms, gender relations influence differences in the relative status and power of women and men, and of different women and men.

**Gender roles** shape the opportunities and constraints that different individuals face in securing their livelihoods, including their access to land, to decision-making about land, and to the institutions that administer land and other productive resources.

**Gendered social norms** are the informal rules, assumptions and expectations shared by different individuals and within different communities that define socially legitimate rights and socially acceptable roles, responsibilities, behaviours, and relations between different individuals.

**Gender blind** – often interchanged with gender neutral – refers to provisions in Constitutions, laws, decrees, regulations, ordinances, and administrative guidelines, or to broader programmes, projects or attitudes, that, while not discriminatory in themselves, nevertheless offer no explicit protections for any group or individual that may be discriminated against on the basis of gender. **Gender blindness** is the failure to recognise that the roles and responsibilities of men/boys and women/girls reflect specific social, cultural, economic, and political contexts and backgrounds, and to take into account these different roles and diverse needs. Gender blind safeguards for all, without specific protections for vulnerable groups, can allow discrimination to continue. They maintain the gender status quo and will not help to transform the structure of gender relations.

**Gender equality** is defined by the FAO as:

‘The state in which all women and men enjoy equal rights, opportunities and entitlements in civil and political life. It means equal participation of women and men in decision-making, equal ability to exercise their human rights, equal access to and control over resources and the benefits of development, and equal opportunities in employment and in all other aspects of their livelihoods’.¹

**Gender equity** – fairness – is a major aspect of this.

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¹ Drawn from FAO, 2015, Governing Land for Women and Men Online Course, FAO, 2018a, Introduction to gender-sensitive social protection programming to combat rural poverty, and UN WOMEN Training Centre, 2023, Gender Equality Glossary.

² FAO, 2015, Governing Land for Women and Men Online Course, Lesson 1.
International and Regional Policy Context

This conceptual framework is in line with the principles of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGTs), the international standard for good land governance, in which the principle of gender equity is firmly embedded (see Box 2). The VGGTs were adopted by the Food and Agriculture Organization of the United Nations’ (FAO) Committee on World Food Security in 2012, and were endorsed at high level by Cambodia, Lao PDR and Viet Nam at either the 2014 or 2015 Global Forum for Food and Agriculture. Viet Nam in particular has seen a lot of activity to support multi-stakeholder capacity building and implementation of the VGGTs. In Myanmar, the VGGTs are referenced in the 2016 National Land Use Policy but, at time of writing, have not undergone official high-level endorsement.5

Box 2: Gender and Land within the VGGTs

‘There are two groups of principles within the VGGTs that are most important in supporting gender equity in land rights and governance of tenure in the Mekong region nowadays. The first includes the principles of human dignity [1], non-discrimination [2], and equity and justice [3] which help further improve the land policy and legal framework by enhancing gender equity beyond land rights and access to land, forests, and fisheries. The second embraces the principles of consultation and participation [6], transparency [8], and accountability [9] that are pivotal to the practical changes needed to enable more effective implementation of the VGGTs.’6

Gender and land also feature within the Sustainable Development Goals (SDGs). The SDGs do not directly reference the VGGTs’ notion of gender-equitable governance of tenure, but they do contain some targets and indicators that support improvements in both land governance and gender equity.

Another dimension of the international context is international law.7 The ideal of gender equity is embedded globally in the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW) and its Optional Protocol (CEDAW-OP), which details mechanisms for reporting to the UN’s CEDAW Committee. These uphold the principle of responsible land governance in regard to gender equity and are a ‘gold standard of women’s property rights’.8 CEDAW Article 3 requires parties to take measures to ensure the full development and advancement of women in political, social, economic and cultural fields. This extends to the promotion of gender-equitable rights to own and inherit land, regardless of marital status, and urges that the interests of women must be considered during the development of land tenure projects.

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6 MRLG team members’ comments during regional gender training, 2020-2021. Numbers in square brackets refer to the VGGTs’ Ten Principles of Implementation.

7 All members of the United Nations (UN) become parties to the Statute of the International Court of Justice (ICJ) when they ratify the United Nations Charter (Article 93, paragraph 1). This Statute defines sources of international law to include international conventions, international custom, and general principles of law (Article 38(1)). UN members that ratify or access international conventions agree to uphold the protocols included. However, Lao PDR cannot be held accountable for this at the ICJ as it has not submitted the necessary documentation (International Court of Justice, no date, Declarations).

policies and laws. CEDAW Article 14 requires consideration of the particular problems faced by rural women, noting the significant economic role they have in their families. These provisions have been strengthened in several General Recommendations (GRs) highlighting the importance of property rights and gender equity to human rights and national development. For example, a 2013 GR emphasised land rights within marriage and on divorce and noted the dangers to widows of ‘property dispossessoin’ and ‘property grabbing’ by their in-laws; a 2016 GR on the rights of rural women urged attention to customary tenure and ensuring ‘rural women’s substantive equality in relation to land’.9

More broadly, all parties to the CEDAW agree to condemn discrimination against women in all its forms and to pursue by all appropriate means and without delay a policy for its elimination. This involves, among others: embodying the principle of gender equality within national Constitutions and legislation and abolishing or reforming any existing legislation, regulations, customs, or practices that are discriminatory; adopting legislative sanctions against discrimination; and ensuring public institutions refrain from any practice of discrimination against women. It requires intersectionality to be considered too. Women are not a homogenous group, and the ways that gender discrimination affects them is influenced by many other factors (see Box 3).

Box 3: Gender, Land, and Intersectionality

The term ‘intersectionality’ is increasingly used to describe the way that gender interacts with other axes of social differentiation. Ultimately, gender and land relations are both forms of complex and unequal power relations within communities and wider societies. These are influenced by factors such as age, ethnicity, sexuality, marital status, education level, dis/ability, livelihoods, and physical location.

When asked to identify the most vulnerable groups with respect to land governance during MRLG’s regional gender training in 2020-21 (see Box 1), participants flagged women, ethnic minorities and indigenous groups, and especially ethnic minority and indigenous women. However, the third most common response was people with disabilities, especially in Myanmar and Viet Nam, followed by poor people in urban informal settlements (slums) in Cambodia, and religious minorities in Myanmar.10

When looking to effectively address gender discrimination in the Mekong region, context and broader vulnerabilities are therefore just as relevant to consider. For example, life-changing injuries from past conflicts and ongoing violence have increased care responsibilities in some families. These are mostly a woman’s role, with potential implications for their abilities to access and use their own land and find time to take part in local land governance. Equally, women of different ages will be affected in different ways by the effects of internal displacement from conflict, as well as from more intentional rural-rural or rural-urban migration.

9 General recommendation No. S, 1988; General recommendation on Article 16 of the CEDAW, 2013; General recommendation no. 21, 1994; General recommendation no. 34, 2016; UN Women Asia and the Pacific, 2022, CEDAW and Women’s Human Rights, Lao PDR.

10 Group discussions with MRLG team members during regional gender training, 2020-21.
Lao PDR and Viet Nam were among the first countries globally to recognise the need to strengthen gender equality, signing the CEDAW in 1980 and ratifying it in 1981 and 1982, respectively. However, neither they nor Myanmar have ratified CEDAW-OP, leaving them no access to the complaint’s procedure within the CEDAW reporting process. Cambodia, which has ratified both the CEDAW and CEDAW-OP, had its most recent CEDAW implementation review in 2019.11

Other pillars of international law relevant to establishing gender-equitable land governance include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the UN Declaration on the Rights of Indigenous People (UNDRIP).12 For example, General Comment No. 16 of the ICESCR requires that ‘women have a right to own, use and otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so’.13 Table 1 compares the position of all four countries with respect to both the CEDAW and these other key international instruments.

### Table 1: Position of Mekong Countries vis-à-vis Key International Instruments

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Cambodia</th>
<th>Lao PDR</th>
<th>Myanmar</th>
<th>Viet Nam</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEDAW-OP</td>
<td>signed 2001, ratified 2010</td>
<td>not signed or ratified</td>
<td>not signed or ratified</td>
<td>not signed or ratified</td>
</tr>
<tr>
<td>UNDRIP</td>
<td>voted for at UN, 2007</td>
<td>voted for at UN, 2007</td>
<td>voted for at UN, 2007</td>
<td>voted for at UN, 2007</td>
</tr>
</tbody>
</table>

The regional policy context in the Mekong, especially within the Association of Southeast Asian Nations (ASEAN), is also highly relevant. In particular, ASEAN’s 2017 declaration on the gender-responsive implementation of its Community Vision 2025, and the SDGs (see Box 4) led to the ASEAN Gender Mainstreaming Strategic Framework 2021 – 2025. This framework makes clear that gender is central to the 2030 agenda for ASEAN countries, stating that:

‘Forms of discrimination, inequality, and violence that women and girls face are a matter for deep concern; and that gender equality and sustainable development require multisectoral interventions and dialogue among government, donor, private sector, civil society, and community-based stakeholders’.15

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12 Article 2(1) of the ICCPR requires fundamental civil and political rights to be protected without distinction of any kind, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Article 2(2) of the ICESCR protects the exercise of fundamental economic, social and cultural rights without any discrimination of these kinds. Article 3 notes the equal right to their enjoyment by both men and women. Article 11(1) elaborates rights to food and housing.
14 Table 1 Sources: OHCHR, 2023a, Status of Ratification Interactive Dashboard.
Box 4: Gender within ASEAN Policy Frameworks

Key commitments of the ASEAN Declaration on the Gender-Responsive Implementation of the ASEAN Community Vision 2025 and Sustainable Development Goals include:

1. Enhancing Member States’ capacities in collecting, managing, analysing, and disseminating sex-disaggregated data at the national and subnational levels;

2. Undertaking gender analyses to inform the design and implementation of policies, plans and programmes;

3. Monitoring and evaluating the impact of policies, plans and programmes on men and women, including assessing the contribution of women in the economy and the economic costs of gender-based violence against women and girls;

4. **Promoting women’s meaningful participation in decision-making bodies** and engaging with women’s groups and organisations, while also engaging men and boys as allies for gender equality; and

5. Supporting the development and implementation of gender mainstreaming initiatives across all ASEAN Sectoral Bodies.\(^\text{16}\)

\(^{16}\) ASEAN, 2017, Declaration on the Gender Responsive Implementation of the ASEAN Community Vision 2025 and Sustainable Development Goals.
Regional and Country Gender Normative and Economic Context

The socio-cultural and economic similarities and differences between all four countries help to frame this Outlook within the wider context of everyday gender issues in the Mekong. In MRLG’s regional gender training in 2020-21 (see Box 1), participants elaborated upon many key elements of the socio-cultural context, and provided their informed opinions about trends and areas of note in gender equity. In Cambodia these include women’s limited access to education (also cited for Lao PDR), unequal participation in decision-making and leadership, and traditional norms and beliefs that make it hard for women to claim their rights despite supportive laws. In Lao PDR, it was observed that there are further issues of gender equity within ethnic minority communities. Women lack access to and understanding of the legal frameworks that protect them and there are unconscious gender biases. Furthermore, in both Lao PDR and Myanmar, there is a general lack of public awareness about gender equality. Gender-based violence (GBV) was cited as an issue in both Lao PDR and Myanmar in MRLG’s regional training: it is seen as a private family matter in Myanmar due to cultural/traditional stereotypes of men as breadwinners and women as homemakers. Gender biases and persistent male chauvinism also feature in Viet Nam, where there is a lack of understanding among women about their rights, and a range of gender inequalities at work and in decision-making at work and at home. There is a tendency in Lao PDR for gender issues to be seen as imposed by development partners, thus a lack of local buy-in linked to a general silence within Lao society that makes many people unwilling to see gender imbalances or (lack of) inclusivity as issues at all. These cultural concerns can also be applied to Myanmar, where policies and laws are often still gender-biased and where there is a need to recognise women’s rights without excluding discussions about men’s vulnerabilities – making sure that gender is not just equated with women.17

Similarities and differences between the four countries’ economic context can be seen in the comparative snapshot of available gender- and land-related economic data set out in Table 2.

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17 Group discussions with MRLG team members during regional gender training, 2020-21.
Table 2: A Snapshot of Comparative Gender- and Land-Related Economic Data

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Cambodia</th>
<th>Lao PDR</th>
<th>Myanmar</th>
<th>Viet Nam</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNDP Human Development Rank (out of 188 countries)</td>
<td>146th</td>
<td>139th</td>
<td>148th</td>
<td>116th</td>
</tr>
<tr>
<td>UNDP Gender Inequality Rank (out of 188 countries)</td>
<td>112th</td>
<td>106th</td>
<td>80th</td>
<td>71st</td>
</tr>
<tr>
<td>Number of Officially Recognised Ethnic Groups</td>
<td>22</td>
<td>49 (of 200+)</td>
<td>135</td>
<td>54</td>
</tr>
<tr>
<td>Total Population</td>
<td>16,891,245</td>
<td>7,852,377</td>
<td>57,970,293</td>
<td>104,799,174</td>
</tr>
<tr>
<td>Approximate % of Households Headed by Women</td>
<td>26.9%</td>
<td>10%</td>
<td>22.5%</td>
<td>27%</td>
</tr>
<tr>
<td>Rural Population (as % of total)</td>
<td>79%</td>
<td>67%</td>
<td>70%</td>
<td>64%</td>
</tr>
<tr>
<td>Total Land Area</td>
<td>176,515 sq. km</td>
<td>230,800 sq. km</td>
<td>653,508 sq. km</td>
<td>310,070 sq. km</td>
</tr>
<tr>
<td>% Change in Agricultural Land Area (1995-2015)</td>
<td>+19.6%</td>
<td>+41.2%</td>
<td>+21%</td>
<td>+64.8%</td>
</tr>
<tr>
<td>% Change in Forest Cover (1995-2015)</td>
<td>-21.9%</td>
<td>+10.5%</td>
<td>-20.7%</td>
<td>+37%</td>
</tr>
<tr>
<td>Average Farm Size per Agricultural Household</td>
<td>1.6 ha</td>
<td>2.4 ha</td>
<td>2.6 ha</td>
<td>0.7 ha</td>
</tr>
<tr>
<td>Area Cultivated by Smallholder Farmers</td>
<td>3,304,738 ha</td>
<td>1,666,822 ha</td>
<td>12,794,187 ha</td>
<td>7,772,045 ha</td>
</tr>
<tr>
<td>Area of Agricultural, Timber and Mining Concessions</td>
<td>2,044,706 ha</td>
<td>11,615,618 ha</td>
<td>2,086,892 ha</td>
<td>344,289 ha</td>
</tr>
<tr>
<td>Number of Agricultural, Timber and Mining Concessions</td>
<td>593</td>
<td>1,091</td>
<td>At least 4,425</td>
<td>At least 7</td>
</tr>
<tr>
<td>Approximate % of Agricultural Land Covered by a Formal Title</td>
<td>65%</td>
<td>30%</td>
<td>90%</td>
<td>90%</td>
</tr>
<tr>
<td>Approximate % of Agricultural Land Titles by Sex of Title Holder</td>
<td>65% conjugal, 25% men, 10% women</td>
<td>26% conjugal, 38% men, 36% women</td>
<td>18% conjugal, 82% men</td>
<td>82% conjugal, 18% men</td>
</tr>
</tbody>
</table>

Table 2 Sources: CIA, 2023a, World Fact Book – Cambodia; CIA, 2023b, World Fact Book – Burma; CIA, 2023c, World Fact Book – Laos; CIA, 2023d, World Fact Book – Vietnam; Daley, E. et al., 2012, The Gender and Equity Implications of Land-Related Investments; IndexMundi, 2023; Ingalls, M.I. et al., 2018, State of Land in the Mekong Region; Map 1 (page 8), Map 2 (page 10), Table 1 (page 14), Table 2 (page 18), Map 11 (page 26), Table 3 (page 32, Figure 15 (page 55), Map 23 (page 59), and Figure 16 (page 60); Open Development Cambodia, 2023, Ethnic Minorities and Indigenous People.
A common theme with regard to the economic context is the paucity of gender-disaggregated data. There is a need for greater commitment at the regional level to achieve agreement on standards and indicators for monitoring future improvements in the gender equity of land governance (for instance, on SDG Target 5.A), and to support national level data collection. A foundation for this is having clear and agreed definitions of key terms (see Box 5).

Box 5: Key LandVoc Definitions

Tenure practices vary among the many different ethnic groups across the Mekong region, within and between countries. Different land types and classifications exist, and different terminology is used. This adds to the difficulties of obtaining meaningful comparative data relating to gender and land. LandVoc is a global standard multilingual thesaurus of key terms that provides a platform for the necessary comparative definitions in Khmer, Burmese, Vietnamese, and Lao. LandVoc is continually updated as new definitions are agreed and its list of definitions is not exhaustive. At the time of preparing this Outlook, Lao translations and terms were mostly absent, or in some cases incorrect. Below are some of the Burmese, Khmer and Vietnamese terms that have already been agreed.

**Communal ownership**, ‘situations where rights to use resources are held by a community’: ការកាន់់ដីីរសិ់ជន់ជាតិដើដីីម្ម (Khmer); မှုူလပေါေထိုု�င််သူူမှု��အချွင်််အပေါရ� (Burmese); quyền sử dụng đất theo phong tục (Vietnamese)

**Collective ownership**, ‘ownership of means of production by all members of the group for the benefit of all its members’: ការកាន់់ដីីរសិ់ជន់ជាតិដើដីីម្ម (Khmer); စု�ပေါပ်ါင််�ပ်ု�င််ဆိုု�င််မှုု in Burmese; sở hữu tập thể (Vietnamese)

**Customary land rights**, ‘the enjoyment of some use of land that arises through customary, unwritten practice rather than through written codified law’: សិ ិទ្ធិិដីីធ្លីីីជាប្រ�ពៃពណីី (Khmer); ဓားာ�မှုူလ ပေါေထိုု�င််မှုူမှုမှုင််အ� (Burmese); quyền sử dụng đất theo phong tục (Vietnamese)

**Indigenous Peoples’ tenure**, ‘rights that indigenous peoples traditionally have over land, fisheries and forests to occupy, use, develop, enjoy and withdraw benefits from the natural resources, as well as the right to restrict others’ access to these resources; and/or the right to manage, sell or bequeath the resources’: ការកាន់់ដីីរសិ់ជន់ជាតិដើដីីម្ម (Khmer); မှုူလ ပေါေထိုု�င်် သူူမှု��၏အချွင်််အပေါရ� (Burmese); quyền của người bản địa (về đất đai) (Vietnamese)

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19 CARE, 2022, Food Security and Gender Equality – A synergistic understudied symphony.
21 UNIFEM et al., 2004, A fair share for women: Cambodia Gender Assessment. Although some of the data may have changed, this source was the most comprehensive review available in English at time of writing.
22 UN Population Fund, 2020, Population Data Portal; CEDAW Committee, 2019, Concluding observations on the sixth periodic report of Cambodia; Stankovitz, E., 2020, 7 things to know about Women’s Rights in Cambodia; UNIFEM et al., 2004, A fair share for women, op. cit.; FAO GLRD, 2022a, Cambodia, op. cit.; UN Women Asia and the Pacific, 2023, About UN Women in Cambodia.
It is useful by way of background to highlight some further contextual aspects in each of the four countries. In Cambodia, some 90% of poor people live in rural areas and most farmers are small landholders working on less than 2 hectares. Landlessness has long been a defining factor for poverty and is increasing by roughly 2% per year, with some 45% of all rural households already landless or near landless, with either no land at all or with plots under 0.5ha. Women are 52% of the rural population and their participation rate in agriculture and food production, which dominate the Cambodian economy, is 80%. Women make up over half of the labour force in both subsistence and commercial farming and more than 65% of rural women are farmers. Although most landholdings are held and farmed jointly, single women's landholdings (especially those of widows) are often significantly smaller or less fertile than those held by men. Recent research indicates that women’s workloads, especially those of indigenous women, are more negatively impacted than men's by the agrarian transition in Cambodia, given the ‘predominant roles' men have taken in commercial transactions and interactions with outsiders, ‘while women have tended to remain confined to the domestic sphere'.

Broader gender inequalities are also widespread. In 2003, national average literacy rates were 64.1% for women and 84.7% for men, with women only closing the gap to 75% by 2015. The number of women elected in local (commune) elections rose from 8.5% in 2002 to just 15% in 2007, and women constitute only 14% of judges and 20% of lawyers nationally. The Ministry of Women's and Veterans’ Affairs is the only Ministry to have its own Gender Mainstreaming Strategy, but it has no associated budget. This is despite the fact that the fourth and fifth national strategic plans for gender equality and the empowerment of women make reference to gender-responsive budgeting. Cambodia also has a National Council for Women, created to provide opinions on the status, role, and social welfare of women in respect of national policy and legal issues, and to assist in implementing international and national laws concerning women’s rights. The Secretary of State for Land Management is a member, but there are wider questions about the Council’s ‘lack of autonomy to implement its mandate'. Cambodia operates under a civil law system, meaning that statute is the main source of formal law.

Lao PDR, which also operates under a civil law system, has many legislative instruments that address land rights, inheritance, and women’s rights. However, common indicators of gender equality in Lao PDR are likewise not exemplary. In 2015, estimated literacy rates stood at 79.4% for women, below the overall national average of 84.7%. Intimate partner abuse (physical, sexual, or psychological) is estimated to affect 30.3% of women. Over the past few decades, Lao PDR has undergone substantial processes of rural transformation and developed new land management policies to guide systematic land titling. The costs of increasing formalisation of tenure have fallen largely on women, poor households and the ethnic minorities that make up nearly 40% of the population. This disproportionate impact is largely due to inadequate education and discriminatory traditions, as these vulnerable groups either lack knowledge and skills to secure their land, and/or cannot afford the associated fees. Estimated national land use in Lao PDR in 2018 included 67.9% forest and 10.6% agricultural land. Over 70% of Laotians depend directly or indirectly for their livelihoods on agriculture and forestry. In 2020, the same proportion

23 Gironde, C. et al., 2021, No cash, no food; Gironde, C. et al., 2022, From food crop to food shop, page 28.
of men and women reported that they felt their land tenure was insecure (25%). However, more men (55%) than women (48%) perceived themselves to have secure tenure, with higher rates of women reporting that they either did not know or refusing to answer the question posed.26

Representation is a further issue, with just 22% of seats in the national parliament held by women in 2022.27 On the other hand, the Lao Women’s Union (LWU) operates throughout the country and has been a part of the State since 1955. The LWU is unique within the Mekong region in that it is present in all government administrative levels through associated committees and representations, from central down to village levels. Its core functions include ‘protecting the rights and interests of Lao multi-ethnic women and children’ and ‘promoting the implementation of policy on gender equality’.28 Due to a lack of political and budget support (among many other factors), the LWU’s efficacy is very difficult to gauge, but there is no doubt that it has made an important contribution over the years in ensuring that there is a legitimate policy and institutional space in Lao PDR for women’s concerns to be voiced.

Myanmar’s legal system has been based on English common law since the late 19th century i.e., on a mix of legislation, judicial decisions, and customary practices. However, Myanmar’s political landscape has undergone rapid recent change, prompting policy shifts in the recognition of women’s, indigenous and rural land rights. Key issues in Myanmar include shifting priorities and inconsistencies in the application and implementation of policies and written laws, as well as the impacts of current de facto land grabs, internal conflict, and past land expropriation. On the plus side, literacy rates in Myanmar are relatively high within the region, in 2019 standing at 92.4% for men and 86.3% for women. In 2018, women completed 11 years of schooling on average against men’s 10, and, in 2020, women outnumbered men in educational achievement at all levels. However, this does not translate into political influence, with women occupying just 12.9% of directly elected parliamentary seats in 2016.29 Without broader political influence, the chance of women being able to influence land-related policy-making and wider land governance at all levels is slim. Although Myanmar has a National Committee for the Advancement of Women and a 2013-2022 National Strategic Plan for the Advancement of Women, the current situation since the political changes following the 2021 Coup is difficult to assess.

In Viet Nam, the Doi Moi reforms in the late 1980s led to large-scale market changes, and policy now focuses on investment and efficiency. This presents risks for small-scale landowners and family farmers, of whom 54% live below the national poverty line: the accumulation of large land areas for agribusiness and intensive monocropping might exclude vulnerable groups from their often highly fragmented land resources if their land management needs are not put first by policy-makers. At the same time, Viet Nam is rapidly urbanising. The urban population was 39.5% of the total population by the start of 2023, with population shifting

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27 World Bank Group Data, 2023, Data: Lao PDR.
from rural to urban areas at an annual rate of 2.7%. Some 43% of Viet Nam’s 104 million population were engaged in agriculture, and average farm size is one-third that of Cambodia. Like Cambodia and Lao PDR, the Vietnamese legal system is based on civil law. Viet Nam, like Lao PDR, is also a very multi-ethnic country. Viet Nam’s 53 ethnic minority groups live mostly in the mountainous regions that comprise almost three-quarters of the country’s land, and their monthly income per capita is less than half the national average. Data from two 2019 surveys make clear the compounded disadvantages experienced by ethnic minority women in Viet Nam; literacy rates vary between 75.1% for ethnic minority women and 86.7% for ethnic minority men, and there is a disparity of over 20% in literacy rates between women from the dominant Kinh majority (95.6%) and ethnic minority women (75.1%). Some 83.8% of ethnic minority women work in agriculture, forestry, and fisheries, mostly self-employed due to low levels of technical qualifications. Viet Nam has a 2006 Law on Gender Equality and 2001-2020 National Strategy for Gender Equality, and, like Lao PDR, its Women’s Union has a strong role. Despite advances in legislation and regulations, along with related awareness-raising, there have been implementation issues in integrating gender in agriculture, land, and food and nutrition security policies. Furthermore, indicators are not sex-disaggregated.
POLICY AND LEGAL ISSUES
Policy and Legal Issues

Gender Equality Protections under National Constitutions and Legislation

Although the 1993 Cambodian Constitution states that ‘all forms of discrimination against women are abolished’, and the 2009 Criminal Code punishes discrimination based on gender, national legislation in Cambodia does not clearly define discrimination against women in either public or private spheres. The Constitution supports the provision of economic opportunities for women, especially those in rural areas, but does not explicitly promote special measures to achieve this. On the other hand, together with the 2007 Civil Code, the Constitution does clearly recognise women’s legal capacity as natural persons alongside men. This gender blindness (i.e., both men and women are treated as natural persons) means there are no specific restrictions on women’s ability to pursue contracts to secure access to land. There is also strong gender equality of rights with respect to nationality under the 1996 Law of Nationality, which is important in any country where land rights for nationals, residents and foreigners differ. In Cambodia, ‘any person’ can apply for nationality on the same terms, any national Khmer citizen can confer citizenship on a non-national spouse, and ‘a mother or father’ can confer citizenship on any child born within legal marriage. In practice, however, ethnic minority Vietnamese and Khmer Krom women face difficulties obtaining birth certificates for their Cambodian-born children, constraining those children’s rights to land.32

32 Constitution of the Kingdom of Cambodia, 1993, Articles 31(1), 32 and 45(1); Civil Code of Cambodia, 2007, Article 6; Criminal Code of the Kingdom of Cambodia, 2009, Article 265(6); Law on Nationality, 1996, Articles 2, 4 and 5; CEDAW Committee, 2019, Concluding observations on the sixth periodic report of Cambodia, op. cit.; FAO GLRD, 2022d, LAT assessment – Cambodia.
Gender blind legislation is the norm in Lao PDR, where the Lao language does not distinguish between genders in its use of pronouns. Any individual with a legal personality (over 18, or under 18 if legally married) can conclude contracts in Lao PDR under the 2008 Law on Contract and Tort. The 2004 Law on Lao Nationality makes male and female spouses equally subject to the same conditions for acquiring nationality and citizenship. Neither Lao PDR’s 1991 Constitution, as last amended in 2003, nor its penal codes make any mention of discrimination by sex or gender. Customary and religious laws, that are often discriminatory in many countries, are neither constitutionally recognised nor are their discriminatory provisions outlawed. Yet the Lao PDR Constitution does explicitly promote gender equality. It specifically mandates the provision of education and opportunities for women, including those (mainly ethnic minorities) living in remote areas. It guarantees equality before the law regardless of sex and states that both genders enjoy equal rights in political, economic, cultural, and social fields and in family affairs. It protects the property rights and inheritance of all individuals, and it requires a ‘women advancement policy’ to be implemented to protect the legitimate rights and benefits of mothers and children. However, there is a tension here between the protection of women exclusively in their child-bearing and child-rearing capacities, and the general advancement of all women, at all stages of life. The constitutional conflation of women with mothers in Lao PDR thus risks overlooking the broad range of gender inequalities in the national socio-economic sphere, at the same time reinforcing stereotypes that inhibit women’s rights. Furthermore, the 2004 Law on the Development and Protection of Women guarantees and promotes gender equality and the roles, rights, and interests of all women (i.e., not just as mothers), aiming to eliminate discrimination against women and prevent human trafficking and domestic violence, among other injustices.

Myanmar’s 2008 Constitution explicitly forbids discrimination against any citizen based on sex and guarantees equality to all citizens. However, the still standing Penal Code of 1861 does not contain adequate sanctions to protect women and girls from violence. The Myanmar Constitution includes the same sort of provisions as its Lao PDR equivalent, avowing care for mothers and children, thereby also conflating women and mothers, with its problematic implications for the property (and other) rights of all women who are not mothers. Regarding the recognition of women’s legal capacity, Myanmar does not impose any restrictions, but discrimination against women is not overtly defined so there remains a risk that contractual relations may be influenced by gender-based discriminatory norms and practices. With respect to nationality, Myanmar’s 1982 Citizenship Law does not discriminate by gender, but issues have been raised around the application of its ethnicity- rather than descent-based criteria regarding ethnic minority women. This has hindered citizenship rights for ethnic minority women and men, and their girl and boy children, who, in being denied birth certificates and nationality, are becoming stateless – and almost inevitably landless, too. This notably includes all Rohingyas, as well as other ethnic groups of Muslim Indian descent.


\[\text{Constitution of the Republic of the Union of Myanmar, 2008, part 1, Articles 2, 21(a), 328 and 348; CEDAW Committee, Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure, 2019, page 4; Kyi Phyu Oo, 2019, Legal Analysis on Gender Equality and Women’s Rights in Myanmar, page 284; Burma Citizenship Law, 1982.}\]
On paper, Viet Nam is a regional leader in gender-equitable law. As in Myanmar, Viet Nam’s 1992 Constitution explicitly prohibits discrimination based on sex, stipulating that ‘male and female citizens shall have equal rights in all fields’. It also prohibits all acts of ethnic discrimination and division. These two aspects of gender equality promotion and anti-discrimination were strengthened in constitutional amendments undertaken in 2013, but, as in Lao PDR, there is no constitutional recognition of customary or religious laws and there are no provisions directly ensuring that non-discrimination principles supersede such laws. The Vietnamese Constitution also supports special measures for ‘the comprehensive development of women and promotion of their role in society’ – thus, not just (as in Lao PDR and Myanmar) as mothers. The 2005 Vietnamese Civil Code states that a contract will be invalidated if a contracting party uses gender difference as a reason to force signature or participation. The 2014 Law on the Organisation of People’s Courts gives every citizen equality before the law regardless of sex, and every Vietnamese citizen regardless of sex has the right to sue and to hold equal rights and responsibilities. Viet Nam’s 2008 Law on Nationality also upholds the principles of gender equality, subjecting men and women to the same criteria for establishing nationality through marriage and with regard to their children. A 2014 amendment made it easier for refugee and stateless women to acquire nationality and for Vietnamese people residing outside Viet Nam to retain their nationality, including women married to foreign nationals, thus protecting them in case of divorce.35

Family Law, Inheritance and Gender Equality in Property Rights

Gender equality in property rights encompasses two main dimensions. The first relates to the rights of individuals to acquire, use, and transact property as individuals vis-à-vis the State and other individuals or organisations. The second relates to how these individual rights may be mediated by family and inheritance law and practice i.e., by men and women not as equal individual citizens but as husbands and wives, sons and daughters, brothers and sisters. We have seen above that, as a minimum, gender blindness as citizens is the case in Cambodia, Lao PDR and Myanmar, and that Viet Nam goes the furthest in its constitutional and legislative requirements and protections for gender equality. How this relates to women’s land rights in the Mekong region in reality, however, depends on the specifics of family and inheritance law and practice, of gendered norms, customs and traditions in each country, and of the reshaping of these tenure norms and practices by broader agrarian transformations as land commodifies, wage labour increases and land use systems change.

Explainer 2: Pros and Cons of Sole and Joint Property and Titling

Property can be held either solely by one individual, jointly by two or more individuals, or collectively by a larger group of individuals, such as a community. Within marriage, property is usually held either solely or jointly. Solely owned property is usually referred to as separate property. Jointly owned property is usually referred to as common property, or matrimonial property. Whoever owns the property is key to who is legally entitled to make decisions about it.

On divorce, if property is held jointly, it will generally be divided equally between the two parties. This may also be the case if it was individually acquired by only one spouse, before or during the marriage. Spouses who enter a marriage with nothing will gain, while those who bring their own property into a marriage will lose. If spouses are allowed to have separate property (under individual titles rather than making joint titling mandatory within marriage), their sole-owned property will usually be better protected on divorce. But property acquired separately within marriage may often be considered as common property regardless of whose name is on the title, which protects non-wage-earning spouses.

Joint titling may initially be useful within marriages, especially in rural areas with strong gendered social norms. If only the names of men appear on land titles (as household heads), their wives can worry that they will be left, on divorce or widowhood, with none of the property they may have jointly acquired and used within the marriage. Joint titling can, therefore, reduce these fears and improve perceptions of tenure security for wives in particular.

However joint titling is not a panacea. Mandatory (or compulsory) joint titling is not gender-equitable – put simply, it is not fair. It reduces choice. It leads to land loss for certain groups after land registration, such as women from matrilineal ethnic minorities (where e.g., in Lao PDR, some of their land was titled to male household heads). And it can cause problems for all those whose marriages are unhappy or beset by domestic violence. Joint titling is a useful policy option as a starting point in situations where very few women are named on land titles. But gender-equitable land governance requires it to be complemented by other policy options, including for rights to separate property to be better protected, as the next step in a gender transformative approach.
In Cambodia, the Civil Code grants equal rights to use, benefit from and jointly manage common property to both spouses in a legally registered marriage. Common property is defined as all property acquired during marriage, and the property each spouse held before marriage does not automatically become part of the common property. A legally married couple have equal rights to use and manage joint properties – and their sale or disposal without the consent of both spouses is forbidden – but they also specifically retain their individual interests in their own properties under the 1989 Law on the Marriage and Family. There are extra protections for the right to use (inhabit) the matrimonial home: even where it is separate rather than joint property, the non-owning spouse must be asked permission for it to be sold, leased or mortgaged, and he or she may continue to live in the house if they do not agree to the sale. These laws are silent, however, with respect to the rights of unmarried couples in customary (unregistered) marriages, leaving them without the same protections and thus more vulnerable to property loss and landlessness. In addition, the Civil Code restricts the rights of women to remarry, which may trap women in situations where their legal rights to jointly manage common property are not being respected by their spouses in practice, or worse.36

Inheritance rights in Cambodia are governed either by testament (a written will) or by priorities laid out in statute when there is no will. In these latter cases, the Civil Code provides for the spouse, children, and parents of the deceased to inherit in equal shares. The 1992 Land Law further stipulates that where any member of the deceased’s family is living in/on or using the land to be inherited, the express consent of all those inheriting a share of it is required for decisions to be made on how to divide it between them. The deceased’s spouse does not automatically gain full lifetime user rights to all – or even any – of the deceased’s land as they need the consent of all surviving children and their parents-in-law for that. This can be problematic if they do not have the support of these other family members, for example, if some family members are using some of the deceased’s land themselves. Spouses – especially widows – may succumb to gendered social norms and pressures to give up their claims entirely, even to their matrimonial home, although in theory they may also hold up division of the property to all the other heirs by withholding their own consent. Therefore, despite the guaranteed entitlement of both husbands and wives to a minimum inheritance from their spouse in Cambodia, the lack of an explicit right to continue to use all the common property from a marriage may disproportionately impact widows: if, due to the fact that, on average, women’s economic status is more disadvantaged compared with that of men, they are less able to independently acquire new land or housing after bereavement than a widower might be. Furthermore, while the Civil Code protects the inheritance rights of daughters on a par with those of sons, with siblings inheriting from their parents in equal shares, there are no provisions requiring compensation if any child gives up their claims on the family property. Daughters may be more vulnerable than sons to being pressured into doing just that.37

36 Civil Code, 2007, op. cit., Articles 950, 971, 973, 974(3) and 976(1); Law on the Marriage and Family, 1989, Articles 31, 32, 33 and 37; CEDAW Committee, 2019, Concluding observations on the sixth periodic report of Cambodia, op. cit.; Van Der Kuer, D., 2014, Legal and Gender Issues of Marriage and Divorce in Cambodia. Remarriage is prohibited within 120 days of divorce, so it is a restriction rather than a lifelong prohibition.

37 Civil Code, 2007, op. cit., Articles 1156(1), 1161(1) and 1162; Land Law, 1992, Article 75.
In *Lao PDR*, most assets acquired by a legally married couple during their marriage are considered as ‘matrimonial property’, defined in the 1990 Property Law as ‘the assets acquired by a married couple during their marriage, except for personal items of low value and items for personal use such as clothing’. This law further stipulates that husband and wife have equal rights over matrimonial property regardless of who actually acquired the asset. However, assets belonging to the husband or wife prior to their marriage, or received through inheritance, or granted specifically to the husband or wife during their marriage, shall not be considered to be matrimonial property. These provisions are reinforced by the 1990 Family Law, which grants men and women equal rights in all aspects of family relationships. Once legally married, each spouse has equal rights over matrimonial property, and they must both agree to its use and disposal. In case of divorce, assets held individually at the time of marriage return to their original owner.38

Regarding inheritance, the situation in *Lao PDR* is like that of Cambodia. Under the 2005 Law on Heritage and Basis of Inheritance, the surviving spouse receives only a share of the deceased’s property alongside any surviving children. Where there is no written will, the 2008 Law on Inheritance specifies that only 25% of a deceased person’s individual assets pass directly to their spouse while the rest is left to their children. The surviving spouse receives half of any matrimonial property (joint assets), with the rest divided equally among the children. But this means that they legally inherit only ‘their’ half of any matrimonial property, while the deceased’s half goes entirely to the children. No distinction is made between male or female children, but, in practice, in *Lao PDR*, inheritance is influenced by customs and family traditions within a diverse range of patrilineal and matrilineal systems. As in Cambodia, there is no right for a surviving spouse to stay in the matrimonial home.39

The situation in *Myanmar* is somewhat different, as statutory family law does not apply to most women. This has complex implications for gender equity and women’s rights. The rights to own, manage and control property of the 90% of married women living within Buddhist or Muslim marriages are governed by religious laws. These take precedence over statutory law. With Buddhism ascribed to by most of Myanmar’s population, this means that Buddhist law and practices determine the vast majority of marriage, inheritance, and property matters, and the formal legal framework of family law applies only to around one-tenth of marriages. Buddhist law and custom is not codified in statute in Myanmar. The 2015 Buddhist Women’s Special Marriage Law determines the inheritance and succession rules between a Buddhist woman and a non-Buddhist man. In this case, the husband waives his rights to jointly owned property and all issues relating to inheritance are decided according to customary law. Under the 1898 Burma Laws Act, the courts decide which religious laws to apply according to what religion the parties practice; where parties are not religious, the courts should apply principles of ‘justice, equity and good conscience’. Under the 1925 Succession Act, relevant (religious) customary division of property upon marriage applies, but in all other circumstances marriage does not create any interest in the property of the other spouse. In those few cases not governed by religious law, the earnings and property of a married woman are considered her separate property under the 1874 Married Women’s Property Act. However, it is often difficult to determine the applicable law in a pluralistic legal system such as that of Myanmar, as religious laws may not be clear about whether individual property brought to a marriage by each spouse is held jointly within the marriage, or whether property acquired during the marriage by either spouse, individually, is to be considered as joint property. Myanmar’s 2016

National Land Use Policy (NLUP) anticipated that a new National Land Law would bring clarity by providing for men and women to have equal rights to inherit land when a spouse dies, but it does not explicitly override religious rules governing inheritance. Regarding inheritance for sons and daughters, the 1925 Succession Act refers to children in gender blind terms, but the more recent 1993 Child Law specifically grants every child the right of inheritance, the right of possession and the right to hold property. The overall situation at present, given recent political changes, is unclear.

Gender equality in property rights within marriage and on inheritance is generally stronger in Vietnam’s legal framework. However, the issue of concern here is the practical reality for ethnic minority women. The Vietnamese Civil Code sets out equality in all civil relations and forbids the use of differences regarding ethnicity, gender, social class, economic situation, belief, religion, educational level and occupation as reasons to treat each other unequally. This is supported by the constitutional provisions that place men and women equally in their right to own and use property, although these rights are not always fully observed in the case of ethnic minority people and vary according to whether the ethnic group follows matrilineal or patrilineal inheritance practices. Land acquired during marriage is considered to be common property across Vietnam, and a 2013 amendment to the 2003 Land Law specifically requires the names of both husband and wife to be listed on the Land Use Rights Certificate (LURC) when land is formally titled. However, mandatory joint titling can be problematic for gender equity, as discussed in Explainer 2 above. Women’s right to inheritance is also equal to that of men in statutory law, but, again, the situation is different in practice – ‘among people in rural areas or ethnic people, when their daughters get married, in most of the cases, daughters cannot inherit the properties of their parents’.  

40 Hindu, Sikh, and Jain faiths may be applicable for some married couples in Myanmar, as well as Buddhist Law. Burma Laws Act, 1898, ss 13(1) and 13(3); Succession Act, 1925, Articles 20 and 37; Married Women’s Property Act (1874) (s 4), in Eshbach and Roberts, 2019, Marriage, Divorce and Inheritance, op. cit.; National Land Use Policy (NLUP), 2016, Articles 75(c) and 75(d); The Child Law, 1993, Articles 25(a) and 25(b); Buddhist Women Special Marriage Law, 2015.

41 Civil Code, 2005, op. cit., section 8, Article 8.

42 CEDAW Committee, 2005, Fifth and sixth periodic reports of State parties, Viet Nam, op. cit., pages 48-49; de Andrade Correa, F. and L.J.M. Jansen, 2022, Climate change and tenure rights.
Land Law, Registration and Management

The main land legislation in Cambodia is the 1992 Land Law, which predates both the 1993 Constitution and the 2007 Civil Code. The Land Law contains no explicit statement about women’s equal rights to own and access land. An amendment in 2001 sought to establish a modern system of land registration, as numerous legislative changes after 1992 had resulted in much confusion over title claims and property demarcation. This amendment also clarified the constitutional right of both husband and wife to be listed on the formal certificate of property ownership, which was then clarified further in the regulations of the 2007 Civil Code. In keeping with the original (1992) Land Law, the 2001 amendment does not specifically mention women as needing any special protections but rather provides a gender-blind framework for land registration and land governance that puts women’s land rights on the same legal basis as men’s. Historically, however, the majority of land titles in Cambodia were granted to men and there have been past calls for land reallocation to boost women’s ownership and increase tenure security for women living in informal settlements, especially those who are indigenous, from an ethnic minority and live in rural areas. The implementation of land titling over the last 20 years has nevertheless seen Cambodia exemplify a number of good practices (see Case Study 1), and recent progress on naming women on land titles, according to official Cambodian government statistics, marks an encouraging shift towards more individual titling for women since the 2001-03 period:

‘From 2013 to May 2019, the RGC [Royal Government of Cambodia] issued a total of 2,324,289 land title certificates. The RGC has a clear record of the source of properties as follows: married and single women [...] 18.25 per cent, widows [...] 3.63 per cent, spousal common properties [...] 60.13 per cent, married and single men [...] 12.7 per cent and other properties [...] 6.45 per cent.’

Furthermore, many Cambodians use land titles to acquire loans, and rural households are among the most indebted in the world relative to cash income. This has major gendered implications, including the fact that the burdens of loan repayment and of making ends meet within households often fall to women.

43 The research for this Outlook was done primarily in 2022 and therefore the analysis does not consider any legislation from 2023.


45 CEDAW Committee, 2019, Replies of Cambodia to the list of issues and questions addendum in relation to the sixth periodic report of Cambodia, add.1, page 98.

46 Peer review comments from Alice Beban, citing own recent research.
Cambodia's 2001 Land Law amendment also provided a 'significant legal basis for communal land titling' (or CLTs) among indigenous communities. Implementation has been hindered by issues such as language barriers, lack of awareness of the procedures to be followed, long delays in the processing of applications from hundreds of communities, and overly burdensome budget requirements. Meanwhile agrarian transformation continues apace, and the forested lands inhabited by many of these communities fall within the ambit of the 2002 Forestry Law with its different qualifications for the recognition of traditional user rights in those areas. The gendered impacts of collective titling depend on the governance structures and gendered social norms within each indigenous community, as discussed further below, and between them and the government and private sector partners involved in particular collective land titling projects. However, more can always be done to strengthen gender equity and ensure greater representation and voice of marginalised people within communities in these processes: recent examples appear to demonstrate government efforts to strengthen tenure security for indigenous communities through the collective land rights registration protected by law.

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**Case Study 1: Good Practices on Gender within Land Titling in Cambodia**

Cambodia's 2002-2009 Land Management and Administration Program and follow-on 2011-2016 Land Administration, Management and Distribution Program both focused on reducing poverty and promoting social stability, and improved environmental management and land tenure security for poor Cambodians. The aim was to set up a titling and registration system to issue land titles in urban and rural areas. The emphasis was on boosting land markets, resolving and preventing land disputes, and managing land distribution in an equitable and sustainable way. There was no specific policy emphasis on gender equity, yet, in Cambodia's 2002-2007 Supplemental Land Administration Project (SLAP), some 78% of new land titles were issued jointly to husbands and wives. This project was linked to other development projects to improve sustainability, such as those for securing women's access to credit and extension services. Gender advisors were hired, and an early social assessment applied a gender perspective to land rights; gender concerns were thus integrated into project design. **Women's participation was emphasised in both design and implementation, and a comprehensive public outreach campaign included frequent gender-awareness training sessions with women and men and with land administration officials at all levels.** Women were targeted by SLAP because of their higher rates of illiteracy and lack of education about land rights.

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49 One recent report noted indigenous communities in two villages receiving 36 collective land titles from the Department of Land Management, Urban Planning, Construction and Cadastral Affairs on 27 May 2022 (Khmer Times, 2022, Land titles handed over to indigenous people).
Like Cambodia, Lao PDR also allows all citizens regardless of gender to own land and its 2019 Land Law does not include any gender-specific provisions regarding land ownership or registration. This may indicate a rolling back of rights, as the 2003 Land Law it replaces explicitly mentioned gender throughout. Lao PDR’s 2019 Gender Equality Law stipulates that women and men have equal access to economic resources, production, business and services but does not specifically mention land rights. The 2019 Land Law defines all land as ‘under the ownership of the national community’ and, in line with the Constitution, the State is charged with the centralised and uniform management of all land.50 A land title is the only documentary evidence for permanent land use rights. Land is registered systematically as part of the State’s management of the regions. However, much certification of land use rights is carried out on request, starting with the submission of a request for a Land Use Certificate (LUC) through the village administration. As noted, there are no explicit provisions promoting the position and rights of women in relation to land rights, and nor are there any provisions relating to customary or ethnic land rights. The 2019 Land Law, therefore, risks having a detrimental impact on some ethnic minority women’s (positive) land rights within customary matrilineal and bilineal systems, where their inheritance rights may be undermined via regulations granting blanket rights to pass land use rights over developed land to the ‘husband or wife, children, grandchildren, parents or close relatives’ upon death. This is in accordance with statutory inheritance laws when a person dies without a will.51 Statutory family and inheritance law is influenced by the patriarchal majority and, as noted above, does not fully protect women’s rights in matrilineal and bilineal systems.

The 2019 Land Law has also increased legislative gender blindness in Lao PDR with its removal of the dual names requirement on land titles that was stipulated in the 2003 Land Law. Given well-documented issues that have arisen globally within land registration programmes promoting mandatory joint titling for married couples, it is no longer indicative of good practice on gender equity in land governance. Joint titling is clearly better than not having women’s names registered on land titles at all and there are a range of equally well-documented benefits from it. Joint titling is thus a positive first step towards greater gender equity and protection for women’s rights within marriage. However good practice would now increase options for individuals and couples to make their own choices about how to register their property – if accompanied by well-targeted efforts to educate and empower women to know their rights and exercise their options – and beyond making joint titling mandatory. Joint titling increases the costs and risks to livelihoods of leaving an abusive marriage, which is a concern given the prevalence of gender-based violence (GBV) in the Mekong region. The Lao registration process relies on villagers already having a basic certificate of acquisition or land certificate which women especially may not have. Consequently, a broader range of documents would ideally be accepted, such as land-tax bills and family record books. The high cost of adjudication and issuing of land titles is also a barrier to individual land titling for rural and ethnic minority women, and for women-headed households.52

51 LIWG, 2020b, Women’s Land Rights, op. cit.
52 Ibid.
In **Myanmar**, individuals do not own land, they hold only long-term use rights that are permissions to live and work on specific plots and that can be disposed of through sales and transferred through inheritance. Myanmar’s 2012 Farmland Law lays down the country’s current system of land registration and allows statutory ownership only via an official Land Use Certificate (LUC). These certificates are only gradually being issued, thereby limiting access to formal land ownership, and they are not being issued in upland areas where many ethnic minority communities live. The 2016 NLUP took some positive steps to strengthen women’s land rights, stipulating that ‘[a]ll individuals [...] with the rights to use and manage land must have equal rights to access accurate and complete information related to land use, and have secure land tenure rights’.

Myanmar’s NLUP employs gendered language (i.e., it is not totally gender blind) and invokes the CEDAW, but there remain **three key gaps** between its vision and functionality. The first is the insufficiency of links between the NLUP and pre-existing policies such as the Farmland Law, which thereby cannot provide for the changes stipulated in the NLUP. For example, the NLUP calls for joint registration of spouses for a single property, but the Farmland Law does not allow for this. The second is that, while the NLUP calls for equality between men and women regarding tenure security and property ownership, it **does not identify or address the barriers hindering gender equality in practice**. What is needed is a more nuanced approach to recognise gender differentiation and heterogeneity, along with active monitoring. The third is that **it contradicts the gender-blind language of the Constitution and other legislation**, which contributes to ambiguity. Despite these gaps, the NLUP is foundational for the legal development of gender-equitable land rights in Myanmar and is a valuable aspirational policy against which progress can be measured. It makes an important step towards the true harmonisation of Myanmar’s different types of laws, and to combatting the lack of a clear definition of women’s rights under the primarily religious laws that still govern most of the property relations of married couples in the country, as noted above. The fact that land rights in Myanmar are not clearly understood impacts their enforceability, with potentially larger negative effects for women; women are not equal to men in their participation in decision-making on land or in claiming their rights (see Case Study 2). Thus, the formalisation of women’s rights in the NLUP still favours men in practice.

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53 NLUP, op. cit., page 16.
53 NLUP, op. cit., page 16.
Case Study 2: Land and Forest Rights of Ethnic Minority Women in Myanmar

Two recent case studies focusing on indigenous women’s knowledge, roles, decision-making and land ownership under customary tenure arrangements, in heavily forested areas of Nagaland and Kachin State, shed useful light on the current situation around women’s land rights in Myanmar. Common challenges for women include lack of access to forests, lack of information about their rights and lack of participation in community decision-making. Women’s customary rights to access, use and manage forest resources are weak, as are their customary inheritance rights. Despite women taking on greater responsibility in generating income from non-timber forest products (NTFPs), the studies found men reluctant to recognise women’s role in land management or their right to be involved in its governance. In Nagaland, in particular, gendered social norms remain very strong; men are seen as the custodians of tribal property and women as economically dependent on men. Unequal gender divisions of labour go unquestioned, only men are formally educated, and women only occasionally attend community meetings to represent their households when their husbands are not available.

Most women and men interviewed in these studies acknowledged women’s important role in all aspects of family livelihoods and reported that they take part in household decision-making. Yet women’s detailed local knowledge cannot directly input into community decision-making without the opportunity to participate meaningfully in land and natural resource governance.56

While ultimate ownership of all land and natural resources in Viet Nam lies with the people, the State administers all land on their behalf. The State recognises long-term, alienable usufruct rights over both land and resources i.e., rights to use, sell and live on the land. Land may be acquired by lease, inheritance or grant from a family member, or purchase, or through the issuing of a LURC by the State which gives the holder rights to sell, rent, exchange, mortgage and bequeath their use rights and to exclude others from their land. LURCs are required for formal recognition of a user’s rights, and for formal land transactions, access to formal credit and legal protection of land rights. In Viet Nam, as noted above, the 2013 amendment to the 2003 Land Law, stipulates that the names of both husband and wife must be included on the LURC for any shared property. However, from October 2001, based on earlier government guidance, Viet Nam had already begun to systematically replace LURCs that only listed the household head’s name with those showing the names of both the husband and the wife in households headed by married couples.57 While this is evidence of an active effort by the Vietnamese government to address gender inequalities resulting from historical land management practices, the same caveats about the potential inequity of mandatory joint titling stand as highlighted above in relation to Lao PDR. In late 2021, further legislative

56 RECOFTC, 2022, Gender, Tenure, and Customary Practices in Forest Landscapes, Annexes 5 and 6.
changes were announced, providing a "timely opportunity for striking a balance between government objectives, the profits of investors, and the needs and rights of millions of smallholder farmers who continue to rely on farmland." Among other reforms, citizens applying for land registration will be able to rely on uniform government data from the National Population Database instead of having to supply an ID or military card, thus easing a particular administrative barrier for ethnic minority women. However, at time of writing, formal parliamentary submission of the amended Land Law awaits further consultation on the proposed changes. This raises the question of what form such consultation takes, i.e., if policy-making and legal-drafting processes are gender-equitable in themselves (see Case Study 3).


Case Study 3: Gender Equity in Land Policy-Making Processes in Viet Nam

Those who do not participate in land policy-making and legal-drafting processes may not have their voices heard or their needs met in the resulting policies and laws. In Viet Nam, the two main processes for consultation on laws and policies relating to land found by one recent study are: direct consultation in government-focused local level workshops; and indirect consultation and sending of feedback via workshops organised by national agencies, collectives, and civil society organisations (CSOs). Neither of these processes targets local communities. A third form of consultation process in Viet Nam takes the form of publicly collecting feedback online through websites of the district authority, for consultation on district-level circulars and decrees. However:

‘Few people know about this, and the format is not user-friendly, involving scrolling through technical documents and it is not obvious how to submit feedback. Thus, interviewees suggested that it is generally urban people and academics who provide feedback online, and that in rural areas, men may have more access to online options than women as they are more likely to be literate and have smart phones’.60

The Vietnamese government is already concerned that its regulations on mainstreaming gender equality into legal drafting processes have not yet been successfully implemented, and that different government offices have not paid attention to implementing the regulations.61 The study noted an ambitious schedule for local-level consultation meetings, with voter contact meetings to be conducted twice a year at local level, or quarterly in some urban areas. However, this schedule has proven difficult to maintain and is not always followed in practice. There is also a lack of concrete criteria for assessing whether a particular legal-drafting process is gender-equitable or not, and whether commune-level rural development targets for gender equality are being met.

The study notes that social media are increasingly being used in rural areas and that online consultation tools primarily used in urban areas could, therefore, be developed for broader rural use. This wider point applies across the Mekong region, not just in Viet Nam. However:

‘...there is a need to be mindful of barriers to accessing information and technologies, as well as issues of censorship, exclusion, and safety. We cannot assume that online consultations will be inclusive, particularly as women have a lower rate of cell phone ownership and internet access than men in rural areas, but there is potential for social media to be used creatively, and more research is required in this area to understand gender implications’.62

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61 Ibid, page 34, citing official government sources.
ECONOMIC ISSUES
Economic Issues

Key to understanding gender and land in the Mekong region, is to review some of the issues arising in relation to large-scale land acquisitions and concessions. Cambodia’s legislation on land concessions is set out in the 2001 Land Law. It allows the relevant government authority to create Social Concessions, Economic Land Concessions (ELCs), or Use, Development and Exploitation Concessions, and to grant rights to any natural person or legal entity or group of persons to occupy land and exercise thereon rights set forth by law. The regulations around ELCs relate especially to agricultural investment; together with the 2001 Land Law, these regulations allow the expropriation of people’s land for the purpose of economic projects, thereby providing legal cover for what, in some cases, are a form of vastly undervalued land acquisitions, with compensation and resettlement issues negotiated case by case. This has contributed to rising land inequality and land concentration, partly fuelled by government efforts to increase large-scale irrigated agriculture, with reportedly few benefits, considerable environmental devastation and claims of unregistered indigenous communities being evicted under threat of violence.63 Growing concerns through the 2000s resulted in a government review of all land concessions from 2009, and in 2010 the then Prime Minister denounced illegal logging and corruption within forestry offices. A moratorium on the issuance of new ELCs began in 2012, but, despite this, continuing Social Concessions and reclassification of different types of concession contributed to increasing land disputes and ongoing disposessions (see Case Study 4).64

63 Amendment to the Land Law, 2001, op. cit., Chapter 5, Articles 5 and 48; Sub-Decree No. 146 ANK/BK on Economic Land Concessions; Radio Free Asia, 2020, Cambodia’s land concessions yield few benefits; Embree, J., 2015, Criminalizing Land Grabbing. Dispossession could be addressed under Cambodia’s 2015 National Housing Policy, which promises universal access to adequate shelter. But its implementation has been limited (Habitat for Humanity Cambodia, no date, Land and Housing Advocacy).

64 Radio Free Asia, 2014, New Cambodian land disputes despite moratorium; Land-Links.org, no date, op. cit.
Case Study 4: Women and Land Concessions in Cambodia – Boeung Kak Lake

Large-scale land acquisitions affect whole communities, but it can be harder for members of vulnerable groups, like female-headed households, to resist them. Vulnerable groups are less likely to have formal land rights and more likely to have lower literacy levels and lack information about their rights. They may also lack bargaining power within their communities to claim a share of any compensation, particularly in ethnic minority communities where gendered social norms favour male household heads.

The Boeung Kak Lake Community was a Cambodian community that lost its land through an Urban Development-Related Land Concession, whereby the urban poor were determined to be illegal squatters and were subsequently evicted. The affected families lost their tenure security and were left without any redress. Following this, 13 women were imprisoned for almost two-and-a-half years for trying to rebuild their homes in the locality. Their trial was condemned internationally as a violation of the Cambodian justice system, amid reports that local authorities had used bribery to encourage some members of the community to spy on others.65

Mediation has since yielded positive results for some groups impacted by land concessions in Cambodia. In 2021, for example, the Busra Indigenous Communities and the rubber company SocFin Cambodia concluded five years of negotiations to resolve a land dispute arising from an ELC granted in 2008.66 (See more details in Case Study 10, below.) However, it is questionable whether this kind of solution can keep pace with rising numbers of displaced people. At the same time, Cambodia has substantial experience of utilising good practices to address gender issues within land management and titling (see Case Study 1 above). This suggests that current concerns about large-scale land acquisitions in the country reflect broader State-against-citizen issues rather than specifically gender issues, as the gender dimension mainly results from the general global tendency for women to be relatively more disadvantaged and discriminated against as a group.67 However, this is not to dismiss the well-documented negative gender impacts of land investments in the region that do stem from women’s relatively disadvantaged position, particularly around land loss from ELCs, and Cambodian women’s commitment to confronting land investments that threaten their livelihoods is notable.

Similar concerns about large-scale land acquisitions arise in Lao PDR. Despite various moratoria since 2012 on new land concessions, land grabs continue to impact communities living in coveted resource-rich upland areas, with one report noting that ‘the legal framework is good, but enforcement is the issue’.68 To address the inequalities caused by

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the granting of land concessions, in 2013 the Lao government, with support from the University of Bern’s Centre for Development and Environment (CDE), began developing a Land Concession Inventory to help monitor investments and strengthen national land planning efforts for the benefit of all stakeholders. However, as in Cambodia, studies have shown that the gender implications of large-scale land acquisitions for agricultural investment in Lao PDR are complex and present opportunities for rural women as well as threats, with the main issue being the need to strengthen community involvement in land and natural resource governance in general.69

As noted above, almost 70% of Lao PDR’s total land area is forested and the 2019 Forestry Law, therefore, also has considerable bearing on how most of the population interacts with land. The Forestry Law does not specifically mention gender, the rights of ethnic or indigenous groups, or issues around Free, Prior and Informed Consent (FPIC). Yet despite this, considerable efforts have been made by development partners to promote the recognition of FPIC across the country (see Case Study 5). Also on the positive side, Lao PDR’s 2018 Compensation and Resettlement Policy specifically recognises the implications for women, as a vulnerable group, from relocation following land expropriation for the purposes of promoting large-scale agriculture. This policy entitles women to full compensation, as they are considered less likely than men to be able to restore their living conditions, livelihoods, and income-level post-relocation.70

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Case Study 5: Gender and FPIC Promotion in LAO PDR

To promote the recognition of FPIC in Lao PDR, the Regional Forestry Training Centre for Asia and the Pacific (RECOFTC) with the Lao Biodiversity Association (LBA) and the World Wide Fund for Nature (WWF) undertook efforts through their Carbon and Biodiversity Project Phase II and the World Bank’s Sustainable Forestry for Rural Development Project (SUFORD) to engage with 600 villages throughout the country. The aim was to promote participatory sustainable forestry management in priority production forest areas. Obstacles to success included ‘weak government commitment to increasing citizens’ natural resource rights’ and that where community tenure was denied, it was hard to motivate villagers to engage in participatory forest management, especially if the government seemed unwilling to consistently apply participatory management principles. Gender equity per se was not a focus of these projects, the emphasis being on strengthening communities as a whole. However, there is evidence to suggest that approaches which integrate gender issues into local land and natural resource management from the outset can deliver broader community results that are more sustainable in the longer term. Not paying attention to gender equity up front is, therefore, a major missed opportunity.71

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70 LWU, 2019, National Review of Lao People’s Democratic Republic.
These kinds of measures – FPIC, Environmental and Social Impact Assessments (ESIAs) before projects and investments begin, and safeguards for women’s rights – are particularly important given overall government policies focused on strengthening the market economy and commoditising land through the formalisation of rights via the allocation of LUCs. Lao PDR’s 9th Five-Year National Socio-Economic Development Plan and Vision (2021-2025) highlights the completion of the National Master Plan for Land Allocation 2030 and of 13 provincial land allocation, natural resource management and comprehensive environmental management plans; it also notes that, in the previous five years, land titles have been issued for more than 580,000 plots of land nationwide, although the government’s data is not gender-disaggregated. Beyond agriculture, Lao PDR’s growth strategies are reliant in practice on large-scale infrastructure projects such as mega hydropower projects requiring extensive land concessions and resource extraction, especially for logging, and involving domestic and foreign investors, including from China and Viet Nam. Issues arising include the disproportionate impact this has on rural women and forest-based ethnic groups, and particularly on the women of those minority ethnic groups, who comprise one of the most vulnerable social groups in Lao PDR. The disproportionate impact arises from their limited participation in decision-making, legal restrictions on freedoms of expression, assembly and association, and a range of economic, educational, and socio-cultural barriers that prevent them from protecting their rights. Such large-scale projects also add to Lao PDR’s existing environmental worries about unexploded ordnance (land mines), deforestation, soil erosion, loss of biodiversity and water pollution.

In Myanmar, long-running conflict has caused large-scale land loss and internal displacement. There is a history of arbitrary expropriation and unlawful occupation, with past reports of direct military involvement in moving villagers off their land. There was growing recognition pre-Coup of the benefits of stable property rights for fostering peace, and three of the 10 principles on land and the natural environment agreed on by the former government and ethnic representative negotiators during the mid-2017 Panglong 2 peace talks directly referenced gender. A countrywide gender-inclusive land policy was supported (Principle 1) and women and men were to have equal rights to own and manage land (Principle 7) and to manage land ownership matters (Principle 8).

Several attempts have been made to investigate land matters in Myanmar as the political environment has changed. In 2012 the then military-led parliament created a Parliamentary Land Investigation Commission (PLIC) to monitor large-scale land acquisitions and set up a Land Utilisation Management Central Committee in 2013. Both were dissolved in 2016 with the introduction of a new democratic government and replaced by a Central Reinvestigation Committee for Confiscated Farmlands and Other Lands. One report found that, of the 30,000 cases received in the PLIC’s first two years, just two-thirds had been heard, and compensation was found to be justified in fewer than 1,000 cases. PLIC also stood accused of having purposely avoided investigating cases in contentious regions.

72 For example, the 2017 Resolution of the Party’s Central Committee on the Enhancement of Land Management and Development in New Period, page 3, noted that: ‘For state land that is granted to individuals, entities, and organizations for use without land use rights [i.e., LUCs], it may not be transferred or sold-purchased. For state land over which land use rights are granted to individuals, it may be transferred, sold-purchased according to law.’ (italics added).


74 Land in Our Hands Network, 2015, Destroying People’s Lives.

and much of the information it produced was said to be incomplete and inaccurate. In 2019 the National Parliament passed a Land Acquisition, Resettlement and Rehabilitation Law to replace outdated colonial legislation. However, the overall situation around large-scale land acquisitions remains fluid following the 2021 Coup.76

Giving more cause for optimism is the 2018-2030 Climate Change Strategy. This builds upon Myanmar’s Climate Change Policy, which includes ‘Gender Equality and Women’s Empowerment’ as one of its nine key principles. The 2018-2030 Strategy specifically upholds principles of ‘(i)nclusive development that allows poor, landless, marginalised and vulnerable women, men and geographic regions to shape and benefit from opportunities provided by climate-resilient and low-carbon development’. The Strategy recognises a key finding of Township Level Climate Change Vulnerability Assessments by 2050, conducted in 2016 and 2017, that ‘women are, and will further be, disproportionately affected by climate change as they already suffer from lower wages and lack of opportunities’. It also recognises that gender has a major bearing on the impacts of climate change due to unequal access to land and natural resources and limited opportunities to participate in decision-making. During policy consultations, suggestions were made for there to be either a gender advisor or reserved seats from relevant commissions or social groups on the National Environmental Conservation and Climate Change Central Committee, which leads on implementing the Climate Change Strategy.77

The situation as regards large-scale land acquisitions is somewhat better in Viet Nam than it is in other parts of the Mekong region, in part because the 1993 Land Law gave Vietnamese farmers more secure land tenure than was the case in other countries. Laws around compulsory acquisition require the State to provide notice to land users, provide for their resettlement, and support and hear challenges to land acquisition decisions. In theory this should help citizens to protect themselves or at least acquire adequate compensation. However, current procedures are slow, unpredictable and lacking in transparency, and any policy solutions to support small-scale farmers still need to pay careful attention to gender issues.78 As noted above, customary forms of tenure are not recognised by statutory law in Viet Nam, and communities lack the legal status to engage in civil proceedings to protect their collective land rights. However, community management of forest land was allowed under the 2004 Law on Forest Protection and Development, and the more recent 2017 Law on Forestry, in seeking to balance socio-economic development with biodiversity conservation and climate change issues, puts sustainable forest management at its heart.79

Like Lao PDR, Viet Nam follows five-year socio-economic development plans, but there is no specific mention of women’s land rights in the latest one, only of the equal access to land and natural resources needed by private enterprises. Climate change is a further cause and consequence of land inequalities in Viet Nam. This has been exacerbated by the considerable loss of natural forests during Viet Nam’s transition to becoming a major agricultural exporter. The reduced yields induced by increasing climate variability hit rural women and ethnic minority groups hard – including that most vulnerable social group of the Mekong region, ethnic minority women – as they predominate among small-scale

77 Myanmar Climate Change Strategy, op. cit., pages 22, 52, 103 and 135.
78 USAID, no date, USAID Country Profile, op. cit.; Cole et al., 2022, Agricultural Land Accumulation, op. cit.
farmers. This requires factors that aggravate the impacts of climate change on women to be addressed, including the ‘socio-economic dimensions of climate change regarding land rights and access, such as tenure rights of displaced people, and the gender gap in tenure rights and access’.80

Urbanisation is another key issue in the region, and what it means for gender and land in different rural, urban, and peri-urban areas. In general, rural poverty is substantially higher than poverty in urban areas. In 2016 in Viet Nam, for example, the urban poverty rate was 2% compared with a poverty rate of 7.5% in rural areas.81 There is a tendency for land titles in both Lao PDR and Viet Nam to be found much more in urban and peri-urban areas than in rural areas, and for there to be a gender gap between urban and rural areas with respect to the land titles that are held (see Case Study 6).

Case Study 6: Gender Gaps and Urban and Rural Land Titles in Lao PDR and Viet Nam

Land titles are considered the most secure form of tenure security in Lao PDR, but they predominate in urban and peri-urban areas, where the Lao Land Titling Programme, initiated in 1997, focused most of its efforts. From 2003, titling began in rural (but not forest) areas but was later abandoned. A comprehensive analysis published in 2018 found that, of all four countries in the region, Lao PDR has by far the lowest coverage of agricultural land titles, at less than 3%, but even these are largely restricted to peri-urban areas.82 In Viet Nam, the gender gap in access to land titles is not only notable but is much worse in urban than it is in rural areas. Among all of those who have LURCs, overall, 13% more men than women have their names recorded on them. However, in urban areas the difference between them is only 5.8% more men than women; in rural areas, the difference is 19% more men than women who have their names recorded on LURCs.83

These examples provide a useful reminder that, where titling coverage really only reaches urban and peri-urban areas, access to land titles is unlikely to be gender-equitable for the country or region as a whole – regardless of how gender-sensitively designed and implemented the actual titling process is.

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81 Ingalls, M.I., et al., State of Land in the Mekong Region, op. cit., page 158.
83 Ibid, page 171.
INSTITUTIONAL ISSUES
Institutional Issues

Representation and Participation in Land Management

At the national level, all four countries have women-focused institutions that broadly address gender equality issues. However, it is unclear the extent to which these institutions, and the policy-making domain in general in the Mekong region, prioritise women’s land rights. Structures such as the LWU in Lao PDR and the VWU in Vietnam are relevant when reflecting on the broader incorporation of gender equity into policies, legislation, and practice in the different countries. With respect to issues of participation and representation in local government and especially within the institutions of land governance and land administration, there are some major differences between the Mekong countries. In Cambodia, there are no specific quotas for the appointment of women in land management and administration committees nor quotas for the appointment of women in land dispute resolution committees such as Commune Dispute Resolution Committees and Maisons de la Justice which operate at the subnational commune and district levels. This is despite the fact that politicians have begun discussing the general role of women in politics and leadership roles. However, recent evidence suggests that some women are actively involved in land management within designated Community Forests, and, for both Cambodia and Lao PDR, it appears that differences between women are an important mediating factor in how different women exercise their rights in practice within local land management in their different communities (see Case Study 7).

84 FAO GLRD, 2022d, LAT Assessment – Cambodia, op. cit.; Policy Pulse, 2019, Alternative Dispute Resolution; Samean, L., 2022, Chanthol pushes for more women in leadership roles.
Case Study 7: Differences among Women in Local Land Management in Cambodia and Lao PDR

Three recent case studies highlight differences in participation in community-level land management between different groups of women in Cambodia and Lao PDR. The Lao study included comparative research in an ethnic majority Lao Loum village, where livelihoods centred on paddy rice farming and trading, and an ethnic minority Khmu village in a mountainous area where livelihoods rested on swidden rice farming, cattle-raising, and collection of NTFPs. Ethnic minority women in Lao PDR often take part in land use decision-making at the household level, but in general, and compared with ethnic majority women, they tend to be under-represented in community-level decision-making structures, such as the Village Agriculture and Forestry Subunit (VAFSU). However, this study found that women in the ethnic minority village were more involved in their VAFSU than their sisters in the ethnic majority village were, and that this was because of the greater incentive to participate that arose from the ethnic minority women’s greater reliance on local natural resources for their livelihoods. The study also found that younger people, and girls in particular, hardly participated at all in local land and forest management in either village.

One Cambodia study included research in a Community Forest in Kampong Thom province, which falls under the jurisdiction of a community with some 95% of its members belonging to the Kouy indigenous group. Under Cambodia’s 2002 Forestry Law, customary use rights as well as statutory rights are recognised within a Community Forest, and the local regulations of this particular Community Forest clearly state that all members, male and female, have rights to access and use its resources, including NTFPs. However, the study found that the regulations do not adequately protect the rights of vulnerable members to benefit from Community Forest management activities when their physical participation in those activities is more limited. This affects groups such as widows, the poor, the elderly, and younger women. For other, non-vulnerable women, the study found that they were generally participating in, and benefitting from, the local management of the Community Forest on a par with men. The specific roles of men and women were different rather than strictly equal, reflecting gendered social norms and gender divisions of labour, but this was regarded by those interviewed for the study as equitable (i.e., fair) – with people playing a more active role in the aspects of land management of most direct concern to themselves.

A second Cambodia study featured a Community Protected Area (CPA) also in Kampong Thom province. Local perceptions were of equal access, control and use of farm and housing assets, but changing gender roles and divisions of labour within households were creating dissimilar rights to different parts of the forest. Men and women’s land management and conservation practices were found to differ according to their own knowledge and methods of using the forest’s resources. Those interviewed expressed support for social inclusiveness and equitable participation in land governance, but the CPA’s Committee had very few women members partly because only 30% of women in the community could read and write.

Taken together, these three studies are a valuable reminder that differences exist between different groups of women. These differences influence the ways in which different women and men understand and utilise their land and natural resource rights, including their rights to participate in community land and natural resource governance. The studies are also a reminder that policies that support one vulnerable group may sometimes undermine another, and that the best policies will, therefore, be those that are based on a thorough contextual appraisal of all the available evidence, and which include mechanisms for review as new evidence emerges during policy implementation.85

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85 RECOFTC, 2022, Gender, Tenure, and Customary Practices, op. cit., Annexes 1, 2 and 4.
In Lao PDR, around 373 of the 477 complaints that individual members of the public lodged with the National Assembly in 2017 were minor land and inheritance disputes that could be resolved by Village Mediation Units (VMUs). These must each contain a LWU representative.\(^{86}\) Here, the LWU plays a formal role in supporting women's access and tenure rights to land in the face of the customs, traditions and socio-economic differences that hinder the realisation of gender-equitable land rights by all. The LWU has been closely involved in land titling in Lao PDR, 'addressing women’s issues in land adjudication and registration and helping to ensure that women's rights to inherited land or land acquired during marriage are reflected in the names on land titles'.\(^{87}\) However, concerns have also been raised about the limited representation of women in land governance structures from central to local levels beyond the formal role of the LWU, and, at the time of writing, the Ministry of Natural Resources and Environment lacked any specific internal sectoral policies, plans or strategies to improve gender-related aspects. As one recent paper notes, women are greatly under-represented in the land sector in Lao PDR: ‘...the vast majority of official positions, especially at high-ranking levels, are occupied by men’, which adds to ‘the disproportion of voices within government to advance women’s rights to land’.\(^{88}\) Critics also note that the LWU, while powerful, does not adequately reflect the needs and interests of ordinary women, nor does it have an intersectional understanding of gender (see Case Study 8). Nevertheless, having an existing government structure, like the LWU, is a major step towards improving gender equity going forward.

### Case Study 8: Participation and Representation of Women in Government in Lao PDR

A recent study has observed that, despite the longstanding existence of the LWU, women's participation in decision-making about land and natural resources remains very limited, both in numeric terms and in their ability to make meaningful and effective contributions, especially at higher levels of government. According to the study:

‘...even when women are included in committees and in the workplace, their influence is limited at higher levels, with low levels of representation in land-related offices and in the Party Committee and People's Council at provincial level limiting their ability to push for change. One LWU leader noted that she is the only female Council member of nine people, and while she has some authority to mediate land and agricultural issues at local level, including involvement in neighbourhood land disputes, this is limited at higher levels. The LWU representatives also tend to be selected from among women who have had more access to education and are often from wealthier or more politically connected families. According to one DAFO (District Agriculture and Forestry Office) official, for example, when consultation meetings over the Land Law were held at the village level, about 80 percent of attendees were women. However, intersectional power relations shaped whose ideas were heard. The executive board of the local LWU expressed their opinions, but “ordinary women” did not.’\(^{89}\)

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\(^{86}\) CEDAW Committee, 2018, List of issues and question in relation to the sixth periodic report of the Lao People’s Democratic Republic, add.1, page 4; Constitution, op. cit., Article 41.


\(^{88}\) Derbridge, J., 2021a, Awareness-raising about Gender and Social Inclusion in respect of Land.

\(^{89}\) Beban et al., 2022, Towards Gender-Equitable Policy and Law Making, op. cit., page 31.
In Myanmar, the 2016 National Land Use Policy (NLUP) stipulates that committees of the proposed national land use councils shall consist of representatives from all ethnic nationalities, experts, women, and elders, but sets no specific quotas to ensure either any minimum level of representation or meaningful and effective participation. This suggests a lack of women’s participation in both policy-making and its implementation, and it is compounded by inter-sectionalities such as ethnicity, wealth, and education i.e., by differences between different men and women. One 2017 study, citing evidence from 2014, describes how:

‘In workshops, women explained that local administrative offices, including survey departments and courthouses, were male domains. Their testimonies are echoed in statistics: in the General Administrative Department, the face of government in rural Myanmar, 17 of 15,972 ward/village tract administrators are female, and there are no female administrators for the country’s 330 townships.’ [emphasis added]

This is similar to the poor state of involvement among ethnic minority women across all local government institutions in Viet Nam, despite the country’s strengths in many other aspects of gender equality. There is a major discrepancy in the representation of ethnic minority women compared with that of ethnic minority men within the Vietnamese civil service, and, as also in Lao PDR, ethnic minority women in the Vietnamese civil service were more likely to have clerical, administrative and finance-related roles than key leadership positions. This is a reminder of the importance of looking at gender in relation to women’s representation and participation in land governance and land management at all levels as an intersectional issue, linked inextricably to broader power dynamics (see Case Study 9).

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91 See Open Development Vietnam, 2021, Gender and Ethnic minority, op. cit., which notes that ‘Female EM officers represented the highest proportion in socio-political organizations (15.5%), in which the Women’s Union has 100% female representation while in other agencies the participation rates are very low (6% in Party agencies; 7.3% in People’s Councils - only one-sixth compared with the rate of EM men).’
Case Study 9: Participation in Land Governance in Cambodia and Viet Nam

A recent study of women’s participation in law and policy-making in relation to agriculture and natural resources found that much consultation with communities remains top-down and comes after a new law or policy has been adopted. The study also found that women’s participation tends to be equated with women being represented in consultations, with insufficient attention paid to ensuring their participation is both meaningful and effective.

The research team attended two national level consultation workshops as observers. The first took place in July 2022 and was a ‘Validation and Consultation Workshop’ that focused on conflict resolution mechanisms in contract farming in Cambodia. It was hosted by Oxfam Cambodia and the Centre for Policy Studies but brought government officials together with civil society representatives and the private sector. There were around 56 attendees in all and slightly more men than women. Ordinary farmers were represented by members of Agricultural Cooperatives, but these did not contribute in the plenary sessions, only in small group discussions. Power dynamics were very visible in the plenary but still visible in the small groups, with women farmers hesitant to speak up in front of more powerful men. Although participation by both women and men in general was active, gender equality issues were barely touched on. For at least some of the Agricultural Cooperatives and private sector representatives, it was also their first time to be involved in any discussion or consultation on the new contract farming law.

The second consultation workshop, which took place in October 2022, was an Expert Workshop on Mainstreaming Gender Equality in the Revised Land Law in Viet Nam. This had around 26 attendees coming from the National Assembly and from nearby provinces, all government officials but more women than men, and there was a female facilitator. There was much lively debate and opinion sharing by both men and women throughout, and consultation tools to collect opinions from a wide group of stakeholders were vigorously discussed, including how to increase publicity and transparency of the legislative process.

These two examples illustrate first, that simple inclusion of women in national level consultations does not necessarily mean that gender issues will be considered (or mainstreamed), and second, that even where gender is strongly considered the impetus for this is still top down. Furthermore, while a common approach to mainstreaming gender equality into the drafting of land-related policies and laws is to ensure equal numbers of women and men in consultation meetings, often through quotas, this does not guarantee that either the consultations or the policies and laws arising will be gender-sensitive or gender-equitable, due to the overall power dynamics within the participatory process i.e., due to the differences between different men and different women. Inclusive participation must therefore be an ongoing process that factors-in power dynamics and intersectionality, not just looking at participation as a matter of numbers of men and women taking part in a meeting.

Two further take-aways for the region stand out. First, ethnic minority status and social norms cannot be separated from gender when considering participation, especially when ethnic minority women and men take part in national level consultations or workshops held in the majority language. Second, more broadly, participation in land governance takes place at multiple levels, from the family and community and right up to national level workshops and beyond. The ways in which women participate at the most local levels of land governance affect how they participate at the higher levels, not just in terms of whether or not they have access to higher levels, formally themselves or informally via more powerful men from their families and communities, but whether they have real confidence to raise their own voice.\textsuperscript{92}

\textsuperscript{92} Beban et al., 2022, Towards Gender-Equitable Policy and Law Making, op. cit. See also FAO, 2013, Governing Land, op. cit., Daley et al., 2021, Women and Community Land Rights, op. cit. and Daley et al., 2023, Confident Gender and Land Champions, op. cit.
Legal Pluralism and Access to Land Justice

Regardless of the actual composition of all the various relevant institutions, gender-equitable land governance requires that if, or whenever, needed, all people can gain access to justice to defend their land rights and pursue their legally valid land claims. However, access to land justice is a complex issue, mediated not just by the provisions for accessing legal systems (whether statutory, customary, or religious), but also by factors such as the time and cost of transport to the physical spaces where claims need to be lodged or hearings held. Other influences to be considered include the claimant’s level of legal (as well as basic) literacy, and the level of confidence they have to claim their rights amid the influence of potentially discriminatory or intimidating social norms that disincentivise action due to the risk of ostracism or retaliation. For example, are women allowed to speak in public in front of men? Are there separate men’s and women’s toilet facilities with suitable privacy at court locations? Can women afford the bus fares or the fees for lodging court papers or obtaining the ID documents needed to lodge a case? And so on.93

In addition to these general aspects, the particular shape of equality before the law and of access to the law in the case of land disputes in each country then come into play. Looking first at access to the statutory legal system, the VGGTs impel States to provide specific legal assistance to vulnerable and marginalised people to support them in gaining equal access to judicial systems, especially indigenous women, women from ethnic minorities, women living in rural and remote areas and women from low socio-economic backgrounds. This could include the creation of a national legal aid or a similar organisation by the government, or the provision of additional support for pro bono community legal services specifically stipulated in legislation.94

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Explainer 3: Legal Pluralism Defined

Legal pluralism refers to the existence of more than one legal system (or legal sphere) in a country or local area. It is found in places where land is governed by formal (or statutory) law at the national level and the level of formal government institutions, but may also be governed by informal (or customary) tenure practices and arrangements. This informal legal system may have a long history and be managed by informal local people and institutions which are seen as more socially legitimate than the formal legal system of a faraway national or provincial government. It becomes a gender issue when different laws say different things. Some may discriminate while others offer protections.

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94 VGGTs, para 21.6; Kenney, N. and de la o Campos, 2016, Developing gender-equitable legal frameworks, op. cit.
Yet even without such services, when there is legal pluralism – i.e., when countries have both statutory land laws and active customary tenure arrangements, as do all four Mekong countries – there is sometimes scope for vulnerable women or other individuals to ‘work the system’ in their favour by choosing which ‘legal sphere’ to pursue their claims in, depending on their own assessment of where they will likely have the strongest claims. This has various implications for policymakers. For example, a free national government legal aid service that only helps with taking cases to statutory land tribunals may be shunned by an ethnic minority widow who feels that she would perhaps have stronger and more socially legitimate claims to her former matrimonial home in an informal meeting of tribal elders. In contrast, government support for community paralegals, with knowledge of both statutory land and family law, and of local customary practices, would benefit that same widow by giving her the option of getting a more informed second opinion from the paralegal as to her best course of action in the local context, taking into account all relevant local norms and national laws. That same paralegal may also be able to accompany her to either the statutory land tribunal or the informal meeting of tribal elders, coach her in how to present her case in either setting, or generally build her confidence to claim her rights.\(^{35}\)

At the same time, legal plurality often works against the most vulnerable social groups, who may have limited options for access to justice and, therefore, no real choices in practice. This makes support to navigate the different options in a situation of legal pluralism all the more necessary. This may deter the most powerful from ‘working the system’ to delay results or obtain their preferred outcomes at the expense of the most vulnerable, who may struggle with lack of financial resources, lack of information, illiteracy, and lack of confidence, among other barriers. In addition, customary processes of justice and dispute resolution can be particularly discriminatory and, therefore, unhelpful ‘options’ for some women, for example in relation to some inheritance rules and the protection of land access rights upon the death of a (male) spouse.

Access to Justice in Practice

Cambodia grants the gender-blind right to access a court in civil disputes to all, and the country also has a human rights commission as a higher authority for appeal. A court may grant judicial aid for a person who lacks financial resources, but in the 2006 Code for Civil Procedure there is no provision for any legal support without specific application to the Court on the grounds of financial need. However, the government has made various efforts to support access to justice for women in practice (see Case Study 10).

Case Study 10: Efforts to Improve Access to Justice for Women and Ethnic Minorities in Cambodia

The Cambodian government has taken various steps to improve access to justice for women, especially in rural areas, by increasing the legal aid budget and establishing a special team of volunteer lawyers to assist women in poverty. The Chairman of the Commission on Human Rights, Complaint Reception and Investigation, has highlighted the intention to provide assistance ‘especially where the victim is a woman or they lack the money to pursue their interest in court’. On the other hand, and despite progressive measures to include women in titling and registration processes and on land title documents, low basic literacy rates limit Cambodian women’s access to written sources of information about land issues, sales and their rights. This is particularly prohibitive for women’s overall control of land and their specific rights to land they may inherit from their families, if they are married, as ownership will often pass directly onto the male head of their household (their husbands), because women lack information about their legal rights. But it is also problematic for women household heads – without knowledge of their rights, or of titling procedures, it is that much harder for them to protect their household’s land. In addition, general ambiguity around rules and practices may lead to corruption, which disadvantages poorer people and those who are least able to defend their rights.

Some of these issues could be relatively easily addressed through multimedia public information campaigns and legal literacy training to strengthen the capacity and confidence of local people to stand up for their rights. There are many examples globally of good practices to draw on. Within Cambodian civil society, however, there are almost no CSOs working on both gender issues and land rights; instead, Cambodian gender CSOs tend to focus more on issues around gender-based violence (GBV) and nutrition. One source notes that ‘efforts to strengthen the enforcement capability of the country’s judicial and administrative agencies are critical if gender equality in basic rights is to be achieved’.

96 CEDAW Committee, 2019, Concluding observations on the sixth periodic report of Cambodia, op. cit.; Samean, L., 2021, Hun Sen sponsors pro-bono lawyer group; Code of Civil Procedure, second draft, chapter 1, section 2(1), Articles 69 and 70; Sub-Decree No. 570 of 2013 on the Organization and Functioning of Cambodian Human Rights Committee.

97 UNIFEM et al., 2004, A Fair share for women, op. cit., page 12. The Women’s Media Centre was the only example reported by MRLG team members during regional gender training, 2020-2021, of a Cambodian gender CSO that was documenting good practices on gender and sharing information. For multiple examples of global good practices on awareness-raising about land rights and improving legal literacy, see FAO, 2013, Governing Land, op. cit., Module 5, pages 87-102, and FAO, 2015, Governing Land, op. cit., Lesson 6.
More broadly, the case of the Busra Indigenous Communities mentioned earlier in this Outlook is an example of how valuable external legal support can be in resolving land disputes. Five villages had a long running conflict with the SocFin company. The conflict was cyclical, flaring up and down from its first eruption in 2008. There were four points of conflicts. Two related to communal land and to individually held farmland along the local stream. The third related to family rubber contracts between families and the company, and the fourth related to issues around lack of compensation payments for land occupied by the company. The company and the Busra Communities tried to resolve the conflicts many times through a tripartite committee and through compensation programmes to affected families, but the issues were still simmering away, unresolved. Eventually the conflict was resolved via a conflict mediation process funded by MRLG and involving most of the affected villagers as well as other relevant stakeholders. The Independent Mediation Group was nominated by both SocFin and the Busra to mediate, giving an opportunity to both parties to understand all the issues fully and clearly, and to carry out a land conflict mapping process. MRLG funded the Independent Mediation Group, and both MRLG and the Office of the High Commissioner for Human Rights (OHCHR) funded a local legal aid civil society organisation (CSO), Legal Aid of Cambodia, to provide legal assistance, capacity building and advisory support for the affected communities during the mediation process. Importantly, there was recognition of the role of socially legitimate customary authorities, with the Busra Commune Authority and the District authorities, on the government side, actively engaged with elders from the five villages in the mediation.59

In Lao PDR, the 2004 Law on Civil Procedure requires all civil proceedings to be conducted on the basis that all citizens are equal before the law regardless of gender. It further states that people’s courts must make favourable conditions for citizens, particularly civil litigants, to ensure equality. Despite this, Lao PDR has no legal provisions for legal support except for the right to seek counsel.

Government policy since 2009 has nevertheless aimed to enhance the role of legal aid. This has resulted in the creation of legal aid clinics supported by the International Law and Development Partnership and has promoted calls for an expansion of legal aid services. Lao PDR’s 2021-2025 Five-Year National Socio-economic Development Plan commits the government to providing further services through legal aid clinics and Village Mediation Units (VMUs).59

In Myanmar, there are no specific provisions guaranteeing equal access to the institutions of statutory, customary, or religious justice to resolve land disputes in either the Constitution or the 1909 Code of Civil Procedure. The 2016 NLUP indicates that one of its key principles is to ensure ease of access to judicial review and other dispute resolution mechanisms. This policy grants the right to complain and appeal in land disputes but relies on civil society to provide legal aid. The 2016 Legal Aid Law was an initial step forward, but it is unclear if it has been applied post-Coup.100 Moreover, access to justice in practice for many people in Myanmar is not straightforward (see Case Study 11).
Case Study 11: Barriers to Gender-Equitable Access to Justice in Myanmar

In Myanmar, access to justice is heavily influenced by the country’s legal pluralism. Traditional and religious institutions do not encourage gender equality and the participation of women, especially in rural and ethnic minority areas. In these areas, there are statutory, religious, and other customary laws and social norms that might apply to the ownership, use and management of property within marriage and families, and on inheritance. In most ethnic minority areas, the customary practices tend to be strongly patriarchal. However, whether or not there is legal pluralism, rather than dominance by one type of law - usually religious or customary - varies significantly by area, and it depends on the extent to which government institutions reach down to local communities, even within areas of the country dominated by the majority Bamar ethnic group. Within Bamar society, customary law is usually associated with dhammatat, or Buddhist law on marriage and the family; within ethnic minority areas customary law may or may not be religious law as well. In ethnic minority areas, including those controlled by non-state ethnic armed organisations, there is often widespread distrust of government institutions, reliance on local ‘big men’ and difficulties in accessing statutory legal protections and institutions, which are often not present nor operational at all. There is a corresponding low level of awareness about the statutory system, lack of trust in it, and limited awareness of legal aid services. Formal court processes are expensive and involve travel and time costs. Laws are written in the majority language which most ethnic minority people do not understand. Similar issues to the remote rural areas also arise for people living in camps for internally displaced people.

Thus, customary and traditional justice mechanisms predominate, and land-related disputes tend to be solved by village or religious leaders, or leaders of non-state ethnic armed organisations, backed up by social pressures that lend them greater local legitimacy than the national government. The greater social legitimacy of customary and traditional justice mechanisms, and for decision-making on land issues within families to be conducted according to the prevailing religious and customary laws and norms, makes it harder to achieve gender-equitable land governance or for women’s land rights to be strengthened towards parity with men’s, as local leaders and leaders of ethnic armed organisations do not tend to encourage gender equity.101

In Viet Nam, the Civil Code enables all individuals regardless of gender to request a court of State authority to assist with remedial action where their civil rights have been violated. Local courts deal with land dispute resolution on behalf of claimants with and without Land Use Right Certificates (LURCs). Certificates of dispute resolution can be submitted by one or both parties to settle or pursue civil procedures. However, poor and marginalised people are less likely to obtain LURCs in the first place, often because they lack clear information; one 2015 study of LURCs issued in ethnic minority communities in Viet Nam stated that as few as 21% of LURCs were issued in women’s names.102 Nevertheless, a range of legal support mechanisms and programmes provide a framework for supporting gender-equitable access to justice in Viet Nam (see Case Study 12).

101 MRLG team members’ comments during regional gender training, 2020-2021.
102 Civil Code, 2005, op. cit, especially Article 12(2)(a-f); FAO and MRLG, 2019, Challenges and opportunities of recognizing and protecting customary tenure systems in Viet Nam.
Case Study 12: Legal Support for the Gender-Equitable Exercise of Land Rights in Viet Nam

Legal support has a key role in ensuring the gender-equitable exercise of land rights in Viet Nam. Every national law contains a mandate for the government to disseminate the law, and within the formal judicial system the government has established legal aid centres to provide free legal support, including on land issues.

Dispute resolution mechanisms at community level, however, tend to prioritise stability over gender equity, and dispute resolution committees often require legal literacy training and gender-sensitisation. CSOs and development partners have a role to play here. **CSOs in Viet Nam provide legal aid to ethnic minority women** to resolve land disputes and run legal awareness-raising events in ethnic minority areas. Others raise awareness about forestry laws and land rights within forest communities. MRLG Alliance partners have taken part in processes to harmonise forestry and land laws across Viet Nam and recognise the role of customary law and authorities in land management and dispute resolution processes in remote and mountainous areas, piloting new approaches to land and forest management that involve the active participation of local women and men. Vietnamese CSOs also train communities to raise awareness about legal aid centres and facilitate their connections to them; at least one CSO, the Consultative Institute for Socio-Economic Development of Rural and Mountainous Areas (CISDOMA), has specifically worked at local level to train communities in securing equitable land access for women.103

Customary Tenure and Gendered Social Norms

Understanding issues around women’s participation and representation in the institutions of land governance and their ability (or inability) to gain access to justice in claiming and protecting their land rights requires understanding the extent and practice of customary tenure arrangements and of gendered social norms and traditions. This is particularly relevant in the context of the legal pluralism found across the Mekong region. Key questions include: 1) whether statutory local land management and justice mechanisms uphold principles of gender equity; 2) whether customary tenure arrangements are still predominant in land management, or, if not, whether effective decentralisation has occurred via formal land institutions; and 3) whether or not customary tenure arrangements and gendered social norms uphold principles of gender equity, and, if not, whether they are flexible enough to incorporate gender-equitable principles and practices.

Currently, the Cambodian Constitution does not recognise customary law and, therefore, by extension, it cannot explicitly supersede any customary practices that breach the constitutional principle of non-discrimination. However, Part 2 of the amended 2001 Land Law of Cambodia recognises the collective possession of immovable property (land) by indigenous communities. Their land is considered as collective property if cultivated according to customary rules of collective use. If so, its management is the responsibility of the traditional authorities and customary governance mechanisms of the communities, with all the gendered implications of that, depending on each community’s social norms, customs, and tenure practices. It is also subject to the Land Law and the laws of general enforcement related to immovable properties.

103 MRLG team members’ comments during regional gender training, 2020-2021.
Explainer 4: Customary Tenure Defined

Customary tenure is generally part of the picture wherever legal pluralism is found. Customary tenure refers to informal practices and arrangements by which land is accessed, used, and managed by local people and institutions. These practices and arrangements are usually closely linked to (often longstanding or traditional) gendered social norms. Constitutions, as the highest order of formal law, often do not recognise customary tenure or other informal laws, and socially legitimate practices and may reflect different gender norms, such as those of international treaties or global good practices. This can lead to contradiction, confusion, and frustration when governments try to implement formal laws that rub against local customs, practices, and social norms.

Customary institutions retain control over their lands – their collective property – if they are recognised by formal government institutions and also while pending determination of their official status in the Constitution. As regards social norms, the Chbab Srey, or Women’s Code of Conduct, and Chbab Prohh, or Men’s Code of Conduct, still hold much influence in Cambodia, despite the influences of agrarian transitions in reshaping gendered divisions of labour and increasing rural women’s autonomy as they move increasingly into wage work. While some studies have indicated that the Chbab Srey does not necessarily affect women’s engagement in politics, it does reinforce traditional norms and the obligations women have on a day-to-day basis to their husbands and families. Alongside other cultural factors, this may create unequal domestic power relations and position women in subordinate positions within their households. In turn, this can prevent women’s autonomy in the use and enjoyment of their land as well as their access to land and to information about how to claim their land rights. These customary codes of conduct can normalise male superiority and promote women’s passivity in Cambodia, not only tending to uphold discriminatory stereotypes but also potentially legitimising gender-based violence (GBV). As a result, the CEDAW Committee has recommended references to the Chbab Srey be eliminated within education, and widespread gender sensitisation to be promoted in the media.

While collective or village land ownership is most common in Lao PDR, recent legal reforms have pushed rather in the direction of individual titling efforts and targets. Collective titling at the level of the village remains difficult to achieve and legally ambiguous. Indeed, although the 2019 Land Law recognises customary land rights, it does not explicitly recognise collective land titles, emphasising rather the issuance of individual use rights over customary land use lasting over 20 years. However, collective land use rights are recognised on public utility lands, permitting common access (i.e., a use right) for activities such as the collection of timber and honey within forest lands. Communal customary practices and social agreements to allocate different areas of village forest

104 Land Law, 1992, op. cit. part 2, Articles 23 and 26; Amendment to the Land Law, 2001, op. cit. part 2, Articles 23 and 231-232.
for different families for the collection of NTFPs, relate to activities mainly undertaken by women, so their potential eradication via eventual individualised titling of all land would have a disproportionate impact on them. Moreover, it is mainly rural villages that rely on customary land and natural resource governance and the sharing of access to village land, whereas urban and peri-urban areas tend more to mix statutory and customary land governance arrangements. Increasing urbanisation in Lao PDR – by over 6% between 2010 and 2020 – means that the proportion of the population fully reliant on customary land governance is gradually decreasing. The overall picture in the ethnic minority and rural areas of Lao PDR thus suggests that women may be increasingly losing access to, and control over, customary land, through the national ‘de-agrarianisation’ and ‘de-feminisation’ in agriculture caused by policies fostering large-scale investor-led commercial farming. This also reduces the areas of land left available for private use, whether farming or NTFP collection, resulting in food insecurity.

In addition, a key impact of the Covid-19 pandemic in the Mekong region (as elsewhere) was the sudden influx into rural areas of local people who had previously emigrated away. Some lost jobs and needed to return to farming to survive, others sought to escape infection in crowded cities, and still more returned from other countries where they had fewer rights to public healthcare or financial support. It is too soon to assess the longer-term impacts of this on rural lands across the Mekong region, but the immediate shocks were clear.

As noted above, as in Viet Nam, the Lao PDR Constitution does not recognise customary law as a source of law. The 2019 Land Law does grant customary land use rights on public utility lands but does not mention customary land governance or mechanisms to protect and manage these rights. Land management is organised in Lao PDR through the national land management authority, provincial authorities, district and municipal management authorities and village land units. At the same time – and again in common with Viet Nam and its 53 minority groups alongside the Kinh majority – the Lao government officially recognises 50 ethnic groups with 160 ethnic subgroups, although the total number of ethnic groups may be over 200. In 2015 some 53% of Lao PDR’s total population was estimated to come from the majority Lao Loum ethnic group, with other large groups being the Khmou (11%) and the Hmong (9%). Women’s land rights in Lao PDR are, therefore, closely linked to customary tenure arrangements and inheritance practices, many of which are matrilineal, and are framed within customary gendered social norms.

Lao inheritance practices vary widely across provinces and villages and usually reflect the customs of the predominant ethnic group in the village. One 2020 study identified matrilineal ethnic Lao-Tai and partly matrilineal ethnic Bru/Makong villages to be places where ‘the customary inheritance and rights of women are continued and maintained’. However, there are many more patrilineal and bilineal villages where this is not the case.

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107 LIWG, 2020b, Women’s Land Rights, op. cit.; Derbidge, J., 2021b, Customary Tenure Rights in Lao PDR.


110 LIWG, 2020b, Women’s Land Rights, op. cit.
The situation in ethnic minority areas in Viet Nam is very similar, and women’s relative lack of knowledge about their statutory inheritance rights is a key barrier to gender equality. According to one recent study, the preference of sons in inheritance practices and divorced women being unable to acquire LURCs are two of the key reasons for discrepancies in women’s land rights between what is protected in statutory law and what takes place under customary practices. Barriers to women’s tenure rights in ethnic minority areas of Viet Nam are exacerbated by a common lack of knowledge and awareness of rights granted by the formal legal system. This is often linked to traditional gender roles and representations, such as the belief that only men have a place in public life or that men are better at solving problems or doing paperwork: in one area, Hung Yen, only 40% of men and 37% of women knew that, according to statutory law, widows do not lose land they inherited from a deceased husband if they subsequently remarry, while in the Long An area the figures were 46% of men and 33% of women.\footnote{LIWG, 2020a, Women and Land Rights in Lao PDR.}

Up until the launch of Myanmar’s 2016 NLUP, customary land rights and land tenure arrangements were also not formally recognised. As noted above, the Myanmar Constitution and current legal framework does not recognise customary law. The NLUP did endorse both the recognition of customary land use and tenure arrangements and practices, and the formalisation of customary land use rights, as measures to be included in the proposed new National Land Law. However, neither measure has, at time of writing, been re-affirmed in any subsequent legislation.\footnote{Constitution, 2008, op. cit., Sch. 1 s 5(a), (c) and (g) and s 10(b), and Article 37(a); NLUP, 2016, op. cit., Foreword s 8, Article 64.}

The NLUP explicitly states, in relation to customary tenure, that:

“Ethnic leaders, elders and women shall be involved in decision making processes related to land tenure rights of individual stakeholders or groups practising traditional cultivation methods on customary lands, monitoring, and dispute resolution mechanisms.”\footnote{NLUP, 2016, op. cit.}

The Constitution also states that the Union (the government) is the ultimate owner of all lands, so any future legal recognition of customary tenure and management might still be over-ridden and restricted to cover only use rights.
KEY EMERGING THEMES
Key Emerging Themes

Analysis of the relevant Articles addressing gender and land in different policies and laws in the four countries demonstrates the extent to which commitment to gender equality and gender equity is embedded within existing policy and legal frameworks, both more broadly and, more specifically, in terms of land governance. Gender-specific issues countering effective implementation of policies and laws in all four countries have been highlighted, including those relating to land concessions, land administration and titling, customary tenure and inheritance, and gendered social norms. The analysis has shown how all of these factors influence how different women and men participate in land governance and land management, and their abilities to access justice and exercise their land rights. By way of conclusion, several key themes and pressing issues can be drawn out as discussed below; each theme or issue is complemented by a forward-looking recommendation.

- **Policy Strengthening:** Policy frameworks across the Mekong region generally provide an adequate basis for gender equity in respect of land, especially in Viet Nam. The issue of concern is the ‘gender blindness’ of many statutory provisions in all four countries, including some constitutional provisions, in the face of long-standing socio-cultural norms and traditions. These weigh against many women in the region, especially those from patrilineal ethnic minorities and some religious groups. However, gender blindness (or gender neutrality) is clearly better than outright gender discrimination.

  » **Recommendation:** There is a strong case for strengthening policy frameworks through explicit provisions for gender equality, and for Constitutions to be amended to explicitly prohibit discriminatory gendered social norms. The 2016 NLUP in Myanmar is an example of a move in this direction.

- **Customary Tenure:** Customary tenure arrangements in the Mekong region vary extensively with the diversity of ethnic groups, and between patrilineal, matrilineal and some bilineal systems. Customary tenure increases complexity when land is expropriated for investment of any kind. This is due to its informal nature and its fluidity, and because it reflects existing local gendered social relations and power structures that can intersect with outside interests in unpredictable ways.

  » **Recommendation:** To ensure accurate understanding of customary tenure arrangements, a gender-inclusive approach must be fully embedded and integrated from the start. Where customary tenure practices are not gender-equitable, policy and legal frameworks can sometimes support access to stronger rights for vulnerable groups within customary tenure if there is political will to ensure that they are implemented well. For example, new forms of collective land titling might level the tenure security playing field for all and allow new by-laws to be developed and agreed that are clear and non-discriminatory to all. Likewise, individual titling or contract farming arrangements may offer preferential routes for women to own, transfer, utilise and manage land under customary tenure. In the case of the region’s matrilineal ethnic groups, particular care is needed to ensure that changes to land ownership do not reduce women’s current status in the absence of other changes to improve their access to opportunities from education, mobility and wage employment, that men currently have preferential access to.
- **Ethnic Minorities and Indigenous Rights:** Across the region, many marginalised people are from indigenous or ethnic minority groups; often these are also the most vulnerable people, and there is a tendency for women to be the most disadvantaged among them.

  » **Recommendation:** Addressing discrimination in all forms will go a long way towards tackling this, and it is the day-to-day operational and procedural details of land governance that actually matter. Administrative and procedural details need to consider women and ethnic minorities more systematically.

- **Legal Ambiguities:** Legal frameworks in the region are characterised by the ambiguous status of customary law and practice. Either customary law is not constitutionally recognised at all, or it is recognised and some elements of it are inconsistent with statutory provisions, decrees and/or regulations against gender-, and ethnic-based discrimination. Alternatively, customary or religious law is recognised in such a way that the vast majority of women (and men) are excluded from the protective jurisdiction of statutory legislation. This removes their freedom of choice. These issues are particularly pressing in respect of inheritance. In Cambodia and Lao PDR, the law mandates at least some property goes to a bereaved spouse in the absence of a written will, but the specific provisions do not meet adequate global standards. For example, they do not include the right to continue living in the matrimonial home.

  » **Recommendation:** Legal ambiguities should be addressed through comprehensive reviews of legislation in all four countries, including at the level of regulations and by-laws, followed by careful accompanying amendments.

- **Land Investments:** Investment in the region typically requires the granting of land concessions, which often includes land expropriation from small-scale farmers and forest-users. Evidence suggests that women are more negatively affected, due to gender inequalities within households and communities.

  » **Recommendation:** Legal requirements for FPIC and ESIA are necessary, but accountability measures and law enforcement need to be robust. A key theme is the level to which communities themselves are sufficiently involved in local land governance and management to enable them to constructively engage with investors – and with real authority, not just with a voice or some form of representation. The broader condition of local governance is an issue, and generally weak, including its approach to gender equity.
- **Land Administration:** All countries in the Mekong region have engaged with land registration and titling initiatives over the past few decades. Some projects, including those in Viet Nam, Cambodia, and Lao PDR, have taken steps to address gender equity and women’s rights within their activities, but there have been mixed results in terms of increasing women’s access to, and ownership of, land and overall tenure security. The trend toward joint titling may have had little impact on promoting meaningful gender equity, particularly when it has been made mandatory without alternative tenure options on offer.

  » **Recommendation:** What is now needed is greater recognition of differences between women (and between men). Unmarried, divorced, and widowed people’s rights must be protected at the same time as greater levels of choice are offered to married couples, in addition to encouraging joint titling within marriage where that remains appropriate. This is a challenge for land administration, land registration and titling programmes across the world. Likewise, there is a need to review and harmonise family and land laws with regard to gender equality in property rights, to make sure that rules and definitions of individual and family, matrimonial or common property are clear, non-contradictory, and that meaningfully uphold gender equity.

- **Policy-Implementation Gaps:** Policy-implementation gaps relevant to gender and land are not necessarily a result of a lack of good intentions: all four Mekong countries examined in this Outlook face varying levels of technical and resourcing capacity to implement policies and laws. Further focus on implementation is essential, even though it is not easy to measure progress in this area.

  » **Recommendation:** The everyday operational and procedural detail of how, and by whom, laws and policies are implemented is what matters. How is a law being applied? What do the implementing regulations look like? Have they been piloted with different social groups? There are numerous barriers that may need to be resolved, such as differences in literacy and education. Co-ordination among development partners is needed to avoid duplication of efforts and to promote synergies.

- **Participatory Land Governance:** Local land governance is crucial, including the need to embed gender-equitable community participation in the processes and institutions of land management at local levels.

  » **Recommendation:** Accountability mechanisms are needed and must be enforced, grounded in local regulations and by-laws that require certain forms of consultation to take place, at certain times and in certain ways. This would ensure that even the most marginalised members of communities have a voice that is heard and respected. Training, capacity building and gender sensitisation initiatives are needed to enable effective and participatory land governance that is not just representative of local elites.

- **Gendered Social Norms:** Gendered social norms – in the form of values, practices, belief systems, traditions – develop slowly over time. Land, at its heart, encompasses fundamental values that cannot be reflected within market economics. This is particularly the case in indigenous or forest areas, where people have deep cultural attachments to ‘their’ land or house, linked to their sense of ‘belonging’ and ‘home’. Likewise, all people grow up under a range of socio-cultural influences that determine their own set of gendered social norms and practices. Socio-cultural norms and practices are the main reason why (some) women are marginalised within and outside the home, and why women-headed households are often at risk of losing their rights to
Essential Questions: Guiding the Implementation of Gender-Equitable Land Administration

The implementation of land law and land registration and titling programmes faces a broad set of gender-related issues. One relates to the frequent disconnect and conflict that occurs between the structures and mechanisms of the statutory legal system, put in place by governments to carry out the functions of land administration, and the day-to-day practices that take place within families and communities to manage land. Conflicts with customary land tenure arrangements are to be expected but disconnect between the formal land law and other statutory laws relating to marriage, family, and inheritance, is also common. While the specifics vary, there are several general questions that should be asked in the implementation of any land administration activity to support gender equity. Taking the time to address questions like these may have far more impact on the numbers of women coming forward to register their land rights and starting to take a more active part in local land governance than any number of top-down efforts to boost the total numbers of land titles.

a) for Central Government Institutions

• Are documents needed to support formal land claims easy for both men and women to obtain?
• Are the costs of formal land administration processes affordable for the poorest and most vulnerable people? If not, are there any subsidies available to support discriminated groups? Are these well publicised and easily to claim?
• Is there space on land titling forms and documents to register more than one person’s name, to give options for both joint titling and for listing other people with interests in the land?
• Is there space on the forms and documents needed to register land transactions and transfers on inheritance or divorce for more than one person’s name?
• Is spousal consent needed to register land sales or to lease land or housing? How is it to be recorded, and by whom?
• When new forms or recording systems are designed, or new operational processes rolled out, are they first pilot tested in different areas of the country, rural and urban, and with different social groups?
• Are national public information campaigns conducted in-person using visual aids rather than relying only on text?

b) for Local Government Institutions

• Are there any hidden forms of discrimination within land administration offices? For example:
• Do local land officers, especially in public reception areas, speak local languages?
• Does every land office have at least one trained female land officer who speaks the main local ethnic group’s language?
• Are posters and information notes written in local languages, and do they make good use of illustrations to support less literate people to understand procedures?
• Are there accessible and gender-segregated toilet blocks at each land office?
• Do land office opening hours allow for those arriving either earlier or later in the day due to domestic and caring responsibilities to still be seen?
• Are local land officials effectively trained in issues of gender equality, gender equity and non-discrimination?
• Are there mechanisms of accountability in place to make sure that, in practice, land administration supports everyone’s rights fairly?
male family members, local elites and commercial interests. Changing social norms and values around either land or gender, though inevitably complex, is possible. Change can take place very quickly when a critical mass builds up.115

» **Recommendation:** Key moments of change may come through a well-publicised test case or a peace process, but equally through a ‘sudden’ realisation by members of a community that something needs to change. Civil society and government can work together with local champions of change, both women and men. Development partners can help with funding and technical support for learning and sharing good practices. Other measures to counter discriminatory social norms include: building the capacity and confidence of the most vulnerable people to ensure their participation in land governance and land titling initiatives; funding gender specialists to ensure women’s land rights are supported by the overall titling and registration process; and conducting public education campaigns among marginalised communities that take into account considerations of time of day, season, childcare options, language, location, and more. Policies to support gender equity in land governance must assess the overall socio-economic situation around existing gender relations and gendered social norms in order to avoid making anything worse. This especially pertains to matrilineal and bilineal communities where general policies that work in patrilineal communities can exacerbate the problems of women.

- **Capacity Strengthening:** Above all, there is a need for capacity strengthening for action. Across the region there are multiple examples of legal provisions and of institutional, project and programming efforts to improve and strengthen gender equity in land administration, land registration, access to land justice and participation in decision-making relating to land. To date these efforts are not as cohesive as they could be to achieve maximum impact.

» **Recommendation:** There is a need to foster a community of practice on gender and land at both national and regional levels in the Mekong, to encourage cross-learning and sharing of experience, co-operate in advocacy on key issues, and build critical mass for deeper change. This might also support – and perhaps inspire – discussion at both regional and national levels about the types of measures that might be needed to further strengthen individual and institutional capacities for gender action in the land and forestry sectors more broadly in the region.

Additional emerging themes that have been briefly mentioned throughout this Outlook, and are increasingly important for gender equity in land governance, are:

- **Forests and Climate Change:** The Mekong region contains many heavily forested areas but continues to face rising levels of deforestation and illegal logging. Some parts of the region are vulnerable to the effects of rising sea-levels. Women are among the most vulnerable within communities who are already at risk of climate shocks and disasters. The Covid-19 pandemic has exacerbated many of these issues.

» **Recommendation:** A common ASEAN-based regional approach on gender and climate change is needed, supported by the international VGGTs (Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security), and the SDGs (Sustainable Development Goals). This is needed to

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115 ICRW, 2018, Gender Equity and Male Engagement; Daley et al., 2021, Women and Community Land Rights, op. cit.; Daley et al., 2023, Confident Gender and Land Champions, op. cit.
address the negative effects of deforestation and climate change in Cambodia, Lao PDR, Myanmar and Viet Nam on ethnic minorities, forest-dwelling indigenous groups and the relatively more disadvantaged women among them. If support for climate change adaptation and mitigation measures is targeted only at the predominantly male holders of formal land use certificates, this might further disadvantage women and ethnic minorities: other, more gender-sensitive, approaches thus need to be found.

- **Knowledge and Data Gaps:** We know a lot, but there is always more to learn, not least as the rapid pace of agrarian transition and economic change in the region leads to changes in gendered social norms and power relations. Equally, the unavailability of comparable land data across the Mekong region generally, and the lack of consistent, sex-disaggregated data at both national and sub-national levels more specifically, present major challenges for identifying issues and tracking progress to address them.

  » **Recommendation:** Programme and project design needs to be well-informed and well-targeted, taking an iterative approach and based firmly on evidence gathered on the ground, with attention to gender from the start.
High Priority Recommendations

Gender equity is integral to good land governance. Gender is always important, even though the way it is addressed in different countries often varies according to context. Looking forward, key areas of focus might usefully address the need to:

- Increase women’s meaningful participation in community leadership and decision-making at both family and community levels;
- Widely recognise and implement women’s rights to own/inherit land on equal terms with men and have the same powers around land use decision-making. This includes representation in national, sub-national, provincial, and local land management institutions and governance bodies and in decision-making about agricultural investment;
- Improve women’s capacity and understanding about land tenure issues and legal frameworks to enable them to meaningfully engage in decision-making regarding land;
- Ensure women’s access to land administration services and land titles in their own name (and not just in joint names) despite literacy and socio-cultural barriers;
- Promote greater focus on issues of women’s land access and inheritance rights in ethnic minority communities, paying particular attention to rights under customary tenure arrangements;
- Encourage greater commitment at the regional level to agree on standards and indicators for monitoring gender equity in respect of land governance, and support national data collection to generate best-in-class gender-disaggregated comparative data so that progress can be tracked; and
- Cultivate a vibrant community of practice on gender and land in the region, to support the design and implementation of measures to improve gender equity in land governance and land access.

At the level of policy and legal frameworks, all four countries could follow the recommendations on gender and land made by the CEDAW Committee in their most recent formal review of Cambodia: take steps to reallocate or distribute land to women as most titles still go to men; give special attention to indigenous, ethnic minority and rural women in informal settlements; and establish systematic gender assessments when adopting or revising laws. At the level of land administration, programme and project design and implementation, all four countries could likewise pay more attention to creative innovation and draw more on evidence-based global good practices.

There is a role for development partners to collaborate with governments and civil society in developing clear monitoring indicators and mechanisms and supporting iterative approaches. This would include being more ready to encourage the adaptation of good global practices, perhaps even developing a ‘toolkit’ of Mekong best practices, so that solutions are specific to national and sub-national contexts and are developed in partnership with local communities.

Finding what works best in the local and national context to support greater gender equity in land matters will lead to better outcomes for all people in the Mekong region – young and old, women and men, married and single, rich and poor – regardless of educational attainment, dis/ability, ethnicity or gender.

115 CEDAW Committee, 2019, Concluding observations on the sixth periodic report of Cambodia, op. cit.
## Annex 1: A Comparative Summary of Key Gender and Land-Related Legislative Provisions

<table>
<thead>
<tr>
<th>Legislative Provision</th>
<th>Cambodia</th>
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<tbody>
<tr>
<td><strong>Gender Equality in Constitution?</strong></td>
<td>YES, all forms of discrimination against women explicitly abolished and supported by broader legislation.</td>
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<tr>
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<td>The Cambodian Constitution, 1993, Articles 45(1), 46</td>
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<td></td>
<td>Civil Code of Cambodia (Cambodia) 8 December 2007 Royal Kram n°NS/RKM/1207/030, Articles 6, 8, 15 and 16</td>
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<td></td>
<td>Additionally:</td>
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<td>Criminal Code of the Kingdom of Cambodia (Cambodia) 30 November 2009, Article 265(6)</td>
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<td><strong>Gender Equality in Citizenship?</strong></td>
<td>YES, supported.</td>
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<td>Sub decree No 36 ANK/BK/July 26, 1996, on Khmer National Identity Cards, Articles 3 and 4</td>
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<td>Law on Nationality, 1996, Articles 4 and 5</td>
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<td>Lao PDR</td>
<td>Myanmar</td>
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<tr>
<td>NO, no explicit mention of sex or gender.</td>
<td>YES, but neutral, no explicit support for women.</td>
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<td>Constitution of the Lao People's Democratic Republic (Lao People's Democratic Republic) 6 May 2003, Articles 22, 29, 35 and 45</td>
<td>Constitution of the Republic of the Union of Myanmar (Myanmar) adopted May 29, 2008 (Law no 2/2008) part 1 Article 21, and Article 348</td>
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<tr>
<td>YES, supported.</td>
<td>YES, supported.</td>
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<tr>
<td>Law on Lao Nationality, 1990</td>
<td>Burma Citizenship Law (Pyithu Hluttaw Law No. 4 of 1982), Chapter 2</td>
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<td>*No provision enabling Lao Nationality by marriage, thus female and male spouses have the same conditions for conferral of citizenship rights in that nationality can be acquired via an application if Article 14 is fulfilled.</td>
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<tr>
<td>Legislative Provision</td>
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</tbody>
</table>
| **Gender Equality in Marriage?** | **YES, equal rights granted.**  
Constitution, Articles 44 and 45  
Civil Code, Articles 973 and 974  
Land Law, Articles 4 and 24  
Law on the marriage and Family 1982, Articles 32, 33 and 37 |
| **Gender Equality in Property Ownership?** | **YES, supported.**  
Civil Code, Article 971  
Law on the marriage and Family, Articles 32, 33 and 37 |
| **Gender Equality in Land Transactions?** | **YES, supported.**  
Civil Code, Articles 973 and 976  
Law on the marriage and Family, Articles 33 and 37 |
| **Gender Equality in Inheritance?** | **SOMEWHER, matrimonial rights largely unsupported, no discrimination based on gender for succession.**  
Land Law 2001, Article 75  
Civil Code, Articles 1156(1), 1156(2), 1161(1) and 1162 |
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<tr>
<th>Lao PDR</th>
<th>Myanmar</th>
<th>Viet Nam</th>
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| **YES, equal rights granted.**  
Property Law (Lao People’s Democratic Republic) 27 July 1990 No. 04/PO, Articles 25 and 26  
Family Law, Lao People’s Democratic Republic) 29 November 1990 No. 07/90/SPA, Articles 2, 3, 4, 5, 9, 15, 20 and 24 | **NO, no universal and specific protections.**  
Burma Laws Act (Myanmar) 1898 §§ 13(3)  
Succession Act (Myanmar) 1925 Part XXXIII of the Burma Code (vol XI), Article 20 | **YES, equal rights granted.**  
2013 Land Law, Article 95  
Constitution, Article 64  
Law on Marriage and Family 1982 revised in 2000, Articles 10, 27[2], 97 and 98  
Decree 70/2001/ND-CP On the implementation of the Marriage and Family Law, Articles 5, 13 and 23-25 |
| **YES, supported.**  
Constitution, Article 35  
Land Law (Amended) (Lao People’s Democratic Republic) 21 June 2019 No. 70 NA  
Family Law, Articles 27 and 28 | **SOMEWHAT supported, no universal and specific protections**  
** Hard to determine as family law does not apply to most women in Burma; Buddhist and Muslim marriages (estimated to be over 90%) are governed by religious laws.** | **YES, supported.**  
Constitution, Article 58  
Law on Marriage and Family, Article 27(2)  
Decision No. 01-NQ/HDTP, 1988, Article 42  
Civil Code, Articles 8, 12,15 and 33 |
| **YES, supported.**  
Family Law, Article 27 | **NO, no provision located** | **YES, supported.**  
Law on Marriage and Family, Articles 15, 97 and 98 |
| **SOMEWHAT, matrimonial rights largely unsupported, no discrimination based on gender for succession.**  
Law on Heritage and Basis of inheritance (Lao People’s Democratic Republic) 2005 No. 138/PO art 6, 16 | **YES, full spousal inheritance supported, no discrimination on based gender for succession.**  
National Land Use Policy, ss 75(c) and 75(d)  
The Child Law (Myanmar) 14 July 1993 (Law no 9/1993), Article 25  
Succession Act (Myanmar), Article 3 | **YES, no discrimination on basis of gender for spousal or lineal inheritance.**  
Civil Code, Articles 15, 245, 631, 632, 663, 669. 676, 734 and 735 |
<table>
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<tr>
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<tbody>
<tr>
<td>Gender Equality in Political Representation?</td>
<td>NO, unsupported, no specific law on representation</td>
</tr>
<tr>
<td>Gender Equality in Land Administration? (including decentralisation, customary land rights and access to judicial systems)</td>
<td>NO, mostly unsupported. Land Law, 2001 Articles 23, 26, 231, 232 and 233 Amendment to the Land Law (Cambodia) 2001, Articles 2, 231 and 232 Constitution, Article 31 Code of Civil Procedure, Section 2(2), Articles 69 and 70 Sub Decree No. 570 of 2013 on the Organization and Functioning of Cambodian Human Rights Committee</td>
</tr>
<tr>
<td>Gender Equality in Local Government and Decision-Making over Land?</td>
<td>NO, unsupported</td>
</tr>
</tbody>
</table>

Sources: Eshbach, L. and B. Roberts, 2019, Marriage, Divorce, and Inheritance, op. cit.; FAO GLRD, 2022a, Country Profile – Cambodia; FAO GLRD, 2022b, Country Profile – Vietnam; FAO GLRD, 2022c, Country Profile – Laos; Peter McMullin Centre on Statelessness, 2023, Factsheet: How does someone become stateless? Please also see all national legislation sources listed in the full bibliography of References in Annex 2.
<table>
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<th></th>
<th>Lao PDR</th>
<th>Myanmar</th>
<th>Viet Nam</th>
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<tr>
<td><strong>SOMETHING, unsupported, no specific law on representation</strong></td>
<td>NO, unsupported, no specific law on representation</td>
<td>SOMEWHAT, unsupported, no specific law on representation</td>
<td>National machinery includes:</td>
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<td>Law on the Development and Protection of Women of 2004</td>
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<td>National Committee for the Advancement of Women (NCFAW),</td>
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<td>Committees for the Advancement of Women (CFAWs)</td>
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<td>Viet Nam Women's Union (VWU).</td>
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<td>2005 Gender Strategy for Agriculture and Rural Development</td>
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<tr>
<td><strong>SOMETHING supported, customary land rights and governance not recognised except somewhat in forestry law.</strong></td>
<td>NO, mostly unsupported - Customary Land Rights not recognised.</td>
<td>Somewhat supported, customary land rights and governance not recognised, some decentralisation to administrative bodies, equal de juris access to judicial systems</td>
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<td></td>
<td>Constitution, Articles 37(a), sch. 1 s 5(a), (c) and (g) and sch. 1 s 10(b)</td>
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<td>2003 Land Law supported by 2013 amendment, Articles 48(3), 52(2), 64(1) and 64(2)</td>
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<tr>
<td></td>
<td>National Land Use Policy, Article 64 and foreword s 8</td>
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<td>2001 Circular 1900/2001/TT-TCDC by Department of Land Office</td>
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<td>Legal Aid Law 2016</td>
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<td>Civil Code, Article 12</td>
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<td>Law on Organization of People's Courts, 2002</td>
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<tr>
<td><strong>NO, unsupported but some consideration.</strong></td>
<td>NO, unsupported.</td>
<td>NO, unsupported.</td>
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<td></td>
<td>The five-year national Socioeconomic Development Plan (2021-2025), page 100.</td>
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<td>Law on Civil Procedure, Article 6</td>
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</table>
Annex 2 – References

International Legal Frameworks and National Legislation

International Treaties and Official Documents

United Nations Charter

Statute of the International Court of Justice


General Recommendation to the CEDAW No. 5 of 1988

General recommendation no. 21: Equality in marriage and family relations, UN Doc CEDAW/C/GC/21 Thirteenth session (1994)

General recommendation on Article 16 of the CEDAW (Economic consequences of marriage, family relations and their dissolution), UN Doc CEDAW/C/GC/29 (30 Oct. 2013)

General recommendation no. 34 on the rights of rural women, UN Doc CEDAW/C/GC/34 (4 Mar. 2016)

Consideration of reports submitted by States parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Fifth and sixth periodic reports of States parties, Viet Nam (2005) UN doc CEDAW/C/VNM/5-6

Concluding observations on the combined seventh and eighth reports of Viet Nam (29 Jul. 2015) UN Doc CEDAW/C/VNM/CO/7-8

List of issues and questions in relation to the sixth periodic report of the Lao Peoples Democratic Republic addendum Replies of the Lao Peoples Democratic Republic (19 Jun. 2018) UN Doc no. CEDAW/C/C/Lao/ Q/8-9/Add.1

Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure (18 Mar. 2019) UN doc CEDAW/C.CMMR/CO/EP/1

Replies of Cambodia to the list of issues and questions addendum in relation to the sixth periodic report of Cambodia (8 Oct. 2019) UN Doc: CEDAW/C/KHM/Q/6/Add.1

Concluding observations on the sixth periodic report of Cambodia (12 Nov. 2019) UN Doc CEDAW/c/KHM/ CO/6

UN Declaration on the Rights of Indigenous People (UNDRIP) 2007


Cambodia

Constitution of the Kingdom of Cambodia, adopted in Phnom Penh on Sep 21, 1993, 2nd Plenary Session
Law on the Marriage and Family, 26 Jul. 1989
Land Law, 13 Oct. 1992
Law on Nationality, 1996
Law on Environmental Protection and Management of Natural Resources, 1996
Amendment to the Land Law, 2001
Civil Code of Cambodia, 8 Dec. 2007 Royal Kram n°NS/RKM/1207/030
Criminal Code of the Kingdom of Cambodia, 30 Nov 2009
Sub-Decree No. 146 ANK/BK on Economic Land Concessions
Sub-Decree No. 570 of 2013 on the Organization and Functioning of Cambodian Human Rights Committee
Code of Civil Procedure, second draft
National Housing Policy, 2015

Lao PDR

Constitution of the Lao People's Democratic Republic, 6 May 2003
Family Law, 29 Nov. 1990 No. 07/90/SPA
Law on Civil Procedure, 2004
Law on the Development and Protection of Women, 2004 No. 08/NA
Law on Lao Nationality, 15 Jun. 2004 No. 35/PO
Law on Heritage and Basis of Inheritance, 2005 No. 138/PO
Law on Inheritance, 2008
Law on Contract and Tort, 2008 No. 01/NA
Land Law (Amended), 21 Jun. 2019 No. 70 NA
Gender Equality Law, 2019
Master Plan on the Development of the Rule of Law in Lao PDR toward the Year 2020, 2009
Circular 09/2021/TTBTNMT, 2021
Myanmar

Married Women’s Property Act, 1874
Burma Laws Act, 1898
Code on Civil Procedure, 1909
Succession Act, 1925 (Part XXXII of the Burma Code (vol XI))
Burma Citizenship Law, 1982 (Pyithu Hluttaw Law No. 4 of 1982)
The Child Law, 14 July 1993 (Law No. 9/1993)
Buddhist Women Special Marriage Law, 2015, (Pyidaungsu Hluttaw Law No. 50/2015)
Legal Aid Law, 2016 (Pyidaungsu Hluttaw Law No. 10, 2016, The 9th Wanring Day of Pyartha, 1377, M.E)
Land Acquisition, Resettlement and Rehabilitation Law, 2019 (Pyidaungsu Hluttaw Law No. 24/2019)
National Land Use Policy, (NLUP), Jan 2016
Myanmar Climate Change Strategy 2018-2030, 2019

Vietnam

Law on Organization of People’s Courts, 2014, Law No. 62/2014/QH13
Law on Forestry, 2017
Ordinance on Proceedings in Administrative Cases, 1989
Ordinance on Proceedings of Economic Cases, 1994
Viet Nam Green Growth Strategy, 2012
2012–2020 National Action Plan on Climate Change
2013–2020 National Plan on Urban Development of Viet Nam in Response to Climate Change
National Strategy on Climate Change for 2050
Circular 1900/2001/TT-TCDC, 2001, from the Department of Land Office

Additional Literature

Beban, A., et al., 2022, Towards Gender-Equitable Policy and Law Making in the Mekong Region, draft report, MRLG


Embree, J., 2015, 'Criminalizing Land Grabbing: Arguing for ICC Involvement in the Cambodian Land Concession Crisis', Florida Journal of International Law, 27(3) 399-420


FAO GLRD, 2022d, LAT assessment – Cambodia https://www.fao.org/3/ax944e/ax944e.pdf (last accessed 24 Nov. 2022)


FAO and OHCHR, 2022, COVID-19, land, natural resources, gender issues and Indigenous Peoples’ rights in Asia, Bangkok https://doi.org/10.4060/cb9121en (last accessed 24 Nov. 2022)


Habitat for Humanity Cambodia, no date, *Land and Housing Advocacy* [pdf] (last accessed 23 Feb. 2023)


IndexMundi, 2023, *IndexMundi* https://www.indexmundi.com/facts/ (last accessed 8 Mar. 2023)


International Commission of Jurists, 2021, 'Myanmar – Amendments Restrict Legal Aid for Thousands of Detainees', *Targeted News Service*

International Court of Justice, no date, *Declarations recognizing the jurisdiction of the Court as compulsory* https://www.icj-cij.org/en/declarations (last accessed 10 Mar. 2023)


Land-Links.org, no date, *Country Profile: Cambodia*


OHCHR, 2023a, *Status of Ratification Interactive Dashboard* https://indicators.ohchr.org/ (last accessed 31 May 2023)


This Outlook on Gender and Land in the Mekong Region (Cambodia, Lao PDR, Myanmar, and Viet Nam) identifies strategic priorities to meaningfully strengthen gender-equitable land governance across the region. Gender-equitable land governance ensures that men and women can participate equally in their relationships to land, both through formal institutions and informal land administration and management. While political and economic systems vary across the region, many gender issues are broadly similar, and ethnic minority women are often the group most discriminated against.

The Outlook provides a basis to guide potential policy and action. It starts by framing gender and land in the Mekong region in conceptual, international, and regional contexts, and then reviews land-related policy and legal frameworks and their gender-specific provisions. This includes a look at family and inheritance laws, at land registration and titling initiatives, as well as at implementation issues. Broader land-related economic issues are also addressed, including large-scale land acquisitions and the integration of agricultural production into regional and global markets, and key institutional issues relating to participation in land governance, access to land justice and customary tenure.

The **Mekong Region Land Governance Project (MRLG)** is a project of the Government of Switzerland, through the Swiss Agency for Development and Cooperation (SDC), with co-financing from the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Government of Luxembourg. The MRLG project is implemented by Land Equity International (LEI) in partnership with GRET and supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).