



Gender Dimensions of the Draft Land Law of Cambodia

June 2024

Summary and Key Messages

While women's land tenure security can enhance participation in household decision-making and overall wellbeing, the current draft Land Law lacks specific provisions to effectively address gender equality.

- The draft Land Law makes limited references to spouses, no references to women, and only indirectly reinforces gender equality through references to the Constitution and Civil Code.
- Some articles in the Land Law impact women disproportionately due to unique roles of rural and Indigenous women across Cambodia.
- Existing disparities in women's participation in land governance and leadership are not addressed in the draft Land Law.
- Suggested insertions to reflect gender equality principles in the draft Land Law were not incorporated into updated drafts.

Without including specific provisions aimed at combatting *de facto* inequality, it is likely to persist.

Introduction

The draft Land Law of Cambodia was released to CSOs in January 2024 (draft Land Law, dated 27 December 2023). Following a limited period given to civil society to review and provide comments, the MLMUPC accepted and integrated some comments into the draft and circulated to the CSOs a newer draft Land Law (developed for an inter-ministerial workshop on 26 March 2024). This draft Land Law of 26 March 2024 consists of 7 titles, 190 articles, and a glossary of terms. The following analysis refers to that version of the draft law.¹

This memo examines the draft Land Law through a gender lens, focusing on impacts to women's land rights, livelihoods, and wellbeing. Research shows that increased women's land tenure security has positive impacts on participation in household decision-making, household incomes, expenditures on food and education, and decreased domestic violence [1], underscoring the importance of this law and how it has the opportunity to uplift rural women in Cambodia.

¹ Note: Since the drafting of this memo, a newer version of the draft Land Law (19 June 2024) has been released. This memo has not been updated to reflect any new structure of the law, but the new version has been reviewed for any inclusion of gender equality references, which were still lacking.

Legal Framework for Women's Land Rights in Cambodia

The main laws governing women's land rights in Cambodia include the Constitution, the Civil Code, and the 2001 Land Law. Since the Constitution references adherence to UN conventions, we have also mentioned key provisions of CEDAW, the main UN convention on women, in the following overview.

Constitution

The Constitution includes a number of articles relating to gender equality and land ownership rights that clarify that women have the same rights as men to ownership, inheritance, and control of land, including:

- Article 31: "...Khmer citizens are equal before the law, enjoying the same rights, liberties and duties regardless of race, color, sex, language, beliefs, religions, political tendencies, birth origin, social status, wealth or other situations. ..." This article also references adherence to treaties and conventions related to women's rights and children's rights.
- Article 44: "All persons, individually or collectively, shall have the right to ownership..."
- Article 45: "All forms of discrimination against women shall be abolished. ... Men and women have equal rights in all fields, especially with respect to those of marriage and family. ..."

Numerous other articles in the declaration of rights of Chapter III of the Constitution explicitly state that they apply to citizens of Cambodia "of either sex".

Civil Code

The Civil Code sets forth the general principles governing legal relations in civil matters and that apply to property related matters and family relations (art. 1); fundamental concepts of the Code give concrete embodiment to the concepts of the dignity of the individual, the equality of the sexes, and the guarantee of property rights provided in the Constitution (art. 2).

The Code further recognizes women's legal capacity: men and women have the ability to conclude contracts under the same basic conditions, rights, and obligations (articles 6, 8, 15, and 16).

Further articles on gender equality in property rights and inheritance include:

- Article 971: Recognizes full or partial community of property as the default marital property regime
- Articles 973 and 976: Set spousal consent as mandatory for any transaction involving matrimonial property
- Article 974: Recognizes gender equality in the rights to own or control property regardless of the type of marriage

- Article 1161(1) and 1162: Stipulate that, upon succession, the surviving spouse is entitled to a minimum share of matrimonial property
- Article 1156(1, 2): Stipulates that brothers and sisters have an equal right to inherit and receive an equal share of inheritance

CEDAW

CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women, requires states to take into special consideration the rights and protections of rural women and to take appropriate measures to address rural women’s problems and protect them from discrimination (Article 14). The rights of rural women (Article 14(2)) include the rights to participate in development planning, receive various types of training and education, organize self-help groups and cooperatives for economic opportunities, participate in community activities, access agricultural credit and resources, and receive equal treatment in land and agrarian reform and resettlement schemes.

CEDAW also requires states to take all appropriate measures to ensure that men and women have the same rights in terms of the “ownership, acquisition, management, administration, enjoyment and disposition of property” (Article 16).

Consultations on the Draft Land Law

In early 2024, MLMUPC circulated roughly 3,000 letters inviting comments on the draft Land Law. As part of efforts to facilitate civil society input, Landesa partnered with Open Development Cambodia, ALIGN, and other development partners to host several consultation dialogue sessions of civil society organizations, Indigenous groups, and Land Law experts. These dialogues included a two-day consultation workshop of 72 participants on February 13-14 and an expert session of 21 technical legal experts on February 15 prior to submission of the first round of comments. NGO Forum also organized a consultation session in this time period.

After the comment period reopened in March, Landesa supported Open Development Cambodia and other local partner organizations such as GADC, ICSO, and MVi to organize additional dialogue sessions for the purpose of enhancing coordination and harmonization between civil society inputs, increase understanding of provisions within the Land Law, and share knowledge on potential issues arising from the draft’s provisions. Several of these sessions focused on Indigenous Peoples’ rights. One session, a knowledge-sharing session on women's land rights, was organized by Open Development Cambodia and co-facilitated by Landesa partner GADC, with 22 rural women’s rights experts discussing relevant international and national legal frameworks².

² Participants in the women’s land right knowledge-sharing session joined from Open Development Cambodia Organization (ODC), Cambodia Indigenous Women Association (CIWA), Klahan, Sahmakum Teang Tnaut (STT), Equitable Cambodia (EC), Community Empowerment and Development Team (CEDT), Landesa, Gender and Development for Cambodia (GADC), NGO Forum on Cambodia (NGOF), Cambodian Human Rights and Development Association (ADHOC), Family Health International – Civil Society Support Activity (FHI360-CSS), HBS, and United States Agency for International Development (USAID).

Participants in the women’s land rights knowledge-sharing session raised some key perspectives:

- Lack of consideration of LGBTQIA+³ communities in inheritance, joint titling, and other property rights issues.
- Legal structures are needed to support robust compliance with the provisions of international agreements. Without supportive structures, ad hoc support efforts, such as helping communities register marriage licenses prior to systematic land titling, are needed to fill the gaps.
- Alternative dispute resolution structures are especially important for women who can face lengthy delays in divorce proceedings that affect their land rights.
- “Women are strongly motivated to secure land rights, driven by their desire for prosperity.”
- Despite the growing number of female activists, men continue to dominate lobbying efforts inside Indigenous communities. This issue is influenced by factors such as education, cultural norms, and traditional roles. To support women’s long-term participation, barriers such as early disengagement and cultural expectations must be addressed.
- Women’s relationships with the land are inseparably linked to their responsibilities as gatherers and agriculturalists. However, men make most land-ownership-associated choices, particularly in Indigenous societies where Indigenous elders exercise power.
- When Indigenous women file complaints under the Civil Code about illegal logging or land encroachment, which typically require a major expenditure of time and resources, they frequently receive little support or encouragement. They also face practical challenges, such as requests not to attend court procedures with their children owing to worries that the children’s presence may disturb the proceedings.
- “Competent authorities” and other undefined terms in the Land Law could be clarified to facilitate successful and equitable application of the law.

Gender Dimensions of the Draft Land Law

The draft Land Law of Cambodia has limited references to women and gender despite civil society’s recommendations to prioritize gender equality:

1. **Gender equality is implicitly reinforced through reference to the Constitution and Civil Code.** By clarifying the relationship between the Land Law and the Civil Code and Constitution in articles 6 and 8 respectively, the draft law indirectly recognizes gender equality in the right to own, inherit, or control property through incorporation by reference. Under articles 6 and 8, all provisions in the Civil Code and Constitution, including those that support women’s equal rights, are reinforced within the Land Law unless the law specifies otherwise. The draft Land Law includes no provisions that explicitly undermine women’s equal rights, so gender equality principles, as set out in Article 31 of the Constitution and Articles 1-2 of the Civil Code, could extend throughout application of this law.

³ Acronym for the communities/identities encompassing Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and/or Asexual.

- Article 6 discusses the referential relationship between the Civil Code and the Land Law, stating that “the provisions of the Civil Code shall be applied...except as otherwise provided in this law.”
 - Article 8 references the provisions on ownership as enshrined in the Constitution, stating that “the provisions on ownership as enshrined in the Constitution shall be applied to all immovable property of the Kingdom of Cambodia in accordance with the conditions determined in this law, in the Civil Code, and in other relevant provisions in force.”
2. **Women are never mentioned in the text, but spousal rights to joint property are.** Three articles make mention of spouses, referring to women in a context of joint property:
- Article 165 on unilateral registration requests states that jointly held property can be transferred into indivisible ownership if one of the spouses dies.
 - Article 180 on registration of joint property of spouse, which addresses when rights arising from a spousal contract cannot be challenged by a third party if the spousal contract is not registered with the Cadastral Administration.
 - Article 182 on general points to be registered, which refers to joint property of spouse as a point to be included in registration.

As “spouse” in Khmer refers to a husband and wife, and it has been understood in law to require a bond by marriage certificate, this and related provisions exclude from the process of joint land registration those in traditional partnerships who lack formal marriage certificates as well as members of the LGBTQIA+ community.

3. **Despite limited references to women and de jure equality, the Land Law has many provisions with gendered impacts due to the situation of rural women in Cambodia.** Many of these gendered impacts result in decreased power and increased risk to women, with some notable exceptions. Failure to recognize and remedy these disproportionate effects perpetuates the gender gap between women and men in rural Cambodia.
- Articles 29 & 116: The prohibition of any possession originating after 2001 can leave women who have been utilizing public land for decades without any effective path to tenure security. De facto forest use, including for gathering of NTFPs and water, can have significant impact on women’s livelihoods and wellbeing, as they are more likely to have informal relationships to land than men, especially in Indigenous and other traditional communities [2].
 - Article 38: Similar to Article 29, this provision excludes land traditionally utilized at a higher rate by women. The provision excludes forest areas designated for harvesting NTFPs and water use areas from Indigenous land for the sake of communal land titling. While the article states that access will be maintained, that access is provisional on an agreement from the relevant authority, which could be denied. This exclusion disproportionately impacts Indigenous women who traditionally rely on forests to supplement household food and exchange labor with other families [3].

- Article 39: Formalizing customary rule, as outlined in this provision, could inadvertently perpetuate gender discrimination. Although many Indigenous communities in Cambodia uphold values of women's equality and leadership, the absence of a clear statement prioritizing gender equality over discriminatory customary law could endorse discriminatory practices. This recommendation aligns with guidance provided in Sections 9.2, 9.4, and 9.6 of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) [4].
- Article 40: The granting of land and/or compensation to those entering or leaving a community, determined by community by-laws, can result in discrimination against women, who are at higher risk of marginalization after life changes such as divorce, widowhood, etc. and often have smaller land plots of lower value [5].
- Article 61: Similar to Articles 29 and 38, this provision deals with restricting access to forests used for NTFP gathering and water access. Research in Ratanakiri Province demonstrates that granting ELCs in Indigenous areas have increased women's overall workload, as they must find work as agricultural day laborers and their daughters take on care labor, reproducing gender gaps in education and literacy levels for girls that might otherwise be shrinking [2].
- Article 64: A lack of clear principles in the law on how land concessions are to be selected, designed and allocated leaves women vulnerable to discriminatory and neglectful treatment, both in who receives land concessions and in planning land concessions. This is especially important because perceptions of effective consultation and inclusion on designing concession plans are highly correlated with perceptions of equitability, fairness, and satisfaction [6].
- Article 68: This article fails to stipulate that successors, most notably widows, may continue to exercise rights to the concession upon death of the concessionaire, whereas a similar right is defined for ELCs under art. 71. Though the sub-decree on SLCs (sub-decree no. 19) does allow for inheritance of SLC rights to successors in article 18, rights defined under sub-decree are not as strong as they would be if defined in the Land Law itself. Consistency between the two articles (arts. 68 and 71) would underscore the equal importance of social land concession holders to economic land concession holders.
- Article 72: This article helps protect women's interests by ensuring that land concessions are not granted over forage lands, lakes, and reservoirs.
- Articles 126-133: The autonomy granted to officers to selectively communicate and interrogate occupants in the course of systematic land registration can result in women's voices being marginalized if officers prioritize male opinions and evidence in determining land boundaries.

Further, provisions under these articles and others (such as art. 118). related to dispute resolution touch on a major issue facing women in rural Cambodia. Studies show that land

conflicts have a profound impact on intimate partner violence in Cambodia, with 53.9% of women in a CCHR survey reporting that they never experienced domestic violence prior to a land conflict arising [7].

4. **Existing disparities in the presence of women in leadership roles limit effective and equitable land administration and governance, an issue that is not addressed in the draft law.** The draft Land Law is silent on issues of land governance structures. The silence maintains the status quo of inequitable land governance and administration bodies that largely operate without women’s meaningful participation, or *any* participation in some cases, at all levels of governance. The draft Land Law is a prime opportunity to address existing issues and provide the framework by which existing disparities might be progressively addressed. Some evidence of the existing disparities:

- According to UNIDO, while women make up over half of the agricultural workers in Cambodia, they are only “24% of household agricultural holding managers, 12% of agricultural extension officers and 10% of agricultural extension services beneficiaries” [8].
- Women who have taken leadership roles in resolving land conflicts do not report higher levels of access to decision-making once the conflict is resolved [9,10].
- A 2020 World Bank study found that women make up more than 40% of the agricultural labor force in Cambodia but are still almost entirely absent from managerial roles [11].
- A report by the Cambodia Indigenous Women’s Association found that indigenous women were not able to meaningfully participate in governance, that they were not adequately represented in formal authorities, and that the roles they were granted were limited to what were considered “women’s issues” [12].
- Women are granted equal legal standing with men under the Constitution, but a variety of structural and cultural factors have limited their presence in leadership roles at all levels of land governance [13].

5. **Landesa and partners suggested insertions of references to gender equality and nondiscrimination principles in several articles of the draft.** The draft Land Law includes repetition of determinative principles that are also stated in the Constitution and Civil Code. However, gender equality and nondiscrimination were not repeated in the text. As such, reviewers suggested the following insertions among others:

- Article 1: Amend the stated objectives to include the italicized language as follows: “guarantee the protection of ownership and other rights related to land and other immovable property of private persons, *Indigenous Peoples, local communities, women, youth, and vulnerable groups*”.
- Article 5: Add two additional principles:
 - “Guarantee equity, transparency, and accountability in the allocation and management of land rights.”
 - “The right to own, hold, use, inherit, succeed to, or deal with land shall be guaranteed to women and men equally.”

Ongoing Women's Land Rights Support Needs

Moving forward, as several articles in the draft Land Law refer to conditions and procedures to be determined by sub-decree, the drafting of those sub-decrees could consider gender equity and nondiscrimination principles in order to result in equitable outcomes for women. The sub-decrees and implementing regulations referred to in the draft Land Law, to be developed by relevant Ministry following the adoption of the Land Law, are listed in the attached annex. These sub-decrees represent a significant opportunity for the effective implementation of this law. According to FAO, the effectiveness of well-crafted land laws often hinges on the presence of supportive secondary legislation, regulation, and implementation procedures [14].

Landesa will monitor the development of key sub-decrees and will be prepared to support parliamentarians with technical analysis as requested.

Beyond the content of the Land Law and its related sub-decrees, making positive change in the direction of gender equality and empowerment in land governance and ownership requires proactive engagement with rural women through “positive discrimination”, the targeting of resources and programs to elevate and safeguard women's land rights [15].

Only a gender-responsive legal framework can provide an enabling environment for *de facto* equality to grow alongside the existing *de jure* equality found in Cambodian law. Without including specific provisions in the draft Land Law intended to bolster gender equality and nondiscrimination in areas of land ownership, access, and control, the law is unlikely to address the gender gap in rural Cambodia.

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ANNEX

Articles mentioning sub-decrees and implementing regulations that shall be developed include:

Article 35 - Legal regime of burial ground (The conditions and procedures for registering burial ground shall be determined by a sub-decree).

Article 40 - Membership of Indigenous Communities (The conditions and procedures of application for membership of the indigenous communities and application for leaving the indigenous communities shall be determined by a sub-decree)

Article 47 - Definition of Common Ownership (In addition to the private part, the components of the building and the plot on which the building is located, which provides benefits and uses for all co-owners or some co-owners as prescribed by law or sub-decree, are called common area as determined by law.

Article 48 - Legal regime of indivisible ownership of common property (The classification and scope of common parts shall be determined by sub-decree).

Article 54 – Ownership rights of foreigners on private parts of co-ownership buildings (The proportion and calculation method of the private part of the co-ownership building which may belong to the person of foreign nationality shall be determined by sub-decree)

Article 70 - Terms and procedures of social land concession (para. 4) The conditions and procedures for granting social land concessions shall be determined by sub-decree.

Article 73 - Conditions and procedures for registration of economic land concessions (para. 3) The conditions and procedures for the registration of economic land concessions shall be determined by sub-decree.

Article 90 - Cadastral Administration Structure (para. The organization and functioning of the Cadastral Administration shall be determined by sub-decree)

Article 95 - Competence of Cadastral Administration (Other competences of the Cadastral Administration shall be determined by sub-decree)

Article 99 - Conditions and procedures for the provision of public services by the Cadastral Administration (The conditions and procedures for the provision of public services by the Cadastral Administration shall be determined by sub-decree.)

Article 130 - Public posting of surveyed documents (The period for public posting of surveyed documents shall be determined by sub-decree).

Article 132 - Conditions and procedures for systematic land registration (The conditions and procedures for systematic land registration shall be determined by sub-decree)

Article 137 - Sporadic land registration shall be proceeded with public display (The conditions and procedures for sporadic land registration shall be determined by sub-decree)

Article 143 - Separation of co-ownership plots in case of expropriation in the public or national interest. In case of partial deprivation of ownership of the co-ownership land for the public or national interest, the co-owners shall request to separated part of the co-ownership land and grant the new plot to the State or other public legal entities separately from the private part. (The conditions and procedures for the registration of private parts of co-ownership shall be determined by sub-decree)

Article 146 - Land to be registered as collective ownership of indigenous communities (The maximum total size of spirit forest land and burial ground that can be registered as collective ownership of the indigenous communities shall be determined by sub-decree).

Article 147 - Internal Regulations of the Indigenous Communities (The format of the internal regulations of indigenous communities applying for community land registration shall be determined by a Prakas of the Minister of Land Management, Urban Planning and Construction).

Article 148 - Conditions and procedures for indigenous community land registration (The conditions and procedures for land registration of indigenous communities shall be determined by sub-decree).

Article 151 - Corrections of registration (The conditions and procedures of corrections of the initial land registration procedure shall be determined by a sub-decree.)