

## Briefing Note No 4 – Women’s Land Use Rights Article 86

### Issue

The lack of protection for women and their rights in the new draft Land Law.

### Background

Lao PDR policies and legal framework is progressive in the promotion of women’s rights. The Constitution contains guarantees of equality for women, such as in Articles 35 and 37. Also, many government policy statements and plans, such as the 8<sup>th</sup> Socio-Economic Development Plan 2016-2020, contain impressive targets and ambitions. The Lao Family Law states that there is equal decision-making power between husband and wife on marital property (Article 26 and 27) and there is equal inheritance of sons and daughters (Law on Women Advancement and Protection, Article 17).

The SDGs (Indicator 1.4.2) measure land tenure security with legally recognised documentation by sex and type of tenure<sup>1</sup>. SDG 5 specifically measures how prevalent *ownership* or secure *rights* over agricultural *land* are, and the share of women among owners. This **indicator** allows for monitoring progress towards **gender** equity through the adoption of women-specific legal measures to secure **women's rights to land**.

The current Land Law of 2003 contains one article for the protection for married women’s rights. In Article 43, it states that the names of the husband and wife are recorded where the land use right is matrimonial property.

### Problem

Registration. The draft Land Law no longer includes the current protection for married women. It omits the reference to husband and wife in case of matrimonial property. The provision was inserted in 2003 specially to address the cases where only the head of household was registered as the owner, even if he (or she) was not the original owner prior to marriage. In such cases, the original owner, particularly in the case of women, is greatly disadvantaged by the issuance of the land certificate only in the household’s name. A study (Loes Schenk Sandbergen, 2005) shows that land titles were often issued in the husband’s name only, and resulted in cases where the divorced wife did not get a share of the land.

Further, the draft Land Law does not contain any provisions that guarantee or promote women to become land use rights holders. Because women face extra challenges, it is best practice to specifically state that women are entitled to land use rights, including women who are single, divorced or widowed.

Consent in transaction. There is no specific mention in the draft Land Law that there should be consent between husband and wife in marital land transactions. In fact, there are known cases where women were not informed about their husband selling land.

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<sup>1</sup> SDG Indicator 1.4.2: Proportion of total adult population with secure tenure rights to land, with legally recognized documentation and who perceive their rights to land as secure, by sex and by type of tenure

## Proposal

The wording of Article 43 of the Land Law of 2003 should be reflected in the new Article 86; this is to say the names of both husband and wife should be recorded on matrimonial land. This would make it clear that both husband and wife are to be registered as the owners, not just one person in the family.

The Land Law of Viet Nam of 2013 (Articles 95 and 98) provides a good guide as to what needs to be included. In the Rural Land Contracting Law of China, an amendment was approved that women's names should be registered on land certificates. Previously, only the identified head of household (typically a male) was listed on a household's land certificate. The amended law also clarifies that both male and female household members enjoy equal rights to the household's land. In China, where it is customary for a newlywed woman to move into her husband's village, women are often at risk of being denied their rightful share of land in their new household. The equal rights amendment guarantees women an equal share of their household land, and ensures they will retain those rights in the event of divorce.

Other changes that should be included in the new Land Law are as follows:

- Reproduce some of the words from the current Article 5 (Land Law of 2003) of Constitutional guarantees regarding protection of the interests of land use right holders. For example, the new Article 7 could say “in accordance with the Constitution, the State recognizes and protects the equal rights of men and women in relation to land, including the right to land allocation.”
- Specify in the new Article 116 (in relation to the allocation of land) that women can be allocated land independently of their marital status.
- Make additions to the monitoring provisions in the new Article 82 so that there is a requirement for information to be gathered and reported in a gender disaggregated manner (that is, statistics show numbers for both men and women), and for this information to be published. This would be particularly important to measure progress towards the SDGs (1.4.2 and 5)
- Article 96 and 97 should have a reference to both husband and wife giving consent transaction of marital property of land.