

TRAINING TOOLKIT

Vietnam Land Access for Women (LAW) Program

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Land Law and Gender in Vietnam



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ACKNOWLEDGEMENTS

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The International Center for Research on Women (ICRW) gratefully acknowledges the partnership of the Institute for Social Development Studies, especially Nguyen Thi Tu, Pham Thi Thanh Van, Le Mong Phuong and Do Mai Quynh Lien for their contribution in the field.

Special thanks to the community members who participated in the research.

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Contents

About this Toolkit	5
Land law and gender in Vietnam	7
Land and culture	8
Background: Gender, property rights and culture	8
Women's rights in Vietnamese laws	8
2013 Constitution	8
The 2006 Law on Gender Equality	9
The 2014 Law on Marriage and Family.....	9
Land Law 2013	9
The Law on Social Insurance 2006	10
The Labor Code 2013	10
The 2009 Criminal Code.....	10
Land tenure in Vietnam: Then and now	11
Lecture: A history of Vietnam's land tenure systems	11
Before 19th century	11
Colonial period (1858-1945).....	11
1945-1975 period	12
From 1975 until now	12
Discussion: Land tenure systems in Vietnam today (1 hour).....	13
Discussion: Women's land rights (1 hour)	13
How to obtain the right to land use, to the possession of house and other land-attached assets	15
Land registration	15
How to obtain the LURC?.....	15
Discussion: How to obtain the LURC? (60 minutes).....	15
The importance of land related documents.....	15
Land management system and steps to solve land dispute	17
The importance of knowing about land management system and steps to solve land dispute for the community volunteers on gender equality	17
Discussion: Where to go for land management (20 minutes)	17
Discussion: Where to go for land disputes (20 minutes)	17
Handout 1: Land use rights in Vietnam	18
Handout 2: Women's rights in the land law	20
Handout 3: How to obtain right to land use, house and other land-attached assets	22
Land, house and land-attached assets registration	22
How is lurc granted?.....	23
In what cases can the LURC be granted?	24
How is the certificate for land-attached assets granted?	25
Who is competent to grant certificates of land use rights and ownership of house and other	

land-attached assets?	25
Handout 4: Important documents related to land	26
What papers are required to obtain the LURC?	26
Can the LURC be issued to the land users without any documents on the currently used land?	27
What do I do if my granted certificate has the wrong information?	27
Handout 5: Land management system and steps to solve land disputes	29
Land management system	29
Steps to solve land disputes	31
Handout 6: Exercise on case solving	34
Instruction:	34
The story of long and mai	34

About this Toolkit

The right to access, use, and have control of land is a fundamental right enshrined in the Universal Declaration of Human Rights (and Convention on Elimination of all forms of Discrimination Against Women). Access to and control of land are important because property allows people to build a home and/or to sustain a livelihood for themselves and their families. Individual ownership of homes and land can increase individuals' power within their households, communities, and states. However, the ability to own and use land depends on the complex interaction between legal and social contexts. While both men and women may be denied their land (and property) rights, women are more frequently marginalized due to gendered social and legal norms that block their exercise of these rights.

The Vietnam Land Access for Women (LAW) Program addresses this gap in (women's) land and property rights. The LAW Program is carried out Washington-based International Center for Research on Women (ICRW) and Hanoi-based Institute for Social Development Studies (ISDS) with the support of the U.S. Agency for International Development (USAID). This Program aims to increase farmers' awareness of land rights, facilitate their ability to exercise these rights, collect evidence on the (key) barriers farmers face in upholding land rights, and strengthen the capacity of local civil society organizations and mass organizations to advocate for gender equitable application of existing laws. A key activity in the project is the organization and support of teams of Community Volunteers for Gender Equality Advocacy (CVGEA) to help farmers, particularly women farmers, in the northern province of Hung Yen and the Mekong Delta province of Long An to improve their understanding of land rights.

The Property Rights and Gender Training Toolkit for CVGEA seeks to strengthen understanding of property rights—specifically those to land—for

women and men as equal citizens. However, because women are often not treated as equal citizens, the materials pointedly highlight their rights throughout the manual, in order to fully inform participants about what rights women do have, how to communicate effectively on the topic, the obstacles preventing women from having and/or exercising their rights, and how to address those issues in practice.

With the help of the Property Rights and Gender Training Toolkit for CVGEAs, ICRW and ISDS aim to:

- Increase women's knowledge of their legal rights to land according to current law, and increase their understanding and recognition of women's and men's equality before Vietnamese law, particularly their access to land rights;
- Raise awareness of gender-based challenges in implementing land rights in rural areas;
- Increase awareness of how women can exercise and protect their own land rights while respecting the rights of their fellow citizens.

ICRW and ISDS believe that the first step to securing land rights requires raising awareness of *everyone's* legal rights, and emphasizing that women's rights are protected by law and are just as important as men's.

The toolkit has five modules:

- Rights and Gender in Vietnam
- Land Law and Gender
- Land Rights in Marriage and Family
- Inheritance Law, Wills, and Women
- Monitoring Skills for the CVGEA

The modules are designed so that trainers can choose to do all of the modules, or focus on a particular one. However, we recommend beginning with Module 1, Rights and Gender in Vietnam, especially for CVGEAs who have received little previ-

ous training in either gender or human rights. The module uses a human rights-based approach to introduce women’s rights, land rights, and gender, which the toolkit originators—Institute for Social Development Studies (ISDS) and ICRW—have found to be a positive starting point for discussions on women’s land rights.¹

The modules use five different methods to engage participants.

- Background sections introduce new material, explain new concepts, and discuss the gendered aspects of the module topic. Facilitators can use the background information as a short lecture, a reading exercise for participants, or as introduction to new topics.
- Lecture sections provide specific information about the module topic. Facilitators

need to present all of the information in lecture sections clearly.

- Discussion sections promote group conversation, encouraging participants to ask questions and share their experiences, which highlights differences between custom and written law. The facilitator’s role is more to guide the conversation than to present information.
- Exercise sections give participants a chance to practice a new skill or idea. Exercises can be used to make ideas in the Background, Lecture, and Discussion sections more concrete.
- Handouts and Resources, featured at the end of every module, can be used during the training, and also by community rights workers in their own outreach or sensitization work.

1. This toolkit is inspired by previous work by ICRW and the Uganda Land Alliance (ULA) with paralegals in Uganda.

This toolkit was designed to serve as a guide for training Community Volunteers on Gender Equality (CVGEA). The modules contain legal reference material for the CVGEAs to support their delivery of legal advice and community sensitization activities in this capacity. Specifically, the handouts presented in this module are meant to be used only by the CVGEAs as part of preparation for sensitizations or legal counseling services.

Land Law and Gender in Vietnam

Land is a very important resource for most households in Vietnam. People use land to live on, grow food, keep animals, make their livelihoods and for other purposes. While the 2013 Constitution recognizes the land use rights of all citizens, the reality is that men are often those that receive land use rights in Vietnam. Many socio-cultural practices discriminate against women and discourage them from owning land.

Vietnam's collection of land laws is quite complex and can be confusing even to lawyers. This module will not cover all the details of Vietnam's land laws, but will highlight the most important aspects that will enable the CVGEA to pass on the basic message that women have a right to own and use land just as much as men do.

Module Objectives

CVGEAs will **understand**:

- Vietnam's land tenure systems
- Women's and men's legal rights over land
- What different land documents do and how to get them
- The institutions that manage land and handle land conflicts

CVGEAs will be able to **communicate**:

- How some customary practices may violate women's rights over land
- The benefits of having documentation for land

CVGEAs **bring to their communities**:

- Knowledge and services to resolve land conflicts according to the law
- Knowledge and services to document property rights

Handouts

At the end of the module are handouts that can be used both during the training and by CVGEAs in their own outreach or sensitization in their communities

- Handout 1: Land Ownership Systems in Vietnam
- Handout 2: Women's Rights under the Land Law
- Handout 3: Land Management Institutions
- Handout 4: Land Dispute Resolution Institutions
- Handout 5: Important Land Documents
- Handout 6: Story/Role Play for Community Sensitization: Mai and Long

Handout 6 is a story that can be used as an optional exercise. The story raises questions about women's and men's land rights and shows a positive example of a woman owning and managing land. It creates opportunities to open discussions about women's and men's rights over land; how couples make decisions about land; how to register land or document transactions; inheritance issues; and who can help resolve disagreements over land. The story is divided into chapters with discussion questions for each chapter.

Total time: 8 hours, plus 3 hours of optional exercise

Land and Culture

Background: Gender, Property Rights and Culture

Some people think that culture and custom hurt women's land rights, while others think that culture and custom can protect women's rights. Because culture and the written law exist together, CVGEAs need to show their communities that they understand and respect their culture *and* that the written law is relevant to everyone, both women and men.

Discussion/Exercise: Gender and Land in Our Communities (1 hour)

The purpose of this exercise is to start discussion on the common challenges regarding land that women face in their communities. The exercise is also meant to identify customary practices about women and land, to inform discussions about women's land rights.

1. In pairs, have the participants discuss the following questions:
 - What are cultural beliefs and practices about women and land in the community where I work?
 - What are common problems women face over land ownership in my community?
2. Have all the pairs share their answers and write them down on a flip chart.
3. Have a brief discussion on the most common cultural beliefs, practices and challenges that women face in relation to land.
4. Point out that despite what culture and practice may be, the 2005 Civil Code provides the standard for women's land rights. Close the discussion by reaffirming the following principles noted in the 2013 Constitution:
 - Women and men – as “all people” are equal under law.

Background: Women's Rights in Vietnamese Laws

Summary of main points in Vietnamese laws about women's status and the legal provisions regarding their property rights and their land use rights.

Since Vietnam gained its independence in 1945 up to today, Vietnam has built and constantly renewed its legal system in order to confirm human rights and promote the development of the country. Protecting the rights of women and promoting gender equality are cross-cutting principles throughout the system of laws of Vietnam. In recent years, a series of legal documents continue to be amended to fit more with the changing societal context. Women's rights and gender equality continue to be addressed the legal instruments. However, in recent years these topics have gained a stronger presence and have become increasingly important.

2013 Constitution

Vietnam's 2013 Constitution has very clear rules on the equal rights of citizens: Accordingly, all people (both women and men) are equal before the law; no one is subject to discriminatory treatment in political, civil, economic, cultural or social life (Article 16).

The Constitution specifies: Male and female citizens have equal rights in all fields. The State shall adopt policies to guarantee the right to and opportunities for gender equality. The State, society and family shall create the conditions for women to develop comprehensively and to improve their role in society. The Constitution prohibits gender-based discrimination. (Article 26)

Men and women have the right to marry and divorce. Marriage must adhere to the principles of voluntariness, progressiveness, monogamy, equality and mutual respect between husband and wife. The State shall protect marriage and the family,

and protect the interests of mothers and children (Article 36).

The 2006 Law on Gender Equality

This is the first law in Vietnam that addresses gender equality specifically. Basic principles of gender equality are stipulated in Article 6:

1. Men and women are equal in all fields of social and family life.
2. Men and women are not treated differently because of their gender.
3. The measures aimed at promoting gender equality are not considered gender discrimination.
4. Policies aimed at protecting and supporting mothers are not considered gender discrimination.
5. Ensuring gender mainstreaming in the process of development and implementation of laws.
6. Practicing gender equality is the responsibility of agencies, organizations, families and individuals.

Clause 1, Article 7 of this law continues to emphasize: “State policies on gender equality to ensure gender equality in all fields of politics, economy, culture, society and family; to support and provide man and woman with conditions for them to bring into play their abilities; to give them equal opportunities to take part in the process of development and to benefit from the achievements of the development.”

The 2014 Law on Marriage and Family

The revised Law on Marriage and Family has various provisions for protecting women’s rights and promoting gender equality in the family.

- Clause 1, Article 2 affirms major principles of marriage and family in Vietnam as: “Voluntary, progressive and monogamous marriage in which husband and wife are equal.”
- To minimize the persistent influence of traditional customs violating women’s rights, the law has clear provisions on the rights

and obligations of spouses, emphasizing equality in rights and obligations of husband and wife in all family affairs. (Article 17)

- The law also includes detailed and specific provisions about the common property of the spouses to ensure the interests of both parties during the marriage and in case of divorce or widowhood. The law emphasizes: “Husband and wife have equal rights and obligations in the creation, possession, use and disposition of their common property without discrimination between housework labor and income-generating labor.” (Clause 1, Article 29) The principle of equality of rights and obligations of spouses has been addressed throughout all the terms related to common property.
- Particularly, in the context of the tradition of patrilocality, women become vulnerable in cases of divorce or widowhood. They may have no place to live. Thus Article 31 of this Law: “The establishment, making and termination of transactions related to the home being the sole domicile of husband and wife shall be agreed by both of them. In case the home is under the separate ownership of the husband or wife, the owner has the right to establish, make and terminate transactions related to that property but shall ensure domicile for the couple.

Land Law 2013

The law has detailed provisions on land use rights and certificates of land use rights. Women and men need to be aware of the legal requirements to understand and protect their rights and respect the rights of others. For example, Article 98 of this law stipulates the certificate of land use rights of the individual. Specifically, the Clause 4 of this Article stresses that the ownership of houses and other land-attached assets are the joint property of husband and wife, and the full name of both husband and wife must be on all official documents, unless husband and wife agree to record the full name of only one person. In case the granted cer-

tificate only has the full name of only one person, a new certificate in the full name of both husband and wife may be granted upon request.

The Law on Social Insurance 2006

This law has various provisions on women's entitlement to various forms of social insurance, including sickness, unemployment, labor accident, occupational disease, retirement and survivorship allowances, and family planning services, which cover maternal health, pregnancy, childbirth, abortion and IUD insertions.

The Labor Code 2013

State policies guarantee equal employment rights for women workers, and encourage employers to create jobs with conditions supportive to women's needs, such as offering flexible scheduling with shorter hours or work-at-home options. The law is designed to improve working conditions and occupational health standards, in order to enhance the physical and mental well-being of female workers, and help them advance professionally, while harmoniously combining work and family life. (Article 153)

The law defines employers' obligations to ensure gender equality and take measures to promote gender equality in recruitment, utilization, training, working time, rest time, salary and other areas. (Article 154) For example, a female employee is entitled to take a break, without any deduction in payment, of 30 minutes every day during menstruation and 60 minutes a day while nursing a child under 12 months of age. The law forbids employers

to dismiss or unilaterally terminate the labour contract with a female employee for the reason of marriage, pregnancy, maternity leave, or nursing a child younger than 12 months of age. (Article 155) Maternity leave is 6 months long. Leave can be taken before or after birth. (Article 157)

The 2009 Penal Code

This law institutionalizes the 2013 Constitution's provisions on the rights of citizens and promulgates specific provisions for women. Pregnant women offenders or women nursing children under 36 months of age are entitled to a leniency policy. For example, death penalty shall not apply to pregnant women or women nursing children under 36 months of age (article 35). This code also includes provisions to prevent women's rights from being violated. Use of violence or commission of serious acts to prevent women from participating in political, economic, scientific, cultural and social activities could receive shall be subject to warning, non-custodial reform for up to one year or a prison term of between three months and one year (article 130)

Discussion/Exercise (30 minutes)

Have participants answer the following question, then present and discuss with the group:

- As a CVGEA, what tools or methods have I used to sensitize the community about women and land? Which work best and why, especially in convincing both men and women about women's land rights?

Land Tenure in Vietnam: Then and Now

Lecture: A History of Vietnam's Land Tenure Systems

The history of land division and distribution in Vietnam could be divided into four periods: Pre-19th century, The Colonial period (1858 – 1945), the years of conflict (1945 – 1975), and the Modern era (1975 until now).

Pre-19th Century

Traditionally, land in Vietnam mostly belonged to the community, as it was considered the discovery of the whole community. The powerful people in the community divided land and gave to people for their production and benefit. People with land were responsible for supporting others after natural disasters, failed crops, or other crises.

During Chinese dominance, feudalistic forces invaded Northern Vietnam. State ownership and individual ownership to land were created, but the majority of villages still jointly owned.

From the 10th century, which was the independent feudalistic state period in Vietnam, state and private were the two main types of land ownership. But land owned by the State and farmed by the people was always more favored. The King owned most land.¹ In some dynasties, the King distributed land to his advisors and to people in villages and communes, however the village/commune government had full control over the land, and the working people had to pay taxes and fees to the State through the village/commune government. Therefore, even though public land belonged to the State on paper, the village/commune governments were the real landowners. However, the State could still intervene anytime if needed to reaffirm its possession.

1 Phan Huy Le, *Land and Agricultural Economic Regime in the Beginning of the Le Reign*. (Hanoi: Van Su Dia, 1959).

In the beginning of the 19th century, despite the fact that the Nguyen reign tried to restore the rights to land possession of the King and tried to continue the policy of giving land to people for farming (King's land), private possession regimes developed firmly and took over 80 percent of the total land area. In the South, by the middle of the 19th century, there were places with even more than 90 percent of land being privately owned.

Colonial period (1858-1945)

French colonialists first came to Vietnam in 1858, and started exerting possession over the whole country not long afterwards. To control and protect land possession rights, the colonial government carried out measuring, cadastral mapping and documenting in many regions countrywide. Land related law following the French law system was built and executed; each step gradually replaced the Vietnamese feudalistic law. Land law in this period stipulated clearly four kinds of possession protected by law: 1) public legal person possession (including State ownership and village/commune ownership); 2) private legal person possession (including the ownership of commercial associations, legally protected associations/organizations); 3) public possession (a plot owned by many people and is unable to divide); 4) private possession (including the rights to own, use and decide). In the South, the French colony formed large farms to produce goods. In northern and central Vietnam, 'public land' policies and small-scale land possession were maintained. Nevertheless, private lands were mainly in the hands of landlords and bourgeois while public lands were under the control of local village bullies².

2 Nguyen Van Khanh. "Study on Land Possession Rights in Vietnam." *Social and Humanitarian Science Magazine*, 29, no. 1 (2013): 1-16.

1945-1975 period

In the North, from right after the establishment of the Democratic Vietnam Republic in 1945 until the Dien Bien Phu victory in 1954, private ownership of land was still maintained, but tax reduction policies were applied. Land of the French colonialists and government advisors were collected and distributed to farmers.

From the end of 1953 until the middle of 1956, reform efforts completely eradicated possession rights of feudalistic landlords. Land was distributed to farmers and ownership rights belonged to the individual, mainly middle and lower class farmers.

The decision to establish agricultural cooperatives in 1958 changed the nature of land possession in the North. By the end of 1960, agricultural cooperatives managed 85.6% of the farmers and 73% of the land. The 1958 Constitution stipulated three types of land possessions including: 1) State ownership (all citizens); 2) Cooperative possession (cooperatives); and 3) individual labor possession (private possession). However, private possession decreased more and more and no longer held a significant role in socio-economic development.³ Agricultural cooperatives used a 'point system' to divide the harvested crops from the cooperative and distribute to the farmers, as well as allow them to keep the income from a small size called 5% plot. In this system, female farmers eventually were considered equal members to male farmers in agricultural production – on the basis of equal labor division between two genders, even though that was not always the case. During the 1960s and 1970s, many women took cooperative supervisory positions, mostly because men had to join the army.⁴

In the North, under the Vietnam Republic government, land reform policies of Ngo Dinh Diem and Nguyen Van Thieu decreased the land concentration held by landlords, and distributed land to

farmers, making them into landowners. The system of giving land to farmers and collecting taxes (landlords – peasant) was eradicated and replaced by the system of land owner and hired labor. Before 1975, middle classed farmers were account for 70% of the population and owned 80% of the land in the South⁵.

From 1975 until now

After national unification, the agricultural cooperative model was applied in the South, but not long later was proved to be inefficient. Food productivity went down, each year Vietnam had to import a million ton of food for domestic demand.

The 1980 Constitution stipulated that land was the possession of all citizens. Allotment methods in agricultural goods, according to Decision 100 (1981), allowed households to be proactive in production and consumption, despite still being attached to the cooperative. Decision 10 (1988) recognized households as a production entity and allocated land to households for long-term use. This led to fundamental changes in agricultural production. Vietnam became the second biggest country for rice exports in 1989.

The 1988 Land Law stipulated three basic rights related to land: Possession, Management/Control and Usage. However, this law did not allow farm users the right to transfer use rights. This law was neutral in gender, hence was understood to not discriminate between men and women in basic rights to land.

The 1992 Constitution and 1993 Land Law still stipulated for land to be state owned, but farmer households with land given for long-term use had rights to rent/lease, mortgage, transfer, exchange and inherit. Land users were issued a Land use right certificate. However, this land use right certificate was issued for the households, often under the name of the heads of households, who were mostly men.

3 Nguyen Van Khanh, as above

4 Tran Thi Van Anh "Women and Rural Land in Vietnam" in: Tinker, I., & Summerfield, G. (Eds.). (1999). *Women's Rights to House and Land: China, Laos, Vietnam: 95-114* Boulder, CO: Lynne Rienner Publications.

5 Nguyen Van Khanh, as above

The 2003 Land Law clarified the ownership rights of all citizens, and stipulated the representative of all citizen-owned land was the National Assembly, Government, People's Council, and all levels of the People's Committee. However, as the local People's Committee was appointed to represent governmental management of land ownership, and due to lack of oversight monitoring, there were a number of erroneous acts. On another hand, the due time for land collection was 20 years, which made the households not confident to invest in production, and limited the farmers' creativity and initiative.

The 2003 Land Law stipulated a Land Use Right Certificate (LURC) is to be issued for each plot, and if a plot was joint asset of both husband and wife, then the LURC would need to have both signatures. However, in reality, based on the findings of the Living Standard Assessment 2008, only 10.9% of the agricultural LURCs, 18.2% of the LURCs in rural areas and 29.8% of the LURCs in urban areas had both names of husband and wife. The majority of land/house use right certificates and agricultural LURCs had only the husband's name.

Land Law 2013 amended and added a number of new stipulations dealing with limitations of the law. In a gender dimension, one of the most important new additions involve stipulations about issuing LURC, House and other land-attached assets possession certificates. According to the law, if house and other land-attached assets joint property possessed by a number of people, each person can receive a certificate, or they all can share one certificate, which is given to their representative. However, that certificate needs to have all the names of the owners that share the possession to this land, house, or other land-attached assets. If the land is a common asset of both husband and wife, the certificate needs to have full name of both, unless both have agreed to have only one name. If the certificate has only one name, it could be requested to be reissued in the names of both husband and wife.

Discussion: Land Tenure Systems in Vietnam Today (1 hour)

1. Ask participants to describe land tenure systems they are familiar with, or other ways people can hold land.
2. Distribute and discuss Handout 1, "Land Ownership Systems in Vietnam."
3. Ask participants:
 - What differences are there between the different types of land tenure?
 - Do people in your communities know which kind(s) of tenure they have?
 - Invite the participants to ask their own questions.

Discussion: Women's Land Rights (1 hour)

1. Ask the group to read aloud Handout 2, "Women's Rights Under the Land Law" (and also Handout 2 on women's property rights from the "Rights and Gender in Vietnam" module). Have one person read one point aloud and then move to another person to read the next point aloud until all points on the handouts have been read. You may wish to pause after a few points to invite questions.
2. Either as a whole or in small groups, ask the participants to answer the following questions:
 - Is there a difference between women's land rights and men's land rights? How is the law on women's land rights being executed in your community?
 - In what cases can a woman have her name together with her husband's name on the LURC?
 - Can married woman have separate assets? If yes, why? If no, why not?
 - Do married women and unmarried women have different rights over land? Please explain.

- Does a wife need her husband's permission to sell land that they farm for food? Why or why not? What does the law say?
 - Does a husband need his wife's or wives' permission to sell land that they farm for food? Why or why not? What does the law say?
3. Invite the participants to ask their own questions.
 - If a man and a woman are legally married, is it legal for one spouse or other family to chase the other spouse off their land?

Obtaining Rights of Land Use, House Possession and other assets attached to the land

In order to obtain the right to land use, to the possession of a house and other assets attached to the land, individuals or households need to register the land and assets with the government, and to request a LURC.

Lecture: Land Registration

Land registration is the first step for an individual to protect his/her right to land use, as well as the right to the possession of a house or other land-attached assets. After registration, the LURC will be issued as a proof for the legal use right of the individual to his/her land and the possession of the house built on that land, as well as other land-attached assets. This certificate affirms that this individual is permitted legally to live on this land or use the land for other purposes.

Handout 3 includes a brief of legislative regulations on the registration of land use rights, right to the possession of house and other land-attached assets, including the registration for first-time land use and registration for changes in land use.

Both women and men can have the land registered under their names and any land can be registered under more than one name. For married couples, land registration with both husband's and wife's names will protect the land rights of both. Besides, if one dies, the husband or the wife will be able to prove his/her legal right to the land if his/her name is on the LURC or other papers related to land.

How to obtain the LURC?

Next part of Handout 3 discusses how the LURC is issued, situations in which the LURC can be issued and situations in which the LURC cannot be issued.

In addition, various types of papers/documentation that an individual can use to register his/her legal status to land are listed, as well as competent authorities for receiving these.

Discussion/exercise: How to obtain the LURC? (60 minutes)

- Have the trainees read Handout 3 "How to obtain the right to land use, to the possession of house and other land-attached assets."
 - After reading, have trainees answer the following questions:
1. Does everyone know how to obtain the LURC? In comparison to men, do women know more or less?
 2. If your client wants to obtain a LURC, how will you instruct them? Where should they go?
 3. If your client wants to change the LURC from having only the husband's name to having both the husband's and wife's names, where should they go?
 4. Who in your family often goes to register land and deal with land related papers such as LURC?
 5. Why do women rarely deal with land related papers, LURC included?
 6. Do you know individuals or organizations that issue LURC in your community?
 7. Please think of some possible questions that the local people in your community may ask you.

The importance of land related documents

- Have the trainees read Handout 4 'Important documents related to land'
- After reading, have the trainees answer these following questions:

1. What documents are required to obtain a LURC?
2. Are the local women here aware of the importance of land related documents?
3. Who in a family is normally the one keeping and controlling those documents?
4. How to keep these documents safe?

Land Management System and Steps to Solve Land Disputes

The importance of knowing about land management system and steps to solve land dispute for the community volunteers on gender equality

Many different people and institutions are involved in managing land and resolving people's disagreements about land. It is important to know which people and institutions have proper authority and the right expertise. Sometimes when a person has a question, needs a document, or needs someone to help solve a disagreement, the person will seek help from one person, and then another, and then another, and not find the help that s/he needs. Understanding the different roles of people and institutions that manage land and resolve land disputes can help the CVGEA resolve clients' cases quickly and according to the law.

Resolving land disputes involves hearing parties' disagreements and arriving at a settlement that is consistent with the law. When a CVGEA is faced with a particularly complex land dispute, rather than to try handling alone, s/he should refer the client to the right institution. Traditional leaders, People's Committee, Magistrates courts, and mediators are the main persons and places to seek help in resolving land disputes. Handout 5 describes each of these and their roles according to law. The role of the CVGEA is to advise community members on where to go, and to go there with the community member for support if needed.

Discussion: Where to Go for Land Management (20 minutes)

1. Read aloud or have the group read aloud Handout 3, "Land Management Institutions."
2. Ask the participants the following questions:
 - If your client wanted to apply for a "land use rights certificate," where would you direct him/her?

- If the neighbor's cattle damaged your client's land and s/he wants to know how much compensation to ask for, where would you direct him/her?
3. Ask the group if they know the persons or institutions listed in Handout 3. What was good about the experience? What was bad about the experience?
 4. Invite questions from participants

Discussion: Where to Go for Land Disputes (20 minutes)

1. Read out loud or have the group read out loud Handout 5, "Land management systems and steps to solve land disputes."
2. Ask the participants the following questions. Please note that any of the institutions on the handout are valid answers. The goal of the discussion is to give CVGEA practice in thinking about each of the different institutions.
 - If a widow's husband's family wants to use the land she is living on but she doesn't wish that to happen, where will you advise her to go for help solving this issue?
 - Your client wants to know how to request compensation after the family land was invaded by a neighbour's livestock. Where would you suggest he/she go?
 - A divorced woman asked her husband to secure separate accommodations for her, but he says the house and land where they have been living were given to him by his parents. She doesn't know where to live, where would you advise her to go to solve her issue?
3. Ask the group if they know the persons or institutions listed in Handout 5 or not. What was positive about the experience? What was negative about the experience?
4. Invite questions from participants.

Handout 1

Land Use Rights in Vietnam

Land belongs to an entire people, with the State acting as the owner's representative, in order to uniformly managing land. The State shall hand over rights certificates to land users and owners in accordance with the Land Law.

Entities holding land use rights not only benefit from the use right, but can license or exchange use rights as a special commodity, as defined in the policies and laws of the State. Land use rights are recognized and guaranteed by "land use rights certificates."

Land Law 2013 outlines land use rights in Articles 166, 167, 168 and 169, as summarized below:

Article 166. General rights of land users

1. To be granted a certificate of land use rights, houses and other land-related assets ownership.
2. To enjoy the results of the labor and investment on land.
3. To enjoy benefits derived from facilities constructed by the State for protecting and improving agricultural land.
4. To receive the State's guidance and assistance in the improvement and fertilization of agricultural land.
5. To be protected by the State against others' infringements of their lawful rights and benefits involving land.
6. To receive compensation when land is recovered by the State in accordance with this Law.
7. To complain about, denounce or file lawsuits over violations of their lawful land use rights and other violations of land law.

Article 167. The right to exchange, transfer, lease, sublease, inherit, donate, mortgage land

use rights and contribute land use rights as capital

1. Land users may exercise rights to exchange, transfer, lease, sublease, inherit, donate, mortgage land use rights and to contribute them as capital, in accordance with this Law.
2. A group of land users sharing land use rights have the following rights and obligations:
 - a) A group of land users involving multiple households or individuals have the same rights and obligations as households and individuals, in accordance with this Law. In case one member of the group of land users is an economic organization, that group of land users has the same rights and obligations as economic organizations, in accordance with this Law.
 - b) For a group of land users sharing land use rights, which can be split into portions for each member in the group, if every member wants to exercise his/her land use rights over such portion, they shall carry out the prescribed procedures to have the common land parcel split into different parcels of their own and apply for the certificates of land use rights and ownership of houses and other land-attached assets. Those members will then have the rights and obligations of land users, in accordance with this Law. If group land use rights cannot be split into portions, the group shall authorize its representative to exercise the rights and perform the obligations of the group.
3. The notarization and certification of contracts and documents on the exercise of the rights of land users shall be conducted as follows:

- a) Contracts on transfer, donation, mortgage or contribution of land use rights as capital or the rights to use land and land-attached assets must be notarized or certified, except the case of real estate business prescribed at Point b of this Clause;
- b) Contracts on lease or sublease of land use rights or the rights to use land and land-attached assets, a contract on exchange of agricultural land use rights, a contract on transfer of land use rights or the rights to use land and land-attached assets in which one party or all parties involved in the transaction is/are a real estate business organization or organizations must be notarized or certified at the request of the parties;
- c) The documents on inheritance of land use rights or the rights to use land and land-attached assets must be notarized or certified under the civil law;
- d) The notarization shall be conducted at notarization-practicing organizations and the certification shall be conducted at commune-level People's Committees.

Article 168. Time to exercise the rights of land users

1. Land users may exercise the rights to transfer, lease, sublease, donate and mortgage land use rights and to contribute land use rights as capital upon receipt of a certificate. In cases of exchanging agricultural land use rights, land users may exercise their rights upon receipt of a decision on land allocation or land lease. In cases of inheritance of land use rights, land users may exercise their rights upon receipt of a certificate or when they are eligible to be granted a certificate. A land user who is allowed to delay the performance of, or owe, his/her financial obligations, may exercise his/her rights only after fulfilling all financial obligations.
2. The transfer of land use rights within an investment project on construction of houses for sale or lease or the transfer of land use rights together with the whole project within an investment project on construction of infrastructure for transfer or lease may only be conducted upon receipt of a certificate and satisfaction of all conditions prescribed in Article 194 of this Law.

Handout 2

Women's Rights in The Land Law

The law does not allow women to be discriminated against in decisions about land. Any decision taken on customary land that denies women ownership, occupation or use of land is illegal.

Both spouses—husbands and wives—have the right to use and live on family land for as long as the parties are both still married to each other.

Family land is defined as:

- Land where a family home is situated;
- Land that helps sustain a family, such as farmland (for crops, cattle), or land from which the family earns an income;
- Land considered family land, according to the family's norms, custom, or tradition.

Land is granted to households for the common ownership of all members of the household. The determination of who has land use rights is based on the household registration book at the time of the State land allocation, land lease, recognition of land use rights, or transfer of land use rights. Disposal thereof must be agreed upon by the majority of members aged full fifteen years or older.

A spouse—husband or wife—first has to get the approval or consent of the other spouse before either of them can carry out any transaction on family land. Such transactions include sale, exchange, mortgage, or lease.

A husband's or wife's permission to sell, lease, exchange, transfer, or mortgage family land must be given personally in writing to the commune land administration center.

A woman has the right to appeal a decision on a land dispute if she is not satisfied with it.

See relevant articles of the 2013 Land Law and 2014 Law on Family below.

Clause 29, Article 3 of the 2013 Land Law

Land-using household means those who share a marital, family or foster relationship as prescribed by the marriage and family law, are living together and have joint land use rights at the time of being allocated land or leased land; or having land use rights recognized by the State; or receiving transfer of land use rights.

Clause 4, Article 98 of the 2013 Land Law

In cases of land use rights and the ownership of houses and other land-attached assets, the land, houses and other land-attached assets would be the joint property of husband and wife, so the full names of both must be recorded on the certificate of land use rights and ownership of houses and other land-attached assets, unless husband and wife agreed to record the full name of only one. A new certificate which records the full names of both husband and wife may be granted upon request of either.

Article 109 of the 2005 Civil Code regulations

1. Family household members shall possess and use the common property of their households by mode of agreement.
2. The disposal of property being a means of production, common family household property of great value must be agreed upon by members aged full fifteen years or older. For other common property, the disposal thereof must be agreed upon by the majority of members aged full fifteen years or older.

Clause 1, Article 29 of the 2014 Law on Marriage and Family

Husband and wife have equal rights and obligations in the creation, possession, use and disposition of their

common property without discrimination between housework labor and income-generating labor.

Article 31 of the 2014 Law on Marriage and Family

The establishment, making and termination of transactions related to the home – being the sole domicile of husband and wife – shall be agreed by both of them. If the home is owned separately by either the husband or wife, the owner can establish, make and terminate transactions related to the property, but must ensure domicile for the other spouse.

Article 33 of the 2014 Law on Marriage and Family

1. Common property of husband and wife includes property created by a spouse, incomes generated from labor, production, or business activities, yields and profits arising from separate property, and any other lawful incomes during the marriage; except the case prescribed in Clause 1, Article 40 of this Law; property jointly inherited by or given to both, and other proper-

ty agreed upon by husband and wife as common property.

The land use rights obtained by a spouse after marriage shall be common property of husband and wife, unless they are separately inherited by, or given to a spouse, or are obtained through transactions made with separate property.

2. Common property of husband and wife shall be under integrated common ownership and used to meet family needs and perform common obligations of husband and wife.
3. When no grounds exist to prove that property in dispute between a husband and wife is his/her separate property, such property shall be regarded as common property.

Clause 1 Article 34 of the 2014 Law on Marriage and Family about registering possession and use right to common property:

For common property, which the law requires to be registered for ownership or use, both spouses shall be named in the ownership or use right certificate, unless otherwise agreed by the couple.

Handout 3

How to Obtain rights to land use, house and other land-attached assets

Land, house and land-attached assets registration

In order to attain legal right to land use, the land user is required to have a **LURC**, the house and land-attached assets possession certificate. To acquire these certificates, first, he/she needs to register the land, house and land-attached assets.

From Article 95 of the 2013 Land Law:

1. Land registration is compulsory for land users and people who are allocated land for management. Registration of ownership of houses and other land-attached assets is conducted at the request of the owner.
2. Registration of land, houses and other land-attached assets includes the first registration and change registration, which are conducted at the land registration organization under the land administration agency, in the form of paper or electronic registration, which are of the same legal validity.
3. First registration is conducted in the following cases:
 - a) The land parcel is allocated or leased for use;
 - b) The land parcel is in use but not registered yet;
 - c) The land parcel is allocated for management but not registered yet;
 - d) The houses and other land-attached assets are not registered yet.
4. Change registration is conducted in cases in which the certificates have been granted or a change occurs after the first registration, as follows:
 - a) The land user or the owner of land-attached assets exercises the right to exchange, transfer, lease, sublease, inherit, donate land use rights or land-attached assets, mortgage or contribute as capital land use rights or land-attached assets;
 - b) The land user or the owner of land-attached assets is allowed to change his/her name;
 - c) There is a change in the shape, dimension, area, number or address of the land parcel;
 - d) There is a change in land-attached assets compared with the registered contents;
 - e) There is a change of land use purpose;
 - f) There is a change of land use term;
 - g) There is a change from land lease with annual rental payment to land lease with one-off rental payment for the entire lease period, from land allocation without land use levy to land lease, or from land lease to land allocation with land use levy in accordance with this Law;
 - h) Land use rights or the ownership of houses and other land-attached assets of the wife or husband is converted the joint land use rights and ownership of houses and other land-attached assets of both husband and wife;
 - i) The joint land use rights and ownership of houses and other land-attached assets of the organization or the household, of both husband and wife, of joint land users group and joint owners of land-attached assets are split;
 - k) There is a change in land use rights or ownership of houses and other land-attached assets as a result of the successful conciliation of land disputes which is confirmed by a

competent People's Committee, the agreement in the mortgage contract to settle the debt, the decision of a competent state agency on settlement of land dispute, complaint and denunciation, the decision or judgment of a People's Court, the decision on enforcement of the enforcement board which has been implemented, or the document recognizing the result of the auction of land use rights in accordance with law;

- l) The limited use rights to the adjacent land parcel are established, changed or terminated;
- m) There is a change in the limitations on the rights of land users.

5. Land users and owners of land-attached assets who have declared and registered are recorded in the cadastral book and granted a certificate of land use rights and ownership of houses and other land-attached assets if they so request and are eligible in accordance with this Law and other relevant laws. In case of a change in registration, land users are granted a certificate of land use rights and ownership of houses and other land-attached assets, or have the change certified in the granted certificate.

In cases of first registration, if land users are ineligible for a certificate of land use rights and ownership of houses and other land-attached assets, they may use land temporarily until the State issues a handling decision on the issue in accordance with government regulations.

- 6. For cases of change to registration specified in subclauses a, b, h, i, k and 1 above in Clause 4 of this Article, land users shall perform the procedures for change registration within 30 days from the date of the change. In case of inheritance, this period is calculated from the date the inherited land use rights are divided.
- 7. The registration of land and land-attached assets takes effect on the date of registration in the cadastral book.

How is a LURC granted?

A LURC and house and land-attached assets possession certificate will be issued after registration.

Article 97 of the 2013 Land Law stipulates:

1. A certificate of land use rights and ownership of houses and other land-attached assets is granted to those who have land use rights and the ownership of houses and other land-attached assets, which is registered with the same form nationwide. The Minister of Natural Resources and Environment shall issue specific regulations on the certificate of land use rights and ownership of houses and other land-attached assets.
2. The certificate of land use rights, the certificate of house ownership and residential land use rights, the certificate of house ownership and the certificate of construction facilities ownership which have been granted in accordance with land law, housing law or construction law before December 10, 2009, remain legally valid and are not required to be changed to the certificate of land use rights and ownership of houses and other land-attached assets. In cases of those who want to change a certificate issued before December 10, 2009, they shall be granted the certificate of land use rights and ownership of houses and other land-attached assets in accordance with this law.

Article 98 of the 2013 Land Law stipulates:

1. The certificate of land use rights and ownership of houses and other land-attached assets shall be granted for each land parcel. Land users who are using several agricultural land parcels in the same commune, ward or township, shall be granted one certificate for all parcels at their request.
2. For a land parcel used by several land users or for the houses and other land-attached assets owned by several owners, the names of all involved persons shall be recorded on the certificate, and each person shall be granted one copy of the certificate. At the request of the land users

or owners, only one certificate may be granted to all of them and delivered to their representative.

3. Land users or owners of houses and other land-attached assets shall be granted a certificate of land use rights and ownership of houses and other land-attached assets after they have fulfilled the financial obligations as prescribed by law.

In cases where the land users or owners of houses and other land-attached assets are exempted from financial obligations or allowed to owe their financial obligations, and if the land is leased with annual rental payment, they may receive the certificate of land use rights and ownership of houses and other land-attached assets right after the certificate is granted by a competent agency.

4. To establish land use rights and the ownership of houses and other land-attached assets as the joint property of husband and wife, the full names of both must be recorded in the certificate of land use rights and ownership of houses and other land-attached assets, unless husband and wife mutually agree to record the full name of only one person. In such cases, a new certificate with the full names of both husband and wife may be granted upon request.
5. If there is a difference in the area between the actual surveyed data with data recorded on the documents, as prescribed in Article 100 of this Law or in the granted certificate, while the boundaries of the land parcel in use have not changed compared with the boundaries of the land parcel at the time of receiving the document on land use rights, and there is no dispute with the adjacent land users, the land area is determined in accordance with the actual surveyed data for granting or changing the certificate. Land users do not have to pay land use levy for the positive balance in area, if any.

If a resurvey changes the boundaries of the land parcel compared with its boundaries at the time of receiving the document on land use rights, and the surveyed area is larger than the area

recorded in that document, the balance area (if any) may be considered for the grant of a certificate of land use rights and ownership of houses and other land-attached assets in accordance with Article 99 of this Law.

In what cases can the LURC be granted?

According to Clause 1 article 99 of the 2013 Land Law, the State shall grant a certificate of land use rights and ownership of houses and other land-attached assets for the following cases:

- 1) Current land users who are eligible to be granted a certificate of land use rights and ownership of houses and other land-attached assets in accordance with Articles 100, 101 and 102 of this Law;
- 2) People who are allocated land or leased land by the State from the date this Law takes effect;
- 3) People who are allowed to exchange, acquire, inherit, receive land use rights as a donation, or receive land use rights contributed as capital, or to receive land use rights upon settlement of contracts on mortgage with land use rights to recover debts;
- 4) People who are entitled to use land as a result of the successful conciliation of land disputes, a judgment or decision of the People's Court, a judgment enforcement decision of the judgment enforcement agency, or a decision on settlement of land disputes, complaints or denunciations of a competent state agency, which has been executed;
- 5) People who use land in industrial parks, export processing zones, hi-tech zones or economic zones;
- 6) People who buy houses and other land-attached assets;
- 7) People who buy houses attached to residential land liquidated by the State, or who buy state-owned houses;
- 8) People who use split or consolidate land parcels – a group of land users or members of a household, a husband and wife, organizations

using land – who split or consolidate the existing land use rights;

- 9) Land users who request change or re-grant of a lost certificate.

How is the certificate for land-attached assets granted?

Article 104 of the 2013 Land Law stipulates:

1. Land-attached assets to be granted a certificate of land use rights and ownership of houses and other land-attached assets include houses, other construction facilities, production forests which are planted forests, and perennial crops existing at the time the certificate of land use rights and ownership of houses and other land-attached assets is granted.
2. The grant of a certificate of land use rights and ownership of houses and other land-attached assets for land-attached assets must comply with government regulations.

Who is competent to grant certificates of land use rights and ownership of house and other land-attached assets?

1. Provincial-level People's Committees shall grant certificates of land use rights and owner-

ship of houses and other land-attached assets to organizations, religious establishments, overseas Vietnamese expats, foreign investment enterprises and diplomatic organizations.

2. Provincial-level People's Committees may authorize the agency in charge of natural resources and environment of the same level to grant the certificates of land use rights and ownership of houses and other land-attached assets.
3. District-level People's Committees shall grant the certificates of land use rights and ownership of houses and other land-attached assets to households, individuals and communities, and to overseas Vietnamese expats that are eligible to own property associated with land use rights in Vietnam.
4. For subjects that were granted a certificate – a certificate of houses ownership or a certificate of construction facilities ownership – and execute the rights of land users or owners of land-attached assets or apply for the renewal or re-grant of the certificate of a house's ownership or certificate of construction facilities ownership, the agency in charge of natural resources and environment shall handle the case in accordance with government regulations.

Handout 4

Important documents related to land

What papers are required to obtain the LURC?

According to Article 100 of the 2013 Land Law, the certificate of land use right and ownership of house and other land-attached assets can be granted to households, individuals and communities in the following cases:

1. Households and individuals that are using land stably and have one of the following documents shall be granted a certificate of land use rights and ownership of houses and other land-attached assets without having to pay land use levy:
 - a) The documents on land use rights before October 15, 1993, which were granted by a competent agency in the process of implementing the land policy of the Democratic Republic State of Vietnam, the Provisional Revolutionary Government of the Republic of South Vietnam or the Socialist Republic of Vietnam;
 - b) Temporary certificates of land use rights granted by competent state agencies, or having their names recorded in the Land Register Book or Cadastral Book before October 15, 1993;
 - c) Lawful papers on inheritance or donation of land use rights or land-attached assets, documents on handover of land-attached gratitude house or charity house;
 - d) The document on the transfer of land use rights or purchase of residential land-attached houses before October 15, 1993, and such houses were certified as being used before October 15, 1993, by the commune-level People's Committee;
 - e) The document on liquidation of residential land-attached houses by the State or document on purchase of a state-owned house in accordance with law;
 - f) The document on land use rights issued by a competent authority of the former regime to land users;
 - g) Other documents issued before October 15, 1993, in accordance with the Government's regulations.
2. Households and individuals that are using the land and have one of the documents specified in Clause 1 of this Article bearing the names of other people accompanied by the documents on transfer of land use rights signed by the related parties, but have not performed the procedures for the transfer of land use rights in accordance with law prior to the effective date of this Law, and there is no dispute on that land, shall be granted a certificate of land use rights and ownership of houses and other land-attached assets without having to pay land use levy.
 3. Households and individuals that are allowed to use land pursuant to a decision or a judgment of the People's Court, a judgment enforcement decision of a judgment enforcement agency, a document recognizing results of the successful conciliation or a decision of a competent state agency on settlement of land disputes, complaints or denunciations which was executed, shall be granted a certificate of land use rights and ownership of houses and other land-attached assets. If they have outstanding financial obligations, they shall fulfill those obligations in accordance with law.
 4. Households and individuals using land that is allocated or leased by the State from October 15, 1993, to the effective date of this Law and have not been granted a certificate, shall be granted a certificate of land use rights and own-

ership of houses and other land-attached assets. If they have outstanding financial obligations, they shall fulfill those obligations in accordance with law.

5. Communities using land for communal houses, temples, shrines, hermitages, worship halls, ancestral temples, or agricultural land as prescribed in Clause 3, Article 131 of this law – and that land is dispute-free and certified by the commune-level People’s Committee as land used commonly by the community – shall be granted a certificate of land use rights and ownership of houses and other land-attached assets.

Can the LURC be issued to the land users without any documents on the currently used land?

According to Article 101 of the 2013 Land Law, under certain conditions, households and individuals that are using land and have no documents on land use rights may be granted a certificate of land use rights and ownership of houses and other land-attached assets:

1. Households and individuals using the land prior to the effective date of this law and having none of documents prescribed in Article 100 of this law that have a book of status of permanent residence in the locality and are directly engaged in agriculture, forestry, aquaculture or salt production in areas with difficult socio-economic conditions or especially difficult socio-economic conditions – and are certified by the commune-level People’s Committee that the land has been used stably and dispute-free – shall be granted a certificate of land use rights and ownership of houses and other land-attached assets without having to pay land use levy.
2. Households and individuals using land and having none of documents prescribed in Article 100 of this Law that have used land stably before July 1, 2004, with no violations of the land law and such land is certified by the commune-level People’s Committee as dispute-free and con-

formable with the master plan on land use, detailed urban construction master plan and master plan on construction of rural residential areas approved by competent state agencies, shall be granted a certificate of land use rights and ownership of houses and other land-attached assets.

What do I do if my granted certificate has wrong information?

According to Article 106 of the 2013 Land Law:

1. The state agencies, which have the competence to grant the certificate, shall amend certificates bearing the following errors:
 - a) There is incorrect information on the name, the papers on legal status or personal identity, in the address of the land user or owner of land-attached assets as compared with the papers on legal status or personal identity at the time the certificate was granted to such person;
 - b) There is incorrect information on the land parcel, land-attached assets as compared with the registration application dossier on land and land-attached assets, which have been inspected and certified by the land registration agency.
2. The State may withdraw a granted certificate in the following cases:
 - a) The State recovers the whole land area indicated on the granted certificate;
 - b) The granted certificate is renewed;
 - c) The land user or owner of the land-attached assets registers for a change of land or land- attached assets for which a new certificate of land use rights and ownership of houses and other land-attached assets must be granted;
 - d) The existing certificate was granted ultra vires, to an improper land user, for the wrong land area, without sufficient condi-

tions, for improper land use purpose or land use term or land use origin as prescribed by the land law, except for the case in which the person for whom the certificate is granted has transferred land use rights or ownership of land-attached assets in accordance with the land law.

3. The withdrawal of a granted certificate for the cases prescribed at Point d, Clause 2 of this Ar-

ticle shall be decided by the agency having the competence to grant the certificate of land use rights and ownership of houses and other land-attached assets as prescribed in Article 105 of this law based on the conclusion of the inspection agency at the same administrative level, or based on the effective document issued by a competent state agency on land dispute settlement.

Handout 5

Land management system and steps to solve land disputes

Land management system

Article 4 of the 2013 Land Law

Land belongs to the entire people with the State acting as the owner's representative and uniformly managing land. The State shall hand over land use rights to land users in accordance with this law.

Article 24 of the 2013 Land Law

1. The system of land management agencies shall be organized uniformly from the central level to the local level.
2. The Ministry of Natural Resources and Environment is the land administration agency at the central level.

Land management agencies at the local level shall be set up in provinces and centrally-run cities, and in districts, towns and provincial cities. Land-related public service organizations shall be set up and will operate in accordance with government regulations.

The table below summarizes the role of government agencies at all levels of management, distribution, pricing and protect land rights (under Decision No. 21/2014 / QD - TTg of regulating functions, tasks, powers and organizational structure of the General Department of Land Management, under the Ministry of Natural Resources and Environment)

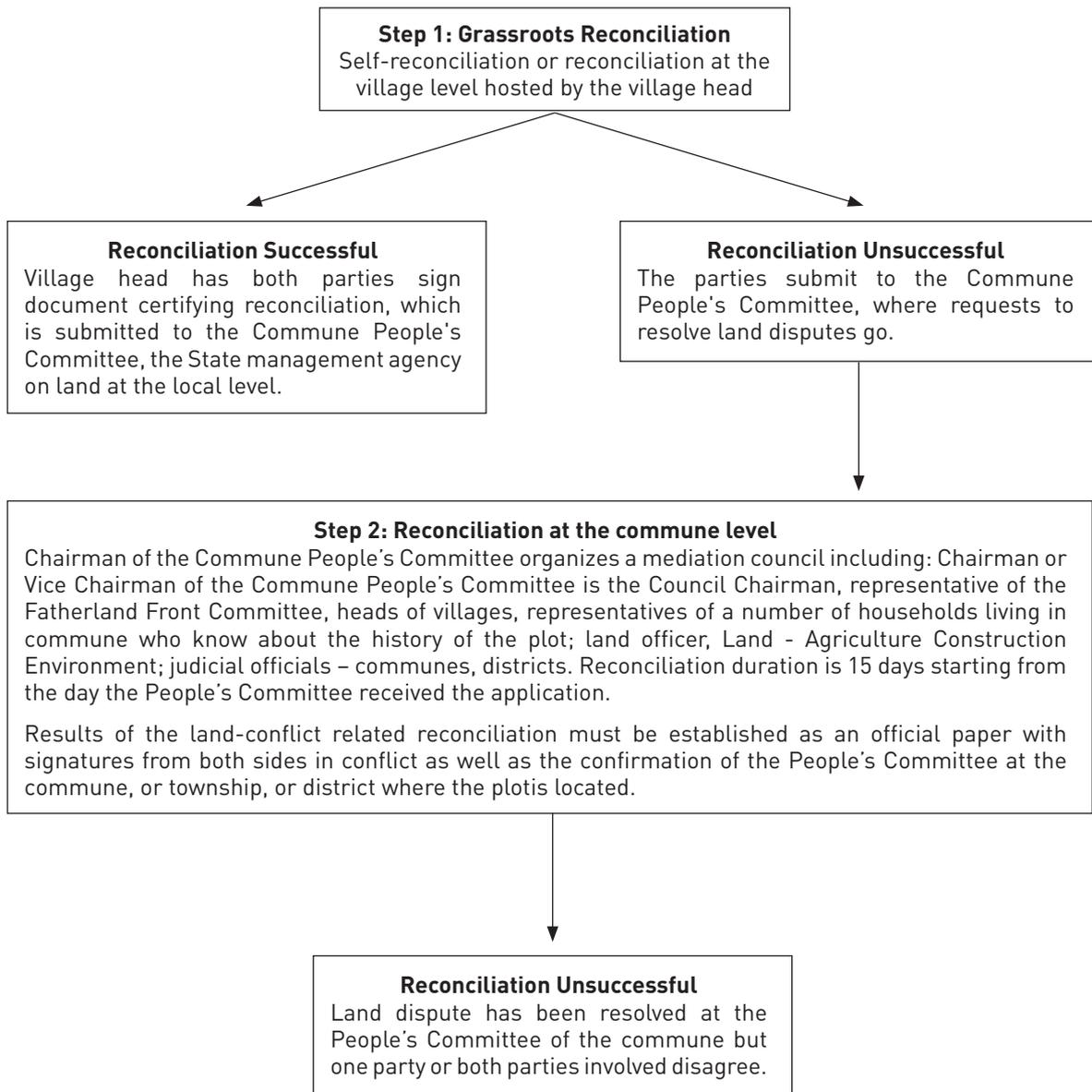
NAME OF AGENCY	FUNCTIONS
The General Department of Land Management (the Ministry of Natural Resources and Environment)	<p>To advise and assist the Minister of Natural Resources and Environment in the management and organization of law enforcement on land in the country; implementation of public services related to land in accordance with law. Some tasks directly related to the people include:</p> <ol style="list-style-type: none">1. Draft legal document, strategies, mechanisms, policies, planning, plans, programs and projects on land;2. Organize, steer and supervise the implementation of laws, mechanisms, policies, strategies, programs, plans and projects on land;3. Preside over the propagation, dissemination and legal education on land, and address problems and devise land policy recommendations;4. Develop the implementation and evaluation of the implementation land use plan.5. Managing land registration:<ol style="list-style-type: none">a. Guide the measurement and adjustment of cadastral maps;b. Inspect the register of land and assets attached to land;c. Issue land use rights certificate, ownership of housing and assets attached to land, the professional activities on land;d. Plan to build a system of land registration in the country;e. Release and check the management and use of land use rights certificates, ownership of housing and assets attached to land;f. Manage the data consolidation of the content above.6. Guide and supervise the construction and adjustment of land price.7. Regarding compensation, support and resettlement: Guide, check the implementation of the law on compensation, support and resettlement when the State recovers land.8. Control the management and use of land.9. Specialized inspections of land in the country; professional guidelines inspection; handling violations of law; resolving disputes, complaints and denunciations in the land.10. Perform public services on land; guide and inspect the operation of public services on land; issue the practicing certificate in the field of land.

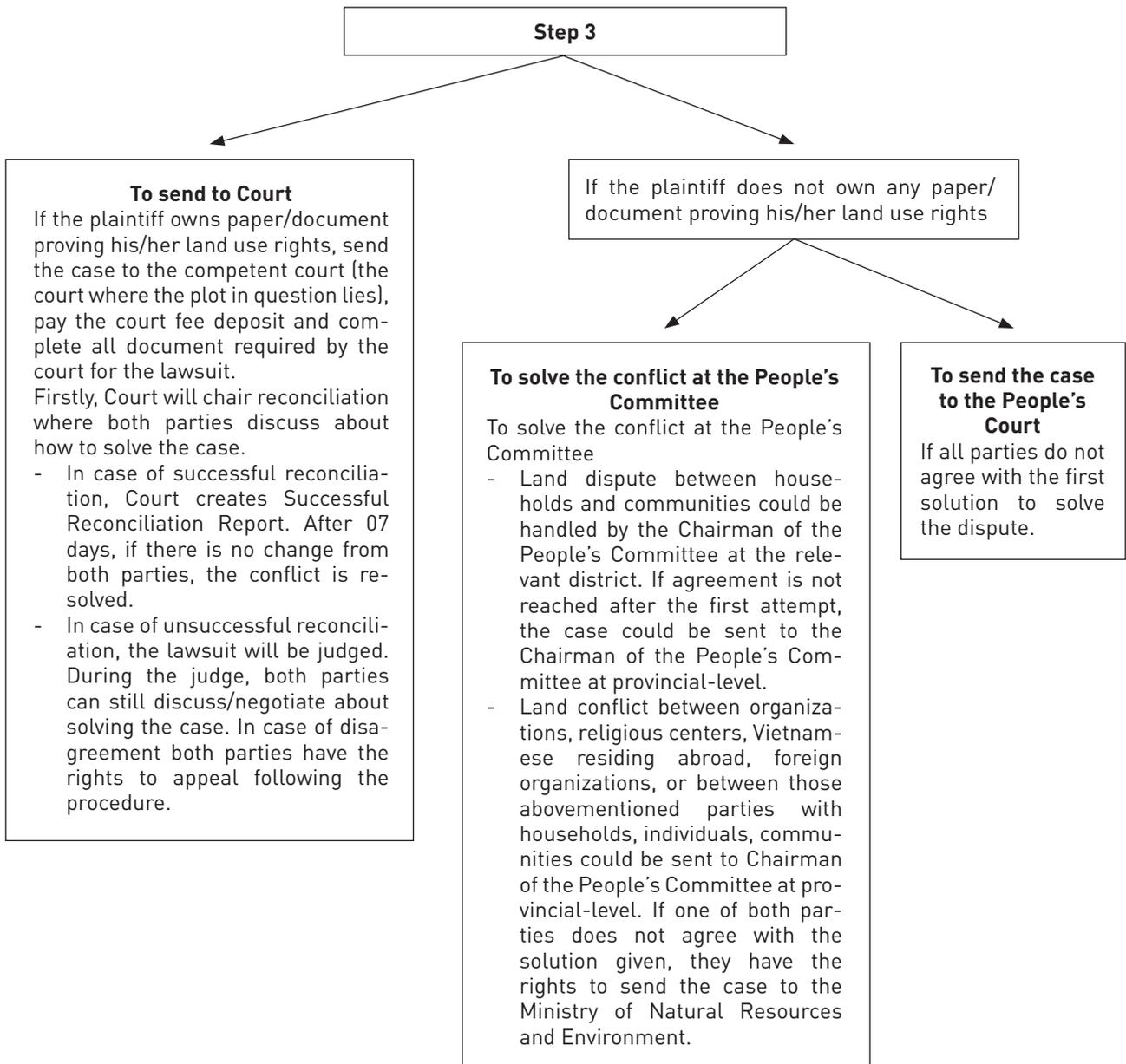
NAME OF AGENCY	FUNCTIONS
Provincial People's Committee	<p>To carry out:</p> <ol style="list-style-type: none"> 1. Procedures for registration and issuance of land use rights certificates, ownership of housing and assets attached to land for people who had registered land use rights for the first time. 2. Procedures for registration and issuance of land use rights certificates, ownership of housing and assets attached to land for the first time, where the owner is not the same as the land user. 3. The procedure for registering additional assets attached to land for a land user who has been issued a certificate. 4. Procedures for registration and issuance of land use rights certificate, ownership of housing and other assets attached to land, in order to transfer land use rights, buy houses, or construct housing development projects. 5. Procedures for registration and issuance of land use rights certificate, ownership of housing and other assets attached to land for cases with land use rights transferred before July 1, 2014, where the transfer right has been certificated but not yet implemented. 6. Procedures for deregistration for lease, sublease, capital contribution with land use rights, or ownership of assets attached to land. 7. Procedures for registration of change in land use rights, ownership of assets attached to land in cases of dispute resolution, complaints and denunciations on land, capital contributions, distraint, auction of land use rights and assets attached to land for execution, or a consolidation agreement or division of land use rights and assets attached to the land of a household, husband and wife, or group of land users. 8. The procedure for registration of a change in land use rights, assets attached to land by changing the information on the certificate (renamed or legal documents, personal papers, address); reduction in land area due to natural erosion; changes in land use restrictions; changes in financial obligations; changes in assets attached to land compared with the registered content, certificated. 9. The endorsements continued use of agricultural land of households and individuals when expiration of land use for cases has demand. 10. Procedures to separate or combine a parcel of land. 11. Procedures for changing land use rights certificates, ownership of housing and other assets attached to land. 12. Procedure for conversion of land use rights, ownership of housing and other assets attached to land. 13. Procedure for conversion of agricultural land use rights of families and individuals. 14. Procedures for reissuing a lost certificate; 15. Procedures to correct certificates already issued; 16. Procedures to recover a certificate.
District People's Committee	<p>They carry out</p> <ol style="list-style-type: none"> 1. Procedures for land dispute mediation under the jurisdiction of the District People's Committee Chairman. 2. Procedures for evaluating the needs of land use, land lease not through auction of land use rights to households, individuals and communities. 3. The procedures for land allocation and land lease for families, individuals and communities in cases not through auction of land use rights. 4. Procedures for changing the purpose of land use. However, they must be approved by the state agency authorized to families and individuals. 5. The procedures for land acquisition by the termination of land use according to law, and voluntary return of the land. 6. Procedures for registration of land use rights, the first time 7. Procedures for registration and issuance of land use rights certificates, ownership of housing and assets attached to land, the first time. 8. The procedures for registration and issuance of land use rights certificates, ownership of housing and assets attached to land for the people registering land use rights for the first time. 9. Procedures for registration and issuance of land use rights certificates, ownership of housing and assets attached to land for the first time with assets attached to land, where the owner is not the same as the land user. 10. The procedures for registering additional assets attached to land for a land user who has been issued a certificate.

NAME OF AGENCY	FUNCTIONS
District People's Committee	<ol style="list-style-type: none"> 11. Procedures for registration and issuance of land use rights certificate, ownership of housing and other assets attached to land, in order to transfer land use rights, buy houses, or construct housing development projects. 12. Procedures for registration and issuance of land use rights certificate, ownership of housing and other assets attached to land for cases with land use rights transferred before July 1, 2014, where the transfer right has been certificated but not yet implemented. 13. Procedures for registering a change in land use rights, ownership of assets attached to land in cases of transfer, lease, sublease, inheritance, donation, contribution of capital by land use rights, ownership of assets attached to land, transfer of land use rights, or when ownership of assets attached to land of husband and wife becomes common property. 14. Procedures for deregistration for lease, sublease, capital contribution with land use rights, or ownership of assets attached to land. 15. Procedures for registration of a change in land use rights, ownership of assets attached to land in cases of dispute resolution, complaints and denunciations on land, capital contributions, distraint, auction of land use rights and assets attached to land for execution, or consolidation agreement or division of land use rights and assets attached to land of a household, husband and wife, or group of land users. 16. The procedure for registration of a change in land use rights, assets attached to land by changing the information on the certificate (renamed or legal documents, personal papers, address); reduction in land area due to natural erosion; changes in land use restrictions; changes in financial obligations; changes in assets attached to land compared with the registered content, certificated. 17. The endorsements to continue using agricultural land of households and individuals when expiration of land use for cases has demand. 18. Procedures to separate or combine a parcel of land. 19. Procedures for changing land use rights certificates, ownership of housing and other assets attached to land. 20. Procedure for conversion of agricultural land use rights of families and individuals. 21. Procedures for reissuing a lost certificate. 22. Procedures to correct issued certificates. 23. Procedures for recovery of certificates.
Commune People's Committee	Oversee the procedures for land dispute mediation.

Steps to solve land disputes

This table summarizes the steps to resolving land disputes and the agencies/organizations involved in helping resolve land disputes when they cannot be solved with the help of CVGEAs alone.





Handout 6:

Exercise on case solving

Instructions:

This is a story about the life of a husband Long, and his wife, Mai. You can read the story out loud or ask participants to role-play and act out the story. Change or add details to make the story more interesting and relevant to your local context. Feel free to use the whole story or just a part of it.

Stop for discussion at different points in the story. Some questions for discussion, as well as legal information, is included here. You should encourage the groups to have their own questions, but discussion should be in accordance to legal regulations.

You can tell the various chapters of the story and choose one or two discussions that you find suitable. If you want to start a discussion or to leave it till later, make sure to continue reading all the content of the story.

Time needed for the whole story and discussions is approximately three hours.

The Story Of Long And Mai

Chapter 1

Long and Mai have been married for ten years and have a son named Kien and a daughter named Lan. After marriage, Long's parents gave Long and Mai two plots of land to plant rice, corn, beans, and seasonal vegetable. Mai spent most of her time taking care of the farm, selling pancakes at the village market, and taking care of the kids and the house. Long sometimes helped with the farming work but he also had his own work at a motorbike repair shop in the village. With the money saved from selling crops, selling pancakes and Long's income from his work at the mechanic shop, they de-

ecided to purchase another small plot of land to have more food for the family, and maybe to sell part of the plot, since their two children will soon reach school age.

Discussion

1. Who has ownership rights to the newly bought plot of land?

The money used to buy this new plot was saved from fruit and pancakes selling of Mai as well as Long's income from the motorbike repairing shop during their marriage. Therefore, according to the Constitution and the Law on Marriage and Family, both Long and Mai have shared ownership rights to this new plot.

2. In your opinion, does Long or Mai or both have their names in the LURC?

Clause 1, Article 34, of the Law on Marriage and Family 2014 states, "For common property, which is required by law to be registered for ownership or use, both spouses shall be named in the ownership or use rights certificate, unless otherwise agreed by the couple."

Besides, Clause 4, Article 98, of the 2013 Land Law stipulates: "Land use rights, or land use rights and the ownership of houses and other land-attached assets, or the ownership of houses and other land-attached assets, are the joint property of husband and wife, and the full names of both husband and wife must be recorded on the certificate of land use rights and ownership of houses and other land-attached assets, unless husband and wife agree to record the full name of only one person."

Therefore, in this case, the LURC must have both Long's and Mai's names.

3. In your opinion, which office/authority does Long and Mai need to visit to obtain a LURC?

To obtain the LURC for their new plot, Long and Mai have to file paperwork with the Department of Natural Resources and Environment at the district where the plot lies.

Chapter 2: Rights to assets not from land

In the following years, Long and Mai both work hard. Long works at the mechanic shop and helps with the farm; Mai works on the farms, sells crops and pancakes at the market and takes care of the kids and the house. Thanks to the hard work and income from the new plot, which Mai works on, they manage to afford all the school fees and expenses for their children.

Every weekday, on the way to work, Long would take the children to school. When the kids are at school, Mai has some free time to make bamboo hats to sell at the market. She also takes very good care of the farm, the kids, and of cleaning the house. When Lan is in the 4th grade, Mai has enough money from making bamboo hats to buy ten chickens. Her brother also gave her a couple of cows. Now the family has enough eggs, and Mai hopes she might sell the cow's milk to a dairy company for extra income.

Discussion

4. Whose property are the ten chickens and the cows? Why?

The 2014 Law on Marriage and Family, Article 33: "Common property of husband and wife includes property created by a spouse, incomes generated from labor, production, or business activities, yields and profits arising from separate property, or any other other lawful income generated during the marriage...[or] property jointly inherited by or given to both, and other property agreed upon by husband and wife as common property."

On another hand, from Article 43 of the 2014 Law on Marriage and Family: "Separate property of a spouse includes property owned by this person before marriage; property inherited by or given separately to him/her during the marriage period."

Therefore, the money to buy the ten chickens is income from the time Mai had free to make bamboo hats. So, this property belongs to both Long and Mai.

The couple of cows were a gift from Mai's brother to Mai alone during the marriage. Hence, this couple of cows is Mai's separate property.

5. Is the cows' milk Long's or Mai's property?

According to Clause 1, Article 33 of the 2014 Law on Marriage and Family, "Yields and profits arising from separate property are jointly-owned property of husband and wife." Therefore, the cows' milk would be both Long's and Mai's property.

6. In your opinion, could the ten chickens be divided into Long's and Mai's separate property?

The 2014 Law on Marriage and Family, Article 38 states: "During the marriage...husband and wife have the right to reach agreement on division of part or whole of common property."

Therefore, the ten chickens could be divided into separate property of Long and Mai. However, this agreement needs to be documented and notarized in accordance with law regulations.

Chapter 3: Decision on assets

The small township next to Mai's and Long's village is developing. When working at the mechanic shop, Long hears that many people are looking for land to build houses. People talk about big money coming from renting or selling land. One day, Mr. Hung – one of the mechanic shop's regular customers – asks Long whether he wants to sell the new plot. Long thinks that they should sell so they can have more money, since Lan will going to secondary school soon, like Kien.

Discussion

7. In your opinion, does Long alone have the right to sell the land?

As both Long and Mai bought this land during their marriage, it is the common property of both husband and wife. Because the land is jointly-owned, both Long and Mai have equal rights to make decisions about this common property (Civil Code 2005 Article 219). Therefore, Long alone cannot sell the land without Mai's consent. If Long sells without Mai's consent, the land buying/selling contract would be illegal.

8. If Long intentionally sells the land without her consent, what can Mai do to protect her rights?

To protect her rights, Mai can sue and request the Court to invalidate the contract and transaction between Long and Mr. Hung, which violated Mai's legal rights. Once the contract between Long and Mr. Hung is ruled illegal, they will have to give back to each other what was taken.

9. How does the 2013 Land Law address household land?

Land Law 2013 Clause 29, Article 3: "Land-using households means those who share a marital, family or foster relationship as prescribed by the marriage and family law, are living together and have joint land use rights at the time of being allocated land or leased land, or having land use rights recognized by the State; or receiving transfer of land use rights."

Therefore, husband and wife and children all have the rights to live and access the land of the household.

Husband/Wife in any case both have the rights to use this land and to agree or disagree with any transaction that may violate his/her rights.

Chapter 4: Land for rent

Neither Mai nor Long want to sell any land, especially Mai since the land has given the family food and income. Besides, they are tending the cows now and need space for grass for the cows. Long said to Mai, "Let's rent out one-third of the new plot to Mr. Hung for one year." Mai agreed with her husband's decision.

Discussion

10. What steps do Long and Mai need to take to rent out that plot for Mr. Hung?

First of all, Long and Mai need to learn about the land rental price within that area. Then, they need to discuss with each other and agree upon a rental price, and about how long they will rent the land for and under what conditions. Next, they will meet Mr. Hung to discuss about the price and contract. If both agree on the conditions, they will create a rental contract. Below is a Land Rental Contract Form which Long and Mai could use.

Number: ____ /HĐTĐ ____

SOCIAL REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

____ day ____ month _____ year

Article 4. Responsibilities of each party:

1. Renter is to ensure the land use of rentee during the contract time, is not allowed to transfer the land use rights to another third party, and follow the National Master Plan as written in Article 38 of the Land Law.
2. During contract time, rentee is not allowed to transfer the rental land use rights. If rentee changes due to division, combination, business changes, property related to rental land sale etc., the new rentee or organization formed legally after the change of the rentee will take over the rentee's rights and obligations for the rest of the contract time.
3. If a rentee wants to give back all or part of the rental land before the end of the contracted term, he/she need to inform renter at least six months in advance. Renter to answer rentee within three months from when they receive the rentee's request. Contract termination time is counted from the date of whole land handover.
4. Land rental contract will be terminated in the following cases:
 - If rent is not paid on time
 - If requested by one or both parties in the contract and approved by a competent authority
 - If rentee is bankrupted or dissolved or has property disposition
 - If an authorized national authority withdraws the land in accordance with Article 38 of the Land Law

Article 5. The resolution of property related to land after the termination of this contract is under legal regulations.

Article 6. Both parties agree to follow this contract's regulations, if one party violates the contract, he/she needs to compensate for the violation in accordance to law.

Article 7. This contract is made into four copies with equal legal value, each party keeps one copy and sends one copy to the tax office to determine

the land rental fee, and one copy to Vietnam's State Treasury, where the land rental fee is collected.

This contract is valid from the signed date.

Rentee

(Sign, write full name, stamp)

Renter

(Sign, write full name, stamp)

Chapter 5: Dividing family assets

A few years pass with Mai and Long continuing to rent out part of the land to Mr. Hung to use as a farm. Mr. Hung and his wife live in the city but return on weekends to work in the garden. Mai and Long use the land rental fee to pay for Kien's and Lan's school fee, and to buy food and other necessary goods for the family.

Many years later, Long is sick and passes away. Kien is an adult, and will be getting married soon and plans to build a house on part of the family's land.

Discussion

11. What could happen if Long leaves a will?

Civil Code 2005 Article 631: "Every individual shall have the right to make a testament to dispose of his/her property; to bequeath his/her property to his/her heir(s) at law; and to inherit property under a testament or according to law."

And Article 632 of the Civil Code: "Every individual shall be equal in the right to bequeath his/her property to another person and the right to inherit property under a testament or according to law."

Therefore, if Long left a will and his will is legal (with Mai's rights respected as a co-owner of all property), all the heirs in his will have the rights to the inheritance as stated in the testament.

12. How much land will Kien receive?

If Long left a will, Kien will receive the amount of land stated in Long's will (if the will is legal).

If there is no will, because all three plots of land are common property of Long and Mai, Long's property is half of the value of the abovementioned three plots.

After death, Long has three direct heirs: Mai, Kien and Lan (according to article 696 of the Civil Code). Therefore, Long's property will be divided equally between Mai, Kien and Lan. So Kien will receive one third (1/3) of Long's property.

Chapter 6: Land disputes

On one occasion, Mai notices that Mr. Hung and his wife had expanded beyond their designated rental land to the land Mai is using. They grew increasingly more plants on Mai's land without paying a larger rental fee or asking for Mai's consent. She even suspects that they are taking some bananas from her garden. Mai is worried that if this goes on for

too long, Mai might lose her land. Mai visits Mr. Le at the commune People's Committee to seek help but Mr. Le is Mr. Hung's friend, so he does not take any action to help her. Mai doesn't know what to do.

Discussion

13. In your opinion, to solve this issue, should Mai go to the People's Court or the People's Committee?

Clause 1, Article 203 of the 2013 Land Law states: "The land dispute in which the concerned party possesses a certificate or any of the papers prescribed in Article 100 of this Law and the dispute over land-attached assets shall be settled by the People's Court."

Therefore, to solve the abovementioned issue, Mai should sue in the People's Court at the district level or city-level in the province where the land is located.

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