

# TRAINING TOOLKIT

Vietnam Land Access for Women (LAW) Program

Photograph courtesy of Thanh Mai



## Property and Land Rights in Marriage and Family



**USAID**  
FROM THE AMERICAN PEOPLE



This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of ICRW and ISDS and do not necessarily reflect the views of USAID or the United States Government.

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### **Authors**

Gina Alvarado  
Khuat Thu Hong  
Stella Mukasa  
Zayid Douglas  
Jennifer Schutzman  
Nguyen Thi Van Anh  
Nguyen Thi Phuong Thao  
Vu Xuan Thai

### **In Charge of Publication**

Jennifer Schutzman

### **Implementing Partner**

Institute for Social Development Studies

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# Property and Land Rights in Marriage and Family



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# About this Toolkit

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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.<sup>1</sup>

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.

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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.

# Property and Land Rights in Marriage and Family

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The Law on Marriage and Family, enacted January 2015, is the primary legal document defining marital and family issues; norms for behavior among family members; what makes a marriage legal; marriage and divorce rights and responsibilities; protection of marriage and family; responsibilities of organizations, state, and society in supporting marriage. The Law on Marriage and Family also governs the rights and responsibilities of couples cohabitating without a legal marriage certificate, and regulates the application of marriage customs.

The institution of marriage can have a significant impact on men's and women's property rights. Even though matters of property will be discussed within the context of marriage here, it is important to remember that women also have rights outside marriage; whether they are single, separated, divorced, or widowed.

## Module Objectives

CVGEAs will *understand*:

- Rights women and men have over property and land, whether married or unmarried
- Procedures and documentation for different types of marriages
- What property is gained after marriage

CVGEAs will be able to *communicate*:

- How some customary practices and gender stereotypes—or prejudices about marriage, divorce, or separation—may violate women's property rights, particularly concerning land and housing
- How customary practices must not violate Constitutional protections for the equality of women and men

CVGEAs *will bring to their communities*:

- Knowledge to support and protect each spouse's rights to property and land
- Increased awareness that women have rights outside of marriage and need not be dependent on men

## Handouts:

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

- Handout 1: New Point of the Law on Marriage and Family 2014
- Handout 2: Practices for a Civil Marriage
- Handout 3 : Practices for a Customary Marriage
- Handout 4: Important Marriage Documents
- Handout 5: The Law on Separation & Divorce for Civil Marriages
- Handout 6: The Law on Separation & Divorce for Customary Marriages
- Handout 7: Women's Land Rights at Separation and Divorce
- Handout 8: Stipulation of Laws about Legal Rights of Property of Husband and Wife in Marriage and after Marriage
- Handout 9: Informal Dispute Resolution Institutions
- Handout 10: Formal Dispute Resolution Institutions
- Handout 11: Role Play – Optional.

At the end of the module is a role play (Handout 11), which can be used as an optional exercise. The role play tells the story of a husband and wife who might

split up and a CVGEA who explains to them their rights to separate or divorce according to the law. It touches on property before getting married, on land and house, and who can decide a divorce. The

role play needs three persons if acted out but could also be told as a story.

**Total time:** 8.5 hours including 3-hour role-play exercise

# Factors Making a Marriage Legal

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## **Background: Marriage Laws**

The main family laws in Vietnam that this module draws from are:

1. The Constitution of the Socialist Republic of Vietnam
2. The 2014 Law on Marriage and Family
3. The 2005 Civil Code

## **Lecture: Different Kinds of Legal Marriage**

Give a short lecture on the different kinds of marriages that are legally recognized in Vietnam. For each kind of marriage, discuss the conditions, procedures, responsibilities, and land rights. Use the following handouts in the lecture:

- Handout 1: Practices for a Civil Marriage
- Handout 2: Practices for a Customary Marriage

## **Discussion: Legal Marriage in Vietnam (1 hour)**

1. Rotate brainstorming by quickly getting opinions from participants to questions given below. Record answers on flipchart.
  - What is marriage?
  - What are types of marriage in Vietnam and elsewhere nowadays.
  - Marriage types can be monogamy, polygamy, same-sex marriage, marriage by custom, and more. Family types can be nuclear family, multi-generation family, single mom family, polygamy family, and more.
  - What does “living together/cohabitation” mean? What does “de-facto marriage” mean?
  - Who can marry whom?
  - What are conditions for legal marriage? In

what circumstance is marriage considered invalid or illegal? What behaviors relating to marriage are forbidden by law?

2. Facilitator provides the official definition of the 2014 Law of Marriage and Family on marriage and cohabitation.
3. Facilitator debriefs following points:
  - *Marriage* is when a man and a woman decide voluntarily to live together using a type of marriage recognized as legal for which they have to apply for a marriage certificate. If they do not apply the necessary procedures to marry by law, their union will not be recognized. Legal recognition in marriage is important because the law stipulates rights and responsibilities in legal marriage such as inheritance, rights to property and supporting the family.
  - *Cohabitation* is where man and woman live together without going through any of the legally recognized marriages. Cohabitation is not recognized as a form of marriage in Vietnam. Since cohabitation is not a legally recognized marriage, the parties do not have the same land rights and legal protections as men and women who are legally married. For example, unless the land where they stay is registered in her name (either alone or jointly with her partner), a co-habiting woman has no legal protection to stop the man she is co-habiting with from selling, renting out, or giving away the land where the couple stays or farms.

As much as possible, make the lecture interactive by asking the group what they know about the conditions, procedures, responsibilities, and property rights in different types of marriage. The facilitator should highlight differences between how women’s property rights are guaranteed or challenged in the life of a couple married by law, and one who followed customary or religious marriage.

However, make sure to correct any misperceptions people have and focus on what the law says. For example, it may be necessary to remind the group about factors that may not be sufficient proof of a legal marriage, such as approval by parents of both parties or a marriage ceremony.

### **Lecture: Types of Legally Recognized Marriages in Vietnam**

To be legal, marriage must meet conditions stipulated in Article 8 of the Law on Marriage and Family:

1. Men must reach full age of 20 years old; women must reach full age of 18 years old;
2. Marriage must be based on a voluntary decision, without force or deceit by either party, or hindering of marriage by anyone.

To be legal, marriage must not violate restrictions outlined in Article 2, Item 2 of the Law on Marriage and Family:

1. Marriage of a person already married
2. With a person who has lost his/her capacity for civil action
3. Between relatives of the same direct blood line, within three generations
4. Between adoptive parents and adopted children, or former adoptive parents and former adopted children
5. Between fathers-in-law and daughters-in-law, mothers-in-law and sons-in-law, stepfathers and stepchildren, stepmothers and stepchildren

Also, to be legal, a marriage must be registered with the competent State bodies (hereinafter called marriage registration offices) according to the proceedings prescribed in the Law. Marriages that do not meet the conditions about marriage registration contained in Article 8 and/or Article 9 of the Law on Marriage and Family are considered illegal.

It is not uncommon to find couples that do not meet the conditions for legal marriage in practice. Common law marriages can include marriages by ethnic custom or religious ceremony, which requires

the agreement and recognition by family, and a ceremony witnessed by relatives, friends, or neighbors. Common law marriages are not legal.

Due to social and historic circumstances, in the past many couples would marry by common law without legally registering their relationship. In order to ensure and protect legal benefits of citizens and to gradually eliminate unregistered marriages, the government issued decree 77/2001/NĐ-CP dated 22/10/2001 to follow the Resolution number 35/2000/QH10 issued by the National Assembly dated 9/6/2000 stipulating about common-law marriage (Article 2, Item 1 and 2) as follows:

1. For those couples where the husband—wife relationship was established before the 3<sup>rd</sup> January 1987 with no legal marriage certificate, the government has encouraged and created favorable conditions for their registration for legal marriage certificates.
2. Men and women living together as husband and wife from 3<sup>rd</sup> January 1987 to the 1<sup>st</sup> January 2001, who meet conditions for legal marriage in the Law on Marriage and Family, must apply for a legal marriage certificate. After the 1<sup>st</sup> January 2003, if they have not registered for a legal marriage certificate, they will not be recognized by law as husband and wife.

### **Discussion/Exercise: Pose the following case for further discussion**

*In 1980, Ms. T and Mr. A conducted a simple wedding ceremony after T's first wife died. Mr. T had child with his first wife. Ms. T and Mr. A have lived together without registering their marriage and have also had a child together. After 8 years of cohabitation, Mr. A demanded a divorce from Ms. T, and brings home another woman.*

### **Question: Is this a common-law marriage and is this marriage legal?**

Further questions you may wish to use in discussion include:

- What are three land rights based in written

law that women have related to marriage, separation or divorce?

- How are the rights and responsibilities of women and men similar to their rights in the Constitution? How are they different?

### **Exercise: Marriage and Cohabitation (1 hour)**

Divide participants into four groups and give each one a set of questions. Ask participants to discuss and write down answers on a flipchart, which one person will present on behalf of the group. (30 minutes)

- Group 1: What is difference between cohabitation and marriage? What is common law marriage? List the factors that make a marriage legal.
- Group 2: List all types of marriage and families that are common in Vietnam. How do the rights of women to property differ in these different types of marriage/families? How do the property rights of wives/mothers/daughters in those families differ from those of husband/father and sons?
- Group 3: How does civil marriage differ from custom/religious marriage? Is custom/religious marriage legal? How do property rights of women and men who are legally married differ from those who have a custom/religious marriage?
- Group 4: What are equal rights and responsibilities of husbands and wives as stipulated in the Law on Marriage and Family? List at least three rights to property included in the Law on Marriage and Family relating to marital status, whether currently married, separated, or divorced.

### **Lecture/Discussion: Important Marriage Documents (30 minutes)**

Use Handout 3, “Important Marriage Documents,” to describe where and how to get marriage certificates for each type of marriage, and to outline the benefits of having a marriage certificate.

The facilitator should ask participants to work in pairs to list as many ways as possible that having a marriage certificate could be helpful. After few minutes, have each pair name one reason. After all pairs have spoken, repeat another round until they have read everything they listed.

Below are suggestions about the benefits of marriage certificates the facilitator may offer if the participants do not:

- A marriage certificate shows that the marriage is legally recognized. This means that the spouses have certain rights and responsibilities according to the law.
- If their parents have a marriage certificate, it can help strengthen and protect children’s rights to be supported by both parents, and to inherit their parents’ property in the case of divorce or parental death.
- A marriage certificate can make it easier to protect widows’ and widowers’ rights to inherit the property of their spouse.
- Having a marriage certificate can make it easier to obtain other documents, such as Land Use Rights Certificates (LURCs).
- Registering marriages makes it clear who is required to give consent if one spouse wants to sell family land.
- If one spouse wants to leave the marriage and take with him/her all the property, the other spouse can produce the marriage certificate to show that s/he also has a claim to the property.

# Property and Land Rights in Marriage

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## **Background: Property/Land Rights in Marriage**

According to the Constitution and other pertinent laws both women and men have equal rights to property, either as individuals, or jointly with other people. When people get married, they do not lose these rights.

However, since couples tend to share property, what belongs to the husband, what belongs to the wife, and what belongs to both can become confusing. In Vietnam, according to customs and traditional gender norms, property is often considered as belonging to the husband or to his family, even property that his wife owned before marriage or obtained with her own money. It is important for women and men to know that they can exclusively own property before, during, and after marriage.

## **Exercise: Husbands' and Wives' Property in Practice (45 minutes)**

1. Divide participants into three groups and assign the following questions:
  - **Group 1:** In a family, what property belongs to the man, what property belongs to the woman, and what property is shared? Property includes land, animals, and other items like bicycles, pots and pans, farming tools, etc.
  - **Group 2:** List cultural beliefs or rules about property in the home. Which of the cultural beliefs or rules advance women's property rights, and which ones do not?
  - **Group 3:** What happens to property when the spouses divorce or separate? Which spouse usually receives which properties?
2. Ask each group to share one or two examples of men and women sharing property in their own villages.

3. Ask the small groups to reconvene as a plenary to share their group work.

## **Lecture: Women's and Men's Legal Property Rights In or Out of Marriage**

Facilitator should give a brief lecture to remind participants about the legal rights of men and women in marriage and outside marriage. Handouts 1 and 2 from the Rights and Gender in Vietnam Module and Handout 2 from the Land Law and Gender Module can be used to refresh their memories. Below are some main points:

The Constitution is the ultimate guide for citizen's rights, including rights to property. Article 32 of the Constitution (2013 revision) stipulates:

1. The citizen enjoys the right of ownership with regard to his lawful income, savings, housing, chattel, means of production funds and other possessions in enterprises or other economic organizations.
2. The State protects the citizen's right of lawful ownership and right of inheritance.

Regarding marriage, Article 36 of the Constitution stipulates:

1. Men and women have the right to marry and to divorce. Marriage shall conform to the principles of free consent, progressive union, monogamy, and equality between husband and wife.
2. The State protects marriage and family, and protects the rights and benefits for the mother and children.

The Constitution stipulates the following about property rights for both men and women, regardless of type of marriage on the conditions that they should meet legal conditions for marriage under law.

- Men and women are equal before the law in all aspect of life, and are protected by law. (Article 14 and 16)

- The Constitution strictly forbids any legal condition, custom, or cultural belief that discriminates or ignores equal opportunities for women and men. The State, society, and families must create favorable conditions for the overall development of women, in order for them to reach their full potential in society. (Article 26)
- Women are equal to men in rights related to the marital relationship, including getting married and deciding if and when to end the marriage. The State protects marriage and family by protecting the rights and benefit of mothers and children. (Article 36)

The 2014 Law on Marriage and Family regulates the property of husband and wife—by legal regulation or by negotiation of the couple before and during marriage.

The 2005 Civil Code stipulates that husband and wife have equal rights in family life:

- Husband and wife have equal rights and obligations in every aspect of family and civil relations, and shall together build a plentiful, equitable, progressive, happy, and lasting family. (Article 40)
- Husband and wife each have a right to request Court resolution for a divorce. (Article 42)

### ***Joint and Personal Property Ownership***

- Women are equal to men in rights to property, they can own property as individuals or jointly with others and no one should grab their property. In marriage, husband and wife have right to their own property to common property. The integration of property and/or dispose common property can be established by law or by agreement (Article 219 of the Civil Code and Article 28 of the Law on Marriage and Family)
- Common property includes property jointly acquired by husband and wife; incomes generated from labor, production and business activities, or other lawful means during a

marriage; property jointly inherited or given to both; and other assets agreed upon by husband and wife as common property. (Article 33, Law on Marriage and Family)

- The land use right obtained by husband and wife after their marriage is their common property. The land use right obtained before the marriage or personally inherited by husband or wife shall be common property only if mutually agreed upon by husband and wife.
  - The Law on Marriage and Family 2014 addresses property rights of husband and wife in Chapter 2, Section 3, including regulations of common property and of personal property owned before and during marriage; general principles about property rights of husband and wife; division of common property during marriage, as well as disposition in divorce.
  - The Law on Marriage and Family also regulates the division of common property during a marriage. According to the law, if a husband and wife makes separate business investments, performs separate civil obligations, or if there are other plausible reasons, the married couple may agree to divide their common property, which must be recorded in writing. From the time of a legally valid division of common property, revenue or other benefits accrued from the divided property belongs to the owner of the original share. Any remaining undivided property is still the common property of both husband and wife.
- The 2005 Civil Code outlines the terms of common ownership between husband and wife in Article 219.
  1. Common ownership by husband and wife is common ownership by integration.
  2. Husband and wife who jointly establish and develop the common property through the efforts of each shall have equal rights in the possession,

- use, and disposition of such property.
3. Husband and wife shall discuss, agree, or authorize each other regarding the possession, use, and disposition of the common property.
  4. The common property of husband and wife may be divided by their mutual agreement or by a decision of the Court.
- Regarding houses and other land-attached assets belonging to the common property of husband and wife, Land Law 2013 (Article 98, Item 4) stipulates that the provision of property ownership and use rights dictates the full names of both husband and wife must be included on the deed, unless the husband and wife mutually agree to record the full name of only one person. If the certificate only records the full name of the husband or wife, a new certificate with the full names of both may be granted upon request.

### ***Protection of property rights for husband and wife***

The Law on Marriage and Family 2014 especially regulates protection of property rights for married husband and wife, and stipulates the following:

- Both husbands and wives have the right to use and live on family land, which is defined as land where the family home is situated, land which helps sustain the family (such as land for crops or animals, or land from which the family earns an income), or that which is called family land according to the family's norms, custom, or tradition.
- A husband or wife must seek the approval of the other spouse before carrying out any transaction of family land. Such transactions include sale, exchange, mortgage, or lease. (Article 35)
- A transaction for the sole place for residence for a husband and wife must seek agreement

from both husband and wife. If the house is the personal property of either the husband or wife, the owner has a right to perform transactions related to the property, but the ongoing residence of the other person must be guaranteed. (Article 31)

### **Discussion**

1. Ask participants to name similarities and differences in women's and men's property rights across the different types of marriages: civil and customary. You can let participants use Handouts 2 & 3, which can be found at the end of this booklet.
2. Ask the participants to use the law to answer the following questions:
  - Can an unmarried woman have land or property that is just hers? (Answer: Yes)
  - Can a married woman have land or other property that is just hers? (Answer: Yes)
  - Can a married man have land or other property that is just his? (Answer: Yes)
  - Can a husband and wife own a piece of land or property together? (Answer: Yes)
  - Can a husband sell land that the family farms for their regular food without consent from his wife? (Answer: No)
  - Can a wife sell land that the family farms for their regular food without consent from her husband? (Answer: No)
3. Facilitator should encourage participants to share stories that have happened in their locality and raise questions for group discussion.

### **Exercise: Debating the Betrothal Gifts/Wedding Present (Optional, 2 hours)**

In promoting women's property rights, CVGEAs will be challenged by opposing views. This exercise provides practice using convincing arguments and persuasive language so people will begin to see women's property rights in a new light.

## ***Preparations and Materials***

On a flipchart, write the following: Betrothal Gifts/Wedding Presents – Do they put a greater burden on women?

Materials needed: In addition to markers, hand-outs and reading documents should be prepared for participants, such as photocopies of related laws and other helpful sources, so participants can reference them during the debate.

**Group 1:** Only sons can inherit land and house from parents.

**Group 2:** Daughters are the same as sons to have rights to inherit land and house from parents.

**Group 3:** One of the couple's name is missing from the LURC (it could be the wife's or the husband's name).

**Group 4:** Both husband and wife should have their name on LURC.

**Group 5:** Daughter cannot worship ancestor.

**Group 6:** Daughter can worship ancestor.

### *Part I: Debate (1 hour 30 minutes)*

1. Explain that you are going to have a debate with the following rules:
  - You will divide the participants into two groups.
  - One group will make a case in favor of the statement and the other group will argue against it.
  - Each group must give clear reasons for their argument and cite sources they are using. For example, if they use an international convention, they have to say which one.
  - Remind the participants that each group is playing a role. They do not need to necessarily believe what they are arguing in the debate. It is important for all participants to

make the best argument they can for their side, so they can appreciate different points of view and practice making respectful and persuasive counterarguments.

- Each group will have 45 minutes to prepare their argument.
  - Two volunteers from each group should be nominated to present their case.
  - Each group will have a maximum of 15 minutes to present their case.
2. Present the flipchart with the statement to be debated.
  3. Divide the group in two. Ensure that the group arguing "Against" the statement has an articulate member who will be able to make the argument against the statement convincingly.
  4. Conduct the debate as described above.
  5. During the debate, the opposing group members must listen carefully and cannot interrupt. They can take notes and prepare to make a short rebuttal (about 5-10 minutes) after the presentation. Emphasize that the rebuttal must refer to what their opponents said, since it is their response to their opponents' arguments.

### *Part II: Discussion (30 minutes)*

1. After each group has had an opportunity for a presentation and rebuttal, the floor is open for a free exchange and discussion.
2. Summarize the discussion and key points made by each side.
3. Ask the members of the team that argued "for" the statement to add any arguments they may have used if they were the opponents.
4. Ask the participants if there were any arguments or approaches from the debate that would have worked well in their communities.

# Separation and Divorce

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## **Background: Separation and Divorce**

While it is hoped that couples will be happy in a lasting marriage, the reality is that sometimes marriages do not work out and the spouses choose to separate or divorce. CVGEAs can either advise couples to get counseling for marital problems or can help in mediating marital problems. At the same time, rights workers need to know what legal advice to give a husband or wife who chooses to separate or divorce.

It should be noted that cohabitation is not recognized as a legal form of marriage, so divorce law does not apply to or protect cohabitating couples ending their relationship, with exception for those who were cohabitating before 3<sup>rd</sup> January 1987.

### ***Activity 1: Quick Rotation Brainstorming***

Facilitator raises the questions:

What is separation?

What is divorce?

Participants take turns each giving their own definition of separation and divorce according to his/her own understanding. Record the ideas on a flip-chart.

### ***Activity 2: What Happens in Separation and in Divorce?***

#### *Separation*

The current Law on Marriage and Family does not regulate separation. Therefore, there is no precise legal definition of separation. Separation could be described as a state of splitting up between husband and wife, such as a separation of eating or living together, or an end to sexual relations for a certain period of time. However, there are separated couples who still live in the same house or share meals.

Since there is no legal regulation of separation, no organization is authorized to decide or approve of separation. Divorce permits do not require a condition of separation as a basis for divorce. Therefore, separation is considered a personal matter between husband and wife, which depends on the decision and/or mutual agreement of both. However, if the couple still cannot come back together after a certain time of separation, then separation can be a basis for the court to consider a divorce procedure.

Separation does not end the legal relationship of husband and wife, so a period of separation is considered a part of the marriage time. (Marriage time starts from the date of marriage registration until the legal formalization of its divorce). Therefore, either husband or wife cannot get married to another person during separation. During the separation period, husband and wife have full rights and responsibilities related to property and children. Husband and wife can negotiate and agree about conditions related to children and property or other conditions that follow during the separation period.

#### *Divorce*

The Law on Marriage and Family 2014 defines divorce as the termination of a husband and wife relationship, which is recognized or decided by the Court at the request of either spouse or both. (Article 3, Item 14)

Divorce is the permanent ending of a marriage. It only applies to legally recognized marriages. The procedure for divorce depends on the type of marriage the parties had. The proper legal procedures must be followed for a divorce to be valid and for the marriage to be ended. Leaving or chasing away a spouse does not amount to divorce or put a legal end to a marriage.

The Law on Marriage and Family 2014 stipulates legal regulations related to divorces such as rights

to request a divorce; procedures for divorce; principles of division of property upon divorce; fostering; custody of children. (Articles 51 through 64)

If a person is incapacitated due to a mental illness or medical condition, and is the victim of violence inflicted by his/her spouse, then a close relative (father, mother, or other close person) can petition the court for a divorce on his/her behalf. (Article 51, Item 2).

If the wife is pregnant or is nursing an under-12-month-old infant, then the husband is not entitled to request a divorce. (Article 51, Item 3)

The table below helps summarize the differences between separation and divorce.

Separation	Divorce
It is temporary and does not end a marriage.	It is permanent. The marriage ends.
There is no legal application for separation. This is personal decision between husband and wife.	Divorce should be applied by provision of the law on divorce.
Marital rights and obligations are maintained during the period of separation.	Marital rights and obligations end.
The husband and wife are still legally married. They work out ways of managing their affairs and looking after children.	The parties are no longer husband and wife. Property is divided between them and custody of children is agreed upon or a court order is given.
The parties cannot marry or be sexually involved with another man or woman.	The parties may re-marry because they are no longer considered husband and wife.

As important as it is to get the right marriage documents as proof of legality of the marriage, it is equally important to get the right documents when one gets a divorce. If one of the parties wants to marry again, the documents are proof that the previous marriage has ended.

- There are two types of divorce—by consent and by the request of one party. If it is a legal marriage, the court issues a decision of divorce where it is clearly written that the marriage is over.
- If it is a custom marriage, an agreement of both parties is the proof that the marriage ends.

Custody of children is decided by court when a marriage is dissolved under provisions of law (Law on Marriage and Family 2014, Articles 81 through 84). The court considers which of the spouses is in a better position to give the children a proper home and to care for and meet the children’s needs. The ages, feelings, and wishes of the children (if over the age of seven) are also considered in custody decisions. Custody is decided on a case-by-case basis. Children younger than 36 months are generally given to mother, unless she lacks sufficient means to care for the child, or if the parents agree differently for the sake of the child.

### **Lecture/Discussion: How to Obtain a Separation or Divorce (1 hour)**

Begin by explaining the differences between separation and divorce. It may be helpful to use the table above. Then, using Handouts 5, 6 and 7, give a short lecture about the grounds, procedures, and institutions involved in obtaining a separation or divorce for both legal and customary marriages. In particular, note the section in each of these handouts, “Who has power over matters of separation or divorce,” to emphasize that only the Local People’s Court has the power to grant a divorce, and reiterate that one spouse leaving or evicting the other from the home is not a divorce.

As much as possible, make the lecture interactive by asking the group what they know about the condi-

tions, procedures, and responsibilities involved for both parties in a separation or divorce, including their property rights. Make sure to correct any misperceptions people have and focus on what the law says.

1. Divide participants into six small groups. Instruct the groups to list all possible rights and responsibilities in cases of separation or divorce for each type of marriage.
  - A. Marriage with marriage registration certificate (legal marriage)
    - Right to property in a case of divorce by consent
    - Right to property in a case of request for divorce by one of party
    - Responsibility towards children
  - B. Custom marriage – Living together without getting legal marriage certificate
    - Right to property in a case of divorce by consent
    - Right to property in a case of request for divorce by one of party
    - Responsibility towards children
2. Have each group present their answers and ask them to compare the differences of property rights and responsibilities in cases of divorce under the law and divorce without a legal marriage certificate. Highlight the differences in risks that women may face when divorce is settled.
3. The facilitator should wrap up the discussion by answering participants' questions.

### **Background: What Happens to Property in a Separation or Divorce?**

When a marriage ends or couples separate, the properties that they own must be divided. A married couple typically shares common property, which may be personal property contributed to the partnership, or acquired together while they are husband and wife. It is particularly important to understand women's property rights because it is

common for women to lose property in a divorce because of cultural beliefs and traditional gender norms that say only men can own property, especially houses and residential land.

According to Article 59 of the 2014 Law on Marriage and Family, the principles for division of common property must be based on the mutual agreement of husband and wife. If negotiations fail, one or both parties may request a court determine the division of property based on legal provisions. The common property of husband and wife shall, in principle, be halved, with due consideration given to each party's situation, the property status, and each party's contributions to the creation, preservation, and development of this property. In this estimation, housework done by the husband and/or wife is regarded as income-generating labor. The legitimate rights and interests of the wife, minor children, or adult children who have no property or ability to support themselves due to mental or physical disability or disease, are protected.

Property created during the separation, which is technically during the marriage, should be halved in principle, but the court can consider the contribution of each party in issuing a decision.

### **Exercise: Divorce and Separation in Our Communities (30 minutes)**

The purpose of this exercise is to have participants explain what happens when a couple separates or divorces in their communities.

1. Ask the participants if couples who split up typically go through a divorce, separation, or some other process.
2. Break the participants into two groups. Ask each group to answer one set of questions:

#### **Group 1:**

- When a couple splits up, what does the wife keep, in terms of property or income?
- What does the husband keep, in terms of property or income?
- How is it decided who will keep what properties?

- Who are the people or institutions involved in deciding?
- Give some practical examples for illustration.

**Group 2:**

- When a couple splits up, where will the wife stay after the divorce or separation?
  - Where will the husband stay?
  - With whom will the children stay?
  - Who are the people or institutions/organizations involved in deciding with whom the children will live?
  - Give some practical examples for illustration.
3. Have the two groups present their answers and discuss.

**Lecture/Discussion: Property Rights in Separation and Divorce (30 minutes)**

1. Give the participants an overview about what the laws say regarding women and men's property rights.
2. Give a short lecture using Handout 6 on "Women's Land Rights at Separation and Divorce." As much as possible, make the lecture interactive by asking the group what they know about the conditions, procedures, and responsibilities involved for both parties in case of a separation or divorce, particularly regarding their land rights. Make sure to correct any misperceptions people have and focus on what the law says.
3. Ask participants to compare women's land rights in divorce for each type of marriage.
4. Wrap up the discussion by answering any questions the participants may have.

# Property Conflicts: Where to Refer People for Help

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## **Background: Resolving Disputes**

A range of dispute resolution institutions exists to address property-related conflicts in the family. Often, the nature and size of the problem will determine which institution is best suited to handle the conflict.

Reconciliation at a grassroots level is included in the formal legal process. The Law for Reconciliation, approved by the National Assembly in 2013, encourages parties to resolve disputes by applying reconciliation at a grassroots level. The law encourages prominent members of a family or community to support and participate in grassroots reconciliation, and to further encourage other individuals and organizations to promote grassroots reconciliation. (Article 5)

Therefore, people in conflict are encouraged to first try to resolve their problem amicably before resorting to more formal institutions, such as courts. This is meant to encourage conflict resolution and peace building directly from the smallest units in society—homes and villages. The law defines grassroots reconciliation as a negotiation guided by a mediator willing to help resolve disputes, who helps conflicted parties reach mutual agreement.

## **Lecture/Discussion: Informal and Formal Dispute Resolution (45 minutes)**

1. Explain that there are two categories of services available to help resolve conflicts. Informal dispute resolution institutions are not a part of the legal justice system, but can help inform people of their rights, provide advice, and mediate. Examples are community volunteers for gender equality advocacy, legal aid centers, clan meetings, and family gatherings. Formal dispute

resolution institutions are a part of the legal justice system. Examples include local people's courts, provincial courts, and the High Court. *Regardless of whether the institution is informal or formal, any decision it reaches or advice it gives must conform to the law and support women's equal rights.*

2. Using Handouts 7 and 8, give a brief lecture about the roles, mandates, and jurisdictions of the different dispute resolution institutions. Throughout the lecture, ask the participants to share their own positive and negative experiences in working with each institution.

## **Exercise: Case Studies for Referrals**

Now that participants understand the roles and mandates of the different institutions, we will practice making recommendations for referrals.

1. Divide participants into small groups. Depending on the number of participants, you may decide to have all groups do all cases or assign different cases to different groups.
2. Ask the groups to read through the case studies (see below, following the directions) and determine:
  - What additional information they would want to know
  - What documentation they would ask for
  - Where they would refer the client and why
3. Have each group present their work and explain their advice about information, documentation, and referrals.
4. Use the guide following the case studies to ensure that certain points are covered during the discussion.
5. Wrap up the session by explaining the importance of correct referrals.

**Directions:** Answer the following for each case that you have been assigned:

1. What is the main problem for which the client is asking help?
2. What other information might you, as a community rights worker, want to find out before you advise your client or refer him/her elsewhere?
3. What documentation might you recommend s/he bring to wherever you refer him/her?
4. How would you approach mediating this case yourself?
5. If you were not able to successfully mediate the case, where would you refer the client and why?

### *Case 1*

Dear Community Volunteer for Gender Equality Advocacy,

I am currently married and have two small children—one 7-year-old daughter and one 3-year-old son. The residential land where our family lives is registered in my mother-in-law's name. But my husband and I had paid for the land and we built a house on that land.

My job has recently been taking me far away from home and my husband and I frequently get in conflict. My husband demands a divorce, which I do not want, but my husband has sent a request to the court for divorce on his own.

If the court grants his request for divorce, do I have property rights related to the house?

My husband has sent our children to be looked after by his parents. I am in the process of asking my employer to transfer me to work closer to home so I can have more time with my children. In a divorce, do I have the right to request that my children stay with me?

### *Case 2*

Dear Community Volunteer for Gender Equality Advocacy,

My husband and I have two children, but my husband is requesting a divorce without stating any clear reason. We officially registered our marriage certificate and have been together for more than 20 years. My husband has moved out to live in a new house he purchased. One of our children got married and moved to her hus-

band's house, and another child is studying far away from home.

I am retired government staff. In the past, my husband's employer provided our housing, which I invested in for home improvements. Now my husband demands that I move out of the house. Do I have to move out? How can I solve my situation?

### *Case 3*

Dear Community Volunteer for Gender Equality Advocacy,

My husband and I have two children, but got divorced in 1999 due to conflicts. At that time, my husband agreed to let our children stay with me in our house. He took the agreed compensation money, which I borrowed to give him, and went away to live and do business. After two years, his business failed and he came back expressing regrets and wishes to live with me and our children. Thinking of our small children, I agreed to let him live with us. We have lived together but never registered for a new marriage certificate.

I own a small shop and my business is in good shape. Everyday my husband helps me sell goods in the shop. Housing and living expenses come mainly from my income. Recently, my health has declined, so I would like to sell the house and move, but my husband does not agree. He said that he wants to leave the house to the children for ancestor worship, though the house no longer belongs to him or his side of

the family. When we divorced, I requested removal of his residential registration to the house.

So what process should I take in order to sell the house? If I sell the house, does my husband have a right to share of money earned from the sale or not?

#### *Case 4*

Mr. Dung is a teacher with salary of about 4 millions Dongs per month. His wife, Mai, is a nurse in the district clinic with a salary of about 2 millions Dong per month. They have been legally married for three years and have no children. They currently live in a house at the living quarters constructed for teachers. In his home village, Mr. Dung's name is entitled on a LURC for a piece of residential land where a semi-permanent house is built. This piece of land and house was inherited from his father. The couple

goes there on weekends to work in the garden and bring back fruit and vegetables to cook during the week.

Recently, Mr. Dung has been thinking that he'd like to sell the house in his home village so he can buy a car, which would help him earn more income. He already met with Mr. Phu, who wants to buy the house. When Dung told Mai, she objected because she thinks the house is the couple's sole property of value, and that buying a car is not a good idea. However, Dung still insists on selling the house because it was his personal property before marriage, and according to the village custom, the wife does not have any voice in that transaction. Moreover, they do not live there, and both of them work and have monthly salaries. But Mr. Phu follows the advice of his friend, a lawyer, who insists that Mr. Dung should have his wife's signed consent for the sale. Because his wife refuses to sign, Mr. Dung visited the CVGEA for advice.

### ***Guide for Facilitator: Key Points to Draw from Case Studies***

#### *Case 1*

- A key question to ask the wife is if she has any documentation or other proof that the wife contributed to paying the mother-in-law, and/or contributed to remodeling and decorating the house.
- Whose name is on the LURC of the house? Is there any receipt or proof of the money paid to the mother-in-law? Who will be entitled on the LURC after all the money is paid to the mother?
- If the reconciliation fails, the wife can bring a case to the local court.

#### *Case 2*

- Participants should discuss whether the house is a part of the marriage or of the family, based on what they have learned so far.

- The wife has a legitimate right to the land and house of the family.
- Since they are still married (although separated), the husband must have his wife's signed consent to sell or rent the house.
- If the client is willing to accept the divorce, the couple should apply to have the district people's court render a decision on the property division.
- Reconciliation must be implemented before a request can be submitted to the court.

#### *Case 3*

- They are divorced, so before the law they are no longer husband and wife. Therefore, the husband has no right to be involved in his wife's property transaction. Division of money from the sale of the house depends solely on the wife's decision.
- Give advice on the registration of ownership of property: personal or joint property.

- One way to create transparency about property in the future is to make written agreements for major property transactions.

#### *Case 4*

- Participant should describe the piece of land in the home village as family land, based on what they've learned so far.
- The law requires consent of both parties for any transaction of family land.
- Consent must not be withheld unreasonably. (Do participants think Ms. Mai is being unreasonable? Why or why not?)
- Mr. Dung can be advised to attempt reconciliation first.
- If mediation fails, Mr. Dung may seek formal mediation through use of a professional mediator. (For more details, see Handout 4 in the module "Land Law and Gender.")

## Handout 1

# New stipulations in the 2014 Law on Marriage and Family

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The 2014 Law on Marriage and Family, in effect from the 1<sup>st</sup> January 2015, stipulates provisions that may affect rights to property of men and women.

The Law on Marriage and Family 2014 amends provisions to protect women married through customary marriages and their children. Article 16 stipulates that solving the property should guarantee rights and legal benefits of women who lack marriage registration and their children. Domestic work and other work that contributes to maintaining the life of family members are considered as income labor. So, although customary marriage is not recognized by law, the rights and benefits of people who do housework (mainly women) are protected by law, so rights of both parties are guaranteed as in the legal marriage.

The Law on Marriage and Family 2014 redefine legitimate age of marriage: woman must be at full age of 18 years old and man must be at full age of 20 years old.

—Law on Marriage and Family 2014 amends provisions on property of husband and wife where husband and wife have right to choose the property regime by law or by agreement (Article 28). The new point is the application of property regime by agreement: if both agree to follow a property regime, they must make the agreement in written certified or notarized form before getting married. The agreement of property regime of husband and wife is valid from the date of the marriage registration. (Article 47)

The content of the agreement of property includes: “property identified as common property, personal property of husband and wife; rights and responsibilities of husband and wife to common property and personal property and related transactions; property to ensure the basic needs of the family; conditions, principles of property division when property regime ends, etc.” This agreement can be changed, revised or amend after marriage (Articles 46,47, 48, 49 and 50)

The regulation of agreed property contributes to reduce disputes of property after divorce of the couples.

—The Law on Marriage and Family 2014 also issues provisions about solving issues regarding children, property, responsibilities and contract of parties when a man and a woman live together without getting marriage registration. Time duration of living together as husband and wife before marriage registration is not included in marriage period.

—Regarding custom marriage, the Law on Marriage and Family 2014 stipulate to apply custom of marriage where it is not stipulated in the law and both parties have no agreement but must conform to marriage conditions and not violate circumstances forbidden in this law.

The Law on Marriage and Family implement the effect of the Article 36 of the Constitution stipulating that men and women are equal to enjoy rights to marriage, in marriage and to end marriage and decide on the time of marriage termination (see section above)

# Handout 2

## Practices of a Civil Marriage

### Conditions:

<b>Conditions Parties Have to Meet</b>	<ul style="list-style-type: none"> <li>• The man must be a full 20 years old and over. The woman must be at least a full 18 years old.</li> <li>• The marriage must be voluntarily decided by the man and the woman.</li> <li>• The marriage must not fall into one of the circumstances where marriage is forbidden by the law.</li> <li>• Same-sex marriage is not banned but not yet officially recognized.</li> </ul>
<b>Circumstances Where Marriage Is Forbidden</b>	<ul style="list-style-type: none"> <li>• Fake marriage</li> <li>• Underage marriage, forced marriage, marriage by deceit, hinder marriage</li> <li>• A person is already married</li> <li>• Between people of the same direct blood line; relatives within three generations; adoptive parents and their adopted children; former adoptive parents and their adopted children; fathers-in-law and daughters-in-law, mothers-in-law and sons-in-law, stepfathers and stepchildren, stepmothers and stepchildren.</li> </ul>
<b>Procedures for Conducting Marriage<sup>1</sup></b>	<ul style="list-style-type: none"> <li>• The commune/ward level of the People’s Committee where either party lives is authorized to handle marriage registration. If both are studying or working abroad but coming to Vietnam to get married and their residential registration has expired, the marriage registration is implemented in the locale where either party resided before going abroad.</li> <li>• Documents needed: 1) Application form for marriage registration (available at the commune People’s Committee); 2) Letter of certification of marital status provided by the People’s Committee in the parties’ residency or by the Vietnamese Consulate in the country where party studies/works; 3) ID document or substitute; 4) Residential Registration Book; 5) If previously married, the person must provide a valid court-issued letter of certification confirming divorce or death of spouse.</li> <li>• Time for processing: Five working days from the acceptance of application, or ten working days if verification is necessary.</li> <li>• Fee: 20 000 VND</li> </ul>
<b>Marital Rights and Responsibilities of Spouses<sup>2</sup></b>	<ul style="list-style-type: none"> <li>• Husband and wife are equal to each other, having equal obligations and rights in all aspects of their family, and in implementing rights and responsibilities of citizens defined in the Constitution, the Law on Marriage and Family, and other related laws.</li> <li>• Husband and wife pledge to love, respect, care for, help, and be faithful to each other; share familial duties; work to build a prosperous, progressive, happy, and lasting family; and live together unless both spouses agree to separate, or due to legitimate reasons (e.g., work, travel, study, or participation in political, economical, cultural, or social activities).</li> <li>• Husband and wife agree to choose a place of residency without adherence to customs, practices, or administrative boundaries.</li> <li>• Husband and wife agree to respect and preserve each other’s honor, dignity, prestige, and right to freedom of belief and religion.</li> </ul>

1. Decree number 77/2001/CP issued by the Government stipulates details of marriage registration according to Resolution 5/2000/QH10, approved by the National Assembly upon the implementation of the Law on Marriage and Family.

2. Rights and responsibilities of husband and wife are defined from Articles 17 through 23 of the Law on Marriage and Family 2014.

<p><b>Marital Rights and Responsibilities of Spouses</b></p>	<ul style="list-style-type: none"> <li>• Husband and wife have rights and responsibilities to create conditions favorable for each other to select a desirable profession; to study and raise his/her educational level, professional qualifications, and skills; and to take part in political, economic, cultural and social activities.</li> </ul> <p>Rights and responsibilities to property<sup>3</sup>:</p> <ul style="list-style-type: none"> <li>• Husband and wife have equal responsibilities and rights in the possession, use, and disposition of their common property, with no discrimination between working for the family and working for income.</li> <li>• Husband and wife have equal responsibilities to ensure conditions meet the family's needs. Husband and wife have rights and responsibilities to implement transactions in order to meet the family's basic needs.</li> <li>• Husband and wife have common obligations towards property, such as those incurred by transactions agreed to by them; providing compensation for damage that both are responsible for under the law, including damage caused by their children, as defined in the Civil Code; obligations to meet the family's basic needs; obligations incurred from possession and use of common property; from use of personal property to maintain, to develop the common property or to generate income for the family; and other obligations defined by related laws.</li> <li>• Husband and wife have rights to possess, use, and make decisions about their personal property; to integrate or not integrate their personal property into common property.</li> </ul> <p>Rights and responsibilities between parents and children<sup>4</sup>:</p> <ul style="list-style-type: none"> <li>• Parents have equal obligations and rights to love, look after, care for, and raise their children or adult children who are disabled, have lost their civil capacities, are not able to work or support themselves.</li> <li>• Parents have the obligation and rights to educate their children, and to attend to and create conditions favorable for their study.</li> <li>• Parents are representatives at law of their minor children or adult children who have lost their civil capacities.</li> </ul>
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3. Articles 37, 44, and 45 of the Law on Marriage and Family.

4. Relations between parents and children are covered in Chapter V of the Law on Marriage and Family.

# Handout 3

## Practices of a Customary Marriage

<b>Explanation</b>	This is a marriage conducted according to the customs of the community/ethnic group to which the parties belong, or of the religion that the husband and wife follow.
<b>Conditions Parties Have to Meet<sup>5</sup></b>	<p>For a marriage to be recognized as legal, men and women must meet the conditions described in the Law on Marriage and Family. Regulations in this law are designed to eliminate backward marital and family customs that jeopardize gender equality and violations of human rights such as child marriage, force marriage and others.</p> <p>The Law on Marriage and Family asserts a status of custom marriage for cases that are not defined by law, in which the parties have no formal agreement and do not violate the basic principles of a marital regime (marriage made on voluntary basis, progressive, one husband/one wife, husband and wife are equal, and no violation of conditions forbidden by this law, as described in Item 2 of Article 5).</p> <p>Custom marriage must conform to regulations defined in Item 4 of Article 3 of the Law on Marriage and Family: Custom is a code of conduct with a clear statement of rights and responsibilities for both parties in a marriage, which is widely recognized in a region or community, where it has been repeatedly implemented over a long period of time.</p>
<b>Procedures for Conducting the Marriage</b>	For the sake of legitimacy, most custom marriages require a wedding ceremony witnessed by people from both the groom and bride's side. Although marriage can be implemented by custom, the legal registration at the People's Committee of the commune/ward is required for civil administration.
<b>Rights and Responsibilities of Husband and Wife in the Marriage</b>	<p>Husband and wife have rights to possess property, either on a personal or joint basis. Both have the responsibility to take care of their own personal property. Property acquired after marriage is considered common property unless husband and wife agree otherwise, or if it is not registered as the personal property of one spouse.</p> <p>Some customs and practices based on traditional gender stereotypes put women at a disadvantage. For example, if a divorced woman remarries another man, she may not be given any property from her divorce. Even if she doesn't remarry, a divorced woman may have to return to her parent's house without any property from her marriage. A widowed woman could be denied the right to inherit her deceased husband's property. Only sons can inherit from parents, especially land and houses; daughters can't, or only receive minor compensation. After divorce, children must live with their father. However, both husband and wife have rights and obligation to raise and care for their children.</p>

5. Decree number 126/2014/CP issued by the Government dated 31/12/2014 stipulate in details some Articles and means of implementation of the Law on Marriage and Family, including application of custom marriage. This Decree is in effect from the date 15th February 2015.

# Handout 4

## Important Marriage Documents



Document type	Where/how to get it	Why it is good to have it and what it can be used for
<b>Marriage Certificate (for a legal marriage)</b>	<p>Marriage certificates are issued by the commune/ward People's Committee. A couple may come to the People's Committee to register their marriage during a certain period of time before or after the wedding ceremony.</p> <p>A wedding certificate has to be signed by the bride, the groom, and the CAO.</p>	<p>The marriage certificate is proof of the legality of a marriage. Having the marriage certificate is crucial when the legality of a marriage may be contested or in situations where proof of marriage is required, such as:</p> <ul style="list-style-type: none"> <li>• When spousal consent is needed for transactions on family land or other common property during a marriage;</li> <li>• For acquiring letters of administration upon the death of a spouse;</li> <li>• If one spouse wants to obtain a divorce;</li> <li>• To apply for residential registration of spouse;</li> <li>• To obtain birth certificates for children;</li> <li>• To apply for legal inheritance by a spouse.</li> </ul>
<b>Certification of Custom Marriage</b>	<p>Requires voluntary agreement of both the man and woman, and parents of either or both sides. The wedding ceremony must be witnessed by people in the community, friends, and/or family members. This marriage does not have legal recognition.</p>	
<b>Letter Certifying Single Status</b>	<p>In cases of divorced men or women or widows/ers, an official letter/decision provided by the court certifying a divorce, or the death certificate of a spouse, must be presented</p>	



## Handout 5

# The Law on Divorce for Legal Marriages

Marriage Type	Civil Marriage
<b>Grounds for Divorce</b>	<ol style="list-style-type: none"> <li>1. In the case of a consent divorce, both spouses agree to end the marriage and voluntarily sign the application form for divorce, which is then submitted to the authorized institution.</li> <li>2. Divorce can be requested by a single party, either the man or the women.</li> <li>3. Parents or other relatives have rights to request the local court settle a divorce if their relative is incapacitated due to illness or injury, and is the victim of spousal abuse seriously affecting their life, health, and mental state.</li> <li>4. A husband can't request a divorce if his wife is pregnant, or has a child less than 12 months old.</li> <li>5. A divorce is granted by the local People's Court when there is a serious situation that shows that a couple living together cannot longer achieve the goal of marriage.</li> </ol>
<b>Procedures for Obtaining a Separation or Divorce</b>	<ol style="list-style-type: none"> <li>1. Send an application form for divorce to the district people's court where the husband or wife has registered residence.</li> <li>2. The Law on Marriage and Family encourages mediation at the community level whenever a couple files for divorce.<sup>6</sup> The mediation can be conducted within the family, the community—at the village/hamlet, or commune level—or at the work place of either husband or wife.</li> <li>3. Reconciliation at court. This occurs after the court has accepted a legal application for divorce. People whose civil obligations have been removed cannot go through court reconciliation.<sup>7</sup></li> <li>4. The decision for divorce must be approved by the Court.</li> </ol>
<b>Documents Needed to Apply for a Divorce</b>	<p>Application form for divorce. If it is consensual divorce, husband and wife need to agree upon division of property, rights to child custody, obligation to fostering, obligation to debts if any, etc.</p> <p>ID documents of husband and wife and Residential Registration book</p> <p>Legal marriage certificate</p> <p>Birth certificates of children</p> <p>If division of property is requested, proof of documents of property, such as a LURC, proof of income, etc.</p>
<b>Conditions for a Consensual Divorce<sup>8</sup></b>	<ol style="list-style-type: none"> <li>1. Both parties agree on the division or lack of division of property, and care for and education of children.</li> <li>2. Agreement of both parties on property and children in specific circumstances, in order to ensure legitimate rights of the wife and the children are protected.</li> </ol> <p><b>NOTE:</b> When a consensual divorce decision is made, it has immediate effect and neither party can appeal the decision.</p>

6. Article 52, Law on Marriage and Family 2014.

7. Item 3, Article 182, Code of Civil Procedure 2004.

8. Article 55, Law on Marriage and Family 2014.

Marriage Type	Civil Marriage
<b>Conditions for Divorce initiated by One Party<sup>9</sup></b>	If mediation in the community and the court fails, the court will decide for divorce if it has proof that a husband or wife is violent towards his/her spouse, or otherwise seriously violate rights and obligations of wife/husband, causing the marriage serious enough strain that they cannot continue living together, and goal of marriage cannot be achieved. If the husband or wife is declared missing by the court, then the application for a divorce will be accepted by the court.
<b>Conditions for Divorce Because of Incapacitation and Domestic Violence</b>	Parents or other relatives may request the local court settle a divorce if their relative is incapacitated due to physical or mental illness and in cases where a person is the victim of domestic violence by their spouse. The court may impose a divorce if it has proof of violent behavior caused by husband or wife to their spouse, which seriously affect the person's life, health, and mental state.
<b>Who Has Power Over Matters of Divorce?</b>	Upon the acceptance of the application for divorce, the court handles the application within its jurisdiction and informs the applicant to pay the cost. After paying the fee, the applicant should bring the receipt to the court. The court handles the case of divorce and informs about the case to the people's prosecution office at the same level and to the applicant. Local People's Court at the residence (de jure or de facto) of the husband and/or wife is the sole institution authorized to legally finalize the end of a marriage. The court is authorized to approve a consensual divorce, to decide on a divorce petition by one party, or to dismiss a divorce application. According to the Law on Marriage and Family, when the application for divorce is submitted to the court, the People's Court oversees the recommendations for reconciliation. If reconciliation does not succeed, the court will decide on the divorce.

9. Article 56, Law on Marriage and Family 2014.

## Handout 6

# Customary Marriages Separation & Divorce

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Marriage Type	Customary Marriage
Grounds for Divorce	<ol style="list-style-type: none"><li>1. When both parties agree to end the marriage</li><li>2. When one party demands to end the marriage</li></ol>
Procedures for Obtaining a Separation or Divorce	<p>The Law on Marriage and Family 2014 stipulates regulations about customary marriage<sup>10</sup> (marriage according to custom, religion, living together without marriage registration but does conform to marriage conditions provided by the law) –</p> <p>Neither husband nor wife has any right or responsibility to each other. However, husbands or wives should honor rights and responsibilities to children and about property resulting of civil unions as described in Article 15. Dissolving a marriage must ensure that legitimate rights of women and children are respected.</p> <p>Reconciliation is an important factor. Family members or close relatives can oversee the mediation. If mediation does not succeed, the divorce is finalized.</p>
Who Has Power Over Matters of Divorce?	<p>Husband and wife try to reach an agreement.</p> <p>In cases of disputes or conflicts over property or child custody or care, the court handles the case according to provisions of the Civil Code or related laws.</p>

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10. Law on Marriage and Family 2014, Article 14, 15, and 16.

## Handout 7

# Women's Land Rights at Separation & Divorce

Remember that the Constitution is the yardstick for the rights of both women and men. Where the current law, customs, or traditions discriminate against women or men, the Constitution takes priority.

Type of Marriage	Land Rights at Separation	Land Rights Upon Divorce
<b>Legal marriage</b>	Since there is no legal regime for separation, the husband and wife are still considered married until divorce is final. Therefore, rights for land and property are the same during separation as the rights of husband and wife in a marriage.	<p>The court decides how to deal with the property of the marriage. The court may order the division of property between the husband and wife, or the sale of the property and sharing of the profits of such sale.</p> <p>The court decides who should retain or stay at the matrimonial home. If the house is the only place of residence for husband and wife, the agreement of both parties must be obtained. In cases where the house is the personal property of husband or wife, the owner has the right to set up, implement, or to end transactions related to the property, but a place of residence for the other spouse must be guaranteed.<sup>11</sup></p> <p>In making decisions, the court is required to:</p> <ol style="list-style-type: none"> <li>1. Treat all parties fairly</li> <li>2. Ensure that justice is done to all, regardless of social or economic status</li> <li>3. Promote reconciliation between parties</li> </ol>
<b>Customary Marriage</b>	<p>Rights to land and assets attached to land can be affected by the customs and rules of a locality, influenced by the ethnic group or kinship where the couple lives. In communities where gender norms and stereotypes strongly prevail, women may face a risk of property grab by their husband or his relatives, especially of land and home. Their rights to raise their own children may also be violated.</p> <p>Rights to land, and assets attached to land, can be affected by the customs and rules of a locality, influenced by the ethnic group or kinship where the couple lives. In communities where gender norms and stereotypes strongly prevail, women may face a risk of property grab by their husband or his relatives, especially of land and home. Their rights to raise their own children may also be violated.</p>	

11. Law on Marriage and Family 2014, Article 31.

## Handout 8

# Legal regulations about legal rights to property and property rights of husband and wife in marriage and after marriage

**Vietnamese Constitution** acts as a compass for all civil rights, right to land included.<sup>12</sup>

Clause 1 and 2 Article 32 Constitution stipulates: Khoản 1 và 2 trong Điều 32 của Hiến pháp qui định: "1. Everyone has the right to ownership of his or her lawful income, savings, housing, chattels, means of production and capital contributions to enterprises or other economic entities. 2. The right to private ownership and the right to inheritance shall be protected by law."

### Stipulations from Marriage and Family Law 2014 on:

#### **General principles of the matrimonial property regime (Article 29):**

1. 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.
2. Husband and wife have the obligation to ensure conditions for meeting their family's essential needs.
3. When the performance of property rights and obligations of husband and wife infringes upon lawful rights and interests of the wife, husband, their family or other persons, compensation shall be paid.

#### **Common Property Of Husband And Wife (Article 33)**

1. Common property of husband and wife includes property created by a spouse, income generated from labor, production and business activities, yields and profits arising from separate property and other lawful incomes in the marriage period; except in the cases prescribed in Clause 1, Article 40 of this Law; property jointly inherited by or given to both, and other property 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 common ownership and used to meet family needs and perform common obligations of husband and wife.
3. When there is no ground to prove that a property in dispute between husband and wife is his/her separate property, such property shall be regarded as common property.

#### **Registration of ownership and use rights for common property (Article 34)**

1. 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 right certificate, unless otherwise agreed by the couple.
2. In case only one spouse is named in the property ownership or use right certificate, transac-

12. Constitution of the Socialist Republic of Vietnam (revised) approved by the National Assembly on 28/11/2013.

tions related to such property must comply with Article 26 of this Law. Any dispute related to that property shall be settled under Clause 3, Article 33 of this Law.

### ***Possession, use and disposition of common property (Article 35)***

2. The disposition of the following common property shall be agreed in writing by husband and wife:
  - a. Real estate;
  - b. Movable assets which are required by law to be registered for ownership;
  - c. Assets which are the major income-generating source for the family.

### ***Common property used for business activities (Article 36)***

When husband and wife reach agreement on either spouse's use of common property for business activities, this spouse has the right to make transactions related to that common property on his/her own. This agreement shall be made in writing.

### ***Common property obligations of husband and wife (Article 37)***

1. Obligations arising from transactions established under their agreement, obligations to pay damages under their joint liability as prescribed by law;
2. Obligations performed by a spouse in order to meet the family's essential needs;
3. Obligations arising from the possession, use and disposition of common property;
4. Obligations arising from the use of separate property for maintaining and developing common property or for generating major incomes for the family;
5. Obligations to pay damages caused by their children as prescribed by the Civil Code;
6. Other obligations as prescribed by relevant laws

### ***Division of Common property during the marriage period (Article 38).***

1. During the marriage period, except in the case prescribed in Article 42 of this Law, husband and wife have the right to reach agreement on the division of part or whole of common property. If they fail to reach agreement, they have the right to request a court to settle it.
2. An agreement on common property division shall be made in writing. This agreement shall be notarized at the request of husband and wife or as prescribed by law.
3. At the request of a spouse, a court shall settle the common property division according to Article 59 of this Law.

### ***Invalidated common property division during the marriage period (Article 42)***

Common property division during the marriage period shall be invalidated when:

1. It seriously harms the family's interests; or lawful rights and interests of minor children or adult children who have lost their civil act capacity or have no working capacity and no property to support themselves;
2. It aims to shirk the following obligations:
  - a. Raising and support obligations;
  - b. Obligations to pay for damages;
  - c. Payment obligations when bankrupt has been declared by a court;
  - d. Debt payment obligations;
  - e. Tax payment obligations or other financial obligations toward the State;
  - f. Other property obligations as prescribed by this Law, the Civil Code and other relevant laws.

### ***Separate property of husband and wife (Article 43)***

1. 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; property divided to him/her under Articles 38, 39 and 40 of this Law; property to meet his/her essential needs and other property under his/her ownership as prescribed by law.
2. Property created from separate property of a husband or wife is also property of his/her own. Yields and profits arising from separate property during the marriage period must comply with Clause 1, Article 33, and Clause 1, Article 40, of this Law.

### ***Possession, use and disposition of separate property (Article 44)***

1. A spouse has the right to possess, use and dispose of his/her separate property, and to merge or refuse to merge separate property into common property.
2. When a spouse cannot manage his/her separate property himself/herself and does not authorize another person to manage it, the other spouse has the right to manage such property. The property management must ensure benefits for the property owner.
3. Each spouse's separate property obligations shall be performed with his/her separate property.
4. When yields or profits from separate property of a spouse constitute the family's sole livelihood, the disposition of such property is subject to the other spouse's consent.

### ***Separate property obligations of husband and wife (Article 45)***

A spouse has the following separate property obligations:

1. The obligations he/she has before marriage;
2. The obligations arising from the possession, use and disposition of his/her separate property, other than the obligations arising from the preservation, maintenance and repair of his/her separate property under Clause 4, Article 44 or Clause 4, Article 37 of this Law;
3. The obligations arising from transactions established and made by himself/herself not for meeting the family's needs;
4. The obligations arising from his/her illegal acts.

### ***Merger of separate property into common property (Article 46)***

1. Separate property of a spouse shall be merged into common property according to the agreement between the husband and wife.
2. For property merged into common property whose transactions are required by law to be under a certain form, the merger agreement must ensure that form.
3. Unless otherwise agreed by husband and wife or prescribed by law, obligations related to separate property already merged into common property shall be performed with common property

### ***Matrimonial Property Regime Based On Agreement Of Husband And Wife***

#### ***Agreement on establishment of the matrimonial property regime (Article 47).***

For a married couple that selects the agreed property regime, this agreement shall be made in writing before their marriage and be notarized or certified. The agreed matrimonial property regime shall be established on the date of marriage registration.

### ***Basic contents of an agreement on the matrimonial property regime (Article 48)***

1. The basic contents of an agreement on the property regime include:

- a. Property determined as common property and separate property of the husband and wife;
  - b. Rights and obligations of the husband and wife toward common property, separate property and related transactions; property to meet the family's essential needs;
  - c. Conditions, procedures and principles of property division upon termination of the property regime;
  - d. Other related contents.
2. For matters arising in the implementation of the agreed property regime which have not been agreed or unclearly agreed by husband and wife, Articles 29, 30, 31 and 32 of this Law and corresponding provisions of the statutory property regime shall apply.

***Modification of the agreement on the matrimonial property regime (Article 49).***

1. Husband and wife have the right to modify their agreement on the property regime.
2. The form of modification of the agreement on the property regime must comply with Article 47 of this Law

***Invalidated agreement on the matrimonial property regime (Article 50).***

An agreement on the matrimonial property regime shall be declared to be invalid by a court when:

- a. It fails to meet the conditions on effect of transactions prescribed the Civil Code and other relevant laws;
- b. It violates Article 29, 30, 31 or 32 of this Law;
- c. Its contents seriously infringe upon the rights to be supported and inherit and other lawful rights and interests of parents, children and other family members.

***Principles of settlement of property of husband and wife upon divorce (Article 59)***

1. The settlement of property shall be agreed upon by the concerned parties in case of applying the statutory matrimonial property regime. If they fail to reach agreement thereon, at the request of a spouse or both, a court shall settle it according to Clauses 2, 3, 4 and 5 of this Article and Articles 60, 61, 62, 63 and 64 of this Law.

In case of applying the agreed matrimonial property regime, the settlement of property upon divorce must comply with such agreement. In case the agreement is insufficient or unclear, the settlement must comply with corresponding provisions of Clauses 2, 3, 4 and 5 of this Article and Articles 60, 61, 62, 63 and 64 of this Law.

2. Common property shall be divided into two, taking into account the following factors:
  - a. Circumstances of the family, husband and wife;
  - b. Each spouse's contributions to the creation, maintenance and development of common property. The housework done in the family by a spouse shall be regarded as income-generating labor;
  - c. Protecting the legitimate interests of each spouse in their production, business and career activities to create conditions for them to continue working to generate incomes;
  - d. Each spouse's faults in the infringement of spousal rights and obligations.
3. Common property of husband and wife shall be divided in kind, if impossible to be divided in kind, common property shall be divided based on its value. The partner who receives the property in kind with a value bigger than the portion he/she is entitled to receive shall pay the value difference to the other.

4. Separate property of a spouse shall be under his/her ownership, except for separate property already merged into common property in accordance with this Law.

A spouse who requests division of separate property which has been merged into or mixed with common property shall be paid for the value of his/her property contributed to common property, unless otherwise agreed by husband and wife.

5. The lawful rights and interests of the wife, minor children or adult children who have lost their civil act capacity or have no working capacity and no property to support themselves shall be protected.

***Division of property for a couple living with their family (Article 61).***

1. When a couple living with their family get a divorce, if their property cannot be determined separately from the common property of the family, the husband or wife is entitled to division of part of the family's common property based on the couple's contributions to the creation, maintenance and development of the family's common property as well as to the common life of the family. The couple shall reach agreement with their family on their portion divided from the family's common property. If they fail to reach agreement thereon, they may request settlement by a court.
2. For a couple living with their family whose property can be determined separately from the family's common property, upon divorce, such property portion of the couple shall be deducted from the family's common property for division under Article 59 of this Law.

***Division of land use rights of husband and wife upon divorce (Article 62)***

1. Land use rights being separate property of a spouse remain under his/her ownership upon divorce.
2. The division of land use rights being common property of husband and wife upon divorce shall be divided as follows:

- a. For agricultural land under annual crops or aquaculture, if both partners have the need and conditions to directly use the land, the land use rights shall be divided under their agreement. If they fail to reach agreement thereon, they may request a court to settle it according to Article 59 of this Law.

When only one partner has the need and conditions to directly use the land, that partner may continue to use the land but shall pay to the other the portion of the land use right value the latter is entitled to;

- b. When husband and wife share the right to use agricultural land under annual crops or aquaculture with their household, upon divorce, the couple's portion of the land use right shall be separated and divided under Point a of this Clause;
  - c. For agricultural land under perennial trees, forestry land for forestation or residential land, the land use rights shall be divided according to Article 59 of this Law;
  - d. The division of the rights to use land of other categories must comply with the land law.
3. For husband and wife living with their family and sharing no land use rights with the latter, upon divorce, the interests of the partner who has no land use rights and does not continue to live with the family shall be settled according to Article 61 of this Law.

***Incase one partner has difficulty in accommodation - The right to stay of a spouse upon divorce (Article 63).***

A house which is separate property of a spouse and has been put to common use remains under his/her ownership upon divorce. In case the other partner has accommodation difficulties, unless otherwise agreed by the partners, he/she has the right to stay at the house for 6 months at most from the date of termination of the marriage relation.

***Division of common property used for business activities (Article 64).***

A spouse who is carrying out business activities related to common property has the right to receive that property and shall pay the other the property value that the latter is entitled to, unless otherwise prescribed by the business law.

# Handout 9

## Informal Dispute Resolution Institutions



Institution	Role
Community Volunteers for Gender Equality Advocacy (CVGEA)	One of the roles of the CVGEA is to offer immediate or preliminary solutions by providing initial legal guidance and information. CVGEAs are also trained to provide legal services, as well as mediation and conciliation services, for disputes arising between members of the community. As conciliators, they encourage the community to negotiate and settle their disputes among themselves.
Family Gatherings	<p>Family gatherings are a common way to discuss family problems and negotiate a solution. This involves hearing both parties, agreeing on the issues, providing information and counseling where necessary, and agreeing on a resolution.</p> <p>CVGEAs may attend family gatherings if requested by one of the parties in conflict. The role of the CVGEA at a family gathering would be to inform the family about relevant laws and procedures, to enable the family to develop a solution that is lawful.</p>
Clan Meetings	<p>Clan meetings are also used for resolving family conflicts. Mediation at the clan level is usually done by clan leaders/elders, who are expected to know the rules, values, and norms of the particular community.</p> <p>CVGEAs may attend clan meetings to provide legal advice where necessary, or to help record the outcome of the meeting in an agreement that both parties to the conflict sign as a way to bind the parties to implementing the resolution.</p>
Religious Leaders	Many married people, for example Catholic couples, seek help from religious leaders when faced with family conflicts. The role of the religious leader is usually to mediate the case in a way that enables the husband and wife to come to an amicable settlement. Religious leaders are also often known to follow up with the conflicting couple to ensure that the conflict is resolved and that there is peace in the home
Reconciliation group	Reconciliation groups are established at the community level, and include key members of organizations like the Women's Union, Farmer Association, Fatherland Front, Red Cross, or the head of residential clusters/village, or police, etc.



# Handout 10

## Formal Dispute Resolution Institutions

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The law gives formal dispute resolution institutions particular roles and responsibilities. There is a hierarchy for the formal dispute resolution institutions so that if a person is unsatisfied with one level, s/he can appeal to the next level for redress.

Institution	Role
<b>The People's Court</b>	<p>Local court at different levels:</p> <ul style="list-style-type: none"> <li>District level</li> <li>Provincial level</li> <li>Supreme Court</li> </ul> <p>If a person is unsatisfied with a decision made by one level, s/he can appeal to the higher level for redress.</p>
<b>Local Courts &amp; Magistrate Court</b>	<p>In cases under dispute, the People's Court conducts the mediation. If mediation is unsuccessful, the court opens for a second review of the case.</p> <p>If a person claims to appeal the first decision, a second phase is conducted for redressing the case. The provincial People's Court will hold the retrial.</p>
<b>Supreme Court</b>	<p>The highest level to pursue a lawsuit, the Supreme Court handles disputes when there is a claim to appeal a decision made by the subordinate court.</p>

# Handout 11

## Role-Play: Oanh & Bao (Optional Exercise)

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This is a story about a couple, Oanh and Bao, and how a community rights worker helps them. Oanh and Bao have been married for ten years, but Bao has kicked Oanh out of the house because they do not have any children. Oanh then meets Lê, a community volunteer for gender equality (CVGEA).

The role-play needs one woman and a man to play the couple and a person from any sex to play the CVGEA. They do not need to say exactly what is written in the script below, but they should stick to the same story and points about the marriage. The full role-play takes about 20 minutes to complete, but you may shorten or lengthen it as needed.

After the role-play, ask the group what they think about the story and each of the different characters. Be sure that everyone has a chance to speak. You may want to ask quieter people in the group a question to encourage them to participate.

The questions below are discussion guides. They will help to highlight portions of the law. Short answers and references to information are provided for several of the questions.

### Community Volunteers for Gender Equality (CVGEAs)

- What is the role of the CVGEA? What things can this person do to help Oanh and Bao? What things can this person not do?
- What other problems could the CVGEA help with?

### Property

- Can Oanh and Bao have property that they share together? (Yes. Refer to Constitution, Land Law, and Law on Marriage and Family.)
- Can Oanh have property of her own? (Yes.

Refer to Constitution, Land Law, and Law on Marriage and Family.)

- If Oanh and Bao separate, do you think Oanh should have some of the land or animals? Why or why not?
- Suppose that Oanh had been selling cooked sticky rice and sweet potatoes in the market, and that she contributed money to buy some of the chickens and a cow. Do you think she should have some of the land or animals? Why or why not?

### Wedding gift

- Do you think that Oanh's parents will accept her if she returns? Why or why not?
- Do you think that they will return the wedding gift? Do you think that they will want to return them?
- Do you think families should have to return the wedding gifts if the marriage ends? Why or why not?
- Do you think the wedding gift is a good idea? Why or why not?

### Marriage, Separation, and Divorce

- What are the different kinds of marriages that the law in Vietnam recognizes?
- What is the difference between separation and divorce? (Refer to the section "Separation and Divorce," found earlier in this module.)
- What are the steps to getting a divorce if you have a legal marriage? (Refer to Handout 4.)
- What are the steps to getting a divorce if you have a customary marriage? (Refer to Handout 5.)

- Who decides how to divide property when a husband and wife divorce? (The court or the clan decides, depending on the type of marriage.)
- Can a man divorce his wife? (Yes.)
- Can a woman divorce her husband? (Yes.)
- Suppose that Oanh and Bao only need to go to their elders to be granted a divorce.
  - If their elders decide to grant a divorce and give all property to Oanh, are they ruling according to the law? (No.) Does Bao have the right to take the case to court? (Yes.)
  - If their elders decide to grant a divorce and give all property to Bao, are they ruling according to the law? (No.) Does Oanh have the right to take the case to court? (Yes.)

## General

- What do you think Oanh and Bao will do?

*We gratefully acknowledge the work of Francisca Cherukut and Le Satya of Kapchorwa Paralegals Association and Jude Okumu (formerly of MIFUMI Project) in developing this role-play as part of the ICRW & ULA Women's Community-Based Paralegals and Women's Property Rights Workshop in November 2008.*

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*[Oanh is sweeping the house.]*

Bao: *[angry]* Oanh, come here!

Oanh: Yes, my husband.

Bao: Can you sit down there?

*[Oanh sits]*

Bao: What are you doing in my home? What have you been doing here?

Oanh: What is the problem, my husband?

Bao: I want to tell you today that if you don't give me a baby boy, you will leave this house! Is that clear to you?

Oanh: But...

Bao: Everyone in the bar and in the trading post is talking about me! They say I am a fool!

Oanh: Bao, you know how much I want. ... Is this my only problem?

Bao: *[shouting over Oanh]* What are you doing in my house?! Your work is to clean my house, make my meals, and give me a son. Is this what I paid for? Your family demanded a cow, rice, wine, pigs, and 10 millions dong. I married you so you would give me a son. What have you done for me? You are useless. Get out. This is my home, not yours. I don't want you here. Leave!  
***[Bao chases her out.]***

*[Oanh runs out.]*

Oanh: *[crying]* What can I do? Where will I go? My parents will be depressed if I go back. If Bao asks them to return the money, where can they get the money? How could they return the money and the cow?

*[Lê walks by and sees Oanh crying.]*

Lê: What's wrong, madam? Are you okay? I see you are crying. You are crying so much that you did not even notice that I am passing by. What is the problem?

Oanh: I have so many problems.

Lê: It is okay. You can stop crying. Maybe I can help you. Why don't you sit here and tell me what has happened? You know we all have problems and we can help each other sort them out.

Oanh: I have a very big problem. My husband, Bao, and I have been married for ten years, but we have not had any children. He kicked me out because I haven't given him a son. And now I am here with nothing and nowhere to go. My parents received money from Bao's family, so how can I go back to them? I stayed in his house for ten years and worked in his rice field, and raised his pigs and chickens. He has kicked me out and will not give me anything.

Lê: Do you know who I am, or what a CVGEA does?

Oanh: No, I do not know you or what you do. I have just seen you around the village.

Lê: My name is Lê, and I am a CVGEA. That is someone who helps people resolve their conflicts and tells people about the law. I am a human rights counselor. Do you know about human rights?

Oanh: No.

Lê: When someone comes and wants to take something that belongs to you or to hurt you, they are violating your rights.

Oanh: So how are you going to help me?

Lê: You are not the first person with this problem. We've been helping women, men, and families with problems like this with advice. For every problem that arises, there is a solution.

I think I could help if you can tell me more about your problem. Maybe I could go with you to talk with your husband together. Would you be free to go to the house and talk with him, or would he beat you when I leave?

Oanh: He is very aggressive, but I don't think he will do anything if you are there. Are you a government officer or police?

Lê: No. I am not a commune authority, government officer, or policeman. But I do work with them as a volunteer helping resolve people's problems.

*[Lê and Oanh walk back to the house.]*

Bao: You! What are you doing back here?! Who is this person you bring into my house?!

Oanh: My husband, you abuse me. Let's listen.

Bao: *[shouting]* I told you that you could not come here unless you have a baby boy. You go with your man! Get out!

Lê: Please, please. I'm not here to cause problems. You don't have anything to fear from me. I am not a policeman or anything like that. I just have a few things I wanted to share with you and your wife. I was just going home and met her on the way. She was crying and I asked myself,

"What could be the matter?" It is a human thing to do to help each other. She is your wife, and married couples sometimes have troubles.

Bao: I just sent that stupid woman away from my home. How can I stay with a woman for ten years and not have a son?

Lê: Is this man your husband?

Oanh: He is my husband. For the last ten years we have been married. I even have a certificate saying we are married.

Bao: How can I be married to this woman? She has done nothing and given me no son. She is useless to the clan. She is useless to me. You both leave my home.

Oanh: I've worked in his home and on his land for the last ten years. We've acquired two plots of land.

Bao: *[shouting]* What have you been doing for my family? Nothing! I bought the land; my name is in the Red Book. I inherited this house from my grandfather. You go and work some other land. The animals you see here are mine. I bought them myself. Everything here is mine, not yours. You have nothing. You came to my house with empty hands.

Lê: *[calmly]* I want to give you a little advice.

Bao: The best you can do for me is to keep her away out of my sight.

Lê: I just want to tell you that there are others like me and we work together. Our work is to help with these kinds of family problems you are having. We come in to help sort out problems if people are willing to accept our help. But even if you are unwilling, I would still like to tell you what the law says, and where Oanh can go next. Something has to be done.

Bao: Okay. You can stay and tell me what the law says. If you tell me that the law allows her to go ahead and leave my home, and she goes away forever, I will be happy.

Lê: When you got married to her, were you legally married?

Bao: I married her and had to give her family a lot of money. Her parents asked me for cows, pigs, wine, chickens, all sorts of things. I brought to them everything they demanded.

Lê: So you just got only wedding ceremony? Still get the wedding gift by custom? But Oanh says that you went for marriage registration, right? If you want a divorce, you both have to apply to the court.

Bao: I know only that I paid a lot of money to marry her, so she belongs to me. She stays in my house. If I do not like it, I have the right to chase her away.

Oanh: But I also worked hard since coming to your family. I also gave you a lot of money to buy cows, pigs, chickens, and I contributed money for you to buy plots of land.

Bao: So now you list your contributions, ahh? I gave a lot of money to your parents. You came here to live, so you had to work. Or did you think that you came to relax and I had to work to feed you? Your main task was to give birth to a boy, but you failed.

Lê: Let me give you more information, so you can use the correct procedures. If you want a divorce, you have to go to court and explain why you want to divorce her.

Bao: Oh, that is good. I will go do that.

Lê: The law is not for her alone. It is for everyone. If you have a good reason, you can divorce her. If the court grants you a divorce, you must divide the property into two. You will have a share and she will have a share. That is likely what the court will decide.

Bao: Now I understand you. I will tell you what I can do. I will give her the land I acquired with her, so she can go live on that land and leave me alone. Is that okay with you?

Lê: I am not the magistrate. I cannot decide that. That must be decided by the magistrate after you explain the reasons why you want to divorce. But I would advise you to take some time together to sort out your problems before you do anything. We can meet again and talk more about what each of you decides. I want to advise you that if you are not able to resolve this issue between yourselves, she can go present her case to the magistrate on her own.

Let us meet again tomorrow when you have had more time to think. But until then, Madam should be allowed to stay in the house, or with friends where everyone can be safe and calm. I will see you tomorrow.

Oanh and Bao: Thank you. See you tomorrow.

*END*



## **INTERNATIONAL CENTER FOR RESEARCH ON WOMEN (ICRW)**

### **Headquarters**

Washington, D.C. Headquarters  
1120 20th St NW  
Suite 500 North  
Washington, D.C. 20036  
tel: 202.797.0007  
fax: 202.797.0020  
info@icrw.org

### **Asia Regional Office**

C – 59, South Ext, Part II  
New Delhi, India - 110049  
tel: 91.11.4664.3333  
fax: 91.11.2463.5142  
info.india@icrw.org

### **Mumbai Project Office**

101-102, 1st Floor, C – Wing, Mangalmurti Complex  
Chikwadi, Mankhurd  
Mumbai, India – 400043  
tel: 91.22.2550.5718 or 5719  
info.india@icrw.org

### **East Africa Regional Office**

ABC Place  
Waiyaki Way, Westlands  
P.O. Box 20792, 00100 GPO  
Nairobi, Kenya  
tel: 254.20.2632012  
info@icrw.org

## **INSTITUTE FOR SOCIAL DEVELOPMENT STUDIES**

Suite 1804, PH Floor, The Garden building  
Me Tri road, Tu Liem District  
Hanoi, Vietnam  
tel: 84.4.37820058  
isdsvn@isds.org.vn