



# Gender Equity in Land and Forest Tenure in REDD+ Programming

## Deep Dive Country Profiles

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# Costa Rica

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## I. INTRODUCTION

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Costa Rica is a heavily forested country that has suffered severe deforestation, particularly in the early- and mid-20th century. In 1950, more than half of the country was covered by forest; by 1987, forest coverage had been reduced to 21 percent of the country's total land area. Over the past three decades, the country has markedly improved its forest-related policies, laws, and practices, thereby pushing forest cover up to 52 percent of its land surface as of 2013 (World Bank 2020). This improvement is largely attributed to policy improvements and related protected area designations that have been evolving under the National System of Conservation Areas (SINAC) and the National Forestry Financing Fund's (FONAFIFO) Payment for Environmental Services (PES) program (Ministry of Environment and Energy [MINAE] 2018).

The Forest Carbon Partnership Facility (FCPF) Emissions Reduction Program (ERP) accounting area covers almost all of Costa Rica's entire continental territory—about 5,000,000 hectares (ha) (MINAE 2018). Included within the accounting area are 24 Indigenous territories covering 334,000 ha. A 2011 national census showed that the percentage of IPs in Costa Rica is about two percent of the total population; approximately 60 percent of the Indigenous Peoples (IPs) in Costa Rica speak ancestral languages. Of the 104,143 Indigenous People in Costa Rica, 48,500 live within their territories, totalling about 11,000 households. These households are located largely in areas that have been given the protected-area status (MINAE 2018).

From a livelihood perspective, Indigenous Communities (ICs) are historically linked to the cultivation of land for agricultural purposes. A 2014 census showed that of the 4,813 farms under agricultural production in Indigenous territories, 3,051 (63 percent) were run by IPs. Of this total, 2,052 were operated by men and 999 by women (World Bank and MINAE 2019); approximately 33 percent of the farms held by Indigenous farmers were managed by women.

As a comparison, all the people classified as small- and mid-sized agro-forestry producers (non-Indigenous and Spanish-speaking) hold private land. About 30 percent of privately held farms are forested, although the primary economic activity is agriculture. Costa Rica’s land tenure regime and land uses correlate with patterns of deforestation: deforestation occurs at higher rates within private forests (*tierra privada*) than within protected areas (*parques nacionales y reserva biológicas*), including areas occupied by IPs (MINAE 2018).

Land use and tenure conditions in Costa Rica that tend to enable deforestation are presented below:

1. The opportunity costs of using land in private forests for something other than agriculture are higher, and there is a related lack of infrastructure to support strong economic results from sustainable forest use.

2. A lack of registration of land and forest areas in turn affects the ability of the landholder to participate in alternatives to deforestation (such as PES) because such programs require proof of registered land.
3. There are overlapping tenure systems, as in the case where private lands exist in areas demarcated as protected areas but have not been expropriated from land users or converted officially to a protected status.
4. In Indigenous areas, the rigidity of the PES scheme rules leads to the prohibition of certain cultural uses of land (hunting, non-timber products, and others) and the exclusion of those areas where there is a lack of clarity of rights, which is attributable to ongoing encroachments by non-Indigenous farmers.

Costa Rica’s National REDD+ Strategy (NRS), the activities of which were launched in 2017, largely provides the framework and activities for ERP (World Bank 2020). The correlation of NRS’ policies and focus with FCPF’s ERP activities and products is shown in the table below.

**Table 1. National REDD+ Strategy and complementary FCPF ERP activities**

National REDD+ Strategy Policy	FCPF ER Program-funded Activity
POLICY 2: Strengthen programs for the prevention and control of land use and fires	Product 2: Fighting forest fires Activity 2.1: Forest Fire Prevention
POLICY 3: Incentives for forest conservation and sustainable forest management	Product 1: Payment for Environmental Services (PES) Activity 1.1: Strengthening the PES Program in all its existing modalities
POLICY 5: Promoting the participation of Indigenous Peoples.	Product 1: PES Activity 1.2: Special payment for environmental services in Indigenous territories

Note: Table adapted from the Benefit Sharing Plan (BSP) (MINAE 2020).

## II. NATIONAL LEGAL AND POLICY FRAMEWORK ON THE RIGHTS OF WOMEN

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The FCPF ERP aims to increase the impact of successful public policies and programs that have been manifested by the implementation of the 1996 Forestry Law (No. 7575) and the linked 1996 Forestry Regulation (Decree No. 25721) through PES activities. Regulated through FON-AFIFO, the national PES implementation under this legal framework has been underway since 1997 (MINAE 2018). ERPD envisions that PES will prompt forest conservation and carbon stock enhancement through incentivizing and rewarding reforestation, tree plantations, agroforestry, and silvopastoral systems.<sup>1</sup>

The ERP PES programs are the primary focus of this deep dive study.

ERP's Benefit Sharing Plan (BSP), created to cover NRS, provides that monetary benefits will be distributed among the different stakeholders participating in the implementation of REDD+ actions at the local level. Three classes of stakeholders are involved in the implementation of the ERP measures and included as monetary beneficiaries: (1) public institutions (primarily SINAC and the National REDD+ Secretariat); (2) private forest landowners; and (3) IPs (MINAE 2018, 2020).

The principal requirement for sharing in the ERP benefits is the legal right to the ownership of emission reductions (ER). Two classes of landholders can obtain that right to ownership: those with legal rights to private land and those with legal rights to the collectively owned land that corresponds to the land legally ascribed to IPs (MINAE 2020).

Costa Rica's national legal framework relating to women's rights includes the 1949 Constitution (last amended on June 21, 2020), the 1887 Civil Code (Código Civil, Ley 63), the 1973 Family Code (Código de Familia, Ley 5476), the 1961 Agrarian Reform Law (Ley de Tierras y Colonización), and the 1990 Law to Promote Women's Social Equality (Ley de Promoción de la Igualdad Social de la Mujer, Ley 7142).

The Constitution recognizes the equal rights of all persons and forbids any discrimination contrary to human dignity.<sup>2</sup> Article 45 establishes an inviolable right to own property, providing that none may be deprived of their property, except in pursuit of a legal public interest and only if prior compensation is provided. Land rights are not expressly addressed in the Constitution, nor does any Constitutional provision expressly provide for women's equal rights to property.

The Civil Code states that both spouses have equal rights in their marriage.<sup>3</sup> The Family Code provides that both spouses are considered heads of the household and hold equal parental authority over their minor children.<sup>4</sup> It was amended in 1995 to recognize consensual unions defined as cohabiting couples living as spouses fulfilling all the legal requirements for marriage.<sup>5</sup> Cohabiting couples have most of the same rights as married couples, including property and inheritance rights.

The Law to Promote Women's Social Equality (the Social Equality Law) of 1990 has been an important vehicle for advancing women's rights, for it has resulted in the amendment of many national laws and codes. The law obliges the State to promote and guarantee political, economic, cultural, and social equality between men and women (art.

1 It is anticipated that NRS (and the PES activities embraced by ER-P from that strategy) will support the maintenance and increase of natural habitats in Costa Rica; define actions for the maintenance and broadening of the PES program; define the efforts to improve the protected areas system and the state natural heritage; reinforce national strategies on fire management and illegal clearing control; incorporate natural regeneration and the regeneration of tree plantations (Ministry of Environment and Energy, *Emissions Reduction Program to the FCPF Carbon Fund—Costa Rica*, Emissions Reduction Program Document, 2018).

2 Constitución Política de la República de Costa Rica [Const.], art. 33.

3 Código Civil Ley No.63 de 28 de septiembre de 1887 [Civil Code], art. 52.

4 Código de Familia Ley No. 5476 [Family Code], arts. 34 and 151.

5 *Id.*, arts. 242–245.

### III. LEGAL AND POLICY FRAMEWORK FOR WOMEN'S LAND TENURE AND FOREST MANAGEMENT

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1), as well as ensure that women do not suffer discrimination and can enjoy equal rights, irrespective of their marital status (art. 2).<sup>6</sup> In establishing an obligation on the part of the State and its institutions to promote and protect women's social equality, the Social Equality Law has led to a number of amendments to other laws strengthening protections for women.<sup>7</sup>

Additionally, the Social Equality Law mandates the joint titling and registration of all real property acquired through government programs (art. 7); this would include land and housing. Other important articles include provisions for the financing and provision of day-care centers (art. 13), criminal proceedings in the case of sexual violence (arts. 14 and 15), and the creation of a women's advocacy office (La Defensoría de la Mujer) (arts. 23 and 25).

The National Women's Institute (Instituto Nacional de las Mujeres [INAMU]) is the government entity in charge of developing, coordinating, and executing policies aimed at the protection of women's human rights, the fight against domestic violence and gender violence, along with the social and economic promotion and empowerment of women.<sup>8</sup> INAMU has designed and used specific materials and training to train women rights promoters to work with Indigenous women. It also provides training to public officials and others on women and human rights (INAMU n.d.).

Costa Rica recognizes three broad categories of rights to land: (1) private—the right of ownership or possession, and other derived rights of use, such as usufruct, leasing, and sharecropping; (2) collective—the rights existing in Indigenous territories; and (3) state—the rights transferred to public-sector institutions (MINAE 2018). Private land rights can be registered in the National Registry, or they can be unregistered, in which case they are known as “a right of possession”. These unregistered assets are regulated by the rules of civil law (MINAE 2020).

The status and formalization of land tenure is directly related to the ownership of benefits from ER in Costa Rica because NRS, ERPD, and BSP establish that ER are owned by the legal owners of the land, and that BSP beneficiaries will be those with a legal right to the land that produced the reduction (MINAE 2015, 2018, 2020). Article 11 of MINAE's Executive Decree No. 40464 establishes that ER may come from (1) private lands, whether registered or not, over which there is a PES agreement or some type of contract that enables the State to carry out the negotiation; (2) lands administered by the State—designated as State Natural Heritage (PNE) lands within or outside of Protected Wildlife Areas (PWA), purchased or expropriated, or so determined by express legal regulation; and (3) Indigenous territories whose holders are the Integral Development Associations (ADI) (MINAE 2020).

#### PRIVATE LAND RIGHTS

Costa Rica's statutory framework for marital property on private land provides for a limited community of property regime: each spouse is the owner of what she or he brings

6 Ley de Promoción de la Igualdad Social de la Mujer [Law to Promote Women's Social Equality] No. 7142, art. 2 (invoking Costa Rica's duty to conform with its obligations under the United Nations Convention on the Elimination of All Discrimination Against Women [CEDAW], which Costa Rica ratified on October 2, 1984).

7 For example, article 28 of the Family Code was amended so that the family home could not be sold or mortgaged without the signature of both spouses. The Civil Code (art. 32) was amended to prohibit the firing of women because of pregnancy and to grant mothers a three-month paid leave upon the birth of a child.

8 Ley del Instituto Nacional de las Mujeres [Law of the National Institute of Women] No. 7801.



into the marriage and any assets acquired by her or him during the marriage and administers her or his own separate property.<sup>9</sup> Property acquired during marriage is considered jointly owned. The family home cannot be sold or mortgaged, while there are minor children, without the written permission of both spouses (Family Code, art. 42). This article also applies in the case of divorce or separation. Both Articles 40 and 42 also apply to cohabiting couples.

Upon the death of a spouse who dies without a will, the Family Code designates the children, parents, and the spouse (or cohabiting partner) of the deceased as heirs (Civil Code, art. 572). A surviving spouse inherits half of the joint property that the couple had acquired during marriage in addition to half of the gains and profits from her or his property accumulated during marriage (Family Code, art. 41).

## REDISTRIBUTIVE LAND REFORMS

Costa Rica has a history of redistributive land reforms in which large estates (*haciendas* and *latifundios*) were distributed to estate workers as well as landless and land-poor peasants. This program ran until the 1980s, after which time there was concerted attention and funding for land titling for peasant producers. The redistributive reforms were thought of in terms of farms as opposed to land plots. Non-farm agricultural production areas are defined in the Agricultural Census as “properties where household farming activities are practiced, primarily for subsistence consumption, such as crop growing that is not highly organized or animal farming, provided that such areas are attended to during the production period” (World Bank and MINAE 2019, 42). Presumably, land plots include both farm and non-farm production land.

Until the 1990s, land was allocated to men as heads of households. This changed with the adoption of the Social Equality Law in 1990, which provides that property acquired through government programs is to be distributed and titled in both spouses’ names and designated as family property.<sup>10</sup> In the case of consensual unions, such property is to be allocated and titled to the woman (art. 7). This dramatically shifted the proportion of land allocations to women: whereas between 1986 and 1989, men received 87 percent of land parcels while women received

13 percent, women’s share of land parcels increased to 65 percent between 1990 and 1992 (Deere and León 2001). More recent data from Instituto de Desarrollo Rural (Institute for Rural Development [INDER]) shows that between 2014 and 2016, the rate of access to land was 30 percent higher for women than for men.

Although women’s share of the number of all land parcels increased rapidly, women’s share of agricultural land did not: women own fewer farms, and their farms are smaller in size than men’s farms. A report from the Organisation for Economic Co-operation and Development (OECD) found that only 17 percent of private farm owners are women (as of 2017). According to the 2014 Agricultural Census, 12,598 farms (13 percent), covering a mere eight percent of the total farm area, are managed by women (OECD 2017). At the same time, most non-farm agricultural production areas are owned and managed by women (World Bank 2019).

Traditional norms, particularly among smallholder farmers in rural areas, often differ from the requirements of law. Sons tend to receive land from their parents, while daughters are not allocated property, since it is assumed that they will marry into another family. It is not unusual for sons to be given land *inter vivos*, with the understanding that this is the land they will eventually inherit (Sick, 1998). When it is the father who dies first, sons will even take control of the portion that goes to the widow, whereas when the mother dies first, the father maintains control of all the property belonging to the parents (Deere and León 2001).

## COLLECTIVE LAND AND INDIGENOUS TERRITORIES

The 1939 Law on Barren Land (Law No. 13 1/10/1939) was adopted to ensure the exclusive use of Indigenous territories by IPs. Subsequently, the 1977 Indigenous Law (No. 6,172 11/29/1977) was enacted. It stipulates that the ownership of Indigenous reserves by ICs is inalienable and indefeasible, that they must be registered in the National Registry in their own name, and that their status could not be diminished except by law. The Indigenous Law (and its implementing regulations) provide that the presidents of the ADIs—the representative entities under which Indigenous reserves are formalized (MINAE 2020)—are

9 Family Code, art. 40.

10 Ley de Promoción de la Igualdad Social de la Mujer [Law for the Promotion of Women’s Social Equality], No. 7142, 1990.

competent to receive registered land titles for the land reserves formalized to the respective ADIs on behalf of the ICs (arts. 2 and 4).

Just as significantly, the Indigenous law also states that ICs have the exclusive right to occupy and hold legal title to Indigenous territories and prohibits non-Indigenous people from occupying or owning land within the territories. It goes on to describe the process for expropriating (with compensation) land held by non-Indigenous parties within Indigenous territories.<sup>11</sup>

However, the legal consolidation (cadastral demarcation along with the titling and registration of ADI ownership) of Indigenous territories has been slow. Non-Indigenous occupiers of Indigenous territories have resisted removal, which has not been helped by the state's insufficient allocation of resources to the process of expropriation and the compensation of good-faith, non-Indigenous occupiers. Some improper titling of land held by non-Indigenous occupiers has occurred because there is no mechanism to distinguish between legitimate and illegitimate claims to the land. Conflicts between ICs and non-Indigenous occupiers are not uncommon, and some violence has been reported. Deforestation in these areas is related to the unsustainable use of the territories by non-Indigenous occupiers and the lack of control by ICs (MINAE 2018).

In addition, even though Indigenous lands cannot be sold or alienated, there is evidence that non-Indigenous persons are making irregular purchases of land in Indigenous territories. While challenging, reversing these extra-legal purchases is possible: bad-faith purchasers can be evicted by the State, if they occupy or possess the land, but do not have the title. In the cases of those with legal (but improper) titles, judicial decisions need to be made to show that the title is invalid. The State has been slow, and in some cases, failed entirely to relocate or evict non-Indigenous occupiers from these territories. No resources have been allocated (as set forth by the National Commission on Indigenous Affairs) for the execution of actions to recover the lands and make them available to the right Indigenous populations (MINAE 2018).

In Indigenous territories, the community holds ownership rights to the land, with individual rights to land, forests,

and all other natural resources determined according to the customary rules of the community. While most of the land and the forest are communally owned, households do have usufruct rights to parcels of land for their family's food production. These rights are passed on within the family. Indigenous groups are either matrilineal or patrilineal: this generally determines who in the family inherits the rights to usufruct parcels.

Within the Indigenous territories, there are 4,813 farms, of which 63 percent are managed by Indigenous producers (OECD 2017). Nationally, Indigenous farmers constitute only six percent of farm owners (Instituto Nacional de Estadística Y Censos [National Statistics and Census Institute (INEC)] 2014). According to the 2014 census, 32.7 percent of the 3,051 farms held by Indigenous farmers in the 24 Indigenous territories were managed by women, compared to the situation for women in non-IP land (13 percent).

Although the Indigenous law makes no mention of women's land rights or other resource rights within Indigenous territories, the land tenure gap between men and women in Indigenous territories is much smaller than it is for non-Indigenous lands. The Bribri area shows the lowest disparities: 470 farms are run by Indigenous men and 348 by Indigenous women, with Talamanca Bribri being the Indigenous territory having the smallest gap—287 farms operated by Indigenous men versus 275 by Indigenous women. The Indigenous territories of Bribri and Cabécar have the largest number of Indigenous women managing farms (World Bank 2019).

## GOVERNANCE OF COMMON RESOURCES

The Costa Rican governance framework lacks legislation that would enable non-Indigenous local communities to obtain legal rights to collectively held community lands. Therefore, there are no examples of non-Indigenous (local) communities holding legal title to collectively held land.

The Costa Rican governance framework (and the 1977 Indigenous Law, specifically) lacks guiding legislation or regulations that provide for how Indigenous territories are governed. Instead, they are considered self-governing ter-

11 Ley Indígena [Indigenous Law], Ley No. 6172.

ritories, and thus, each territory determines for itself how self-governance decisions are made.

As mentioned, the ADI, created under the Indigenous Law, is the formal administrative entity recognized by the State to represent an IC or ICs, as several ICs may be combined under a single ADI (MINAE 2018). The National Directorate for Community Development provides State oversight of ADIs (MINAE 2018). The ADI concept has been criticized for giving the ADI—an alien mechanism for Indigenous populations—nominal oversight over them as an improper imposition (MacKay and Garro 2014).

There are three organizational dimensions within ICs: traditional authorities, ADI, and community organizations. The ADI is responsible for administering the group's PES from FONAFIFO. ADI representatives consult with other governing entities for decision-making purposes on benefit distributions (Marain-Herera 2021; MINAE 2018). In the case of the Bribri and Cabécar, the Bribri-Cabécar Indigenous Network operates in parallel with the ADI, bringing together the eight Indigenous territories of the Atlantic zone of Costa Rica under one group (Marain-Herera 2021; MINAE 2018).

In 2018, Costa Rica enacted the General Mechanism for Consultations with Indigenous Peoples Decree,<sup>12</sup> which was developed in full consultation with IPs. This Decree reaffirms the principle of Free, Prior, and Informed Consent (FPIC), making FPIC and full participation mandatory for all State or private development projects, including procedures for dealing with displacement (FONAFIFO 2018). The Decree embraces the principle of gender equality, as stated in article 3(h):

Within all stages of the consultation process, as well as in the integration of the representative and decision-making bodies included in this Decree, the active, effective, and equal participation of Indigenous women must be guaranteed, as an indispensable population to achieve the goals of inclusion and informed participation, which motivate the General Consultation Mechanism. The Indigenous People must guarantee the appointment of at least 50% of Indigenous women in the formation of their territorial entities.

Further research is needed to ascertain the success of this decree in ensuring Indigenous women's participation in these processes.

During the NRS development process, the Asociación Comunitaria de Mujeres Indígenas de Talamanca (Community Association of Indigenous Women of Talamanca [ACOMIUTA]), an organization representing Indigenous women, convened Indigenous women and identified five issues of special interest:

1. Indigenous PES should be designed to give equal value to traditional farming and forestry done by women, with a call for a comprehensive approach not to compete with other farms, but to recognize all farming equally.
2. Safeguards should be put in place for matrilineal land tenure systems and ensure that they are equally secured.
3. REDD+ should incorporate an Indigenous world view within forestry and environmental policies in Indigenous territories.
4. Customary approaches to forest protection should be integrated into the management of protected areas.
5. Indigenous women who are guardians and protectors of forests should participate in the monitoring and evaluation (M&E) process (FONAFIFO 2018).

Despite this decree and the statement of interest by Indigenous women, some issues remain as to how Indigenous collective lands and the benefits derived from them are governed at the local level. Some have suggested that Indigenous authorities are very masculinized; as such, Indigenous governance is still “not a space for women” (F. Torres, personal communication, August 2, 2021). In fact, the “colonized and masculinized political process is the largest barrier to women's participation” (F. Torres, personal communication, August 2, 2021).

The experience to date, based on the implementation of PES programs in Costa Rica, may shed some light on the governance of ICs because PES schemes have been operating within these communities and ICs have made decisions about PES. The ERP Gender Action Plan (GAP) found that while women have expressed interest in participating in PES activities, they face gender inequalities

12 Decreto núm. 40932-MP-MJP, de 6 de marzo de 2018, que establece el Mecanismo General de Consulta a Pueblos Indígenas [Decree No. 40932-MP-MJP of Mar. 6 2018, establishing the General Mechanism for Consultations with Indigenous Peoples], [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_isn=107029&p\\_lang=en](https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=107029&p_lang=en)

related to land ownership, participation in decision-making, training and access to information, access to and control of economic resources, and childcare responsibilities (World Bank and MINAE, 2019).

Some interview respondents contacted during the research suggested that, even in matrilineal Bribri communities who were included in the design of several PES schemes and drove them, women continue to be excluded from the Indigenous political process at the community and national levels. In addition, women living in remote areas cannot connect or participate effectively because of connectivity and infrastructure issues or language barriers (F. Torres, personal communication, August 2, 2021). To the extent that women derive benefits from PES, they do so because they themselves have organized in order to receive some of the benefits shared with the larger community group. While women may have some power by virtue of their participation in the design of programs that are more accessible and effective for them, ultimately, more effort is needed to ensure that women can meaningfully engage in governance and participate in more lucrative activities (F. Torres, personal communication, August 2, 2021). This may be an area of potential future support—the active promotion of the expansion of women’s roles in governance and decision-making at the community level so that they can engage in more lucrative PES and other schemes and benefit from them.

The number of women involved in PES schemes run by FONAFIFO increased between 2004 and 2016 due to the introduction of program targets that are linked to women’s participation (FONAFIFO 2018; UNDP 2020). Despite these increases in women’s involvement, most distributions of PES to individuals are directed toward men. In 2016, 75 percent of the projects on behalf of individuals were associated with men, with the remaining 25 percent undertaken on behalf of women. Women with PES contracts generally correspond to regions where there is a higher percentage of women who own land and where there are areas of importance for conservation.

Collecting data cited in the gender analysis has become more challenging since 2017. According to several interviewees, farms were given the option to register as “public limited companies” (PLCs). Many families choose to register as PLCs due to several tax benefits; however, since

sex-disaggregated data is not collected on these entities, it is unknown whether it is men or women who are benefiting from the PES payments allocated (A. Quesada, personal communication, August 4, 2021; M. Herrera Ugalde, personal communication, August 6, 2021).

## IV. REGULATIONS AND LAWS RELATED TO THE RIGHTS TO FOREST RESOURCES, INCLUDING TREES AND NON-TIMBER FOREST PRODUCTS (NTFP)

The State owns substantial assets, including national parks, conservation areas, and other areas of specific interest (for example, other protected areas). These are governed by several laws, including the National Parks Law No. 6804 8/24/1977, Forest Law No. 7575 2/13/1996, the Biodiversity Law No. 7788 5/27/1998, and the Wildlife Conservation Law No. 7317 12/7/1992. Each law covers a specific part of the country’s forest resources to make up PNE—a body of land and forest resources owned and protected by the State. These lands must be purchased by the State or expropriated in accordance with the law.

Managed by MINAE, PNE was created by Forest Law N° 7575.<sup>13</sup> It consists of the forests and forest lands in the national reserves; areas declared inalienable; farms registered in MINAE’s name and those belonging to municipalities, autonomous institutions, and other public administration bodies, except for properties that guarantee credit operations with the National Banking System and constitute part of its assets (MINAE 2020).

The current Forestry Law was passed in 1996 to stop the rapid and legal deforestation occurring in Costa Rica since the 1970s.<sup>14</sup> In its first article, the law states its objective to protect and conserve the country’s natural forests, promote the sustainable use of forest resources, as well as provide employment and increase living standards for the rural population. It also forbids the cutting down of trees in national parks, forests, protected zones, wetlands, and reserves. Privately-owned forestland can be acquired by

13 *Id.*

14 Ley Forestal [Forest Law] No. 7575, 1996.

the State to fulfill these objectives through purchases by the State or by expropriation with compensation.<sup>15</sup>

Regarding forestland on private property, the law's management plan prohibits, with a few exceptions for ecotourism and the prevention of forest fires, the establishment of forest plantations and the change in land use (art. 19). Forest harvesting can only be done under a forest management plan developed by a forestry professional and implemented by a forestry administrator (*regente*).<sup>16</sup> Although privately-owned forestland can be utilized as collateral for loans, neither the owner nor the bank (or other financial institutions) has the right to exploit it (art. 25). There are also limitations placed on the number of trees that can be cut down annually on privately-owned agricultural land (art. 27). Plantation forests and agroforests, however, can be felled, transported, and exported without requesting permission (art. 28).

The Forestry Administration (under MINAE) carries out the functions of the Forestry Law on both State and private land, such as forest conservation and the approval of forest management plans.

Forest and conservation programs have played a critical role in the reforestation process. FONAFIFO, created by the Forestry Law, offers financial incentives for owners of natural forests; provides credit for forest management mechanisms for small- and medium-producers, such as tree nurseries, reforestation, and the recuperation of bare areas; as well as supports technological innovation in the forest resource industries. As mentioned above, FONAFIFO also provides financing for PES.<sup>17</sup>

Today, deforestation drivers are largely economic: higher incomes are generated from the sale of timber and agricultural production or cattle grazing than forest conservation or renewal activities (MINAE 2018). For small peasant and forestry producers, other drivers of deforestation include overregulation and the related banning of even some sustainable practices, restrictions on access to PES, the lack of competitiveness of forest versus other uses, along with weak government implementation (MINAE 2018).

For protected lands, deforestation is less likely in areas in the highest-protection category (national parks) and is

more likely in areas where properties have not yet been formally expropriated from private owners by the State, where there are illegal tenants on State land designated as protected area, and where there is illegal logging, hunting, or mining. Also, in some areas, tenure may be unclear, or there may be some areas with overlapping tenures (State and private), which may result in unregulated or unmonitored use (MINAE 2018).

Drivers of deforestation on lands under special regimes, or Indigenous territories, are related to a lack of control of these territories by IPs and the inability of the State to prevent irregular purchases of Indigenous lands by non-Indigenous land users. As mentioned above, the implementation of the processes for the formal recognition of Indigenous territories is still in its early stages and occurring slowly. While some territories are still at the demarcation stage, others are just entering the cadaster, registration, and land tenure study phases; yet others are trying to recover lands from encroachers (MINAE 2018). On State lands that are unprotected areas, there is insufficient information on the location, magnitude, and cause of deforestation (MINAE 2018).

Women are heavily involved in forestry activities in Costa Rica. In some areas of the country, there are gender-specific roles associated with agricultural and forestry activities. Specifically, women are actively involved in the conservation and sustainable management of resources, maintaining agroforestry systems in their plots or farms (FONAFIFO 2018). In these systems, productive species (such as cocoa, pepper, banana, or fruit trees) are mixed with timber and non-timber tree species as well as species for personal consumption (FONAFIFO 2018). Women also lead ecotourism initiatives and engage in the organic farming of vegetables, medicinal plants, or ornamental plants; and in some places, they are actively involved in fire prevention brigades (FONAFIFO 2018).

Nonetheless, even though women are engaged in forestry activities, they face challenges in developing these activities further. For a start, they lack access to the following areas— institutional support, training, information and extension services, technology, and market opportunities. There is also a lack of unity among women's groups (FONAFIFO 2018).

15 *Id.*, art. 2.

16 *Id.*, art. 21. GAP found that women are underrepresented within the ranks of regentes (World Bank 2019).

17 *Id.*, art. 46.

## V. INDIGENOUS GROUPS AND GENDER

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Costa Rica has 24 Indigenous territories inhabited by eight different Indigenous groups. Seven of these IPs, including the Huetar, the Maleku, the Bribri, the Cabécar, the Brunca, the Ngöbe, and the Teribe, are of Chibchense origin (Indigenous to the Isthmo-Colombian Area). The Chorotega, who are of Meso-American origin, live in Matambú (International Work Group on Indigenous Affairs [IWGIA] 2021).

The two largest Indigenous groups are the Bribri and Cabécar. Both matrilineal and matrilocal, they tend to follow their traditional marriage customs. Mothers or grandmothers of the woman to be married have a great deal of influence on the matrimonial decision. The son-in-law comes to live with the bride's parents for some time (IWGIA 2021). Extended households, with people related through the female line, are common, but other arrangements, especially nuclear ones, are also observed. Women's possessions are usually passed on to daughters or uterine nieces, while men's possessions are passed to sons (among the Boruca) or to sons and uterine nephews (among the Bribri and Cabécar). Women inherit from mothers and men inherit from their mother's brothers in the traditional systems of both the Bribri and Cabécar; however, it is becoming more common for men to leave property to their children, rather than to their sisters' children (IWGIA 2021).

### TALAMANCA BRIBRI, PUEBLO BRIBRI

Land within these groups has traditionally been held as a form of clan property in which anyone linked through the maternal line of the clan (including the husbands of the women of that clan) could use these lands (Posas 2013). Clan membership is inherited through the mother, as is the right to land ownership, and settlement patterns among the Bribri are matrilocal (Borge and Villalobos 1995). Land is usually retained for the life of an individual and then divided among the children.

Today, families, rather than clans, typically own land and agricultural parcels, sometimes with mothers and fathers possessing both common and individual farms (Posas 2001). When land is owned outside Indigenous zones, it falls under the public system, which follows patrilineal or-

ganization. On occasion, families are divided over privately owned land that would, under Indigenous inheritance rules, be passed to the mother's daughters or nieces if no daughters were available. This can be a major problem for many groups when they encounter land disputes over farmable areas and attempt to resolve them (Posas 2001).

Moreover, the State's policy of only recognizing children taking the last name of the father (a patrilineal tradition) also causes some tension with the Bribri culture, whereby families take the last name of the mother (Blau 2017).

Further undermining the traditional matrilineal and matrilocal structure of the Bribri has been the introduction of plantation agriculture, which has also contributed to a shift in traditional gender roles, (Blau 2017; Herforth et al. 2018; Posas 2013; Villalobos and Borge 1995). Working for fruit and other export-oriented companies has led many men leaving the community to work at plantations, while women stay home to tend to the children, thus resulting in a shift from a subsistence to a cash-based economy. On plantations, men work long hours for low pay and few health benefits. If women are employed, they work in unskilled positions where their salaries are not equivalent to those of their male counterparts. The men who leave to work for banana plantations often do not return with the money they have earned; instead, they spend it on goods and services near the plantation (Blau 2017). These processes have had the effect of shifting power away from women and disrupting the matrilineal structure of the Bribri, with the matrilineal clan property and inheritance giving way to patrilineal or bilineal family inheritance (Blau 2017; Posas 2011, 2013). Catholic/Christian religious ideologies, promoting the man as the household head and the man's traditional role as the family member responsible for commercial transactions, also perpetuates *machismo* in this context (Blau 2017).

### CABÉCAR

The Cabécar's social organization is based on matrilineal clans in which mothers are the heads of households. Cabécar identify themselves as a single cultural and political entity with the Bribri (Herrera Ulgade and Romero 2019).

Traditional matrimonial norms restrict an individual from marrying a relative within the blood group related to the

individual's mother. On the father's side, marriages are not prohibited beyond the father's sisters and first cousins. Each matrilineal clan controls marriage possibilities, regulates land tenure, and determines property inheritance for its members (Blau 2017).

Private land tenure, like the nucleated village system, was foreign to the Cabécar before contact with the Spanish. By tradition, each clan maintains its own designated area for the subsistence activities of its members (Stone 1962). Personal property is inherited or passed on to clan relatives after the death of an individual. When a man dies, his personal effects can be inherited by his siblings, unless his mother is still alive, in which case she would assume possession. When she passes away, her belongings are inherited by whomever she had designated as the subsequent owner.

However, contact with non-IPs has exposed the Cabécar to Western forms of land tenure based on private ownership. Some Cabécar villages have even begun to recognize land as property, as evidenced in the construction of fences to demarcate boundaries around agricultural plots or household gardens. Nonetheless, traditional Cabécar land tenure regimes, whereby land is controlled communally by the matrilineal clan, persist (Stone 1962).

## BORUCA

Boruca marriages, according to marriage customs, take place in the Catholic church, but common-law unions are very frequent. While monogamy is the rule, separations are also frequent. Legal divorce is rare, and though not shameful, is not expected. When a young man wants to get married, he speaks to both his parents and the parents of his intended wife. The two sets of parents decide whether the couple should be married by the Church or live in a common-law union (Stone 1949).

Neolocal residence is preferred. Nuclear families are common; other arrangements include extended, one-parent, and brother-sister households. Many families include unmarried grown daughters with offspring. Borucan women do not usually inherit land; it is transferred to the husband when the woman marries. The Boruca often prefer male children to girls (Stone 1949; Williams 1976).

Based on the descriptions above, it is evident that Costa Rica's IPs are not homogeneous: each of the eight Indigenous groups has its own language and way of living. ICs, consisting of clans, organize their life and work around them. While most clans are patrilineal, quite a few are matrilineal. They tend to have limited schooling, and in general, keep themselves isolated from the *ladino* society. Their spiritual connection is linked to water and forests. The extraction of natural resources and forest products is confined to what they need to survive. Agricultural production centers on the slash-and-burn method and crop rotation over time between different plots. Minimal production is destined for the market. Land allocations, marriage patterns, inheritance rights, and tenure regimes are not consistent across the Indigenous groups in Costa Rica. Therefore, this may present challenges to national-level PES program efforts to ensure that benefits are distributed fairly and in a way that respects the cultures of participating IPs.

## VI. SOCIAL AND ENVIRONMENTAL SITUATIONAL ANALYSIS

Table 2 illustrates some gender differences in social and environmental situations. Note that women in Costa Rica have made significant advancements in education, labor, and political participation.

**Table 2. Statistics illustrating the social and environmental context for women in Costa Rica.**

Education	Workforce	Political Participation	Gender-based Violence (GBV)	Social Status
Girls' educational participation at the primary school level is 96.6% with secondary school enrollment at 84.5% (World Bank 2016).	In 2016, 83.7% of women were working for a wage or salary that is 75 percent of that of men (World Bank's gender data portal 2021).	Currently, 45.6% of the members of the lower house are women. Its country ranking is 9th out of 193 countries (IPU Parline 2021).	35.9% of women have experienced physical and/or sexual intimate partner violence in their lifetime (Johnson et al. 2008).	The Gender Inequality Index ranking is 63 <sup>rd</sup> (UNDP 2016).
Girls' enrollment at the tertiary level of education is 60.9%, much higher than male enrollment at the same level (46.6%) (World Bank's gender data portal 2021).	Three regions with the highest percentages of women producers also have the lowest development index and represent the three most important areas for conservation (FONAFIFO 2018).			Rural women are not aware of their legal rights, and leave public activity and official procedures to men.
				A study in the Osa Peninsula, where PES benefits are given to male heads of households, found that women in households participating in PES programs have less decision-making power than those in non-PES households. (Schwartz 2017).



## VII. WOMEN'S ORGANIZATIONS

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With their strong presence and effective advocacy in urban areas, feminist movements originating in the 1980s that demanded equal rights and opportunities for women in Latin America resulted in the creation of women's offices in the national government. These offices were established at the ministerial level—some within a ministry, with others established as autonomous offices directly under the Presidency.

It is understandable that these women's offices initially dealt with urban issues, such as housing and divorce legislation. However, by the late 1980s and the 1990s, women in rural areas had also mobilized. One of their principal demands was access to land and their rights to land ownership. Rural women's organizations, in their efforts to have their needs and demands taken seriously, often have to struggle against the male dominance of farmers' organizations (*organizaciones campesinas*) and male leadership. In contrast to the farmers' organizations that focus on access to land and credit, women's organizations fight to have women's ownership rights recognized and greater decision-making authority within these organizations. Although women are sometimes successful in setting up a strong women's branch within peasant organizations, other women's organizations are established independent of the men's organizations. Annex 2 provides additional information about specific women's organizations.

## VIII. CLIMATE CHANGE PROGRAMMING AND GENDER INCLUSION

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### GENDER ANALYSIS FOR NATIONAL REDD+ STRATEGY

FONAFIFO conducted a Gender Analysis in 2018 (FONAFIFO 2018), which informed the GAP for NRS (World Bank 2019). In outlining the progress made in integrating gender into REDD+ planning and the legal and policy framework, the Gender Analysis noted that a *Roadmap for Gender and REDD+ (Hoja de Ruta Genero y REDD+ Costa Rica)* was developed in 2016, following a multistakeholder workshop of 32 participants. They comprised representatives from the government, nongovernmental organizations (NGOs), academia, international partners, Indigenous women's associations, communal associations, Indigenous groups, and rural farmers groups. The roadmap defines four action sites for gender considerations: (1) recognizing and empowering women as stakeholders; (2) strengthening institutions to promote gender equality; (3) ensuring that women participate in decision-making; and (4) designing a gender-responsive benefit distribution mechanism (FONAFIFO 2018).

Gaps and opportunities relevant to this deep dive and identified in FONAFIFO's Gender Analysis are provided in Table 3 below. Additional comments from the deep dive respondents regarding the status of those opportunities have also been presented.

**Table 3. Relevant gaps and opportunities identified in FONAFIFO's Gender Analysis**

Gaps	Opportunities
Officials in environmental institutions do not have the skills or tools to identify and address gender issues.	<p>Take advantage of gender expertise in the country to develop the institutional capacity on gender and integrate tools as well as monitoring and evaluation (M&amp;E) related to gender at the institutional level</p> <ul style="list-style-type: none"> <li>FONAFIFO has developed gender training/capacity-building efforts to educate its own staff on these issues since 2018. However, there is still a need to institutionalize these skills so as to have dedicated gender experts within the organization. New partnerships with INAMU and MINAE are also improving this dynamic (for example, +Mujeres+Natura<sup>18</sup>) (M. Herrera Ugalde, personal communication, August 6, 2021).</li> </ul>
Costa Rica has information on agriculture at the national level, but does not have primary data on activities related to the environment.	<p>Several environmental institutions have the capacity to map social and gender-related aspects and integrate them into their mandate.</p> <ul style="list-style-type: none"> <li>While capacity-building initiatives are taking place, the fact remains that only three people at FONAFIFO are dedicated to gender and social issues around REDD+. FONAFIFO also tends to rely more on gender consultants outside the institution; thus, in-house knowledge is not easily built. There is also no dedicated gender policy or gender unit (A. Quesada, personal communication, August 4, 2021).</li> </ul>
Accountability for gender-related outcomes is not monitored within and across environmental institutions.	<p>Develop goals, indicators, and budgets related to gender that cut across environmental activities</p> <ul style="list-style-type: none"> <li>There is still a need for investments in institutional structures and indicators that reflect improvements in processes within FONAFIFO and elsewhere. This includes investing in women's organizations and their staff. It is not clear that cross-institutional M&amp;E is occurring in other environmental institutions, though this is happening to an extent with +Mujeres+Natura, INAMU, and MINAE. However, FONAFIFO does apply internal goals to monitor gender-related outcomes (A. Quesada, personal communication, August 4, 2021).</li> </ul>
In many cases, women or groups of women are not included as stakeholders in conservation activities.	<p>Generate tools and protocols to better include women and their associations so that they can participate fully and effectively</p> <ul style="list-style-type: none"> <li>Despite the Gender Equality Award and +Mujeres+Natura initiatives (described below), more should be done to ensure that smaller women's groups are driving the agenda; as such, FONAFIFO should not solely rely on the input of these women's groups and other Indigenous organizations to make gender-informed decisions. Therefore, surveys and discussion groups with the community-at-large should be conducted (M. Herrera, personal communication, August 6, 2021).</li> </ul>
Case studies on positive practices have not been well-documented.	<p>Establish a gender and environment network that collects and shares information with the government and civil society on a single platform</p> <ul style="list-style-type: none"> <li>FONAFIFO holds a monthly meeting hosting Indigenous women's groups and independently follows up with these groups regularly (via WhatsApp during the pandemic). An anecdote of institutional attitude change about women firefighters was shared during this process: the head of the forest fire unit has completely changed his approach to gender since they started the Programa Bandera Azul Ecológica, and become an advocate within SENAC. Prior to the program, women firefighters were not even seen or recognized, and no sex disaggregated data was collected.</li> <li>See also the 2019 GAP's complementary document of FCPF's gender integration in REDD+ case studies, which is available online (World Bank 2019).</li> </ul>

Note: Table compiled from *Plan de Acción de Género para la Estrategia REDD+ Costa Rica: Análisis de Género y Bosques* [Gender Action Plan for the Costa Rica REDD+ Strategy: Analysis of Gender and Forests], Fondo Nacional de Financiamiento Forestal (FONAFIFO) [National Forest Financing Fund], 2018.

18 The +Mujeres +Natura Initiative, led by MINAE, the United Nations Development Programme (UNDP), and the Office of the Vice President of the Republic, was launched in May 2020. It aims to strengthen the economic autonomy of women, address gender gaps in natural resource management, and make progress towards meeting the Sustainable Development Goals (SDGs). See below.

## FCPF'S ERP AND BENEFIT SHARING PLAN

The FCPF ERP is focused mainly on (1) preventing and reducing forest fires; (2) strengthening payments for ecosystem services in all its modalities; and (3) special PES payments in Indigenous territories (MINAE 2018). BSP states that benefits will be paid to landowners, based on the emissions reduced (MINAE 2020). More specifically, monetary and non-monetary benefits will be paid, with cash payments going to private owners (see group b in Table 4 below) (MINAE 2020).

The Contract for Emissions Reductions through Forests (CREF) is the mechanism used to distribute monetary payments to private owners and IPs. Owners, including the State as well as private and Indigenous owners duly registered in Costa Rica's National Property Registry, are eligible to participate in CREF. The ownership of the Indigenous territories is proven with a national decree that the creation of the Indigenous reserve and legal territorial registration is not required for participation in the mechanism (MINAE 2020).

Individuals and entities generating ER that do not have titles, or are in illegal possession of forest resources, are not eligible to receive monetary benefits. In addition to the above, eligible beneficiaries, including IPs, must have access to banking services and be able to receive wire transfers (MINAE 2020). Given the requirements for sharing in ERP benefits, it is imperative that the women who operate private farms also hold the legal rights to those farms. In addition, women who are in households that operate private farms should ideally be shown as the joint owners on the title for those farms. Finally, Indigenous women who head individual farms within Indigenous territories, or contribute to farming within spousal or extended family households within Indigenous territories, need to have their rights to land recognized. They must also be meaningfully included in the decisions on how funds paid to Indigenous landowners as a group are used.

**Table 4. Estimated ERP participants by land and ER ownership**

Type of Owner	ER Owner	Forest Area (ha)	%	Information Source/Notes
a. Public owners	a.i. Sinac	678,735	21%	Inventory of Protected Wildlife Areas, State Natural Heritage - SINAC.
	a.ii. PNE owned by other Institutions	25,000	1%	Forest lands of JAPDEVA, ICE, Local Governments, others. Lands managed by public institutions that have not been assigned to SINAC, because it does not have the capacity to manage them and therefore they are kept in the name of other institutions.
	a.iii.FONAFIFO carbon rights of Payment for Environmental Services (PES)	400,000	13%	PES agreements with assignments of current environmental services rights - FONAFIFO.
b. Private owners	b.i. Forest Owners members or NGOs	50,000	2%	Information of Individual members of NGOs such as Fundecor, CODEFORSA, ASIREA, COOPEAGRI and others. People who are associated with an organization and who are not currently in the PSA program.
	b.ii. Private Reserve Owners	25,000	1%	Network of Private Reserves.
	b.iii. Individual forest landowners	390,000	12%	FONAFIFO database. For 2017, FONAFIFO had an over-supply of farms not covered by the PES, on 65,000 hectares. The PES covers 20% of national forests.
	b.iv. Indigenous People	170,000	5%	Estimates in amount of forest in indigenous territories.
c. Other individuals or groups of Forest landowners or non-owners that are not included in any of the previous categories		1,422,602	45%	Forest area resulting from the difference between the area with identified owners and the total forest according to LULC map 2013. These individuals or groups may be eligible to receive benefits from the ER program through the Green Business Fund, the Inclusive Sustainable Development Fund, or the SINAC Strengthening Plan. (See section 5.3). This group may include existing PES participants, those opting not to participate in the ERP or do not meet the title of ER transfer requirements. This may include individuals or groups who have activities that promote emission reductions or contribute to activities against climate change, but who are not recognized or made visible for different reasons (areas of less than 1 ha, other sectors outside LU-LUCF, property titles, financial capacity etc.). These beneficiaries are ineligible for the CREF mechanism. Accordingly the ERP assumes a transfer rate of 55% (excluding the 45% of ERs potentially generated on these Forest lands).
<b>Total Forest Area</b>		<b>3,161,337</b>	<b>100%</b>	

Note: Table reproduced from BSP (MINAE 2020). The types of landowners, the corresponding ER owner, their portions of the respective forest areas, and estimates of their percentages of participation in the program are provided in the table above (reproduced from BSP).

To participate in CREF, owners must voluntarily register their interest and provide a cadastral map of their property where forest resources are located. Notice must be published through national and social media as well as by direct phone calls. Those with Indigenous lands participating in the meeting must submit a certificate with the approval of the Assembly of the ADI. Furthermore, the President of the ADI must enter into the agreement, in his/her capacity as a legal representative (MINAE 2020).

However, there is a risk that women will miss out on monetary payments through CREF, given the issues that had arisen with women's rights documentation in past reforms, the insufficient understanding of Indigenous women regarding their rights on Indigenous lands, and the limited participation of women in Indigenous governance and decision-making. To address some of these risks and challenges faced by women, BSP has also included an Inclusive Sustainable Development Fund (FOINDES): it aims to promote financial mechanisms that benefit women and men equally. It takes into consideration gaps in land tenure and the characteristics of women's farms, for example, by way of implementing Forest Emission Reduction Contract (CREF)-woman and gender-responsive PES, as PES can be offered to individuals or groups (MINAE 2020).

Regarding the other benefits outlined in BSP, respondents suggested that women's involvement in firefighting efforts, which have been strong in some areas, may merit a monetary award (A. Quesada, personal communication, August 4, 2021).

According to BSP, a map of risks and benefits differentiated by sex will be made to decide how to allocate resources and establish a process of technical support, training, negotiation advice, and support for the producers who will receive funding from the Inclusive Sustainable Development Fund (MINAE 2020). The +Mujeres+Natura PES scheme, discussed below, is an example of how women can benefit.

## OTHER CLIMATE CHANGE-RELATED PROGRAMMING

**Nationally Appropriate Mitigation Actions (NAMA) Support Project: Low-Carbon Coffee, Costa Rica, (NAMA Facility)**, Inter-American Development Bank (IADB), German Agency for International Cooperation (GIZ), Coopedota. Founded in 2011, NAMA focuses on reducing greenhouse gas (GHG) emissions of the agricultural sector by up to 15 percent through the implementation of GHG-mitigation technologies in coffee production and processing. NAMA is focused on creating gender benefits and preventing negative impacts on women. There are important knowledge gaps on the gender implications of large-scale climate change-mitigation strategies and how women can be engaged in developing and implementing such strategies. Gender-equitable financing of NAMA would require that the needs and priorities of both women and men are identified and addressed (Di Persio 2019).

The Ecomarkets Project (2000–2006) promoted forest conservation in Costa Rica by supporting the development of markets and private sector providers for environmental services supplied by privately-owned forests. The project focused on the capacity building of local women's organizations. Gender was integrated in key performance indicators, such as a 30-percent increase in the participation of women landowners and women's organizations. The project has supported local women's organizations and their organizational development. Technical strengthening, provided to develop the capacity to promote natural resource management, increased participation in the environmental service program (Di Persio 2019).

+Mujeres+Natura is a new initiative (May 2020) that provides priority access to women participating in the PES program. All women applicants will be given a higher score in the PES evaluation scorecard than their male counterparts. The initiative also includes several gender-sensitive elements for enhancing access to benefits from PES to women without the requirement of land. The PES operations manual has also been updated to create new conditions for ensuring that women involved in forest management, but with no formal land titles, can still access benefits. Several gender-sensitive credits, created as part of this initiative, were specifically designed to target women in rural areas with no or little land (H. Arce, personal

communication August 2021; M. Guerrero Campos, personal communication, August 2021).

This initiative has also created a new partnership among FONAFIFO, the Rural Development Institute (INDER), and INAMU to assign community lands to local women's groups to implement forest management, watershed restoration, agroforestry systems, and other women-led initiatives. The partnership has also launched local rural women discussion forums facilitated by INAMU (H. Arce, personal communication August 2021; M. Guerrero Campos, personal communication, August 2021).

The **Gender Equality Award for Productive Units (GIGUP)** was launched in October 2020. Designed with the support of GIZ, this award is the first of its kind to be developed globally. It aims to achieve just, inclusive, equitable, and sustainable development that guarantees gender equality and the autonomy of women and girls. More specifically, it seeks to identify and understand gender gaps as well as implement actions that contribute to closing these gaps in order to overcome historical discriminatory biases in rural productive units (that is, by recognizing domestic work as a productive unit). The award is aimed at small producers who qualify according to the criteria established in a 2013 Ministry of Agriculture Decree on smallholder registration.<sup>19</sup> Those who obtain the recognition will retain it for one year, which means that productive units must register annually, regardless of whether they have received the award or not (H. Arce, personal communication, August 2021; M. Guerrero Campos, personal communication, August 2021).

## IX. RECOMMENDATIONS

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Costa Rica has made significant progress in analyzing gender issues and devising an actionable plan for how those issues can be met in REDD+ programming. ERP GAP provides evidence of the analysis and plan development. Some recommendations to further carry out this work are provided below.

- **Take steps to facilitate inclusive decision-making by Indigenous groups so that there is a chance that the interests of both women and men are given equal weight in deliberations, particularly where it will have a material impact, as in the case of PES schemes.** Even though Indigenous women have achieved progress in women-devised schemes, their ability to influence the more lucrative “general” PES schemes is limited. Women-only initiatives are a good start, but not when they are the only way that women can benefit and general initiatives are more highly valued. An intervention that works on inclusive decision-making—through skills development, confidence building, social norm change, and good governance—could go a long way to support sustainable gender-equitable processes in ICs. Also, the affirmative action steps of the +Mujeres+Natura program could be adopted more broadly across other PES programs.
- **Pilot a program with a broader distribution of benefits.** Address incentives for deforestation by piloting a program in which benefits are paid not just to landowners, but also to anyone who currently derives benefit from the status quo and is willing to change their behavior, or those whose behavior must change, in order to obtain full support for reforestation efforts.
- **Trial a program where benefits are paid to individuals in households and individuals in communities, rather than representative bodies or household heads.** This might mean that individual women, especially in male-headed households or communities, can directly benefit from payments.

<sup>19</sup> Decrétó No. 37911-MAG, Sistema de Registro del Ministerio de Agricultura y Ganadería, para Certificar la condición de pequeño y mediano productor agropecuario [Registration System of the Ministry of Agriculture and Livestock to certify the condition of small and medium agricultural producers], 2013, art. 13.

- **Encourage women in the smallholder sector to finalize the titling and registration of land and the mandatory joint titling of land.** This would help ensure that women on those lands can benefit directly from any payments that accrue directly to landowners.
- **With regard to benefit sharing, the FOINDES mechanism for including women who are not legal landowners is a positive step forward.** Ensure that this program is fully funded and resourced, that data is collected on its progress, and that it is adaptively improved based on findings from the data collected.
- **The Gender Equality Award and +Mujeres+Natura initiatives show promise for affirmative actions to support the needs of differently situated women.** More should be done to ensure women's groups are driving the agenda. Therefore, FONAFIFO should not limit its efforts to simply consulting with women's groups and other Indigenous organizations to make gender-informed decisions, but also invest directly in measures that help the women they consult with to achieve better outcomes for themselves and their communities.
- **Address institutional resources and capacity needs across ERP to ensure that gender equity remains a key consideration.** There is still a need for investments in institutional structures and indicators that reflect improvements in processes within FONAFIFO and elsewhere. This includes investing in women's organizations and their staff, as well as ensuring that those who are charged with the responsibility for gender have the time and budget to be able to do so, and that they are fully supported in that role within their institutions. Taking advantage of local gender expertise to help build capacity in public institutions and agencies could go some of the way toward addressing this issue.

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## INTERVIEWS CONDUCTED

<b>Name</b>	<b>Position and Institution</b>	<b>Date</b>
Andrea Quesada Aguilar	Gender, Sustainable Development, and Environment Specialist, UNDP	August 4, 2021
Alicia Lopez	Technical Advisor, FAO	August 2021
Stavros Papageorgiou	Senior Environmental Specialist World Bank	August 3, 2021
Faustina Torres	President, Association of Indigenous Women of Talamanca (ACOMUITA)	August 2, 2021
María Elena Herrera Ugalde	National Forest Financing Fund Coord. REDD + Technical Strategy, FONAFIFO	August 6, 2021
Suiyen Ramirez	Professional Specialist Construction of Identities and Life Projects	August 2021

\*All interviews were conducted via Zoom conference, with follow-up communication via email.

## APPENDIX 2: WOMEN'S ORGANIZATIONS

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In Costa Rica, the first state office related to women's issues was the Dirección General de la Mujer y Familia (General Directorate of Women and Family). Housed at the Ministry of Culture, the entity was subsequently renamed the Centro Nacional de la Mujer y Familia (National Center for Women and the Family) in 1986. The autonomous Instituto Nacional de la Mujer (National Institute of Women) was established in 1998.

Efforts to gain recognition for women's land rights during the national land reform programs were led by urban women's organizations; during this period, rural organizations supporting women's land rights were few and not especially strong. Two women's branches established within campesino organizations were the Proyecto de la Mujer y Joven (established in 1990) and the Coordinadora Nacional para el Trabajo con la Mujer Campesina (established in 1995). In 1996, the independent rural women's organization, Asociación de Mujeres Productivas Rurales de Costa Rica (AMPR), was founded and has had a presence at both the national and local levels ever since.

However, unfortunately, by the time these rural organizations for women were established, land distribution in Costa Rica had already declined drastically. The opportunity to put women's land titling up front and center among land reform program priorities had in turn also passed.

### RURAL WOMEN'S ORGANIZATIONS

**Kábata Kónana Women's Association:** Established in 2016, the Association consists of 157 women, with the aim of improving the quality of life of rural women and promoting initiatives focused on the conservation and sustainable management of forests. The association is involved in the implementation of a series of actions to deepen local culture, protect land rights of women, strengthen the capacities of women in different environmental issues, and provide support in the management of projects.

**Asociación Comunitaria de Mujeres Indígenas de Talamanca (Community Association of Indigenous Women of Talamanca—ACOMUITA):** ACOMUITA has developed a pre-consultation process with the REDD+ program that is specifically targeted at women in eight Bribri and Cabécar Indigenous territories in Limón province. This process seeks to elicit discussions, involving Indigenous women regarding the Indigenous worldview (cosmovisión), which are focused on topics of governance, culture, quality of life, land tenure, as well as land and environmental issues. ACOMUITA plans to hold workshops in the eight territories and contract an Indigenous woman to work with them to prepare a proposal regarding the latter's participation in the REDD+ program. The organization has received a strengthening grant from the German Technical Cooperation Agency (GTZ) to develop their gender proposal.

**Asociación Kátsako:** This Indigenous association began in 2006 with 21 women. Their initial objectives concerned domestic violence, alcoholism, drug addiction, and the lack of employment for Indigenous women. What galvanized them to organize was non-Indigenous persons buying land from their families in their territory despite its illegality, leaving them without land. In 2008, they started working with the National Women's Institute (INAMU) to attempt to resolve issues of domestic violence and diversify agricultural production. The association currently works to empower women through creation of economic opportunities and revival of traditional agroforestry practices.

**Asociación de Manejo de Bosques de Osa (AMAOSA):** A group of female farm owners within this association is working on a project to promote forest conservation in the effort to improve their families' quality of life through sustainable forest management.

**Red de Mujeres Rurales de Costa Rica (Costa Rica Rural Women's Network):** This association brings together women from both the *campesino* and Indigenous sectors to defend land, water, local seeds, organic agriculture, food security, health, and education.

# Chile

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## I. INTRODUCTION

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### EMISSIONS REDUCTION PROGRAM AREA

The components of Chile's proposed Forest Carbon Partnership Facility (FCPF) Emissions Reduction Program (ERP) are sited within five of the 15 administrative regions of the country—Araucania, Biobio, Los Lagos, Los Rios, and Maule (Corporación Nacional Forestal [National Forestry Corporation, CONAF] 2016). The ERP is a part of Chile's larger National Strategy for Climate Change and Vegetation Resources (ENCCRV). Chile's ERP Document (ERPD) was submitted to FCPF in October 2016 and supplemented by an addendum in October 2018 (CONAF 2018a). Chile's National Forestry Corporation (CONAF) is the primary implementing state agency at both the national and regional levels (CONAF 2016, 2018a).

The ERP accounting area has a total surface area of approximately 15,300,000 hectares (ha). Within the accounting area, there are four primary land uses that are candidates for contributing to ERP emissions reductions (ER): (1) native forests—candidates for restoration and conservation; (2) forest plantations— parts of which could be transformed into native forest; (3) agricultural land that could be reverted to native forests; and (4) shrublands and grasslands that could be reforested. The selected areas show signs of increased pressure on forest resources as a consequence of fires, a high demand for firewood, as well as the impacts of poverty and the activities of vulnerable populations.

Within the total ERP area, there are 5,853,388 ha of native forests; 2,299,530 ha of forest plantations; 2,316,914 ha of agricultural land; 2,299,530 of scrublands and grasslands; 1,027,971 ha of snow-covered areas, water bodies, and wetlands; 91,311 ha of land classified for urban and industrial use; along with 981,929 ha of land characterized by other land types, such as uplands (CONAF 2016, 2018a).

There are 5.3 million inhabitants in total within the accounting area. The population is mainly urban (74 percent). While Indigenous Peoples (IPs) account for only 9.1 percent of Chile's total population (about 1.2 million persons), there are IP concentrations and Indigenous Communities (ICs) in three of the administrative areas falling within the ERP accounting area: Araucanía—about 384,000 IP or 32 percent of the total; Los Lagos—about 300,000 IP or 25 percent of the total; and Biobío—about 60,000 or five percent of the total. Maule has the fewest IP falling within the accounting area—about 24,000 or two percent of the total (CONAF 2016, 2018a).

## AIM OF FCPF'S REDD+ ACTIVITIES

Chile has an extensive and complex forest resource composed of discrete, modest-sized forests as well as relatively continuous expanses of forestland. Chile's forests cover more than 14 million ha, with forest monoculture plantations occupying nearly three million ha. In all, 23 percent of Chile's surface area is classified as forested land. Unsustainable logging and agricultural practices, climate change, and forest fires (amongst other factors) have all contributed to the degradation of Chile's forests over the past several decades. Although national legislation enacted over the past 15 years has sought to improve sustainable forestry management and preserve or renew forest cover, progress has been slow.

The ENCCRV aims to improve forest practices through measures that include proposed legal amendments and new approaches to sustainable forestry management. Improvements over the past 10 years, attributable to biomass increases as a result of afforestation, reforestation, and decreases in forest harvesting, have led to net carbon dioxide (CO<sub>2</sub>) removal.

The FCPF ERP expects to pilot a mechanism of benefit payments to beneficiaries for ER grants and project activities, based on performance, through the means of the new REDD+/ER activities described in ERPD (CONAF 2016, 2018a).

## FOCUS OF FCPF'S REDD+ ACTIVITIES

The primary causes of forest deforestation and degradation in Chile include forest fires, the unsustainable use of forest products (wood, firewood, and non-timber forest products [NTFP]), livestock grazing in forests, the growth of monoculture forest plantations, the expansion of agricultural activities, the increase in urban activities, along with the general effects of climate change, desertification, and drought. The ERP REDD+ activities will be addressing these causes directly.

The prevention of forest fires will involve tackling both fire avoidance (by changing people's actions or omissions) and providing incentives for owners of forest land to proactively manage vegetation in order to prevent or delay the spreading of fires. Efforts to reduce unsustainable harvesting and the use of forest vegetation, valuable timber, firewood, and NTFP will involve a variety of measures. They will include changing the prevalent economic paradigm that draws forest users into low-profitability and low-opportunity cost activities (such as the use of forest resources for firewood or relatively low-return lumber production).

Furthermore, discouraging the use of forests for livestock grazing (after selective or widespread timber harvests) will be a focus. Reducing agricultural activities in forests after the timber has been harvested and sold for lumber or firewood will also be a priority.

Finally, all measures aimed at sustainable forest use or the prevention of degradation will be accompanied by parallel activities. They comprise improved territorial planning; progress in resource governance; increased enforcement; the creation of new regulations; enhanced support and education on forest management practices; along with the transfer of new technologies backed up by education (CONAF 2016, 2018a).

## PROGRAM FUNDING MECHANISMS AND BENEFIT STREAMS

The ERP Benefit Sharing Plan (BSP) (fourth edition, final plan of 2020)<sup>1</sup> not only covers Chile's FCPF ER proposal, programs, and payments, but also Chile's larger ENCCRV and a variety of projects implemented under the same strategy. Accordingly, the BSP also addresses the distribution of benefits associated with the Green Climate Fund (GCF) and the United Nations Framework Convention on Climate Change (UNFCCC).

The BzP is made up of both monetary and non-monetary benefits. ERP's monetary benefits will be divided between the central state recipients (20 percent for management, administration, and technical assistance) and the regional recipients located in the regions where the ER and/or increases in absorption are to occur (80 percent). The regional benefits, allocated to the regional CONAF operations (hereinafter referred to as "Regional CONAF"), will also reside administratively with Regional CONAF. It will be supported in its regional benefits administrative process by a Regional REDD+ Group (composed of state, public, and private stakeholders) and a Regional Committee for Climate Change (comprising selected representatives from state, public, and private entities) (CONAF 2020).

According to the BSP, regional benefits are to be distributed to small forest owners (both individuals and groups); medium forest owners; non-profit organizations owning rural land; municipalities; and national state landholdings. Individual small forest owners are expected to possess "titles of ownership", although BSP provides that a benefits implementation manual will contain the criteria for accepting other (informal) tenure types. Those eligible landholders with informal tenure would then be able to receive funding to formalize their land rights as part of the subsequent projects funded with regional benefits. However, it is important to point out that this path to the formalization of rights and consequent eligibility to participate in non-monetary project benefits has not yet been defined; it is reported to be under evaluation by CONAF (CONAF 2020; D. Contreras, personal communication, August 11, 2020). Group owners of small forests include Agricultural

Communities (ACs) (see Section III, below), ICs/IPs (see Section III, below), and several other types of community groups (CONAF 2020).

Importantly, BSP further provides that the regional benefits are to be non-monetary, that is, funds will not be directly transferred to eligible individuals or groups. The non-monetary benefits will include technical support, ER project implementation on land parcels held by individuals and groups, and other funded activities related to ENCCRV's (and ERP's) action measures. They will be made available (pursuant to a Regional Technical Proposal) through two paths within each region: (1) "prioritized projects" that make up a portfolio of projects and activities derived by Regional CONAF and (2) "public tender" projects, where a competitive process will be used to select the projects to be funded (CONAF 2020).

Both the 2019 and 2020 BSPs address the inclusion of women and IPs through the introduction of "Cross-Cutting Variables" that will inform the content of the Regional Technical Proposal, and subsequently shape the body of projects that become prioritized projects or public tender projects. Thus, there is a "Gender Variable" and an "Indigenous Variable".<sup>2</sup> The variables, derived from the participatory consultation activities undertaken during the readiness phase, provide a mechanism for prioritizing or accommodating the issues or demographics aligned with the variable.

In the case of The Gender Variable, it "[aims] to privilege and/or strengthen the various roles of women in forest development" (CONAF 2020, 17). The focus areas for achieving this objective are presented below:

1. Involving women and their representative organizations as beneficiaries in a specific, distinctive manner;
2. Promoting and/or reinforcing productive activities carried out by women so as to improve their income (apiculture, crafts, among others);
3. Reinforcing the resource management and technical skills of women; and
4. Valuing the initiatives formulated by women and their representative organizations.

1 The "final" BSP is noted on the FCPF website as being dated June 2021, although the document itself calls for it to be cited as being published in 2020. For the purposes of this case study, the final BSP is deemed to have been published in 2020. The final 2020 BSP appears to have first been made available to the public in June 2021.

2 There is also an "Ecosystemic Variable," "Socioeconomic Variable," and "Territorial Variable".

The Indigenous Variable calls for “prioritiz[ing] actions addressing social and cultural vulnerabilities of organizations and individuals belonging to the nine Indigenous Peoples recognized in Chile” (CONAF 2020, 17). The focus areas for the Indigenous Cross-cutting Variable are set out below:

1. Taking into consideration complementarity with IP’s productive and forest conservation initiatives;
2. Involving the traditional governance instances and traditional authorities of IP;
3. Reinforcing the ecosystems and/or sites of religious or cultural importance in the Indigenous worldview, along with other ancestral use areas or spaces; and
4. Including Indigenous communities, associations, organizations, or people as beneficiaries and/or owners.

The Regional Technical Proposal, which will be informed by a referenced operational manual, will describe the weighting of the variables and how the projects will be shaped in response to them (CONAF 2020).

## II. NATIONAL LEGAL AND POLICY FRAMEWORK ON THE RIGHTS OF WOMEN

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Chile has set in place laws that promote equality between men and women. Article 19 provides that men and women are equal before the law, that neither the law nor any authority can establish arbitrary differences in the treatment of men and women, and that the law will provide equal protection in the exercise of rights.<sup>3</sup> Article 1 of Chile’s 1980 Constitution (as amended through 2014) similarly stipulates that all persons have equal rights; however, it also places the family as the primary path through which the state promotes and guarantees these rights.

Despite provisions supporting equality, a 2009 United Nations Development Program (UNDP) survey (conducted in preparation for the *2010 UNDP National Human Development Report*) found that 62 percent of all Chileans

were opposed to full equality between the sexes (Estrada 2010). Indeed, interviews with key informants in Chile revealed that the forestry sector is seen associated with “machismo” and that there has traditionally been very little involvement by women within it (G. Bascur, personal communication, August 5, 2020; S. Parada, personal communication, August 4, 2020).

Nonetheless, there are indications that change in the forestry sector may soon take place with the drafting of a new national Constitution that will improve the status of IPs and women. In October 2020, Chileans held a national referendum and voted to draft a new national Constitution. It will be drafted by a Constitutional Convention with 155 constituents slated to be elected by popular vote by April 2021 (after having been significantly delayed by Covid). The election was held on May 15 and 16, 2021. Of the 155 seats, 17 were reserved for IPs. The results yielded seven seats for the Mapuche, two for the Aymara, and one each for the Diaguita, Quechua, Atacameño, Colla, Chango, Rapa Nui, Kawésqar, and Yaghan peoples. Parity in gender representation within the convention was incorporated into the election process, resulting in a body consisting of 78 men and 77 women (UNDP 2021).

Chile is among the few Latin American countries that do not recognize IPs within their national Constitutions (Partridge 2020).<sup>4</sup> Some observers suggest that a new constitution will likely increase the state’s role in the economy. Property rights for land and natural resources are likely to be addressed, including the relatively high levels of compensation provided in cases of expropriation, as well as the issue of recognition of IPs and their rights in relation to land and natural resource governance. It is expected that a revised constitution might strengthen the role of the state in limiting property rights affecting basic services, natural resources, and the environment (Selman 2020).

Moreover, there are endeavors to promote gender equality in the country. In 2016, the presidential administration of Veronica Michelle Bachelet created the Ministry of Women and Gender Equality. The law carries with it a reorganized National Service for Women and Gender Equity. Its goals

3 Constitución Política de la República de Chile [C.P.]

4 While the majority of Latin American constitutions recognize the existence of IPs and/or their specific rights, Chile, Uruguay, and Suriname do not, despite the presence of IP in their territories. See Gonzalo Aguilar, et al, *South/North Exchange of 2009 – The Constitutional Recognition of Indigenous Peoples in Latin America*, Pace Intl. Law Rev. Online Companion, Sept. 1, 2010, at 44. See also Rights and Resources Initiative, Landmark Legal Victory for Indigenous Land Rights in Belize, Rights and Resources Initiative Blog (February 11, 2007), <https://rightsandresources.org/blog/landmark-legal-victory-for-indigenous-land-rights-in-belize/>.

include implementing policies, plans, and programs aimed at gender equity, equality of rights, and the elimination of all forms of discrimination against women.<sup>5</sup>

In addition, the UNFCCC and its related Lima Work Programme on Gender provided in 2017 for an overarching Gender Action Plan (GAP) that further calls upon UNFCCC's participating parties to prepare submissions that report on the progress of the parties' GAP implementation (UNFCCC 2017). The GAP set out implementing activities in five priority areas: (1) capacity-building, knowledge sharing, and communication; (2) gender balance, participation, and women's leadership; (3) coherence in the integration of gender considerations within the work of UNFCCC's bodies; (4) gender-responsive implementation and means of implementation; as well as (5) monitoring and reporting.

At the same time, Chile's 2018 submission on its progress in the implementation of GAP suggests that its efforts in promoting gender equality are still in its early stages. For a start, it focused only on the first two priority areas. The submission also described several challenges related to its ability to implement ERP commitments: increasing the collection and analysis of gender-disaggregated data; augmenting the number of gender specialists and enhancing their capacity; achieving a comprehensive gender approach in the country's policies and sectors; strengthening, monitoring, and improving management; along with expanding the availability and use of practical methodological practices.

### III. LEGAL FRAMEWORK FOR WOMEN'S LAND TENURE AND FOREST MANAGEMENT

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#### OVERVIEW OF LAND TENURE

The Constitution provides for the right to acquire and own land, except in the case when the law declares the land to be "common to all men or which should belong to the entire nation" (art. 23). Only formal law can establish the manner through which land can be acquired, used, or disposed of. No one can be deprived of property (including land), except by virtue of a law that authorizes expropriation for purposes of public benefit or national interest. Landowners can also challenge the legality of expropriation in the courts. Furthermore, they are entitled to compensation in cash (unless otherwise mutually agreed) before the land is taken. The state retains all rights to subsurface resources.<sup>6</sup>

Chile's fundamental land laws and the series of agrarian reform laws that post-date them have set the stage for broader individual and collective land ownership. The land tenure (agrarian) reform laws cover expropriation and redistribution schemes that move land and rights to land from large private estate and government ownership to a variety of individual and collective landholders engaged in agriculture. Both subsistence farmers and larger-scale commercial farmers have benefited from the land reforms (Bellisario 2007).

#### INDIVIDUALIZED LAND

This subsection addresses individual land that is not held as a part of IC/IP land. IP's individualized land is addressed in a subsequent subsection.

Laws and regulations, both of which were passed during and after the agrarian reform period (roughly 1962 to 1973), cover the mechanisms, incentives, and support for the formalization of both individual and common land (Bellisario 2007). Individualized land is held under the typical

5 Law No. 19023, Crea el Servicio Nacional de la Mujer [Creation of the National Women's Service], Dec. 26, 1990, D.O. Available at <https://www.leychile.cl/Navegar?idNorma=30390>.

6 C.P., arts. 23, 24.



types of governance frameworks that provide for individual holdings and rights—individual ownership arrangements and land administration systems to support acquisitions and subsequent transactions, including sales, leases, and inheritance. At the same time, individualized land is also held within formalized ACs that hold land collectively and allocate it for both individual and common uses. Individual land is also held within ICs and governed through collective community action (CONAF 2016, 2018a). Individualized land held within common/collective and IC schemes is addressed below under common/collective land.

The legal framework for individualized land is primarily made up of a multitude of laws and decrees that have been enacted over hundreds of years. They address formalization, parcel registration, state functions, permissible land uses, and land use planning. There is no standalone land law or code that exhaustively sets out permissible landholding types, permitted transactions, and state mechanisms for recording rights. Underscoring the complexity, when compiling Chilean national information on land use planning, the Organisation for Economic Co-operation and Development (OECD) reported that: “Compared to other OECD member countries, an exceptionally large number of laws, regulations and other legal instruments governs land use and land-use planning. Due to the associated complexity, no comprehensive overview of the most relevant laws and regulations can be provided. In some instances, the multitude of instruments can lead to laws and regulations with overlapping or contradicting objectives” (OECD 2017, 3).

For individual land held outside of common/collective or Indigenous schemes, Decree Law 2695 (1979) established legal processes to formalize the ownership of small, individual parcels for smallholders. This law was created to address the many formal and informal holdings that were subject to uncertain rights or conflicting claims. This situation was attributable to the land right never having been formalized to any holder, or to the subsequent transfers of the land (purchase, sale, gift, bequest, and inheritance) not having been formalized since the transfer(s) (CONAF 2016). Under this law, individual occupants of small agri-

cultural or other parcels of land for at least five years (but not Indigenous land or land held by groups or communities) may obtain a title that becomes a full registered ownership right (qualified by some restrictions on subdivisions) after one year. The law thus provides a path for reconciling the uncertain or conflicting rights or claims borne of years of unrecorded transactions, inheritance/successions, and the voluntary nature of land registration. Subsequent revisions to this individual parcel formalization process were made as late as 2018.<sup>7</sup>

Titles granted through this process are entered within the national land registry and registered at the local level. The Ministry of National Assets (formerly the Ministry of Land and Colonization) is the implementing state entity responsible for the largely subsidized process set out in the law.

On the whole, there are no restrictions on women becoming individual title holders, but there are also no provisions calling for joint titling to spouses.<sup>8</sup> With that said, Chile has included women-focused elements in land titling programs to increase the registration of rights to women (Deere and León 2001). Decree Law 541 (2004), which provides revised rules for prioritizing groups to receive the formalization process subsidies, has established criteria that give female heads of households priority in receiving subsidies that fund individual formalization.<sup>9</sup> This provision appears to be one of the few legal measures aimed at facilitating formalization of land rights for Chilean women.

Yet despite the current constitutional protections for women establishing gender equality under the law, the portions of Chile’s Civil Code addressing the matrimonial property regimes still create a system that does not provide equal rights to, or control over, land or other natural resources held by a matrimonial household. According to Article 1715 of the Civil Code, spouses may elect one of three matrimonial property regimes before or during the marriage described below:

1. Separation of property/assets (total or partial): Each party to the marriage is permitted to have rights to their own assets before, during, and after the marriage.

7 Law No. 21108, Modifica Decreto Ley No. 2695, Sep. 25, 2018, D.O., available at <http://bcn.cl/2ogdf>.

8 Decree Law No. 2695, Fija normas para regularizar la posesión de la pequeña propiedad raiz y para la constitución del dominio sobre ella (Rules to Regularize the Possession of Small Properties and Formalize Title Over Them), Jul. 21, 1979, Diario Oficial [D.O.], available at <https://www.bcn.cl/leychile/navegar?idNorma=6982>.

9 Decree No. 541, Reglamento de Decreto No. 2695 de 1979 [Regulation for Decree No. 2695 of 1979], Aug. 20, 1996, D.O., available at [http://transparencia.mbienes.cl/archivos/DS\\_541\\_de\\_1996.pdf](http://transparencia.mbienes.cl/archivos/DS_541_de_1996.pdf).

Each party can freely manage and dispose of the assets at any time. At the end of the marriage, neither spouse has the rights to the property of the other.<sup>10</sup>

2. Joint property or profit sharing: Under this property regime, assets acquired during the marriage are administered by each spouse as their own separate property. When the marriage ends, all assets acquired by the spouses during the marriage (joint property) are distributed in equal parts. For the purposes of this calculation, the property owned by the spouses at the time of the marriage is considered and an inventory of this individual property can be prepared, when the parties agree on the marriage contract and the property regime.<sup>11</sup>
3. Community of assets or marital partnership (the default regime) (Vásquez Duque 2018):<sup>12</sup> Under the community of assets or marital partnership approach (the default regime), all assets acquired or generated during the marriage are part of a community and they are divided into equal parts at the end of the marriage (by the death of a spouse or divorce). Importantly, a husband has the authority to administer the property of the family and his wife, whether the property individually belongs to the wife (by virtue of inheritance or other means during the marriage) or is jointly owned (by virtue of it being acquired by the community during the marriage).

When the marriage ends, the wife can choose to be awarded her individual assets and relinquish the joint property of the marital partnership or contribute her individual assets to the marital partnership and receive 50 percent of the total estate. To opt out of the default regime, the spouses must expressly agree before or during the marriage that they will adopt one of the alternative property regimes.<sup>13</sup> If the recorded marriage certificate does not mention an alternative property regime, it is legally assumed that the couple are married under the community of assets default regime.<sup>14</sup> Data from 2006 to 2014 indicates that 55 percent of spouses accepted the default regime at the time of their mar-

riage (Vásquez Duque 2018).

The default matrimonial property regime, which endows husbands with the legal authority to administer the property of the family and his wife, essentially places women in a position where they would be excluded from joint titling that could occur upon marriage. This disadvantageous situation could also take place during state efforts to formalize informally held individual parcels or reconcile formal registration clouded by unrecorded subsequent transactions or inheritance.<sup>15</sup>

In addition, divorce was only legally recognized in Chile in 2004 with the passage of a new Civil Marriage Law, thereby overturning most of the 1884 legal code governing marriage. It is only through divorce that a husband's authority to administer the property of the family and his wife ends.<sup>16</sup>

Moreover, the land registration system, in terms of its design or implementation, has also not facilitated women's legal rights to ownership as individual rights holders or as joint owners in a marriage (Santander 2018). The registration of individual parcels in Chile revolves around the local registrars located within each community or a group of communities (largely aligned with municipal *communes*), with the jurisdiction being instituted by the parallel jurisdiction of the civil court of first instance. The local registries, under the auspices of the registrar, are each staffed by a notary, an archiver, and the registrar. The registrar oversees the registration of properties within the assigned area. The registry maintains the public records linked to a number of land-related legal characteristics: mortgage, use prohibitions, the legal capacity of owners, water rights, mineral rights, and liens.

Disaggregated data on women's sole or joint formalized land rights to individual parcels is scarce for many Latin American countries, including Chile. Some disaggregated data have been collected during national agricultural censuses. For example, Chile's 1997 agricultural census indicates that about 24 percent of owner-operated farms are

10 *Id.*

11 *Id.*

12 Código Civil (Civil Code) [Cód. Civ.], art. 1715 et seq., art. 1749 (1857, 2000). Available at <https://www.leychile.cl/Navegar?idNorma=172986&idParte=8717776>.

13 *Id.*, art. 1723.

14 *Id.*

15 Cód. Civ., art. 1715 et seq., art. 1749 (1857, 2000) Available at <https://www.leychile.cl/Navegar?idNorma=172986&idParte=8717776>.

16 Law No. 19947 Establece Nueva Ley de Matrimonio Civil (New Civil Marriage Law) art. 60, May 7, 2004, D.O., available at <http://bcn.cl/2fctd>.

held by women. This share is greater than the total proportion of women farmers, which probably means that women are less likely than men to acquire land through tenancy arrangements (Deere and León 2003). Data from Chile's 2007 agricultural census suggests that about 30 percent of all agricultural landholders are women, although it is not certain whether this proportion of women landholders possesses individual titles to the land (FAO [Food and Agriculture Organization] 2021).

None of the ERP or ENCCRIV documentation appears to directly address the community of assets default property regime or the fact that husbands have the authority to administer the property of their families and wives. This authority would appear to permit a husband to enter into an agreement with CONAF for non-monetary benefits under BSP that would be used to implement REDD+ projects or activities on family land and on land for which a wife holds individual or joint rights. As well, the ERP documentation does not seem to address the paradox created by the default property regime and the ERP requirement that individual land users have registered formal rights to the land in order to qualify as BSP beneficiaries. It is unlikely that the default property regime would facilitate the formalization of land rights to women.

Given this disincentive, it is also unclear whether a married woman would have a right or entrée to exercise her voice and provide opinions on forestland use or obtaining BSP benefits for forest preservation activities on her family's land administered by her husband. There is also a lack of clarity regarding how BSP would protect a new female rights holder within a project involving BSP's non-monetary benefits upon the death of her spouse or divorce. In such a case, BSP or an implementation manual would ideally provide for the formalized land rights held by the deceased or divorced male spouse to be subsequently formalized in the name of the surviving or divorced wife. Finally, clarification is also needed on how to implement BSP in a household (formed under a separation of property marital regime) in which each spouse has rights to his or her own assets and can freely manage and dispose of the assets at any time.

## COMMON/COLLECTIVE LAND

Group tenure of land largely falls under two categories: (1) IC land (held within IP land areas) and (2) AC land (including forestland). This subsection addresses the common/collective land that is not held as a part of IC/IP land. The common/collective land of ICs/IPs is addressed in the following subsection.

The legal framework for AC land is primarily addressed by Law No. 5 (1968, 1993, as amended and reconciled). It has led to the establishment of ACs and given them the right to own, use, enjoy, and govern land held in common.<sup>17</sup> An AC is defined as a group of owners of community rural land, who individually or commonly "occupy, exploit or cultivate it."<sup>18</sup> Three types of land holdings are included within an AC: (1) lands used commonly by AC members, (2) individual land assigned to the member households of an AC for purposes of "singular enjoyment", and (3) individual plots (*lluvias*) within the otherwise common lands allocated to increase the allotments of individual land (Fernandez 2002).

ACs can obtain legal personality by registering the collective community property, and the legal entity can exercise its rights, enter into contracts, and engage in judicial proceedings.<sup>19</sup> It appears that formal AC members are envisioned to be men, as indicated in Article 1 when describing individual holdings as: "...a certain portion of community-owned land that is assigned to a *community member and his family* for their exploitation or cultivation."

Headed by a President, an AC is governed by a Board of Directors consisting of at least five members.<sup>20</sup> General meetings of AC members (constituting an AC Community Council) are deemed to be either ordinary or extraordinary, with each AC member given the right to one vote. An ordinary general meeting is held yearly.<sup>21</sup> During general meetings, members approve the cultivation of use plans for the commonly used property; establish protection measures for soils, waters, and forests; as well as approve the distribution of individual land and water allocations.<sup>22</sup> Dis-

17 Law No. 5 (1968) (as amended by Law No. 19233 of 1993).

18 *Id.*, art. 1.

19 *Id.*, art. 1.

20 *Id.*, arts. 3, 17.

21 *Id.*, art. 16.

22 *Id.*, art. 18.

putes between AC members and their ACs are to be submitted to an arbitration proceeding conducted by the AC Board of Directors. If the dispute is not resolved through arbitration, the complainant may take the dispute to the local civil court.<sup>23</sup>

Further, under Law No. 5, an AC can transfer or encumber its land with the consent of all AC members; however, only 50 percent approval is required to transfer or encumber a portion of the land for a state project. At an extraordinary general meeting, two-thirds of the attendees, representing at least 50 percent of the registered rights, can authorize the AC Board of Directors to mortgage the common property as collateral for loans granted by the state, and the same majority can authorize the lease of the common lands and water rights for a maximum period of 10 years.<sup>24</sup>

Law No. 5 also provides that an AC's rights to common land or individual land be passed through inheritance to a surviving spouse, undivided.<sup>25</sup> A surviving spouse can divide the individual property into equal portions and pass one portion to the eldest child of majority age.<sup>26</sup> It is likely that divorce has not been taken into consideration in this law, as divorce was only recognized as a legal outcome in 2004, with the passage of the new Civil Marriage Law.

A key informant interview has confirmed that the AC members are those who have legal membership in the AC, and thereby, have formal (but undivided) ownership rights to the AC's community land. Therefore, women are not formally deemed to be AC members because they are not formalized rights holders within the AC tenure and governance framework. As a result, they are not included within an AC's Community Council, where each member possesses one vote. Given the lack of formal membership (and ownership), women are unlikely to be participating in the AC's decision-making processes, and they would not be included in formal AC decisions to apply for ERP non-monetary benefits that could bring REDD+ or other ER projects or ac-

tivities to the AC land, or benefit from them (D. Contreras, personal communication, August 11, 2020).

## IP'S LEGAL FRAMEWORK AND IP'S LAND

The legal framework for the IP's land is primarily covered by Law 19253 (1993). It stipulates the rules on the protection, promotion, and development of Indigenous populations and their resources.<sup>27</sup> The law has led to the creation of the National Corporation for Indigenous Development (CONADI). A National Council manages CONADI at the executive level. A variety of national and regional sub-entities within CONADI are set out in Law 19253.<sup>28</sup>

Even though Article 39 of the law calls for CONADI to "[e]ncourage the participation and comprehensive development of Indigenous women," there are no requirements for women's representation within any CONADI role, function, or sub-entity, or any IC assembly or community group. While Law 19253 calls for the creation and operation of CONADI National and Regional Councils, national sub-directorates, regional sub-directorates, and regional Offices of Indigenous Affairs, no participation by women, of any level, is required. The rules for CONADI staff qualifications also do not call for the inclusion of qualified women.

To provide context on the status of IP women's rights to IC land, the relevant laws will first be described. Article 9 of Law 19253 extends IC status to any group of people who belongs to one Indigenous ethnic group and who is in one or more of the following situations: (a) come from the same family tree; (b) recognize a traditional leadership; (c) own or have owned common Indigenous lands; and (d) come from a common ancient settlement.<sup>29</sup> Through its community assembly, an IC can create a constitution, a board of directors, and a corporate entity that must be registered with CONADI in order to validate its status.<sup>30</sup>

23 *Id.*, art. 22.

24 *Id.*, art. 24.

25 *Id.*, art. 37.

26 *Id.*, art. 38.

27 Law No. 19253, Ley Establece Normas Sobre Protección, Fomento, y Desarrollo de Los Indígenas, y Crea la Corporación Nacional de Desarrollo Indígena (Law Establishing Rules on Protection, Promotion and Development of the Indigenous, and Creating the National Indigenous Development Corporation), Sept. 28, 1993 D.O., available at <http://bcn.cl/2f7n5>.

28 *Id.*

29 *Id.*, art. 9.

30 *Id.*, art. 10.

IC lands can be obtained through historical occupation or a variety of formal grants, transfers, and assignments.<sup>31</sup> They may not be purchased, seized, taxed, or acquired by prescription from those outside the IC; nor may the IC lands be leased, loaned, or transferred to third parties.<sup>32</sup> When areas protected for conservation purposes are located within the IC land, the form and scope of the IC participation in the protected areas and their management will be established by mutual agreement with the responsible state entities.<sup>33</sup>

Article 15 of Law 19253 calls for the creation of a land registry for IC lands, with Decree No. 150 (1994) providing regulatory details for that requirement. Decree No. 150 requires a public land registry to be established by CONADI, within which all Indigenous lands will be registered. Divided into four regional registries, it is to contain information on all individual and community parcels, including land titles and grants from the state, the IC informal holdings not yet formalized at the time that Law 19253 was enacted, and land obtained through market transactions. Registered land titles are to include the names of individual owners and the related IC.

However, there is no requirement within Decree No. 150 that individual land held by households be jointly registered in the name of both spouses. Neither Law 19253 nor Decree No. 150 describes the extent to which women are intended to be included and have their rights formalized as individual owners of the IC land, joint owners within a marriage of IC land that is individualized to a household, or members of the IC.<sup>34</sup>

Therefore, IP women face significant challenges to gaining formal recognition of land rights due to three constraints, two of which relate to all IPs and a third that is exclusive to IP women. For a start, a key issue faced by many IPs is that much of the IP land remains formally undeclared, that is, unassigned to IP or communities, and unregistered to ICs. IPs, living on these unregistered lands, are therefore viewed as being “in occupation” of the land. They face a “double land tenure barrier” in their endeavor to participate in ERP and obtain BSP benefits because they must obtain

formal recognition and registration, first as ICs and as individual members of the ICs, and then as individual owners of demarcated IC lands. IP women face an additional constraint: they also contend with social frameworks that often relegate them to secondary rights to land (behind men) and leave them out of land and resource management discussions. As a consequence, it is difficult for them to surmount the regulatory requirements for obtaining IC membership status and individual IP registered land rights (D. Contreras, personal communication, August 11, 2020; G. Soto Nilo, personal communication, August 11, 2021).

Within the context of the governance framework, CONAF and collaborating state agencies published an Information Note that addresses the consultation and participation process for IP during the creation of ENCCR (also covering ERP) (CONAF 2018b). The note describes the regional IP participatory events held in 2016 during which IP attendees learned of the ENCCR program and its components as well as provided input on their needs and concerns linked to how ENCCR and ERP would affect and relate to IP/IC lands. Of primary concern for attendees were the broad effects of climate change on IP land and natural resources, and the prospects of the environmental deterioration of their agricultural and forest lands. The consulted IP called for both mitigation and adaptation measures that fit with their resources and resource uses. Other concerns expressed during consultations included the conservation of native species forests and vegetation; the negative effects of monoculture plantations growing exotic species; the recovery, conservation, and increases in the availability of water resources; the respect for their ancestral customs and traditions; improvements to the governance framework and its implementation; the need for increases to compliance oversight; the creation and increases of locally directed financing, bonuses, incentives, and subsidies that benefit local natural resources; the prevention of forest fires; and the need to increase the number of formalized land rights. This input was used in the creation of the Environmental and Social Management Framework (ESMF). Women attendees at the regional IP consultations were reported to make up 48 percent of all attendees (CONAF 2018b).

31 *Id.*, art. 12.

32 *Id.*, art. 13.

33 *Id.*, arts. 35, 41.

34 Decree No. 150, Fija Reglamento sobre Organización y Funcionamiento del Registro Público de Tierras Indígenas (Regulation on the Organization and Operation of a Public Registry of Indigenous Lands), Mar. 30, 1994, D.O., available at <https://www.bcn.cl/leychile/navegar?idNorma=10080>.

In general, IP women are not involved in IP community or forest governance, and it is a challenge to include them in forestry project planning. Women tend not to be present when CONAF officials interact with ICs and CONAF planning is largely done with men. While women may have been included in early sensitization workshops, they tend to not participate in follow-up initiatives or other workshops.

These realities are in stark contrast with the fact that IP women are heavily involved in forest-related (but non-timber) livelihoods. They make up the largest number of IP involved in NTFP use—food production (mushrooms, fruit, and others), medicines, along with decorative or cultural crafts—that contribute to the rural household economy and improve nutrition. CONADI’s Agenda for Indigenous Women, with its forestry focus for women placed largely on non-timber activities, reflects this circumscription. Also, there is a lack of data on women’s forest-related livelihoods and production activities, which limits the recognition and inclusion of women within larger planning frameworks. Finally, the tendency of men to control land and resource uses (in both IP and non-IP landscapes) is reinforced by an increasing pattern of migration of rural women to urban centers in response to rising demographic pressure on land and forest resources (G. Soto Nilo, personal communication, August 11, 2021; L. Martinez, personal communication, August 11, 2021; G. Bascur, personal communication, August 5, 2020; S. Parada, personal communication, August 4, 2021).

Chile’s governance milieu also contributes to the exclusion of women and IP populations in general from the benefit sharing of the BSP. Chile’s governance framework is viewed by state actors and civil stakeholders as a strict regime that must be literally and uncreatively embraced. It leaves little room for accommodation and inclusion beyond what is expressly prescribed by laws or regulations. Therefore, it is difficult and time-consuming to craft solutions that can surmount regulatory barriers, such as the requirement that the BSP beneficiaries must possess formalized land rights in order to participate in ERP projects and activities (G. Soto Nilo, personal communication, August 11, 2021; G. Bascur, personal communication, August 5, 2020; A. Lopez, personal communication, August 8, 2021; CONADI, 2021).

## FORMALIZATION AND REGISTRATION OF LAND RIGHTS

ERPD, the amended ERP, BSP, and other ERP documents describe the rights of holders who are eligible to participate in the ENCCRV and FCPF ERP program activities and benefit from them. The primary criterion is that holders of land must have unambiguous and formalized registered land rights to participate. BSP identifies the following types of rights holders within the ERP accounting area:

- Individual small forest owners (natural persons holding legal title and working the land directly, including Indigenous rights holders residing within the IC);
- Small group forest owners (including the AC, the IC, the communities living on commonly-owned land resulting from the agrarian reform process who do not qualify as an AC, and dryland communities established under Law No. 2,247);
- Individual and corporate medium forest owners.
- Non-profit organizations; and
- Municipalities.

Data from 1997 and 2007 indicate that 13–19 percent of the land within the categories described above are unregistered or “improperly documented”, and thus would be ineligible to participate in the ENCCRV or ERP programs (CONAF 2016). Using the assumptions on the extent to which land had been regularized (first registration or the reconciliation of ambiguous titles) through 2013, ERP estimates that the percentage of unregistered or improperly documented land holdings should drop to below 10 percent by an unspecified date (CONAF 2016, 2018a). ERP contains no data on the number of women with existing individual or jointly titled land rights, or those likely to be individual or joint occupiers of parcels lacking in formalized land rights.

Overall, there is no centralized national database on the numbers or types of formalized (registered) property rights, including the individual rights of IP land users, the community rights of ICs, the individual rights of other land users, or the group rights of ACs or other groups. There is also no national data on the total number of land parcels held individually or by groups, within or outside of the IP territories, although there have been projections of the total amount of land in Chile that is aligned with and likely to be under the control of IPs/ICs. In addition, there is no

national data on the numbers of formalized and/or informal small forest parcels or parcel holders. In any context, there is no disaggregated national data on the gender of formalized land rights holders or informal land users (G. Bascur, personal communication, August 5, 2020; CONAF 2017).

However, the 2017 ENCCRIV Information Note No. 10 contains parsed parcel data collected within the national database created and managed by the Chilean Internal Revenue Service and within a database compiled by the Chilean Natural Resources Information Center. This data analysis has enabled CONAF to conclude that there is a sufficient surface area within Chile, held by state or private actors, to allow for the implementation of ENCCRIV. The same analysis has also concluded that, while accurate land tenure registration information is fundamental to implementation of ENCCRIV and the distribution of benefits to holders of registered land parcels, more information is needed on the size of parcels and on the total number and owners of registered parcels. The Note makes no mention of women and the extent to which they may be underrepresented within the total number of registered parcels (CONAF 2017).

The large proportion of unregistered or improperly documented land holdings are attributed to the state's failure to require all owners to register their holdings and the state registrars' lack of legal authority to review or verify titles prior to registration. The latter has resulted in "the likelihood of errors, parallel and overlapping registrations" (CONAF 2016, 112). Unrecorded successions and subdivisions are cited as a cause for the unscrutinized errors in title (CONAF 2016, 2017, 2018a).

ERP and amended ERP set out a series of "action measures" to be undertaken by ERP and state actors to remediate a variety of implementation, institutional, and capacity inadequacies so as to bring ERP into closer conformance with FCPF's requirements. One of the action measures (MT.3— "Adjustments for the inclusion of owners with poor legal security of tenure on the land") is to permit land users lacking formalized/reconciled land rights to obtain them. MT.3 has two components that are described in detail in the ERP (2016):

1. Legislative and regulatory changes that would permit an improperly documented owner to participate in ENCCRIV/ERP. The changes will be preceded by a "technical legislative feasibility analysis" and creation

of an "amendment process proposal." ERP cites "international experiences" as providing content and precedents for the needed changes (81).

2. A targeted program to rectify improperly documented titles that would include free legal support and CONAF technical assistance. This program will require prior analysis, design, and legislative action (CONAF 2017).

Both components will be developed during the promulgation of a new Forestry Development Act and modifications to the Law on the Recovery of the Native Forest and Forestry Development (2016–2017) (CONAF 2016, 2018a). The delivery of MT.3's first component—the legal and regulatory amendments—is also projected for completion by end-2025 (CONAF 2017).

ENCCRIV Information Note No. 10 specifically addresses Action Measure MT.3 by establishing annual goals for its second component—"Implementation of the Title Deed Program". The goals call for registering informal holdings within prioritized communities over an eight-year implementation period (2018 through 2025). One hundred titles are to be regularized each year, providing for a total of 800 registrations by end-2025. These registrations will enable rights holders to be eligible to apply for BSP's non-monetary benefits and receive them in the form of REDD+ projects or activities on their newly eligible "small-forest" parcels. However, there is no mention of women, or whether they might be prioritized for the individual, joint, or group registration of rights with regard to this MT.3 component.

Another path for women to obtain ERP benefits (in the absence of formalized land rights) has been conceptually broached by CONAF. This approach would call for the projects awarded with non-monetary BSP benefits to formal land rights holders to also put in place agreements with women's groups to promote or provide suitable livelihoods activities—tourism, NTFP, others—for women that are in keeping with the subsidized REDD+ activities. Still under evaluation, this concept has first to be scrutinized from a legal perspective by the national government (D. Contreras, personal communication, August 11, 2020; G. Soto Nilo, personal communication, August 11, 2021).

ERP also discusses the reasons for not permitting those with informal or customary rights to participate in ENCCRIV/ERP programs. The exclusion is linked to the Chilean civil law's "doctrine of supremacy of law". It states that

custom is only enforceable if legislation refers to it and expressly provides for its enforceability. Informal land rights are not made enforceable in the absence of a positive legal mandate to the contrary. However, the doctrine is seen as inapplicable to Indigenous customary rights because of Chile's agreement to certain international instruments and conventions (including ILO Convention 169) (CONAF 2016, 2017, 2018a).

## COMMUNITY MEMBERSHIP

Formal or informal membership within the community is linked to voice and control of land and forest assets. For purposes of controlling assets, women often lack the voice and opportunities to participate in conversations about asset use and control. Practically speaking, they are often not amongst the members of the community who control the assets.

Although community membership can be defined and promoted by formal laws and rules, social rules and status can undermine it or make it impossible. Essentially, community membership is sometimes nominally provided by formal rules, but *de facto* membership may be denied by social rules and status.

As mentioned above, formal AC membership is reserved for “the holders of rights over the...lands” included with the defined AC area.<sup>35</sup> Women are not expressly referred to in Law No. 5 from a membership perspective, although the inheritance of land rights by surviving spouses presumably carries with it some sort of a membership right because they become “holders of rights over the...lands.” With that said, Law No. 5 provides no gendered distinctions regarding formal or informal membership in an AC, the rights of AC members, the roles of AC members, the makeup of governing bodies, opportunities for formal participation in governing bodies (locally, regionally, or nationally), or opportunities for providing opinions or information to governing bodies. Nonetheless, an AC Community Council, consisting of the legal owners of the group land rights, seems to only include men in almost all instances (D. Contreras, personal communication, August 11, 2020).

<sup>35</sup> *Id.* art. 1.

<sup>36</sup> When describing case study interviews, Fernandez reported that a total of 185 *comuneros* were interviewed of whom 65.9 percent were men and 34.1 percent women. Among the men, 92.6 percent were *jefe de hogar*, while 33.3 percent of the 63 interviewed women were *dueñas de casa* and the remainder (66.7 percent) both *jefe de hogar* and *dueñas de casa*.

Despite these omissions in the law, one extensive historical and current case study of an agricultural commune in *Canela Baja* offers the following observation:

There is a high percentage of people older than 50 years old and a high percentage of women who assume both the roll of *jefe de hogar* (household's breadwinner) and *dueña de casa*, (household's owners). The concept *jefe de hogar* stands normally for breadwinner, but within a patriarchal system this concept is much wider, representing authority and decisions making. However, when the man dies, if there are no adult sons, the woman assumes this role. So, a woman can thus be *jefe de hogar* and *dueña de casa* (household's owner) (Fernandez 2002).<sup>36</sup>

Therefore, at least in some agricultural communities, some women may have a *de facto* voice and control over individual land holdings by virtue of being surviving spouses. Some women may be included within AC community councils. However, *jefe de hogar* and *dueña de casa* status are informal or customary designations. Given this customary status, under the doctrine of the supremacy of law, it would seem doubtful that Chilean women holding this status would be viewed as qualifying landowners under the participation rules set out in ERDP or as “landowners” under the more formal procedures adopted for AC governance.

However, pursuant to Law No. 5, some women may be AC members by virtue of being “holders of [formalized] rights over the lands” and may have a formal AC community membership (and Community Council) status and a wider voice by virtue of that control. However, to the extent that social limitations could restrict women's voices and control, their membership status (and presumed voice and control) could be similarly limited despite their formal rights. With that noted, women with formalized rights within the ACs would, nonetheless, be eligible for ERP benefits and participate in programs.

Community membership within ICs, as established by Law 19253, appears to be extended to women because they meet the criteria set out in Article 9 (as described above). However, as mentioned above, women are not singled out



in the law for inclusion within the various representative or management structures established under the law.

Nonetheless, there are signs that Chilean Indigenous women do have a voice and some level of community participation around such issues as land, forests, and resource livelihood practices. For example, IP women, both individually and through women's civil society organizations (CSOs), have been activists, advocates, and strident communicators during interactions related to IP land, forest takings, and encroachments (Skjævestad 2008). Women in IP communities have traditionally had a voice in the use of the land. In the Mapuche IP communities, historically, women have largely been responsible for passing along information on traditional agricultural practices as well as the planting and harvesting schedules embraced by the communities. Moreover, some young Mapuche women, who have completed university studies, have returned to their IP communities to mix their new knowledge with that of their male and female elders. While they may not have control over land and forest use, they have a voice within the community on land use practices (Parra 2020).

## GOVERNANCE OF COMMON RESOURCES

The governance of common resources largely occurs under the legal regimes established for ACs and ICs. The operations of both regimes are subject to the formal legal frameworks (mentioned above) that govern the collective owners of common resources, along with the customary realities that continue to exist and influence the local governance of these resources. ERPD describes the various formalized land and forest ownership situations that will be relevant to ERP REDD+ projects.

## IV. REGULATIONS OR LAWS RELATED TO THE RIGHTS TO FOREST RESOURCES, INCLUDING TREES AND NON-TIMBER FOREST PRODUCTS

Since 2000, over 72 laws, decrees, resolutions, regulations, and other state enactments have been put in place to govern Chile's forest resources.

Several forestry laws govern forest use in Chile in such a way that individual and collective forest use rights are restricted for purposes of conservation. The current Forest Law, which came into force in 1931, sets out norms to restrict the cutting of trees and shrubs near certain water sources and on slopes exceeding 45 percent; impose rules on the use of fire for purposes of land clearing; and establish regulations regarding the creation of parks and reserves.<sup>37</sup>

Decree 701 of 1974 (as amended), a forestland management regulation, gives state agencies specific legal enforcement and management powers, including the approval, objection, or rejection of management plans, along with the powers to supervise compliance with approved management plans and reforestation duties. The decree further sets out incentives for the reforestation and protection of forest resources, as well as provides for soil rating designations (established by forest engineers) and related restrictions on agricultural uses (plowing, permanent cropping, fruit farming, and livestock grazing). It also provides for tax exemptions and reforestation grants for those whose land uses are restricted. Activities promoted through the grants and other incentives include reforestation on fragile and degraded soils, soil remediation, the establishment of wind shelters, along with first pruning and thinning by small forest owners.<sup>38</sup> The use of incentives, aimed at securing compliance with forest management plans, remained in effect until 2012 (CONAF 2016).

37 Decree No. 4363, Aprueba Texto Definitivo de la Ley de Bosques (Approving the Final Text of the Forest Law), Jun. 30, 1931, available at <http://bcn.cl/2iwik>.

38 Decree Law No. 701, Fija Regimen Legal de los Terrenos Forestales o Preferentemente Aptos para la Forestación, y establece normas de foment sobre la materia (Forest Management Regulations ), Oct. 15, 1974, D.O., available at <http://bcn.cl/2g8ao>.

## V. SOCIAL AND ENVIRONMENTAL SITUATION ANALYSIS

The 2008 Native Forest Recovery Act defines and regulates the use of native forests as well as promotes sustainable forest management. It took 15 years to be developed, before it was finally approved by the parliament in 2007. Before and after its enactment, the government negotiated with key stakeholders (private sector, small- and medium-sized forest owners, civil society, and others) to forge a preservation compromise acceptable to the broad constituency. The law's features include some provisions for forest conversion (limited to 25 percent of designated areas having less than 45-degree slopes), offer incentives for sustainable forest management to small- and medium-sized owners. Overall, the law seeks to create a protection regime that encourages forest recovery and improvements.<sup>39</sup>

In the 2019 Gender Development Index (GDI), Chile is ranked as category 2 out of 5—indicating medium–high gender equality, in terms of the country's Human Development Index (HDI) achievements. The Gender Inequality Index (GII, 2019) that captures gender-based inequalities in reproductive health, empowerment, and economic activity ranked Chile at 55 out of 162 countries, with a GII value of 0.247 (UNDP, 2020a).<sup>40</sup> Table 1 provides a brief overview of the social and environmental context for women.

**Table 1. Statistics illustrating the social and environmental context for women in Chile.**

Education	Workforce	Political Participation	GBV	Social Status
77.8% of adult women obtained at least some secondary level of education, compared to 88.1 percent of males (HDI 2019).	Female participation in the labor market was 51.8%, compared to 74.0 percent for men (UNDP 2020a).	22.7% of the parliamentary seats were held by women (UNDP 2020a).	The 2019 lifetime likelihood of violence against women in Chile was 6.7%, (OECD 2019). <sup>41</sup>	For every 100,000 live births, 13.0 women die from pregnancy-related causes (WHO 2019).
	There is a 12.5% difference between male and female median wages (expressed as a share of male wages) (OECD 2020).	The proportion of elected positions held by women in legislative/deliberative bodies of local government was 24.9% (UNDP 2020b); the participation of women in ministerial positions was 35% (UNDP 2020b).		Adolescent birth rate was 41.1 births per 1,000 women aged 15–19 (UNDP 2020a)
	19.2% of women had no income in 2017; in rural areas, 22.0% are without income (UNDP 2020a).			

39 Law No. 20283, Ley Sobre Recuperación del Bosque Nativo y Fomento Forestal (Law on the Recovery of Native Forests and Forest Promotion, Jul. 11, 2008, D.O., available at <http://bcn.cl/2fcmf>).

40 In GII, reproductive health is measured by maternal mortality and adolescent birth rates; empowerment is measured by the share of parliamentary seats held by women and attainment in secondary and higher education by each gender; and economic activity is measured by the labor market participation rate of women and men (GDI 2019).

41 Org. for Econ. Coop. and Dev. *Violence Against Women*, OECD Data, n.d., <https://data.oecd.org/inequality/violence-against-women.htm>.

## VI. WOMEN'S ORGANIZATIONS

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Women's organizations in Chile exist both within state structures and the civil society. They address a variety of women-related issues, including land and natural resource uses and rights. There are both national women's organizations and local women-focused CSOs.

The ENCCRIV development, the ERP development and ERPD drafting process, along with the ERP Strategic Environmental and Social Assessment (SESA) consultation process, operated against a goal of 30 percent of all mixed-group consultation attendees being women. Women-only groups were also organized and consulted. A 2015 ERP consultation in Maule Region focused (among other topics) on agriculture and livestock raising. During the consultation, it was noted that the focus groups with the greatest attendance and some of the most salient inputs were those held for women and women's organizations (CONAF 2016). See Appendix 2 for further detailed descriptions of women's organizations.

## VII. CLIMATE CHANGE PROGRAMMING AND GENDER INCLUSION

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Several past climate- and forest-related projects in Chile have featured gender-related design and delivery considerations that may provide indications of the prospective attention to be paid to women during ERP implementation.

The *Sustainable Land Management Project* (a Global Environment Facility Trust Fund project), implemented by the World Bank between 2013 and 2020, involved the development of a national framework for sustainable land management to combat land degradation, the incorporation of biodiversity into national policies, and the protection of forest carbon assets. The project was successful in adopting ENCCRIV as the national Sustainable Land Management (SLM) framework and instituting an early warning system for monitoring national changes in native forest vegetation. A number of SLM pilot projects were undertaken: they led to 20,764 ha of land being put under SLM practices, 315 farm-level SLM plans adopted, and a total of 1,728 ben-

eficiaries reached. Project gender provisions consisted of efforts to include women as direct beneficiaries of the project. The actual number of women involved in the SLM pilot projects exceeded the initial target of 25 percent to eventually constitute 43 percent of all beneficiaries. Project capacity building programs covered 615 women (246 percent of the target), with the project incorporating special gender training for all groups (Di Persio 2019).

The *Integrated National Monitoring and Assessment System on Forest Ecosystems Project* (a Global Environment Facility Trust Fund project), implemented by FAO between 2015 and 2019, developed and implemented a forest carbon stocks and biodiversity monitoring and assessment system in support of the National Greenhouse Gases Inventory. The project also supported the development of policies, regulations, and sustainable forest management practices incorporating REDD+ and biodiversity conservation in forest ecosystems. The project created an institutional coordination framework and capacity development component to support the implementation of the monitoring and assessment system, as well as provided support for the development of local, regional, and national policies and regulations. Gender provisions included a focus on the gender balance among project beneficiaries (including capacity building recipients and the involvement of both women and men in forest ecosystem monitoring activities and project pilots). The project promoted the participation of women in project training and information dissemination activities and developed specific information contents and materials targeting women from different sectors (businesswomen and women working in NGOs, CSOs, academia, and public institutions) (Di Persio 2019).

The *Calculation/Confirmation of REDD+ Results-Based Payments (RBP) for the Period 2014–2016* activities are central to the implementation of future ERP components and the overall implementation of Chile's wider ENCCRIV strategy objectives. Implemented by FAO and falling under the GCF umbrella, the project approach has and will be used to ascertain subsequent-period RBP and confirm compliance with stakeholder participation commitments and benefit distribution plans. Attention was given to gender in the planning and delivery of the REDD+ projects that contributed to ER. As with the current ERP, this project established a target of 30 percent participation by women in ER activities performed during the 2014–2016 reporting period. During the ER program formulation, regional work-

shops, involving 1,266 people, were held, of whom 36.4 percent were women. Citizen consultations were conducted with a participation level of 41 percent women. A national workshop involving 125 people, of whom 31 percent were women, was also held. Gender-related issues raised during the consultations and workshops included the collection of data disaggregated by sex and the generation of employment opportunities for women. The 2014–2016 gender-related performance record and issues raised by women should inform the calculations of RBP for subsequent ERP reporting periods (Di Persio 2019).

## VIII. ANALYSIS AND RECOMMENDATIONS FOR GENDER INCLUSION

### ANALYSIS

Chilean women generally lack the formalized land rights that would give them entrée to ERP participation as individual or group landowners. Land in Chile is usually registered only to men, with men typically being the voices of households and communities regarding land and resource use. This exclusion holds for both IP and non-IP rural women.

Furthermore, women lack jointly registered land rights within the marriage because Chile's default matrimonial property regime provides that husbands have the authority to hold title to and administer the property of the family and their spouses.<sup>42</sup> While spouses can opt for alternative matrimonial property regimes before or during marriage, data from 2006 to 2014 show that 55 percent of spouses accept the default regime at the time of their marriage (Vásquez Duque 2018). Furthermore, women may also lack formal membership within ACs because, as spouses without joint ownership, they are not formally included among the owners of community rural land, who individually or commonly “occupy, exploit or cultivate it.”<sup>43</sup> Additionally, women lack the rights as individuals (to a lesser degree) because a certain portion of all land rights remain informal or irregular throughout the country. All these realities may prevent women from participating in ERP and having the voice and

right to provide input that comes with formal participation as landowners.

Similarly, women's rights and status within ICs are also uncertain because the formalization of IC land has been slow, and they are not prioritized in the formalization of individual IP rights within formalized ICs. In addition, even when the land is formalized for ICs, women may not be deemed formal IC members to benefit from this formalization process.

ERP and its constituent documentation (ERPD, BSP, and others) mention the prospect of CONAF undertaking a “cross-cutting action measure” (MT.3) to address the issue of prospective beneficiaries lacking registered land rights. MT.3 has two prongs: (1) amending the legal and regulatory regime to permit informal landowners to participate as ERP beneficiaries and (2) facilitating the registration of the rights of prospective beneficiaries to enable their BSP participation. The former calls for a “technical-regulatory feasibility analysis and an amendment proposal process” in support of the possible changes. The latter calls for regularizing the land rights of 100 landowners over an eight-year period to enable 800 beneficiaries to be included in ERP benefits.

### RECOMMENDATIONS

There are several areas where follow-on actions may help to improve women's inclusion and participation in the ERP and as beneficiaries.

**Effects of marital property regimes.** CONAF could focus on how a husband's right to administer the property of the family and his spouse (whether it is jointly registered in the names of spouses or even individually registered in the name of a wife) is intended to interact with ERP's requirement that only legally registered property owners can obtain ERP benefits. Perhaps, CONAF could take special measures to permit a married woman to exercise her voice and provide opinions on agricultural or forestland use or obtain the ERP benefits for forest preservation activities on her family's land (administered by her husband).

CONAF's research would also be useful to determine how ERP might incorporate a new woman rights holder within the ERP components upon the death of her spouse or di-

42 Cód. Civ. arts. 1715 et seq., art. 1749 (1857, 2000).

43 Law No. 5 (1968) (as amended by Law No. 19233 of 1993).

voce. Finally, where spouses have agreed to a separation of property marital regime, research would be useful to determine how ERP would work in the case of a household in which each spouse has rights to their own assets and can freely manage and dispose of the assets at any time.

**Prospects for Action Measure MT.3.** Supporting CONAF in furthering both prongs of MT.3 could result in positive outcomes for women.

On the prospect of amending the legal and regulatory regime to permit informal landowners (and particularly women) to participate as ERP beneficiaries, CONAF might benefit from legal support in parsing the governance framework to determine the extent of reforms needed and then in drafting the needed regulatory amendments.

Overall, CONAF might find support to be useful with regard to its task of undertaking the technical-regulatory feasibility analysis and an amendment proposal process.

Concerning the facilitation of the registration of the rights of prospective beneficiaries to enable their BSP participation, CONAF may benefit from support in detailed planning for rights formalization within the context of ERP, and particularly, with how women might be included in the rights formalization process. CONAF could explore the prospect of subsidies expressly targeted at women or households possessing the potential for joint titling. There are precedents for this: targeting was included to a small degree within Decree Law 541, which similarly facilitated the formalization of the individual holdings of ACs. Within ACs, formalized rights are key to formal membership. The parallel sensitization of men and other community members during the formalization of MT.3 could improve the likelihood for women to gain the voice and the potential for control over the newly formalized land rights (both individual and joint) by tempering contrary customary tendencies.

CONAF might also be provided with support linked to the related suggestion (mentioned above) that women (in the absence of formalized land rights) might be able to benefit from awarded REDD+ projects through women's groups that focus on promoting or securing suitable alternative livelihood activities in keeping with the subsidized REDD+ activities. To advance this endeavor, women's groups could be identified and sensitized, as well as their capacity to participate, negotiate, and advocate for their rights and

interests, and undertake alternative livelihood activities, developed. Tools, such as model agreements and documentation templates, could be created for women and women's groups to use. Examples and models could be evaluated and shared to demonstrate the effectiveness and potential of alternative livelihood activities and determine the types of ongoing support for women needed to sustain new livelihood approaches.

**Extent of women's formal property rights.** Data on formalized and informal land rights in Chile is incomplete, while data covering the extent to which women possess formalized property rights is scarce. CONAF (and its sister agencies collecting or generating land rights information) could be supported in understanding the importance of land-related data that is disaggregated by sex and improving its collection. Data could also be disaggregated during the second prong of MT.3, thereby providing an approach for collecting such data on a broader scale in the future. CONAF could also be supported in analyzing available data to determine the extent to which women's names can be included on registered land documentation within ERP accounting areas. If no data exists, planning could be done for data collection within broader land registration efforts undertaken by sister agencies.

**Women's land rights and membership within ICs and ACs.** CONAF could assess the extent to which women are likely, or intended by law or custom, to be included as individual owners of IC land or as joint owners within a marriage of IC land individualized to a household (particularly for land within the ERP accounting area). Similarly, CONAF could determine whether women are intended, under the law or treated as AC members, when they hold individual parcels within the AC or holders of joint rights within a marriage in cases where the marriage community holds individual rights to AC land. If women are not intended to be formalized rights holders, CONAF could explore ways for the inclusion of women in discussions on whether the AC individual or group rights holders should attempt to secure BSP benefits and how the land use changes stemming from the linked REDD+ activities might affect women's livelihoods. This exploration might also be linked to the idea of having women benefit from BSP projects as semi-formal beneficiaries through women's groups.

**Quality of women's participation.** Women's "active and effective participation" is called for in all aspects of ERP by ERPD, the amended ERPD, SESA, and BSP (3<sup>rd</sup> and 4<sup>th</sup> editions). One metric of that participation is an ERP requirement that women be represented at a level of 30 percent of all engaged stakeholders. Women's participation in benefit sharing is also an ERP objective. BSP's non-monetary benefits are to be split evenly between forest-related projects funded in response to proposals submitted by participating landowners and forest-related projects designed by CONAF and the Regional Councils on Climate Change (CORECC). Projects will be defined through the development of a National Technical Proposal and Regional Technical Proposals that address a number of "variables," including the Gender Variable and the Indigenous Variable (mentioned above). The Gender Variable, defined as enhancing the role of women in forest development, have the following criteria: (1) involving women as beneficiaries "in a specific, distinctive manner" as well as (2) involving women and women's organizations as plot owners (CONAF, 2020, p. 17). In short, the variable addresses participation.

CONAF could renew and revitalize its emphasis on women's participation across ERP. Research has shown that women's participation is higher during the initial ERP sensitization and workshop activities, and that CONAF now has a more difficult time in obtaining women's participation, as the dialog focuses more specifically on forest resources and activities at the local level. The voices CONAF hears are largely those of men.

One key to increasing participation might be through women's groups. New women's groups might be considered, along with the provision of long-term capacity building and support of those groups. CONAF could be supported in communicating with both women and men about the importance of women's participation. CONAF might find it useful to have help in developing the messaging and tools for dissemination, with messaging content crafted specifically for both men and women. It could be useful to share any tools or approaches on improving women's participation or communication with women with all the state actors involved in ERP implementation at the national, regional, and local levels.

**Women's Organizations.** Women's organizations in Chile are certainly aware of ENCRRV and ERP. IP women's organizations may have a higher awareness than general women's organizations. However, it does not appear that REDD+ and women's forest-related livelihoods have the highest thematic priority for women's organizations. Similarly, the Ministry of Women and Gender Equity does not appear to place a thematic priority on women's participation in ERP and its impacts. Therefore, it might be useful for CONAF to expand its outreach to national and regional women's groups and the Ministry to further educate them on the scope and impact of ERP and seek their cooperation in securing women's participation. CONAF could provide tools to these organizations and underwrite information campaigns for distribution through them. "Twinning" opportunities could place CONAF specialists within the organizations and the Ministry for meaningful durations so that the staff from both types of entities could be sensitized to opportunities provided by ERP and the challenges facing CONAF in securing women's participation.

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## INTERVIEWS CONDUCTED

Interviewee Name	Title and Organization	Date	Communication Mode
Guido Aguilera Bascur	Head of the National Unit for Indigenous and Social Affairs, CONAF	August 5, 2021	Zoom Interview
Daniel Contreras	Head of Social and Environmental Safeguards, CONAF	August 11, 2021	Zoom Interview; Email
Alicia Lopez	Environmental Specialist, FAO	August 8, 2021	Zoom Interview
Laura Martinez	Gender Focal Point, Gender and Climate Change Management, CONAF	August 11, 2021	Zoom Interview
Stavros Papageorgiou	Environmental Specialist, World Bank	August 4, 2021	Zoom Interview
Soledad Parada	Gender Advisor, UN FAO	August 4, 2021	Zoom Interview
Gabriela Soto Nilo	National REDD+ Program Coordinator, UNDP	August 11, 2021	Zoom Interview



## APPENDIX 2: WOMEN'S ORGANIZATIONS

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**The National Women's Service** (*Servicio Nacional de la Mujer—SERNAM*) is a Chilean state agency created in 1991. SERNAM is a part of the Ministry of Planning and Cooperation. Its Gender Studies and Training Division carries out research needed to support the creation of the gender criteria and indicators that are incorporated into state policies, programs, evaluations, and planning processes. This division also prepares and tracks gender indicators and conducts the training of public officials in gender matters. SERNAM has established a program to aid female heads of household and create a national network of information centers that focus on women's rights.<sup>44</sup> However, SERNAM has been criticized because its top appointees are not women linked to the feminist community. Moreover, its endorsement of legislative initiatives is restricted in correspondence with which of the parties are in power. An example of this limitation is its failure in 2000 to support a bill for legalizing divorce. The state has also been criticized for underfunding SERNAM, thus forcing it to obtain supplemental funding from nongovernmental organizations (NGOs) and other international organizations (Council on Hemispheric Affairs 2008).

**The National Rural and Indigenous Women's Association** (*Asociación Nacional de Mujeres Rurales e Indígenas—ANAMURI*) is a non-profit and autonomous Chilean civil society organization (CSO) that is open only to women. Founded in 1998, its mission is to organize and promote the development of rural and Indigenous Chilean women by stimulating and supporting their organization. In 2016, ANAMURI had approximately 6,800 partners. ANAMURI's primary focus is food sovereignty and the recognition of the important role that women have played in agricultural production since ancestral times. ANAMURI is a network affiliate of La Via Campesina—an international movement that defends women's rights and promotes gender equality (among other activities) (ANAMURI n.d.).

**The Center for Women Development Studies** (*Centro de Estudios para el Desarrollo de la Mujer—CEDEM*) is a women-led Chilean NGO established in 1980. CEDEM focuses on strengthening democracy, fighting social exclusion, transforming gender relations, generating knowledge, and encouraging citizen participation in public debates. It was originally created as an organization called the Program for Studies and Capacity Building of Rural and Indigenous Women. CEDEM's women-focused programmatic areas include governance, political advocacy, higher education, corporate social responsibility, and social affairs (CEDEM n.d.).

**ComunidadMujer** is a Chilean CSO that promotes the rights of women and contributes to the creation and discussion of public and corporate policies for greater equity between men and women. Founded in 2002, it aims to promote women's leadership, opportunities, and progress in women's full participation in the public space. Its programmatic areas include education, labor, political participation, research, along with advocacy on government programs and legislative changes. It also promotes public-private partnerships and collaborations with international organizations for the integration of the gender approach in public and corporate policies. It undertakes consultancies at companies as well as public and private institutions on topics promoting gender-focused change and cultural transformation that are founded on the value of diversity and inclusion (ComunidadMujer n.d.).

**La Coordinadora Feminista 8M** deems itself Chile's largest feminist advocacy group. It focuses on a variety of women's issues, including legal abortion, an end to domestic violence, and greater equality in the workplace (La Coordinadora Feminista 8M n.d.).

44 Law No. 19023, Crea el Servicio Nacional de la Mujer [Creation of the National Women's Service], Dec. 26, 1990, D.O.), available at <https://www.bcn.cl/leychile/navegar?idNorma=30390>.

# Ghana

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## I. INTRODUCTION

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Shaped around the Ghana Cocoa Forest REDD+ Programme (GCFRP), Ghana's Forest Carbon Partnership Facility (FCPF) Emissions Reduction Program (ERP) began the program implementation throughout the 2017–2021 period. GCFRP, the first program to be developed and implemented under ERP, is expected to test many of Ghana's REDD+ systems, processes, policies, and safeguards. They include ERP's measurement, reporting, and verification (MRV) component; the Feedback and Grievance Redress Mechanism (FGRM); the Environmental and Social Management Framework (ESMF); the safeguards monitoring and mitigation approach; along with broad reforms of tree tenure and benefit sharing (Forestry Commission [FC] 2017). Follow-on ERP components are anticipated for future years: they include the Ghana Shea Landscape of the Northern Savanna Woodland REDD+ Programme, the Emission Reduction Program for the Transition Zone, the Emission Reduction Program for the Togo Plateau, and the Emission Reduction Program for the Coastal Mangrove. The Emissions Reduction Program Document (ERPD) also anticipates a program component that will focus on policy and legislative reforms linked to tree tenure and carbon rights (FC 2016, 2017).

Located in the southern third of the country, the ERP accounting area covers 5.92 million hectares (ha) and spans portions of 92 administrative districts and five administrative regions (the Eastern Region, the Central Region, the Ashanti Region, the Western Region, and the Brong-Ahafo Region). Approximately 2.4 million ha of the ERP area (within the Western Region and part of the Brong-Ahafo Region) fall within Ghana's Forest Investment Programme (FIP) area.<sup>1</sup> The Forestry Commission of Ghana, in conjunction with its aligned and cross-staffed Climate Change Directorate (CCD), is the manager of ERP (FC 2017).

Over 1.27 million ha of the ERP area (21 percent) are gazetted as forest reserves and national parks, both of which are managed by FC and commonly referred to as the “on-reserve” portion of the ERP accounting area. The majority of the forests within

<sup>1</sup> The FIP fund is situated within the Strategic Climate Fund, which is part of the Climate Investment Funds (CIF).

the accounting area are located within this on-reserve area. The “off-reserve” ERP area includes all the land outside of protected areas and covers approximately 4.65 million ha. The off-reserve area is made up of settlements and related infrastructure, agricultural lands (including tree crops), fallow lands, and forest patches or high biomass agroforests. About 78 percent of the land within the ERP area is held under customary tenure, while 20 percent and two percent are publicly and privately owned, respectively (FC 2017, 2020).

The total population of the ERP area is estimated to be just over 12 million people, with an almost even urban-rural divide. In comparison, Ghana’s national population (as of the 2010 census) was about 24.6 million people, with an average annual growth rate of 2.5 percent; between 2000 and 2010, its population density increased from 79 to 103 people per square km. Kumasi, the capital of the Ashanti Region, is the largest urban center in Ghana, with a population of approximately two million people. The accounting area has a slightly higher ratio of women to men, and approximately one-third to one-half of the inhabitants of the districts within the ERP area have migrated from elsewhere in the country.

The farming of cocoa, other tree crops (for example, oil palm, rubber, and citrus), and food crops constitutes the main agricultural activity in the rural areas. There are no national statistics available on the total area under cocoa farming within the off-reserve ERP area (FC 2017).

The authors of ERPD list these stakeholders (a broader group than the ERP beneficiaries) within the ERP area:

- **Landowners:** They comprise traditional authorities (the chiefs and their representatives) and family landowners who control most of the land in the ERP area.
- **Land users:** Predominantly smallholders, including immigrant farmers, they enjoy secure user rights to the land, once they have cleared the land and established their farms. This security is enhanced by the planting of tree crops.
- **Forestry Commission (FC):** FC is an entity that possesses the legal mandate to manage Ghana’s natural resources on behalf of the people, including its timber and forest resources. It has the legal right and responsibility to manage Ghana’s forest reserves and national parks, as well as timber trees in the off-reserve

landscape. FC/CCD, along with its REDD+ Secretariat, operates the GhREDD+ website (<https://reddsis.fc-ghana.org/index.php>). This website contains the most recent program documents, including information on GCFRP and the broader ERP consultations that occurred during the Readiness Phase.

- **Other government entities:** Many government agencies and institutions are active within the ERP area, including local District Assemblies, agricultural extension services, and regulatory bodies. Although they do not own land or resources, they play key roles in determining land use and supporting decision-making and information sharing.
- **Minority populations:** Minority groups are largely made up of farming immigrants (known as “strangers” at the community level); as such, they do not hold the same rights as historical, or ethnically or clan-related community members. However, the traditional leaders of the minority migrant groups are often regarded and formally recognized by land-owning chiefs as leaders of the immigrant groups. At the same time, there are some minority pastoralist groups (such as the Fulani) who are often associated with conflicts; these groups are deemed in ERPD to be in need of special attention as stakeholders, based on the goal of conflict reduction.
- **Private sector:** Agricultural companies and service providers play an important role, by virtue of their investments and roles in the cultivation, purchase, extension, training, and/or monitoring of cocoa, oil palm, other tree crops, or food crops.
- **Women:** Women “...are integral members of all of the above groups, [and] the role of women in the social structure, and the nature of their relationships and access to resources means that they represent a unique stakeholder group that has distinct roles in land-use decision-making processes, resolution of disputes, and traditional governance systems...[W]omen serve as Queen Mothers and are responsible for selecting the Chiefs, [and] they are farmers and forest users who typically operate with more limited financial and labor resources, [and] they are often the main decision makers in the household, if not the head of the household, and in addition to farming are responsible for maintaining the household” (FC 2017, 37).

Ghana has one of the highest deforestation rates in Africa—3.2 percent annually. ERPD cites four pathways that have led to deforestation and forest degradation in Ghana (in order of magnitude): 1) uncontrolled agricultural expansion; 2) the overharvesting and illegal harvesting of wood; 3) population and development pressures; along with 4) mining and mineral exploitation. Of the total area deforested for agriculture, 66 percent is attributable to food crop cultivation and 27 percent to cocoa expansion, making cocoa the single most important commodity driver of deforestation in the ERP area. The remaining seven percent is attributable to citrus, oil palm, and rubber expansion. ERPD further notes that the establishment of a cocoa farm is typically preceded by the planting of food crops as initial shade cover. Therefore, it is likely that a significant proportion of food crop land becomes cocoa land (FC 2017).

ERP designers have designated a number of Hotspot Intervention Areas (HIAs) as priority locations for early concentrated interventions at the farm-to-landscape level, including for GCFRP. These HIAs were identified in light of significant deforestation trends and drivers, their levels of cocoa yields and production, the presence and commitment of key stakeholders (including private-sector cocoa companies and nongovernmental organizations [NGOs]), along with population levels.

In particular, six HIAs were selected for early focus. They are linked to the five key activities to be undertaken during ERP: 1) institutional coordination and MRV; 2) landscape planning within HIAs; 3) the implementation of a climate-smart cocoa program to increase yields and discourage deforestation; 4) risk management and finance; as well as 5) legislative and policy reforms.

At the same time, these HIAs are to be used as geographical and administrative community forest use management entities. They will be organized and formalized through the institution of a duly constituted, multi-tiered governance structure that also includes Sub-HIA bodies, with the responsibility of creating land and forest resource use plans. In addition to the HIAs as implementation vehicles, Community Resources Management Areas (CREMAs) have also been formed as community-based implementation entities. One or more CREMAs may be aligned with a single HIA. These features are described in more detail below (FC 2017).

2 Constitution, 1992, as amended through 1996, art. 17.

ERP intends to generate two types of benefits for distribution to beneficiaries:

1. **Carbon benefits:** This type of benefits comprises monetary or non-monetary goods, services, or other benefits, related to performance-based payments received under the contractual agreement with the Carbon Fund by the Government of Ghana (GoG) or funded with such received payments.
2. **Non-carbon benefits:** They refer to in-kind or financial benefits produced by, or in relation to, the implementation or operation of the ERP, other than those directly derived from the performance-based payments for ERs (FC 2020).

Beneficiary groups are set out below:

- Registered farmer groups;
- Traditional authorities;
- Communities;
- Government agencies (FC, Cocoa Board, along with metropolitan, municipal, and district assemblies); and
- Private-sector cocoa companies.

Of the above groups, all but the cocoa companies will be eligible to receive both types of benefits; these companies will receive non-carbon benefits only.

## II. NATIONAL LEGAL AND POLICY FRAMEWORK ON THE RIGHTS OF WOMEN

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From a gender perspective, Ghana's 1992 Constitution serves as a progressive benchmark, providing that women have a right to legal equality, and that they will not be discriminated against on the basis of their gender.<sup>2</sup> Specifically, Article 12 provides that women are entitled to all fundamental human rights and freedoms provided for under the Constitution. In terms of matrimonial property regime, Article 22 stipulates that a spouse will not be deprived of a reasonable portion of the estate of the other spouse, regardless of whether the spouse who has died has made a will. It also states that spouses will have equal access to property jointly acquired during marriage, and that these assets will be distributed equitably between the spouses

upon the dissolution of the marriage. Furthermore, Article 36 calls upon the State to guarantee the ownership of property and the right of inheritance, as well as ensure the full integration of women into Ghana's mainstream economic development. Finally, Article 27 broadly guarantees women equal rights to training and promotion.

Ghana's 2015 National Gender Policy is aimed at "mainstreaming gender equality and women's empowerment into Ghana's development efforts."<sup>3</sup> This national strategy points to the Ministry of Food and Agriculture's (MOFA) Gender and Agricultural Development Strategy (GADS) and commits to supporting GADS' gender-mainstreaming processes. GADS' objectives include enhancing the institutional capacity of MOFA to address gender issues; promoting the collection and use of sex- and age-disaggregated data; ameliorating extension service delivery for women; boosting the access of women farmers to financial services; improving women's access to information on land rights; advancing the development and promotion of appropriate technologies in agriculture; along with supporting the diversification and development of new processed products. Finally, the national policy points to the World Bank/GoG's Land Administration Project (LAP) II project as aiming to increase women's ownership of land (in addition to user rights) (Ministry of Gender, Children, and Social Protection [MGCSP] 2015; MOFA 2015).

Ghana's National REDD+ Strategy provides that women's rights as landowners and land users will be recognized in the implementation of national REDD+ activities. Under the strategy, Ghana's REDD+ approach has embraced a "safeguards approach" that prioritizes the need for an accountable and participatory process for women. The strategy aims to ensure that both women and men will be fully recognized as REDD+ stakeholders and that both genders will have equal access to forest resources and equitable shares of REDD+ benefits, along with their use and control. To uphold this commitment, the strategy acknowledges the need to develop women's capacity to fully and effectively participate in, contribute to, and benefit from REDD+ initiatives. The prioritization of women's representation in REDD+ institutions and programs are particularly important, given women's historical absence from decision-making processes (FC 2016).

The strategy is also committed to minimizing or addressing the negative impacts of REDD+ activities on women by taking into consideration the different roles women and men play in reducing deforestation and degradation, as well as how specific interventions impact them differently. Moreover, it seeks to identify and address gender inequalities existing within the context of REDD+ by providing targeted programs that can enhance the positive impacts on women's livelihoods and their socioeconomic well-being (FC 2016).

On behalf of ERP, and in cooperation with FC and other state actors participating in the ERP implementation, the International Union for Conservation of Nature (IUCN) prepared a Gender Analysis and Action Plan (GAAP) in 2018. The GAAP preparation process included three workshops, held in April 2017 within the High Forest Zone across three regions (Eastern, Brong-Ahafo, and Western). All three locations were within the HIAs designated for inclusion within the ERP. Workshop participants included women and men farmers, cocoa growers, Queen Mothers and Chiefs, NGOs, as well as representatives from FC and other government entities.

GAAP provides a rich descriptive discussion of women's agricultural and forest livelihoods activities; applicable policies, laws, and regulations; along with the formal and informal tenure regimes affecting women's resource uses and rights. It describes with credibility the drivers of deforestation and degradation in the ERP accounting area, identifies linked gender issues, and points out possible entry points for ERP gender-focused activities (including within GCFRP). Furthermore, it also depicts challenges specific to REDD+ at the local level and categorizes them under key areas: participation, social and livelihood issues, policy and cross-sectoral cohesion, along with institutional issues. Based upon the workshop results, the analysis done by IUCN, along with the ERP and ERP frameworks, GAAP has identified a number of gender entry points, related actions, and possible indicators of success or failure (IUCN 2018).

Although the 2018 GAAP is considered today as the fundamental framework for mainstreaming gender within ERP, a number of women-focused plans, statements, and activities had already been undertaken during the ERP Read-

3 Ghana Ministry of Gender, Children, and Social Protection, National Gender Policy, 2015, at 4, available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103987/126660/F-515436150/GHA103987.pdf>.

ness Phase. For example, a 2012 gender mainstreaming roadmap, created by FC and IUCN, also describes the detailed activities that need to be accomplished in order to address the women's needs linked to the ERP REDD+ implementation. This roadmap, while not as detailed as the 2018 GAAP, sets out pertinent gender considerations and risks, as well as the alignment of gender-specific objectives with actions that should be implemented in order to address the risks effectively (FC 2012). In addition, the National Gender Sub-Working Group (GSWG) was created, along with the formulation and implementation of capacity-building activities targeted at GSWG participants and collaborators (women's organizations, local women, and FC gender desk officers). GSWG is tasked within GAAP with building the capacity of participants and collaborators such that they can actively participate in the MRV process.

With the start of GCFRP's landscape planning and actual implementation through the HIAs and CREMAs, GAAP has called for direct activities that reach individual women and groups of women within the HIAs and CREMAs, including those ensuring equal access for women and men to engage with the GCFRP resources and benefits. MRV metrics are to cover the number of women and men receiving GCFRP benefits; the number of women and men who experience changes in access to resources; the percentage changes in income; and documented qualitative benefits and co-benefits. Other GAAP activities highlighted as important during landscape implementation include the identification and collation of best practices for gender-sensitive benefit-sharing mechanisms and delivery frameworks, as well as the selection of pilot communities to apply and assess these practices. GAAP has also mandated the start of dialogs with traditional authorities/local government institutions on women's rights issues pertinent to the forest sector and the development of their institutional capacity to support conflict resolution at the local level (IUCN 2018).

However, it does not appear that GCFRP has gone sufficiently far along in its implementation of the individual women-focused activities described above, according to a June 2021 ERP/GCFRP Monitoring Report (covering the final six months of 2019). With its focus on early GCFRP organizational and framing activities in anticipation of establishing and formalizing several HIAs, the report shows that the primary gender-focused accomplishment was the inclusion of six women on the 13-member Hotspot

Management Board (HMB) established for the Juaboso/Bia HIA. The report has forecast that additional HMBs will be established in 2021. At the same time, the report also states that a number of CREMA Executive Committees (CECs) have been set up during the reporting period, including 16 committees in the Juaboso-Bia, Asutifi-Asunfo, and Kakum HIAs, along with 12 Sub-HIA Executive Committees in the same HIAs. The number of women participants within these committees was not noted in the Monitoring Report (FCPF 2021).

The distribution of ERP benefits also remains in the planning stage, with the Benefit Sharing Plan (BSP) having been certified as final in March 2020. According to the June 2021 Monitoring Report, a number of national and sub-national BSP stakeholder workshops, trainings, and engagements had been planned for the final quarter of 2020, and that BSP capacity-building events for landscape stakeholders were slated for 2021 in all four of the initial GCFRP HIAs. These events aim to cover roles and responsibilities regarding the HIA framework agreements, benefit-sharing approaches, and the benefit fund flow mechanism. Participants in these events are slated to include institutional representatives from HMB, HIA, FC, the Cocoa Board, the district government, civil society organizations (CSOs), traditional authorities, and the private sector. Attendance by individual affected community members/stakeholders does not appear to be anticipated. In the report's annex addressing BSP, no mention was made regarding the inclusion of women during the 2021 BSP sensitization events (FCPF 2021).

FC and the associated CCD (staffed by FC employees, including several gender specialists) reported on a training conducted in 2018 on the safeguards for REDD+ regional and district Safeguards Focal Persons (SFPs). SFPs are mainly FC Assistant Regional Managers, Assistant District Managers, and Assistant National Park Managers. SFPs are expected to observe GCFRP implementation and impacts at the local level, as well as pay close attention to safeguards implementation, as necessary. The safeguards identified include both the FCPF Readiness Fund's common approach to environmental and social safeguards as well as the International Finance Corporation's (IFC) Performance Standards (for activities receiving the Green Climate Fund support). Adherence to both of these standards would serve to buttress the gender mainstreaming approach set out in ERP GAAP.

A key finding in the training report is the lack of representation of women in the training sessions; for example, there were no women participants during the first day of training. The training report affirms that the underrepresentation of women should not be permitted to occur again and that women's participation in the SFP ranks would be increased (FC 2021c).

A 2021 FC/CCD report evaluated the effectiveness of the follow-up on the 2018 safeguards training to determine the status of the safeguards system and the SFPs. Qualitative fieldwork, undertaken in support of that evaluation, found that many of the SFPs who had kept their SFP status had retained their training knowledge on the safeguard system and FC's climate change, forestry, and ERP activities. However, many SFPs had left their positions, or were otherwise no longer holding their SFP status.

The report concluded that new SFPs needed to be trained. As well, a number of the remaining SFPs had forgotten about the FGRM (the grievance mechanism); as such, the report noted that sensitization and training in this area needs to be renewed with the remaining and new SFP. Overall, the ERP and GCFRP rollouts at the local level have not been as rapid as the district-level SFP training; in general, ERP implementation at the local level has lagged behind the institutional capacity building at the district level (FC 2021b).

During an interview, an Assistant Safeguard/Gender/FGRM Officer from FC's CCD reported that GAAP continues to be implemented with the start of GCFRP at the local level. She verified that GSWG is monitoring implementation; however, she did not explain how the working group monitors implementation or what MRV information is used in its monitoring of GAAP implementation, while pointing out that GSWG has not convened recently (R. Donkor, personal communication, August 11, 2021).

According to the interviewee, the safeguards teams now include women amongst their ranks, although the GhREDD+ FC/CCD website does not provide information on the teams' composition or whether women members have been trained in safeguards monitoring (FC 2021a). When asked if FC's staffing levels at the local level hinder GAAP implementation, she said that while there is always a need for local staff, capacity building at the local level is taking place to augment the FC staff. Collaborators at

the local level, providing support to local implementation and supplementing FC staffing at the local level, include district assembly representatives, local CSOs, and Cocoa Board local representatives (R. Donkor, personal communication, August 11, 2021).

A primary challenge in mainstreaming gender at the local level is the need to improve the training of men and women beyond a basic level, as well as having sufficient personnel and resources to build alternative livelihoods through detailed, in-person interactions with individual women on livelihoods activities (R. Donkor, personal communication, August 11, 2021). GAAP confirms this conclusion when it notes that participants at GAAP consultation workshops called for intensive training for women on alternative livelihoods, along with financial support for alternative entrepreneurial livelihood paths for women (IUCN 2018).

Yet another critical challenge is the level of women's participation. According to the FC officer, women's ability to participate and express opinions on GCFRP and other REDD+ implementations reflects the extent to which they have a voice on land use and rights. Women in the south of Ghana have stronger land and other resource rights than those in the north of Ghana. With this marginally greater opportunity to participate in community resource discussions comes a greater opportunity to take part in REDD+ activities and inform them. Generally, however, the FC officer reported that women are reluctant to speak out about land and resource use across Ghana and that individually tailored support is needed to improve their participation (R. Donkor, personal communication, August 11, 2021).

### III. LEGAL FRAMEWORK FOR WOMEN'S LAND TENURE AND FOREST MANAGEMENT

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#### OVERVIEW OF LAND TENURE

As mentioned above, Ghana's 1992 Constitution provides that women have a right to legal equality, and will not be discriminated against on the basis of their gender. From a land perspective, it is important to stress that Article 22 provides that a spouse will not be deprived of a reasonable portion of the estate of the other spouse, whether or not that spouse dies without having made a will. It also stipulates that spouses will have equal access to property jointly acquired during marriage, and that these assets will be distributed equitably between the spouses upon the dissolution of the marriage. Finally, Article 22 calls upon the Ghanaian parliament to enact legislation that brings these Constitutional protections for women into effect "as soon as practicable." This mandate has yet to be fulfilled. While Article 36 of the constitution provides that the State guarantees the ownership of property and the right of inheritance, there are no provisions within the reviewed laws or regulations to expressly reflect the guarantee provided by Article 36, from the perspective of women's land and inheritance rights.<sup>4</sup>

ERPD has expressly called for the quick passage of the Wildlife Resources Management Bill (WRMB) (first drafted and proposed in 2014), which it deems essential to the overall success of the program, because several key provisions in the bill "are important for increasing communities' rights to benefit from their natural resources." The ERPD authors consider this legislation to be "critical...for implementing the programme on the ground in many locations." The draft bill provides for the creation of CREMAs that will play a central role in the implementation of ERP. CREMAs will help to involve communities in the management of forest and wildlife resources (ERPD, 2017). FC has begun to facilitate the creation of CREMAs, but they do not yet appear to be provided for under the national law because the Bill has not yet been passed by the Parliament.<sup>5</sup>

WRMB mentions women once, calling for "...when possible..." the inclusion of "...one member of a women's group..." when forming Protected Area Management Advisory Boards (art. 12). These advisory boards are to be composed of 7–13 members. It is unclear from ERPD as to the function of the advisory boards, although they may be the equivalent of the HMBs of HIAs (as described in ERPD): they have similar functional duties as the advisory boards mentioned in WRMB. CREMAs seem to be a subset of HIAs, and indeed, FC reported that several CREMAs may be established within a single HIA, if a smaller organizational entity is warranted (R. Donkor, personal communication, August 11, 2021). The provisions within WRMB that address the creation and duties of CREMAs do not mention women.<sup>6</sup>

Since the publication of all FCPF Ghana ERP documents, Ghana's Parliament has passed a new Land Act with the President's assent. Coming into force at end-2020, the Land Act covers both individual rights and common/community/collective rights. With over 280 articles, the new law was intended to consolidate and harmonize the content of many of the pre-existing laws on land and land administration. The Land Act also introduces several reforms, including provisions on land registration, electronic conveyancing, and the formalization of land rights in the name of women. Article 280 presages extensive rulemaking by listing over 20 topical areas that should be a focus for follow-on regulations, including sustainable land management, land registration, transactions in customary lands, compulsory acquisition, the allocation of public lands, and large-scale land acquisitions.

Moreover, Article 282 lists 13 ERPreviously enacted acts that have been repealed by virtue of the passage of the Land Act. The same article provides that regulations, by-laws, orders, and other rules, created to implement the repealed acts, will remain valid and in effect until revoked. Such an approach seems destined to create confusion, if the necessary and mandated rule-making is not timely.<sup>7</sup>

The 2020 Land Act has several provisions that affect women's uses of both individual and common/collective land as well as their rights to them. For example, Article 11 renders void any customary practice relating to individually or

4 Constitution, 1992, as amended through 1996.

5 Wildlife Resources Management Bill, 6th Parliament, 2014.

6 *Id.*

7 Land Act (Act 1036), 2002, art. 282.



communally held land that discriminates against women. Other provisions of note in the new law are described below within the discussions of individual land and common/community land.

The Land Act formalizes, and to some extent, modifies Ghana's customary tenure regimes. Article 1 sets out the six permissible interests in land and the attendant hierarchy:

1. *Allodial title* is the “ultimate interest in land.” It can be held by the State, a paramount customary leader (stool or skin), or a customarily influential clan or family. It may have been acquired through compulsory acquisition (by the State), conquest, “pioneer discovery and settlement,” gift, purchase, or contract. Allodial title is absolute, and not subject to any superior title or claim (but for the state's compulsory acquisition in conformance with the law).<sup>8</sup>
2. A *common law freehold* is generally on par with a fee simple land right and arises from a transaction done under the rule of law (formal or informal). It is perpetual, although it is subject to the interests of the State or the stool, skin, clan, or family holding the allodial title. It is held free of obligations to any other person or entity, and it is inheritable and alienable. Since August 22, 1969, the acquisition of a common law freehold from stool or skin lands has been prohibited.<sup>9</sup>
3. A *customary law freehold* arises from transactions under customary law. It is an “absolute” interest in land, but is subject to the jurisdictional and cultural rights of the stool, skin, clan, or family holding the allodial title. Individuals or groups of persons can acquire such an interest through purchasing from the stools/skins or families/clans holding the allodial title. Of perpetual duration, it can be acquired through gift or inheritance, without the consent of, or payment, to the allodial title holder. As of August 22, 1969, the acquisition of a customary law freehold by non-citizens from stool or skin lands is prohibited.<sup>10</sup>
4. A *usufructuary interest* is the most ubiquitous interest and it can be acquired through several channels. First, it can be acquired by a subject or member of a stool/

skin or family/clan holding the allodial title by the development of an “unappropriated portion” of the land held by the stool/skin or family/clan. Second, it can be acquired through an express grant from the stool/skin or family/clan. Third, it can be acquired by one or more “non-Indigenes” (those who are not members of the customary group) or their descendants by way of settlement for at least 50 years, with the permission of the holder of the allodial title. All three usufructuary interests are inheritable and alienable, although alienation to a person, who is not a member of the customary group, requires the permission of the stool/skin or family/clan, and must be accompanied by “the performance of established customary obligations.”<sup>11</sup>

5. A *leasehold interest* can be created when the holder of the allodial title, a customary law freehold, a common law freehold, or a usufructuary interest conveys to another person an interest in land for a specified term, subject to terms and conditions. A lessee may sublet or assign the leasehold interest to others.<sup>12</sup>
6. A *customary tenancy* is an interest in land that is created by an agreement between a stool/skin or family/clan holding the allodial title, a person holding a customary law freehold, or a person holding a usufructuary interest and another party. The resulting tenancy may require the payment of rent or the sharing of farm produce.<sup>13</sup>

The rights regime set out in the Land Act reflects the extent to which customary land rights have played (and continue to play) a central role in Ghana's land holdings and relations. The stool/skin and family/clan governance structure is reflected institutionally through the National House of Chiefs, which provides a forum for customary leaders to convene and discuss matters tied to customary governance across Ghana. A 2006 commentary (Yiri 2006) from the then-chair of the Stool/Skin Lands Committee characterized the customary land rights hierarchy in this way:

- The Paramount Chief—Allodial Owner;
- The Divisional Chief—Customary Freehold;
- The Sub-Chief—Customary Freehold; and
- The Indigenes (subjects)—Usufruct Interest.

8 *Id.*, art. 2.

9 *Id.*, art. 4.

10 *Id.*, art. 3.

11 *Id.*, art. 5.

12 *Id.*, art. 6.

13 *Id.*, art. 7.

This characterization largely mirrors the hierarchy of rights set out in the Land Act. Most individual and group rights, held within community agricultural and forest areas by Indigene/subject community members, are customary usufructuary interests that remain unformalized. Over 80 percent of the land within the ERP accounting area is held subject to customary regimes (FC 2017).

## INDIVIDUALIZED LAND

While the allodial title is held by the highest-situated customary leaders on behalf of communities and groups, most land within Ghana is held “individually,” with an individual or single family holding the usufructuary interest. The customary system of rights almost always places that interest with men. Under the customary schemes, women are not deemed to be rights holders; essentially, their access to land is mainly through the male members of the family (Food and Agriculture Organization [FAO] 2010). While the new Land Act contains provisions for making women formalized rights holders of some land through the land registration process, this path to rights does not include “lineage land”<sup>14</sup>. This land, which falls under the customary umbrella of an allodial interest holder, is passed customarily to men or sons through patrilineal or matrilineal succession.

One path to formalized rights for women covers freehold land acquired jointly through a transaction during marriage. Article 97 provides the details on what is needed to make an application for a formalized usufructuary interest (along with other registrable interests). The article stipulates that an application for the registration of land jointly acquired for valuable consideration (through a conveyance) during marriage will presume that the spouses are jointly applying for registration, unless the conveyance states otherwise; essentially, the registration of a joint holding will be presumed. Moreover, under the article, when only one of the spouses is put forth as the applicant, it will be presumed that the applying spouse intends to apply on behalf of both

spouses, unless stated otherwise, that is, the registration of a joint right will also be presumed.

In the case of Article 125, regarding the description of the contents of the land certificate generated by the land registrar upon registration, the law similarly provides that a certificate for land acquired for valuable consideration during marriage will include the names of both spouses. Even if only one of the spouse’s names is included on the certificate, that spouse will be presumed to be holding the land on behalf of, and in trust for, the other spouse.<sup>15</sup>

The Land Act also places restrictions on a single spouse in transferring land acquired jointly during marriage for valuable consideration, by prohibiting that spouse from selling, leasing, or otherwise transferring the land, without the written consent of the other spouse.<sup>16</sup> The Act goes on to address the transfer of such an interest upon the death of a spouse. It calls on the land registrar to delete the name of the deceased spouse (“joint proprietor”) upon receiving proof of death from the land register and leaving the surviving spouse as the sole rights holder.<sup>17</sup>

As mentioned, the Land Act does not provide that “lineage land” will become the joint property of spouses by virtue of the land being brought into the marriage by a male spouse or being inherited by a male spouse during the marriage. Also as discussed below, inheritance and succession laws are not favorable to women in cases where land has been brought to the marriage by one spouse (usually a man), or inherited by one spouse during marriage (usually a man).

Nonetheless, the Intestate Succession Act (ISA) of 1985 does provide some protection for goods/chattels and a house when the spouses are in a registered marriage.<sup>18</sup> The Act specifies that a surviving spouse and children will inherit household goods and chattel (including furniture and household appliances, simple agricultural equipment, motor vehicles, and household livestock).<sup>19</sup> If the deceased’s estate includes a house, the spouse and children will inherit it as tenants-in-common. If the deceased has

14 Lineage land is land acquired (almost always by men), by virtue of a status or membership within a lineage of customary inheritance. In both patrilineal and matrilineal land inheritance regimes, it is almost always men who inherit lineage land.

15 *Id.*, arts. 97 and 125.

16 *Id.*, art. 47.

17 *Id.*, art. 173.

18 Intestate Succession Law. PNDCL 111, 1985.

19 *Id.*, §3.

left multiple houses, the spouse and children are entitled to only one house.<sup>20</sup> Section 5 of the Act addresses the remainder of the estate when the deceased is survived by a spouse and children, by providing that three-sixteenths will pass to the surviving spouse, nine-sixteenths to the surviving child/children, one-eighth to the surviving parent, and one-eighth in accordance with customary law. When the deceased is survived by a spouse only, Section 6 provides that the estate will pass one-half to the surviving spouse, one-fourth to the surviving parent, and one-fourth in accordance with customary law. Where there is no surviving parent, one-half of the remainder of the estate will be allocated in accordance with customary law.<sup>21</sup> Amendments to the law (1991) make it an offense to eject a spouse or child from the matrimonial home prior to the distribution of an estate (even in the event that the deceased had a will).<sup>22</sup>

At the same time, it is important to point out that this Act also does not apply to lineage property—the classification of the majority of land in Ghana. As such, the Act provides no protection for the claims of a spouse or children to the deceased’s land holdings acquired through lineage (Chronic Poverty Research Centre [CPRC] 2011).

Customary marriages are common in Ghana, and few are registered when they occur, even though the Customary Marriage and Divorce Law (CMDL) of 1985 (as amended) permits either of the spouses in a customary marriage to individually register the marriage at any time during the marriage. Polygamous customary marriages can also be registered, although few are aware of this possibility (CPRC 2011).<sup>23</sup> Section 15 of the amended CMDL permits the application of ISA to registered customary marriages and the Act can further be extended to unregistered customary marriages, if a court finds that a customary law marriage had been contracted validly between a deceased and surviving spouse.<sup>24</sup> Therefore, the limited protections provided to widows under ISA can be extended to many customary marriages.

Despite these protections, there is currently no provision under the Ghanaian marital law for the joint ownership of

property by spouses who are not part of the same lineage, including legally married individuals. During the marriage, husbands and wives retain separately any property they owned prior to the marriage. As well, the spouses separately own, as individuals, any property acquired by one of them during marriage (CPRC 2011).

Under the law, women have equal rights to acquire and possess rights to land they have acquired on their own or jointly with another person or spouse. Nonetheless, women’s access to dispute resolution mechanisms is limited, and women may have a difficult time showing that the land was acquired jointly during the course of a customary marriage or consensual union (Yirrah 2019; N.A. Yirrah, personal communication, July 7, 2021). It is not uncommon for women to lose their land and crops after a divorce or upon the death of their husbands (United States Agency for International Development [USAID] 2013).

The Wills Act of 1971 provides that the drafting of a will permits a testator to distribute an estate contrary to ISA or customary law. The Act permits a court to make reasonable provision out of the estate for a spouse, father, mother, or child under 18 years, if the court finds that the will does not contain reasonable provision for their maintenance, and that this neglect causes hardship.<sup>25</sup>

Though 20 percent of women aged between 15 and 49 years live in a polygamous union (CPRC 2011), neither the Wills Act nor other pertinent laws address the reality of polygamy. Where the deceased has multiple wives, the courts typically grant the household chattels and one house to each of his wives and children as tenants-in-common. A further complication is created by ISA’s definition of a spouse, which does not include cohabiting partners who are not married.

None of the information gathered through desk reviews or interviews indicates that ERP or GCFRP have determined how to counter the pervasive reach of customary practices preventing women from holding significant land rights or obtaining such rights for lineage land held by a husband.

20 *Id.*, §4.

21 *Id.*, §5, 6.

22 *Id.*, §17.

23 Customary Marriage and Divorce (Registration) Law (PNDCL 112), 1985.

24 *Id.*, §15.

25 Wills Act (Act 360), 1971.

GAAP includes a “gender entry point and action” calling for advocacy toward the “implementation of legal frameworks that fully secure the rights and interests of women as well as marginalized groups, and ensur[ing] they benefit equitably from the resources” influenced or provided by ERP. The completion indicator for this action is that “[n]ational and subnational legal frameworks [have been] drafted and approved” (Table 4, 43). Desk research and interviews yielded no information on ERP or GAAP advocacy efforts that would prompt the national government to make the needed reforms (FC 2017; IUCN 2018).

## COMMON/COLLECTIVE LAND

Article 19 of the Land Act provides that communities can “set aside or recognize one or more areas of land within a community for common use by the members of that community.”<sup>26</sup> Article 281 defines a community as a group of families and individuals living in a “territorial area” that have common interests in...agriculture, communal land use and protection of land...whether cultivated...or forests.”<sup>27</sup> Under the law, the community can exclude those who are not members of the community from the land.

Based on Article 19, common land is to be used in accordance with customary law and uses as well as the management plan prepared by the community. The community has a duty to comply with the rules set out in the management plan and the laws related to environmental protection. It cannot transfer the rights of occupation or use of resources to others in exchange for a fee. Disputes are to be resolved through community consensus or by a dispute settlement body established by the community.<sup>28</sup> As of now, there is little evidence that there is extensive common use of land by communities in Ghana (that is, the collective farming of large community plots or the collective growing and harvesting of cocoa on large community cocoa tree holdings).

Until the passage of the 2020 Land Act, Ghana lacked a mechanism for formally registering collective or common properties (Wily 2018). With the enactment of the Act, a path has now been provided for the registration of community customary properties that are not subject to allodi-

al titles held by chiefs as trustees or individual customary freeholds allocated to individuals.

Notwithstanding this path to community rights formalization, it is uncertain whether communities would, in fact, register land in their names and collectively manage the use of that land. Common or community land use historically occurs, by virtue of community members having a voice as subjects of a stool/skin or clan/family. The current reality is that customary chiefs tend to make the decisions about customary land uses and land allocation for development. Some observers believe there should be a “reformation” in the customary norms and rules to allow community members to have a stronger voice in customary land management decisions (Ansah and Chigbu, 2020). Until then, and given that the Land Act was enacted only in December 2020, it is doubtful that many, if any, communities have registered community land in their names.

One CSO/NGO interviewee affirmed that she was familiar with the prospects for formalized community land holdings created by Article 19 of the Land Act. According to her, she did not know how likely it was that communities would undertake community land formalization, and had not yet seen or heard of any evidence that this had been done. She herself had no knowledge of how communities would go about registering commonly used land or even individually allocated land managed by communities. (N.A. Yirrah, personal communication, July 7, 2021). It remains unclear if this path might be a vehicle for communities to participate in ERP activities and benefits. The extent to which women might be able to participate in community decision-making under these new formalization arrangements is also uncertain.

## INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

Ghana is a diverse and ethnically complex country with more than 90 ethnicities. Ghana’s 2010 Population and Housing Census categorized the country’s population under eight ethnic groups: Akan (47.5 percent), Mole Dagbani (16.6 percent), Ewe (13.9 percent), Ga-Dangme (7.4.1 percent), Gurma (5.7 percent), Guan (3.7 percent), Grusi

26 Land Act (Act 1036), art. 19, 2020.

27 *Id.*, art. 281.

28 *Id.*, art. 19.

(2.5 percent), Mande (1.1 percent), and others (1.4 percent) who comprise foreign ethnic groups and foreigners (Ghana Statistical Service 2010). While these ethnic communities have traditional homelands, significant internal migration has resulted in substantial ethnic intermingling throughout the country (Minority Rights Group International [MRGI] n.d.).

For Ghana's minority groups and those outside the recognized chieftaincy system, access to land and political power are ongoing concerns (MRGI n.d.). While these minority populations are predominantly in the Northern region, and therefore outside the ERP area, sociocultural diversity within the ERP area is significant. The Akan meta-ethnic group is the largest ethnic-linguistic group in the ERP area, with over two-thirds of the population speaking an Akan dialect (for example, Twi, Ashanti, Fante, and Bono) and belonging to one of many Akan sub-groups (for example, Ashanti, Akuapem, Akyem, Akwamu, Ahanta, Bono, Fante, Nzema, Kwahu, and Sefwi). Seven other populations are represented in significant numbers in the ERP area and come from other parts of the country. They include the Ewes, Ga-Dangbes, Mole-Dagbanis, Gurmas, Guans, Grusi, and Mandi. The influx has been supported in large part by welcoming traditional systems that have allowed for immigrant settlers and even encouraged them to develop and occupy forestland. As a result, farming and forest-fringe communities in the ERP area are ethnically diverse.

There are no Indigenous Populations (IP) within the accounting area (FC 2017). However, there are minority populations who could face barriers to participation in ERP activities because they are outside the chieftaincy system. For instance, the Fulani, a pastoralist group present in Ghana for over a century, can be found across the country. Despite their longstanding presence in the country, the Fulani are not one of the recognized ethnic groups in Ghana and their exact numbers are not known. Fulani pastoralists, excluded from socio-political participation and access to resources, encounter barriers to full citizenship, voting rights, and other modes of political participation (Bukari and Schareika 2015).

Despite the lack of IP, the sociocultural diversity within the ERP area carries with it significant variations in customary land regimes. For example, Ghana includes both patrilineal

and matrilineal customary land and inheritance regimes that revolve around lineages. Within the patrilineal communities, land is passed from father to son. In matrilineal communities, land is passed from maternal uncles to their nephews. Under both regimes, land always vests with males. The majority of Ghanaians practice patrilineal inheritance. However, the Akan sub-groups within the ERP area practice matrilineal inheritance. The ERPD and other ERP documents take note of the variations in the customary land regimes and adapt their programs to them (FC 2017; USAID 2013).

## COMMUNITY MEMBERSHIP

The Land Act provisions on the community registration of land are skeletal in their treatment of how a community group is formed, how it should be governed, and who should be permitted to consider themselves a member of the community. Specifically, there is no mention of whether all individuals, including some or all women, within the geographic area to be registered, should be deemed members of the community.

While Article 19 does stipulate that the community sets up a committee "comprising persons with the relevant skills" to prepare the required land use management plan, women are not likely to be able to participate in practice. Given women's socioeconomic status, literacy rates, and the limited opportunity given to them to voice their opinions within larger groups dominated by men, they are probably unlikely to possess (or be perceived to possess) the "relevant skills" among community members.<sup>29</sup>

Moreover, women are also not likely to be considered members of the community for the purposes of discussing needs and priorities linked to land or forest use, from a customary perspective. Under Ghana's customary land tenure systems, community-level decisions on land use and allocation are made by the chiefs or family heads on behalf of the community. Under both the matrilineal and patrilineal regimes, men preside over the allocation and use of family and community resources (FAO 2010; USAID 2013). In fact, there are examples of allodial interest holders making land use decisions and negotiating land deals with private sector actors to the exclusion of all affected community members (Blocher 2006; Larson 2012).

29 *Id.*

Both ERP and GAAP expressly acknowledge that women are not equally involved in forest management or commodity production along the various resource value chains related to REDD+ activities. GAAP lists many challenges, in the areas of women's participation, engagement, livelihood improvements, land and resource rights, along with community and institutional voice.

The women-focused actions, set out in GAAP, are clearly focused on helping women to achieve a greater "community membership status" under ERP than they would normally attain within the reality of exclusive and limiting customary practices. For example, within the contexts of GCFRP and climate-smart cocoa production, GAAP calls for identifying key gender issues in relation to cocoa production systems and the different roles women play in them; increasing women's participation in cocoa production decision-making platforms; pinpointing sources and channels of information and communication and using them to allow for the participation of rural women; along with creating mechanisms for providing equal access, use, control, and benefits to women, in relation to information, tools, equipment, technology, and resources needed for increasing yields and benefits, and monitoring all these aspects. By obtaining information about women and their cocoa livelihoods, as well as enabling it, along with solicited input from the women, to shape GCFRP and climate-smart cocoa production (including alternative livelihoods paths) in which their communities will participate, all these actions would likely improve the women's "community membership status" (IUCN 2018).

However, it does not appear that the implementation of GCFRP or GAAP have yet progressed to the point where these actions are being undertaken. FC reporting does not yet address them, nor does GhREDD contain MRV reporting that reflects these sorts of locally implemented activities. No GCFRP work plan as yet seems to contain these kinds of activities as specific tasks to be implemented according to established schedules.

## GOVERNANCE OF COMMON RESOURCES

CREMAs are central to ERP implementation. Institutionally, a CREMA serves as a community-based organization that is built upon existing community decision-making structures, with an executive body and a constitution guiding the activities and regulations of the CREMA. A CREMA covers a geographically defined area that includes one or more communities who have agreed to manage natural resources in a sustainable manner (often by engaging in REDD+ activities). Over 35 CREMAs have been established in Ghana, including within the ERP accounting area. They were formed without the express legal authorization provided by the yet-to-be-enacted WRMB (drafted in 2014). However, as the 2012 Forest and Wildlife Policy does address CREMAs, implementers see this policy as providing a sufficient formal mandate for their existence.<sup>30</sup>

Similarly, HIAs (organized on a larger territorial scale and home to a number of separate CREMAs) will be key entities during ERP implementation. HIAs are designed based on the CREMA structure. Both HIAs and CREMAs will operate pursuant to land use plans that preclude illegal land use practices; as such, they will result in the establishment of local rules that ban activities related to illegal logging, mining, and/or bush fires. Importantly, with the adoption of the related land use plans, HIAs and CREMAs will receive certificates of devolution from GoG to authorize the community-based management of the natural resources. This allows the members of each CREMA to define the ERP's local benefit-sharing frameworks, with oversight by the Forest Commission. A number of NGOs and international organizations, including IUCN, have experience with chartering CREMAs within Ghana (FC2017, 2020). The necessary experience and expertise is thus available at the local level to properly set up CREMAs.

From the standpoint of women's participation, ERP acknowledges that there may be challenges in equity in this area. It notes the following: "...it is possible that groups who tend to carry less 'power' within society (e.g., marginalized groups) such as women, children and migrants could feel that their interests are not adequately reflected in the HIA decision-making process, in the implementation of activities or in the sharing of benefits" (FC 2017, 205).

30 Ministry of Lands and Natural Resources, 2012, Ghana Forest and Wildlife Policy.

ERP's FGRM provides a mechanism for receiving and resolving REDD+ related grievances arising within the ERP accounting area from affected individuals or communities. Complainants could presumably include women who believe the gender mainstreaming (in relation to the governance of common resources) is proving ineffective or that women have suffered a particular loss or damages by virtue of that fault. Therefore, FGRM could provide an avenue to address and resolve these and other concerns and grievances. In fact, in its establishment of FGRM, Ghana's National REDD+ Secretariat has sought to make the FGRM consultation and resulting complaint process as gender sensitive as possible. This is in accordance with the suggestion in ERPD that the overall FGRM process should also "be transparent, impartial, safe, timely, accessible, and provide special attention to women, the poor and marginalized and/or vulnerable groups" (FC 2017, 205).

While the GhREDD+ website includes a section dedicated to FGRM and contains an online form for lodging a complaint, along with a hotline number, there is no MRV information on the use of FGRM to date or a description of the nature of complaints fielded and resolved thus far. Such information would be particularly useful to determine whether women have accessed FGRM, and if so, whether they have taken issue with the extent to which gender has, or has not been, made a meaningful part of common resource governance in general or GCFRP in particular.

Furthermore, the FGRM website does not describe how FGRM has been shaped and promoted at the local level to accommodate women and support their use of its grievance processes. MRV data on women's use of FGRM to date would be useful for gauging the overall effectiveness of GAAP and ERP's overall gender mainstreaming. As well, it would be useful to know more about the specific FGRM features that are intended to make the complaint process accessible to women and minimize the social barriers that otherwise make it difficult for women to speak out about their concerns, needs, and complaints (FC 2021a).

WRMB, in its treatment of CREMAs, provides no guidance or requirements for women's participation within CREMA governance structures, or the solicitation of input from women during the preparation of land and resource use plans.<sup>31</sup> A 2014 manual for creating HIAs and the sub-situated CREMAs does provide guidance for integrating wom-

en in the development, governance, and management at all levels, noting the central role that women play in achieving sustainable natural resource management and agriculture. However, the manual provides no details for how, and to what extent, women are to be included.

## TREATMENT OF WOMEN'S LAND AND RESOURCE RIGHTS IN THE ERP'S GAAP

ERP's GAAP repeatedly recognizes and affirms the problematic land and resource rights situation for women in Ghana. According to GAAP, women are disadvantaged and treated unequally in their land uses and rights under both the patrilineal and matrilineal systems. GAAP highlights that women not only do not have rights to lineage land, but also lack the voice and control in shaping its use. It plainly points out that the community-level governance bodies with authority over land are made up of traditional leaders and family heads—a situation that virtually excludes women from participation. Plots of land allocated to women tend to be smaller and less productive than the land managed by male relatives, thereby impacting overall yields and constraining women's productivity.

In view of this inequity, GAAP has called for improved legal frameworks that fully secure the rights and interests of women. Moreover, it has also advocated for the judiciary to be sensitized on women's rights issues and the courts to support the elimination of customary practices limiting women's land rights and voice on land and resource use (IUCN 2018).

Nonetheless, given that the 2020 Land Act revisions would not entirely resolve the inequality and disadvantages faced by women, and very few, if any, of the 2020 revisions have been implemented in any event, it seems that legal and regulatory reforms may not be the path to improving ERP participation for women. There is also no indication from the MRV reporting that the GAAP recommendation concerning the sensitization of Ghana's judiciary to the lack of women's land rights has been undertaken. Based on these shortcomings, it would be a missed opportunity not to use the ERP as leverage for improving the legal and regulatory governance framework (N.A. Yirrah, personal communication, July 7, 2021).

31 Wildlife Resources Management Bill, 6<sup>th</sup> Parliament (Ghana), 2014.

## IV. REGULATIONS OR LAWS RELATED TO THE RIGHTS TO FOREST RESOURCES, INCLUDING TREES AND NON-TIMBER FOREST PRODUCTS (NTFPS)

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Ghana has many laws and regulations related to the rights to forest resources.<sup>32</sup> The forestry laws are augmented by a collection of environmental and wildlife laws. One observer notes that, "...even though emerging initiatives under climate change and environmental services may hold enormous economic incentives for forest-owning communities, Ghana has a long way to go in ensuring that such opportunities benefit ordinary people. Tenure issues are the most difficult to deal with in the context of Ghana, because of the complex nature of the system due to a mix of statutory and customary laws" (Marfo et al. 2012, 170). Another observer, commenting on Ghana's formal and customary legal and regulatory structure, along with the prospect of CREMAs being used to manage community forest use, notes that, "...[i]nitiatives such as the CREMA, which may have the potential to strengthen forest governance, needs [sic] to be promoted and implemented with caution. Otherwise, these interventions are likely to perpetuate existing inequalities in decision-making processes regarding access to forest and land resources and hinder pro-poor outcomes" (Baruah 2017, 380).

In sampling Ghana's forest laws and regulations, there are no references to women within the context of forest resources, the rights to those resources, or the use or management of trees, timber, or non-timber forest resources. Similarly, in the proposed or enacted laws addressing HIAs, CREMAs, or community rights to land or natural resources, no mention is made of how women might be able to participate in establishing or governing the community groups or associations used to manage forest resources.<sup>33</sup>

32 Visit this link for a partial list of Ghana's forestry laws: <http://www.fao.org/faolex/country-profiles/en/> (follow "Ghana" hyperlink; then follow the "see more" hyperlink under the "Forestry" heading), available at <https://tinyurl.com/33p9d8yw>.

33 See for example, the Timber Resource Management Act (Act 547), 1997; the Timber Resources Management (Amendment) Act (No. 617), 2002; the Manuals of Procedure for Forest Resource Management Planning in the High Forest Zone Of Ghana (prepared to assist the staff of the Forest Service in their duties as custodians of the forest reserves of the country and management roles for the off-reserve forest resources), 1998; and the Forestry Commission Act (Act No. 571), 1999.



## V. SOCIAL AND ENVIRONMENTAL SITUATION ANALYSIS

In the 2019 Gender Development Index (GDI), Ghana was placed under Category 4 out of 5, where countries are divided into five groups by absolute deviation from gender parity in Human Development Index (HDI) values. Essentially, Group 1 comprises countries with high equality in HDI achievements between women and men (absolute deviation of less than 2.5 percent), while Group 5 consists of countries with low equality in HDI achievements between women and men (absolute deviation from gender parity of more than 10 percent).

Furthermore, the Gender Inequality Index (GII) of 2019 indicated that Ghana had a GII value of 0.538, ranking it 135 out of 162 countries. GII reflects gender-based inequalities in terms of three dimensions: reproductive health, empowerment, and economic activity. Table 1 illustrates some gender differences.

**Table 1. Statistics illustrating the social and environmental context for women in Ghana.**

Education	Workforce	Political Participation	Gender-based violence (GBV)	Social Status
55.7% of adult women aged 25 and older have some secondary-level education, compared to 71.6% of males in 2019 (UNDP 2020).	Female participation in the labor market is 63.6%, compared to 71.9% for males in 2019 (UNDP 2020).	13.1% of parliamentary seats in Ghana were held by women in 2019 (UNDP 2020).	In 2019, 24.4% of females, 15 and older, experienced physical and/or sexual violence from an intimate partner (UNDP 2020).	For every 100,000 live births, 308 women in Ghana died from pregnancy-related causes in 2019 (UNDP 2020).
	In 2007, women produced 70% of food crops. Ninety percent of women were self-employed or worked as unpaid family labor in farming, agricultural enterprises, or small-scale manufacturing, with only a minority as independent farmers [[AQ: time frame??]] (FAO 2020).			

## VI. WOMEN'S ORGANIZATIONS

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Ghanaian women's organizations exist both within state structures and civil society. There are both national women's organizations and local women-focused CSOs. These women-focused organizations (both state-sponsored and civil society) address a variety of women-related issues, including land and natural resource uses and rights. Several CSOs, with broader gender-focused programmatic missions, focus on women's land rights and livelihoods. A CSO, serving as a network leader for Ghana's CSO community, is concerned with climate change and REDD+, as well as their corresponding impacts, on women, men, and communities.

A description of a sampling of each type of organization is described in Annex 2. Information obtained during several interviews with organization representatives is also included.

## VII. CLIMATE CHANGE PROGRAMMING AND GENDER INCLUSION

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Several land-, climate-, and forest-related projects in Ghana have shown that gender-related design and delivery considerations provide indications of the prospective attention that would be paid to women during the ERP implementation.

The **Dedicated Grant Mechanism (DGM) for Local Communities Project**, covering the 2017–2022 period, is focused on strengthening the knowledge and practices of targeted local communities in REDD+ processes and sustainable forest management. Its implementation of community mobilization, awareness, capacity building, and climate-smart interventions was done by taking into account gender considerations.

The preliminary project assessment has demonstrated some success in the provision of equal access to project activities for males and females. Intermediate monitoring results showed that 57 percent of female and 67 percent of male respondents from DGM communities had heard of the DGM project. About half of all beneficiaries who partici-

pated in basic training were women. Regarding the awarding and implementation of the grants for climate-smart interventions, intermediate results showed that women and men were approximately equally likely to receive individual grants: approximately 50–60 percent of grant recipients were women (Di Persio 2019).

The **Ghana Forest Investment Programme's Enhancing Natural Forest and Agroforest Landscapes Project** covers the 2015–2023 period. The project's focus is on financing country-specific efforts to address the underlying causes of deforestation and forest degradation as well as promoting sustainable forest management. The project includes three work areas: reducing pressure on natural forests through an integrated landscape approach; enhancing carbon stocks by engaging local communities in REDD+; and involving the private sector in REDD+ (though this work area has been discontinued). The project's three components comprises 1) policy reforms and institutional strengthening; 2) pilot investments for improved forest and landscape management with communities; and 3) capacity building on sustainable forest management.

To address gender issues, the project has focused on promoting the equal participation of women and men in the project's main activities. Data from 2019 showed that women made up 33 percent of capacity-building beneficiaries. Special gender considerations were included in the component dedicated to pilot investments. According to project reporting, gender gaps related to the unequal access of men and women to decision-making and assets were being addressed through potential differential uses of the sites. To address gender gaps in the involvement of men and women in planting and replanting activities, the project established targets for the number of women engaged in replanting and alternative livelihood activities (Di Persio 2019).

The **Ghana Forest Investment Programme's Engaging Local Communities in REDD+/Enhancement of Carbon Stocks Project** ran from 2014 to 2018. The project's objective was to increase carbon stocks and reduce poverty in the off-reserve areas of the High Forest Zones by engaging communities in land management approaches that generate direct financial and environmental benefits. Piloting a jurisdictional approach to REDD+, the project had several components: assistance for the community restoration of degraded off-reserve forests and agricultural landscapes;

the promotion of climate-smart and environmentally responsible cocoa and agroforestry systems; and support for alternative livelihoods for the community as well as capacity building for the government and local communities.

Because the project was aimed at poverty reduction, gender equality and women's empowerment issues were deemed essential in the implementation of the project. The main gender-related emphasis was the promotion of the gender quota. Results showed that at least half of the direct beneficiaries were women. The design of the project incorporated gender as one of the criteria for the selection of project beneficiaries, thus ensuring that both women and men would benefit equally from the project's activities (Di Persio 2019).

The **Africa Palm Oil Initiative (APOI)** is an ongoing project that began in 2016. Its focus is to establish a sustainable palm oil industry that will become a driver of long-term, low-carbon development in a way that is socially beneficial, while protecting the region's tropical forests. The initiative will address environmental targets for reduced deforestation, land use and greenhouse gases, along with social indicators on issues, such as land tenure and the rights of Indigenous Peoples. The research and analysis of gender gaps and challenges have been deemed critical for addressing gender issues in APOI's activities.

During the activities to date, significant steps are reported to have been taken in gender mainstreaming, with one being a gender analysis of the APOI processes. The analysis was focused on addressing customary practices, which influence women's access to and control over resources. It is hoped that the acquisition of the knowledge of these customary practices could help in the designing of gender-sensitive activities that will ensure more equitable relationships between different stakeholders, and thus provide opportunities for women, men, Indigenous Peoples, and other vulnerable people to benefit equally. There is no reporting on the success of the activities in ensuring these outcomes (Di Persio 2019).

The long-running **World Bank Land Administration Project** began in 2003 and continued through 2020. The project focused on the implementation of key policy actions and reforms to address critical issues and constraints, such as the inadequate legislative frameworks and weak institutional capacity that have undermined effective land

administration in the country. The passage of the 2020 Land Act is seen as a considerable achievement that took place during the life of the project. Project activities included strengthening the policy and legal and regulatory framework for land administration; enhancing the functions and business processes for service delivery; along with improving maps and spatial data for land administration.

Gender activities consisted of the collection of gender-disaggregated data, the integration of gender equity issues in land policies, capacity building focused on increasing gender equity, and the establishment of gender equality desks within GoG institutions. Significant progress was evidenced by the improvement in gender outcomes in land titling: between 2003 and 2020, the number of women holding titles increased from 288 to about 47,000. The project's public awareness campaigns and training were reported to have positively impacted women's rights and access to land (Di Persio 2019).

## VIII. ANALYSIS AND RECOMMENDATIONS FOR GENDER INCLUSION

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### ANALYSIS

Ghanaian women routinely experience discrimination and harmful outcomes in their use of land and natural resources as well as gaining rights to them. Despite their important role in using and cultivating land and natural resources, women often do not get to fully benefit from the livelihood potential of using and managing the land and forest resources surrounding them. Prevailing customary tenure and resource use regimes are the primary barrier to parity in women's ability to derive social, economic, and livelihood benefits from land as well as natural resource use and rights.

More particularly, women's participation is lacking in many of Ghana's development initiatives and interventions in general, as well as in programs and interventions explicitly requiring women's participation (such as during ERP activities). While women have reportedly participated in ERP consultations within ERPD, this participation (and the beneficial outcomes for women) could probably be improved.

While women’s consultative participation is mentioned and reported on in various ERP documents, the nature of the specific inputs gathered from women, the one-on-one impacts, or the one-on-one actions to improve women’s status, are not well-reported. Consequently, there is little information within ERP documents on how individual women’s inputs at the local level have influenced the design and implementation of ERP activities. While ERP’s GAAP contains actions aimed at both the national and local institutional levels, along with the landscape/local/household levels, defining and implementing the latter group of more granular actions has been less intensely undertaken. This appears to be a result of slow local implementation and the lack of FC or other personnel (particularly women) at the local level, who are trained in gender mainstreaming.

Women’s treatment under the various laws and regulations is mixed. While the Constitutional mandates are clear, the laws and implementing regulations are inconsistent in their delivery of women’s Constitutional rights. The new Land Act is largely unimplemented, while important implementing regulations remain unenacted. In addition, existing inheritance and succession provisions within the family laws seem to be crafted to support and perpetuate discriminatory customary practices. Both ERP and GAAP call for (and appear, in part, to rely upon) an effort by ERP and FC to prompt and support the national government in the needed legal reform and implementation process. There is little evidence that this has been an ERP priority.

Therefore, it does not appear that new, formalized land and inheritance rights will be central to women’s equal and beneficial participation in the ERP. ERPD, GAAP, and other ERP documents frequently highlight the difficulties born of customary land and resource regimes faced by women. This status quo supports the conclusion that better outcomes would more likely come from increasing levels of women’s participation in the community and individual resource management schemes envisioned under ERP (GCFRP and Land Act community land prospects), HIAs (and related HMBs), and CREMAs (and related CREMA Executive Committees). When “gender-vacuums” are created by a lack of formalized rights, the slow implementation of national gender policies, laws, and regulations, a dearth of meaningful participation during development interventions, and by an unsupportive governance framework, the space will be filled by Ghana’s customary regimes favoring men over women. ERP implementation, under GAAP, can

help fill the vacuum and offset the disenfranchising effects of custom.

## RECOMMENDATIONS

Given the land- and forest-related legal and social frameworks within Ghana, along with the measures for women’s inclusion and participation set out in ERPD, BSP, and GAAP, there are several areas where additional efforts would be useful.

First, **GAAP implementation should be emphasized.** The granular actions within the GAAP—those aimed at individual women, households, and small groups of women, as well as traditional leaders—should be stressed. Clear work plans and additional resources (funding, staff, and more women within the ranks of implementers) would likely help. The MRV should be further developed and routinely applied to focus on these granular GAAP actions. The landscape and household implementation of GCFRP should be where granular actions are applied.

Second, **more granular GAAP implementation** could be done more usefully with an express goal of supporting women in achieving a greater “community membership status” under ERP than they normally would attain within the reality of exclusive and limiting customary practices. ERP could make this outcome a central target by tailoring GAAP activities to broadly include women in community membership and facilitating their participation and voice. For example, increasing women’s real and effective level of participation within HIAs and CREMAs, and as GCFRP participants and beneficiaries, will improve women’s status. Furthermore, supporting women in alternative livelihoods in sustainable ways that can translate into improved household income and well-being will likely improve their status and membership within the community of voices that controls land and resources. Viewing GAAP implementation from this perspective could help to change the fundamental status and role of women within their communities.

Third, **FC/CCD could increase its efforts to prompt and support the national government in the needed legal reform and implementation process.** CCD staff could more systematically lobby and support the national government in creating needed implementing regulations, guidelines, and procedures to improve women’s land and

inheritance rights, along with their overall participation in the forest sector. Conversing with legislative and regulatory drafters, monitoring progress, drafting model regulations, working with civil society to advocate for reform, and preparing to support the implementation of new regulations would all be useful. The goal should be the implementation of legal and policy frameworks within the framework and activities of ERP and increasing women's participation in ERP, thus making it more meaningful.

Fourth, **ERP, under the stewardship of FC/CCD, could explore, help design, and then facilitate the process (set out in the new Land Act) for communities to register and manage commonly and individually used land within those communities.** These new vehicles for institutionalizing and managing land at the community level could supersede the need for HIAs or CREMAs (that still lack the formal legal mandate because WRMB has yet to be enacted). The new approach might serve to mitigate the control that traditional authorities hold over rural land. It might also create “a community” within which women might more easily become members and be able to exercise a more equal voice and level of participation, in terms of decision-making and resource management.

Finally, **given ERP's investment to date in a number of well-conceived components (including the MRV, FGRM, safeguards approach, and CCD as an implementing entity), it would be useful to revisit and refine them from a gender perspective.** These programmatic creations seem thoughtfully designed and well along the path to full implementation. They already reflect gender-focused planning and include gender-focused elements. Refining them to better incorporate gender and forge them into mechanisms that can better advance women's participation, voices, and benefits would make good use of sunk (or retrospective) costs. A modest investment in further gender analysis and action planning—from the perspective of these existing ERP components—could shift them to becoming model, best-practice approaches for accommodating and improving the needs and status of women in Ghana.

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## INTERVIEWS CONDUCTED

Name	Organization	Date	Communication mode
Nana Ama Yirrah	COLANDEF	July 7, 2021	Zoom
Jonathan Gokah	Kasa Initiative Ghana	August 4, 2021	Zoom
Rhoda Donkor	Forestry Commission Climate Change Directorate	August 11, 2021	Zoom

## APPENDIX 2. WOMEN'S ORGANIZATIONS

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Although it is a part of the Government of Ghana (GoG), the **Ministry of Gender, Children, and Social Protection** (MGCSP) should be seen as a women's organization that could serve as an ERP collaborator. The Ministry was created in 2013 as the successor to the Ministry of Women and Children's Affairs. It is responsible for policy formulation, coordination, along with the monitoring and evaluation of issues related to gender, children, and social protection, within the context of the national development agenda.

As a participant, it exercised its voice in the review of the National Gender Policy by promoting an Affirmative Action Bill and gender-responsive budgeting. It also played a role in the development of the 2020 Land Act. Its mission includes promoting gender mainstreaming and gender-responsive budgeting across the government, improving the socio-economic status of the vulnerable and the excluded through targeted interventions, enhancing evidence-based decision-making on gender equality by collecting disaggregated data, along with assessing progress on the implementation of gender related programs and projects and evaluating policy outcomes and impacts (MGCSP 2021).

**COLANDEF** focuses on women's access and secure rights to land and natural resources. Formed over 15 years ago, it empowers smallholder land users, women, migrants, and other disadvantaged groups at the local level through advocacy and education on land rights. While making women-related issues a part of everything it does, it has a primary focus on the land governance and natural resources thematic area. More specifically, COLANDEF's work includes public awareness campaigns on land laws, land rights, and the mechanisms available for protection of land rights; capacity enhancement programs for customary land authorities; institutional strengthening for increased participation and inclusion in customary land governance; and technical support in managing the processes and impacts of large-scale investments in customary lands.

Under its local governance thematic area, COLANDEF is focused on increasing the inclusion and participation of women in the governance of the development processes affecting their community. Work in this area includes community mobilization, sensitization, and training; facilitation

in the preparation of community development plans; the coaching and mentoring of community leaders in proposal writing, fundraising, and project management; and the easing of the engagement between local government authorities and community members (see <https://www.colan-def.org/>).

COLANDEF participated in the International Union for Conservation of Nature (IUCN) process for creating the Emissions Reduction Program's Gender Analysis and Action Plan (ERP GAAP), having been involved in early consultations. In an interview with N.A. Yirrah, COLANDEF's Executive Director, she observed that GAAP is well-received but not heavily implemented, adding that local field staff would benefit from increased training on gender issues. According to her, while IUCN continues to have an ongoing voice on ERP activities and GAAP implementation, its funding and deeper participation is time-bound by funding availability (N.A. Yirrah, personal communication, July 7, 2021).

On the topic of the local implementation of GAAP measures, the COLANDEF director believes that more local study (by informed and knowledgeable local people) is needed to reveal the specific ways that local measures in support of women should be shaped and implemented. Livelihood alternatives need to be shaped by the specific desires and situations of local women. She offered an example of an alternative livelihoods project involving the growing of mushrooms: while the local women were supported in the growing activities, little or no attention was paid to how the mushrooms might be marketed and sold. Value chains need attention when supporting women in changes in livelihood activities. Concerning the topic of suitable livelihood paths for women, she stressed that ideas and solutions need to be simple in their content and implementation in order to be manageable and sustainable; nonetheless, market linkages should be identified and facilitated. Therefore, she also concluded that local Forest Commission (FC) implementers should focus more on customary dynamics—listening to traditional authorities and educating them—so as to begin to shift their perspectives on the roles and status of women. In addition, once local chiefs get involved in the local ERP activities, they



need support in pushing information and commitments up to the highest levels of traditional authority (N.A. Yirrah, personal communication, July 7, 2021).

Given the delay in enacting enabling legislation under the Wildlife Resources Management Bill (WRMB), COLANDEF's director also considers the Community Resources Management Area (CREMA) structure and implementation to be in need of clarification and further formalization. Specifically, more clarity is needed on FC's guidelines concerning how women will be included in the formation and operation of CREMAs. Local CREMA structures do not appear to be sufficiently linked to local women and men. The ongoing CREMA institutional support and facilitation does not seem sufficiently sustained by FC or other supporting entities, and local CREMA leadership is often performed by the usual leaders and elites (N.A. Yirrah, personal communication, July 7, 2021).

The lack of expertise in gender and land use and rights among the civil society organizations (CSOs) and other organizations working in the forestry and natural resource management sector was also another issue highlighted by COLANDEF's director. According to her, these organizations need training on these topics in order to better understand and implement the specific measures needed to spur and sustain women's participation. Overall, women's participation will be made possible when the customary perspectives of men and community leaders are changed. These changes will best be prompted by trained women and men serving as local FC staff who are engaged with local women and men (N.A. Yirrah, personal communication, July 7, 2021).

**KASA Initiative Ghana** was formed in 2008 as a civil society platform, with the support from several international nongovernmental organizations (NGOs). Today, KASA aims to ensure effective participation in responsible environmental and natural resource governance for marginalized populations (including women). Consisting of seven networks and coalitions, along with a secretariat that coordinates activities for collaborating CSOs, KASA seeks to achieve this aim by facilitating interactions among CSOs, as well as among CSOs, state institutions, and development partners (J. Gokah, personal communication, August 4, 2021). It explores opportunities for CSO-government engagement in the formulation and review of national natural resources and environmental policies as well as cre-

ates a platform for this process. Regarding the ERP activities, KASA works solely at the policy level; essentially, it is not a field implementer, nor does it operate at the GCFRP project level. KASA is a participant in the FCPF REDD+ National Working Group (J. Gokah, personal communication, August 4, 2021).

During an interview, KASA's executive director, J. Gokah, referred to ERP's use of a "safeguards" document and framework (J. Gokah, personal communication, August 4, 2021). As mentioned, the "safeguards" approach refers to the use of the Forest Carbon Partnership Facility (FCPF) Readiness Fund's common approach to environmental and social safeguards and the International Finance Corporation's (IFC) Performance Standards (in the case of the Green Carbon Fund support). In providing an opinion on the overall effectiveness of the ERP GAAP content and implementation, the director rated it as "75 percent out of 100 percent," saying that "it has been a learning process for all of us." He viewed it as having improved over time, as FC staff have learned to better address gender at the GCFRP landscape level.

When queried about what more is needed from a gender perspective, the director pointed to two areas: (1) the FC needs more staff at the district and community levels, who have more capacity, experience, and knowledge in reaching women and facilitating their participation; and (2) women need more direct individual support in enabling their participation in specific ERP program activities. On the latter, the director noted that men play the primary land- and forest-related roles within the household and communities, serving as the primary face of these social groups. This reality means that sustained support of women's participation is required.

The general lack of appeal of forest governance issues to individual women, men, or households, is also an issue. According to the director, these stakeholders sometimes fail to see how forest governance relates to their interests and livelihoods; therefore, more education on the relevance of forest governance to community and individual interests is needed at the local level. The director's opinion was that the policy (national) level appears to receive the majority of funding and attention. While this has been valuable and necessary, more focus and resources are needed at the community and household levels. While there are some women FC staff members at the local level, more

are needed. This noted, the director views CSO outreach at the local level to be the most effective mechanism for reaching local stakeholders and changing local perspectives. He suggests that FC focuses on local CSOs and supports them in providing effective outreach and support at the local level (J. Gokah, personal communication, August 4, 2021).

The Ghana chapter of **Women in Law and Development in Africa** (WiLDAF) is part of the Pan Africa Women's Rights network. It aims to promote and reinforce the strategies linking law and development in order to increase women's participation and influence at the local, national, and international levels. WiLDAF promotes gender equality and development by advocating for the rights of women and increasing their participation in decision-making in Ghana by using the law as a tool. Within the land and natural resource sector, the organization focuses on empowering women farmers on legal and human rights; promoting women's access, control, and ownership to land; advocating for mainstreaming gender in agricultural and food policy programs in Ghana; and connecting women farmers to markets through their mobile phones (see <http://www.wildaf-ghana.org/>).

**Abantu for Development** is an NGO established in 1991 by African women based in Europe. It is a grassroots organization advocating for women rights, particularly women's land rights. Abantu's regional office, based in Accra, coordinates all of Abantu's programs in the West African sub-region. In 2003, Abantu initiated a research and advocacy program that led to the creation of a document known as the "Women's Manifesto for Ghana". The manifesto articulates a series of positions and requests on land reform and the land titling and registration process; the representation of women in the land commission; the transformation of customary tenure systems; equity in access to land and control of it; and the guarantee of women's inheritance rights (see <http://www.abantu-rowa.org>).

The **Network for Women's Rights in Ghana** (NETRIGHT) is a coalition of CSOs and individuals working to promote gender justice in economic and land policies. In 2008, NETRIGHT, after conducting broad consultations with women's groups on a national level, issued a series of recommendations to the government calling for the provision of equal access to ownership and national policies that promote gender equality (see <https://www.facebook.com/netrightghana/>).

# Guatemala

## I. INTRODUCTION

The Guatemala Emissions Reduction (ER) Program (ERP) area encompasses 3,389,693 hectares (ha) of forest, accounting for 92 percent of the country's total forested area (Ministerio de Ambiente y Recursos Naturales [Ministry of Environmental and Natural Resources, MARN] 2019). These areas, which include highly vulnerable territories from a biodiversity perspective, coincide with extensive deforestation.

Deforestation is a major environmental problem in Guatemala—a country considered to be megadiverse<sup>1</sup> due to its biological and cultural richness; among Mesoamerican countries, it has the second-greatest diversity of species and endemism. According to the Emissions Reduction Program Document (ERPD), the most recent forest cover survey in the country (2016) revealed a total deforestation area of 515,281 ha between 2001 and 2015—an annual loss of 34,352 ha. In stark contrast, the increase of forestland through plantation forestry was only 38,311 ha, or 2,554 ha per year (MARN 2019).

Although the original program area had encompassed all of Guatemala, a World Bank risk assessment concluded that project-related conflict risks could persist over the near term. As a consequence, the ERP implementation area was reduced to exclude those high-risk areas. The program will expand to a national scope, once the conflicts are resolved, through continuous dialogs and a conflict resolution program led by the Presidential Dialogue Commission (MARN 2019).

The resulting ER Program area encompasses 91.7 percent of the national territory of Guatemala, excluding Triángulo de Candelaria and Laguna del Tigre, located in the Maya Biosphere Reserve (MBR) (Department of Petén) and the municipalities of Morales, Livingston, and Puerto Barrios (Department of Izabal) (MARN 2019). The

<sup>1</sup> The term, “megadiverse”, refers to any one of a group of nations harboring the majority of Earth's species and ecosystems. In 2012, a total of 12 of the main developing megadiverse countries adopted the Cancun Declaration and the so-called Group of Similar Megadiverse Countries was formed to consult, cooperate, and promote interests related to the conservation and sustainable use of biological diversity and genetic resources. Member countries include Brazil, China, Costa Rica, Colombia, Ecuador, India, Indonesia, Kenya, Mexico, Peru, South Africa, and Venezuela. Malaysia, Philippines, Guatemala, and Iran have since joined the Group (United Nations Environment Program 2016).

excluded areas coincide with some of the largest forest masses in the country, with a significant number of Indigenous Communities (ICs) that manage natural resources communally (Herrera Garibay and Edouard 2012).<sup>2</sup>

Most of the forests in the ERP accounting area are protected areas and overlap or border traditional Indigenous territories. According to the Benefit Sharing Plan (BSP), 51 percent of the country's population lives in rural areas, with 40 percent identifying as Indigenous Peoples (IPs) (comprising 23 Mayan groups and one non-Mayanã group) (MARN 2020).

Several projects in the ERP area have been implementing early REDD+ actions for more than 10 years, using private investments, three of which will be part of ERP:<sup>3</sup>

- **Guatecarbon Project**—Covering an area of approximately 665,000 ha or 34 percent of the total MBR, this project is jointly managed by the Association of Forest Communities of Petén (ACOFOP) and the National Council of Protected Areas (CONAP). Registered as State property, MBR also includes forest concessions (MARN 2020).
- **The Lacandón Bosques para la Vida Project**—Located in northern Guatemala in the Sierra de Lacandón National Park, the Lacandón REDD+ project area includes private and cooperative land areas.
- **The REDDes Locales para el Desarrollo Project**—This project has been planned for implementation in the north of the country, with support from the CALME-CAC Foundation. Currently under preparation, the project will be implemented in the departments of Alta Verapaz (484,145 ha), Huehuetenango (110,408 ha), and Quiché (154,023 ha). Data on the tenure status within the project area is not yet available (MARN 2020).

ERP was designed to address the main drivers of deforestation and forest degradation, which include the expansion of intensive cropping and subsistence farming, exten-

sive livestock farming, forest fires, unsustainable firewood collection, and illegal logging. These drivers are exacerbated by Guatemala's socioeconomic and cultural conditions, along with institutional constraints (MARN 2019).

As such, ERP activities will aim to strengthen the forest sector by promoting sustainable land management at the local level and address sustainability issues affecting the existing forest incentives programs. Program implementation will include both direct and enabling actions to achieve the reduction and removal of emissions from deforestation and forest degradation. The ERPD Programmatic Approach defines five main strategic options for addressing deforestation:

1. Strengthening of forest governance;
2. Conservation, protection, and sustainable management of forests;
3. Restoration of forest landscape and the recovery of forest cover and agroforestry lands;
4. Reduction of the unsustainable use of firewood; and
5. Improvement of the competitiveness of the forest sector through value chain and forest by-product development, sustainable natural forest management, and the promotion of regulated, legal forestry activities.

The main potential beneficiaries of ERP will be those who have successfully implemented REDD+ actions under one of the five strategic lines of ERP, during the results period (2020–2025), through REDD+ initiatives, including REDD+ Projects, the Mechanism for the Compensation of Ecosystem and Environmental Services, and Program Management Models (MARN 2020).

Beneficiaries will be:

- a) Beneficiaries of individual or grouped REDD+ initiatives;
- b) Proponents or title holders (*titulares*) of individual or grouped REDD+ initiatives; and
- c) National government institutions.

Individuals and communities can be included in either a or b (MARN 2020).

2 The Department of Petén, where the Maya Biosphere Reserve (MBR) is located, is home to about 50 percent of Guatemala's total forest mass in Guatemala; the country's other northern departments (Huehuetenango, Quiché, Alta Verapaz, and Izabal) contain 30 percent of the national total. Together, the five departments of northern Guatemala contain 80 percent of the country's forest mass (Universidad del Valle de Guatemala, Instituto Nacional de Bosques, Consejo Nacional de Areas Protegidas, Universidad Rafael Landívar. Mapa de la Cobertura Forestal de Guatemala la 2006 y Dinámica de la Cobertura Forestal 2001–2006, Guatemala, March 2011, cited in Herrera Garibay and Edouard 2012).

3 MARN, *Emission Reductions Program Document: Guatemala*, 2019, [https://www.forestcarbonpartnership.org/system/files/documents/Guatemala-ERP11\\_05\\_2019.pdf](https://www.forestcarbonpartnership.org/system/files/documents/Guatemala-ERP11_05_2019.pdf).

Carbon Fund payments are distributed among ERP beneficiaries, in the form of monetary and non-monetary benefits. Beneficiaries of individual REDD+ initiatives will receive monetary benefits, while the beneficiaries of group REDD+ initiatives will decide whether to receive monetary, non-monetary benefits, or a mix of both. Individual beneficiaries must be landowners or landholders; holders must present a certificate of possession certified by the municipal mayor (as stated in Article 8 of the 2010 PINPEP Law).<sup>4</sup> In the case of beneficiaries living in protected areas where only the State can own the land, the certificate of possession must be issued by the National Forestry Institute (Instituto Nacional de Bosques [INAB]).

## II. NATIONAL LEGAL FRAMEWORK ON THE RIGHTS OF WOMEN

Guatemala's Constitution guarantees the equality of men and women, and ensures the protection of Indigenous rights. Article 4 adopts the principles of freedom and equality, stating that "all human beings are free and equal in dignity and rights," as well as affirms the equal opportunity of men and women, regardless of their marital status.<sup>5</sup> The Constitution recognizes the family as the primary source of values in society, bearing the responsibility for promoting the common good.

Similarly, the 2001 Law of Social Development (art. 3) affirms the right to equality and freedoms laid out in the Constitution, as well as those contained in the Universal Declaration of Human Rights. Article 4 situates social development within Guatemala's multicultural context, defining gender equity as equal rights for men and women, and establishes equity as a basic principle of the law that should be promoted by the State.<sup>6</sup> The law holds the State

responsible for planning, executing, coordinating, and promoting "the full integration and participation of women in the process of economic, social, political and cultural development" (art. 10). Moreover, it provides that public policies aimed at promoting social development must respect and promote women's rights, as well as guarantee respect for Indigenous cultures and beliefs. The law (art. 6) also guarantees the equal rights of men and women, either in marriage or de facto unions, as well as those of single mothers and fathers.

The 1999 Women's Dignity and Integral Development Law aims to advance women's rights and quality of life.<sup>7</sup> Article 2 states its objectives as promoting women's participation in all levels of economic, political, and social life, and the development of women's fundamental rights, as established in the Constitution and international conventions. Beyond general statements regarding these objectives, the law also dedicates several articles to eliminating and preventing violence against women. However, there are no specific actions or programs included in the law regarding its implementation, nor are there any publicly available regulations for this law.

In 2000, the Presidential Secretariat for Women (Secretaría Presidencial de la Mujer [SEPREM]) was created, with the objectives to advise, coordinate, as well as promote and monitor policies on women's integral development within the executive branch.<sup>8</sup> The implementing legislation for SEPREM does not include enforcement articles.<sup>9</sup> In 2012, the Women's Cabinet was created to coordinate and promote inter-institutional policies, projects, and programs focused on women's integral development.<sup>10</sup>

Finally, ERPD mentions the signing of a Letter of Understanding (LOU) in November 2017 for the Strengthening and Institutionalization of the Technical Roundtable for Rural Development with a Gender and Peoples Approach

4 Ley de incentivos forestales para poseedores de pequeñas extensiones de tierra de vocación forestal o agroforestal (PINPEP), Decreto 51-2010 [Law on Program for Small Forestry and Agroforestry Land Holders, Decree 51-2010], 2010.

5 Constitución Política reformada por Acuerdo Legislativo No. 18-93 del 17 de Noviembre de 1993 [Political Constitution amended by Legislative Agreement No. 18-93 of Nov. 17, 1993] hereinafter [Const. Polit.], translated from original, which reads: "En Guatemala todos los seres humanos son libres e iguales en dignidad y derechos. El hombre y la mujer, cualquiera que sea su estado civil, tienen iguales oportunidades y responsabilidades."

6 Ley de Desarrollo Social, Decreto 42-2001 [Law of Social Development, Decree 42-2001], 2001, art. 4.

7 Ley de Dignificación y Promoción Integral de la Mujer [Law for the Dignity and Integral Development of Women], 1999, Decree 7-99.

8 Acuerdo Gubernativo 200-2000 [Government Agreement 200-2000], 2000.

9 *Id.*

10 Acuérdese crear El Gabinete de la Mujer, Acuerdo Gubernativo 264-2012 [Agreement to create the Women's Cabinet, Government Agreement 264-2012], 2012.

(MARN, 2019). The LOU, signed by several ministries and secretariats related to rural development, aims to strengthen the work of government institutions and development projects benefiting rural women.

Despite favorable legislation regarding gender equity as described above, many obstacles for the achievement of effective gender equality, particularly in the rural sector and among Indigenous women, remain.

### III. LEGAL AND POLICY FRAMEWORK FOR WOMEN'S LAND TENURE AND FOREST MANAGEMENT

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#### OVERVIEW OF LAND TENURE

Despite many attempts to reform the distribution of land in Guatemala since independence, including those that came after the decades-long conflict and related Peace Accords, land distribution in Guatemala remains the most inequitable and concentrated in Latin America. The Gini coefficient for land distribution, which was 0.83 in 1960, increased to 0.85 in 2001 (International Fund for Agricultural Development [IFAD] 2001). The 2003 Agricultural Census shows that gross inequality in access to land has been maintained, with land concentrated in a few hands for extensive agriculture: nearly half of all farms (45 percent) are smaller than one *manzana* (0.7 ha), covering only 3.2 percent of the arable land, while 78 percent of arable land is distributed among just 1.7 percent of the farms.

Guatemala does not have a standalone legal framework for land tenure, transfer, registration, and administration. The legal framework for land tenure and forest tenure rights includes the Political Constitution, the Civil Code (Decree 106-1963), the 1996 Peace Accords and related decrees, as well as a number of laws including the Protected Areas Law (Decree 4-89), the Forestry Law (Decree 101-96), the Municipal Code (Decree 12-2012), and the Cadastral Information Registry Law (Decree 41-2005) (MARN 2019).

Guatemalan law recognizes four types of land tenure:

1. **State property:** Under Article 456 of the Civil Code, the State holds registered properties and exercises Constitutional control over the Territorial State Reserves.<sup>11</sup> Protected Areas are defined as public or individual property areas managed by the State, due to their special interest and value to the nation. State heritage lands are designated under article 462 of the Civil Code. These areas must be managed for conservation purposes wherever possible.<sup>12</sup>
2. **Municipal property:** These municipal lands are originally communal lands registered in the name of municipalities for convenience (that is, to enable communities lacking legal recognition or status to register their rights); as such, they are often used and managed by the community. The extent to which ICs are considered customary collective lands varies among municipalities and may depend on the relative proportion of the IP in the municipality and whether traditional authorities actively lead their respective communities (Rights and Resources Group [RRG] and Global Land Alliance 2021). This is important because while municipalities may be the formal rights holder, the community may have land and resource management rights and responsibilities.
3. **Private property:** The 1985 Constitution protects private property as an inherent human right (art. 39) and Article 460 of the Civil Code defines private property assets as those that belong to individuals and legal entities with a legal title.
4. **Community property:** Community property includes the communal property of local communities and IPs. While the Constitution formally recognizes the IPs' rights to land, there is no category of Indigenous land tenure that is recognized in the Guatemalan law. Nonetheless, other laws have expanded the recognition of community rights to land, such as the 1996 Peace Accords (specifically, the Agreement on Identity and Rights of Indigenous Peoples), the 2002 Municipal Code, the 2005 Cadastral Information Registry Law, along with the 2009 Regulation of the Law on Cadastral Information Registry for the Recognition and Declaration of Communal Lands (MARN 2019).

11 Const. Polit., art. 122.

12 Ley de Áreas Protegidas [Law on Protected Areas], Decree No.4-89, 1989, art. 9.

Forest concessions, administered by CONAP, constitute a special category of land use regime. Under the Protected Areas Law and its regulations, CONAP may issue forest concessions to private companies and local communities for sustainable and productive forest management.<sup>13</sup> The rights of concessionaires are established by concession contracts and limited to the rights stipulated in those contracts. According to ERPD, these concessions have so far only been issued mostly to forest communities in MBR.

Guatemalan tenure rights distinguish between landowners (those having registered title to land),<sup>14</sup> landholders (those exercising some, or all, of the powers inherent to a property),<sup>15</sup> and tenants (those in possession of a property, without being the owner or legitimate holder of the property).<sup>16</sup> Landholding is a common category in which municipalities are typically the owners, but individuals or communities occupying the land are responsible for managing the land and resources. In many cases, a municipality will issue titles of possession to communities, which convey many of the same rights as those of a landowner.

The 2014 Agrarian Policy states that those individual persons and groups, including Indigenous and peasant groups such as associations and agricultural cooperatives, who have lost their land rights because of political, social, or economic circumstances, should be recognized and have their tenure rights (property or possession) restored.<sup>17</sup> If the land cannot be restored, they will be given other lands or economic restitution.<sup>18</sup>

Gender equity is among the guiding principles of the Agrarian Policy, with its objective of improving access to land for the landless poor. The policy states that women's

full access to property, joint property, tenure (*tenencia*), use, and usufruct rights to land should be guaranteed. The policy also calls for laws<sup>19</sup> to regularize (*regularizar*) land tenure records, including a chapter dealing with the land owned by Indigenous and peasant communities, or in their possession. It recognizes the validity and legitimacy of the customary legal norms of land rights and land management practices, as well as explicitly acknowledges women's land rights.<sup>20</sup>

Nonetheless, despite the promise of these provisions, resources and budget have not been allocated to fully implement these laws or develop the programs needed to implement them. The land tenure regularization law has not been passed and the task of regularizing land records has been allocated to the Cadastre.

The Ministry of Agriculture's 2015 Política Institucional para la Igualdad de Género y Marco Estratégico de Implementación 2014–2023 (Institutional Policy for Gender Equity and Strategic Implementation Framework 2014–2023) features a strategic emphasis on facilitating access to productive resources, including land access. This document, however, does not specify what strategy will be utilized to increase women's access to land other than to promote and implement agricultural production diversification projects, including access to land, credit, incentives, and irrigation. We could not find evidence to suggest that this policy has been budgeted and implemented.

Today, rights to much of Guatemala's land and forests continue to be informal, and conflicts are numerous and serious, despite policies and institutional efforts made in the last few decades.<sup>21</sup> ICs and small landowners are often

13 *Id.*; Regulation of the Protected Areas Law (Government Agreement 759-90), 1990.

14 This includes the rights to use and exploit, defend, claim, and benefit from the fruits or products of the land (Cod. Civ. 464, 468, 469, and 471). Private property belongs to the individual or legal entity holding legal title, whose name and right are recorded in the Land Registry (art. 460) (MARN 2019).

15 Cód. Civ., art. 612. Municipalities are responsible for issuing the title of possession in favor of individual or community holders (MARN 2019).

16 Ley del Registro de Información Catastral [Cadastral Information Registry Law], Decree 41-2005, 2005, accessed at <https://srp.gob.gt/wp-content/uploads/2012/04/Ley-del-Registro-de-Informacion-Catastral.pdf>.

17 Acuérdase aprobar la Política Agraria, la cual será de aplicación en todo el territorio nacional, Acuerdo Gubernativo 372-2014 [Agreement to approve the Agrarian Policy, which will be applied throughout the national territory, Government Agreement 372-2014] hereinafter Agrarian Policy, 2014, 22.

18 *Id.*, 27–8.

19 Ley de Regularización de la Tenencia de la Tierra [Land Tenure Regularization Law], 2016.

20 *Id.*, 31–32.

21 Many of these efforts fell far short because of the Government of Guatemala's lack of political will to resolve its two basic land challenges: 1) access to sufficient land for much of the rural population and 2) the legalization of property rights for Indigenous lands. As a result, customary land tenure is still not legally recognized, and there are no effective programs that increase access to land for the rural landless and land-poor. This land tenure and institutional situation means that efforts by, for example, the now-defunct CONTIERRA (Comisión Presidencial para la Resolución de Conflictos de Tierra) failed to make a dent in the number of land conflicts (Durocher et al. 2003).

affected by the lack of formalization, and face difficulties gaining legal recognition of their land rights.<sup>22</sup> The rights of women within those groups are weaker still because of cultural male preference.

## INDIVIDUALIZED LAND

The Constitution recognizes the right to private property and states that every person may dispose freely of their property in accordance with the law.<sup>23</sup> Within the context of gender, Article 109 of the Guatemalan Civil Code stipulates that both husband and wife have equal rights within the marriage, specifically regarding who can represent the family and who has authority; where the family is to reside; along with decisions regarding the children's education and well-being and the household economy.

More specifically, regarding property ownership, Article 131 states that both spouses have control of family property and jointly owned property. The Guatemalan Civil Code recognizes two types of property rights: ownership and possession (arts. 464 and 612).<sup>24</sup> It defines private property assets as those belonging to individuals and legal entities with a legal title (art. 460). In addition, it recognizes women's rights to marital property (arts. 121–124) and follows basic community property rules, where each spouse individually owns the property each brings into the marriage, and both spouses jointly own all property acquired during marriage (except for inherited or gifted property). However, when the marriage is dissolved, spouses divide equally the joint property acquired during marriage and the profits or gains from those properties each owns individually (Civil Code, arts. 126, 127, and 140). Dividing the profits from individually owned property is favorable to women, who are less likely to have individual rights to land than men. Despite the existence of these laws, many of these protections in the Civil Code are not realized in practice, leaving women more vulnerable than they legally should be.

In the case of intestate inheritance, the deceased's children inherit half of her/his property, with sons and daughters inheriting equal shares (art. 1076) and the widow or widower inheriting the remaining half (art. 1078). Article 1084 provides that in the case of legalized consensual unions, inheritance is also divided in half between the surviving spouse and the children. In practice, cultural norms privileging males with land ownership tend to prevail when inheritance decisions are made.

A number of efforts to regularize private land have been undertaken since the 1990s. Until 1999, these programs did not recognize women as direct beneficiaries and land was allocated to, and titled in, the name of the male head of household by State agencies. Private-sector land market programs, such as the Fundación del Centavo (FUNDACEN), followed the same pattern. In fact, FUNDACEN would not consider single women as eligible for their land market program: only couples were selected, unless the male was deceased. A study undertaken in the early 1990s estimated that women made up only 7–9 percent of the beneficiaries of the National Institute of Agrarian Transformation (INTA) program and just 1.2 percent of FUNDACEN's beneficiaries (Escoto et al. 1993).

Guatemala's Land Fund (Fondo de Tierras [FONTIERRAS]) was created in 1999.<sup>25</sup> Its objective was to facilitate greater access to land for the rural landless and land-poor after the Peace Accords were signed.<sup>26</sup> In general, FONTIERRAS has had little impact on improving access to land by individual owners. By 2008, only four percent of Guatemala's arable land had been redistributed to less than five percent of the landless or near-landless families. By 2007, 80 percent of the beneficiaries of farmland transfers had fallen behind on their loan repayment, reporting that it was impossible to ever pay such an amount in full (Tramel 2009).

In addition, despite the Land Fund Law (art. 20) stating that titles issued to married couples are to be joint titles under

22 ERPD cites three main causes for land tenure conflicts: "1) lack of legal certainty regarding property registration in the General Land Registry; 2) historical claim of Indigenous communities on the possession of ancestral territories, reinforced by identity claims made in recent years; and 3) overlapped properties" (MARN 2019, 64).

23 Const. Polit., art 39.

24 Código Civil de la República de Guatemala [Civil Code of the Republic of Guatemala], Decree No. 106, *hereinafter* [Cod. Civ.], 1964.

25 FONTIERRAS was created under the Ley de Fondo de Tierras, Decreto 24-99 [Land Fund Law, Decree 24-99], 1999.

26 *Id.*, arts. 53, 54, and 58.



the names of both spouses,<sup>27</sup> the FONTIERRAS program design inadvertently excluded many women by requiring identity documentation the women did not have (Gauster and Isakson 2007) or commercial cropping when women's uses were related to subsistence (Lahiff, Boras, and Hill 2007). By 2005, women made up only 11 percent of FONTIERRAS beneficiaries and married women were excluded from being members of cooperatives allocated State land (Krishnamurthy and Schüssler 2007). FONTIERRAS has since made some changes to address gender issues, for example, by passing a resolution in 2016 to prioritise campesina women for credit for land rentals with an option to purchase.

Another law addressing women's land rights is the 1999 Women's Dignity and Integral Development Law. It provides that state institutions, giving out land in any tenure form (property, possession, lease, etc.), must address the needs of women household heads.<sup>28</sup> Also, the National Policy for the Promotion and Integral Development of Women (PNPDIM) and the 2008–2023 Equal Opportunity Plan<sup>29</sup> both aim to guarantee women's access and property rights to land, natural resources, and housing; specific mention is made of the Mayan, Garifunas, Xinkas, and Mestiza women.<sup>30</sup>

These commitments to women's land rights appear to have had little effect in practice. While there are few land tenure statistics for Guatemala and even less data disaggregated by gender, the 2003 census reported that of the total number agricultural land holders, only 7.8 percent were women. This statistic includes private owners, renters, and IC members who work individual parcels (United States Agency for International Development [USAID] 2018). Guatemala has the most inequitable land distribution in Latin America, with 78 percent of agricultural land concentrated in just 1.7 percent of properties (fincas) (USAID,

2010). At the other end of the landowning spectrum, 3.2 percent of land is divided among 45.2 percent of fincas, all smaller than 1.72 acres (Burgos and Guereña 2016). Women's land ownership estimates range from 7.8 to 19 percent (USAID 2018b). For every 100 people with access to land, USAID estimates that about 84 are men and 16 are women (USAID 2010, 2018b).

Field interviews, conducted as part of this deep dive case study, revealed that when the question of women's rights to land was raised, most respondents agreed that, by law, women have equal rights to land, but cultural norms dictate that only men own land. However, the larger issue generally reported is the lack of land for smallholder and landless rural families, because even the few attempts to redistribute private and state land have not effectively diminished the concentration of land rights with a small group of elites. Among experts and practitioners consulted, the consensus is that if land were distributed more equally in general, both men and women would benefit (L. Lorenzo, personal communication, August 2021). Currently, there are no programs for distributing land to land-poor and landless families. Several interviewees mentioned the unresolved land issue to be a major problem for REDD+, because only landowners (those with registered land titles) are eligible for direct benefits. Those who possess or occupy land, but do not hold a title to it, will only indirectly benefit through the social, economic, and infrastructure projects funded by carbon payments (L. Lorenzo, personal communication, August 2021).

Beyond ownership concerns and having land titled in women's names, women are also oftentimes not able to exert control over or make decisions on land for social or cultural reasons, even if they are key users of the land. This is because decisions in rural communities are largely made by the male head of household, and because land titles are in men's names (Alonso-Fradejas 2012).

27 Article 20 reads "... los títulos serán emitidos a favor de los cónyuges o convivientes, jefes de la familia beneficiaria [... the titles will be issued in favor of spouses or cohabitants, heads of the beneficiary family]."

28 Law for the Dignity and Integral Development of Women, 1999, Decree 7-99.

29 Acuerdo Gubernativo 302-2009, Aprueba la Política Nacional de Promoción y Desarrollo Integral de las Mujeres y Plan de Equidad de Oportunidades 2008–2023 [National Policy for the Promotion and Comprehensive Development of Women and an Equal Opportunity Plan 2008-2023]. See also Política para Facilitar a las Mujeres Campesinas, Mayas, Xinkas, Garifunas y Mestizas para Facilitar el Acceso a la Propiedad de la Tierra y Otros Activos Productivos [Policy to Facilitate Peasant, Maya, Xinka, Garifuna, and Mestiza Women to Facilitate Access to Land and Other Productive Activities], Punto Resolutivo 99-2016, 2016.

30 The Maya and the Xinka are Indigenous groups, the Garifuna are Afro-Caribbean, and the mestizo/a are ethnically mixed. See also the United Nations Office of the High Commission for Human Rights, *Informe Alternativo Preparado por Autoridades Indígenas Maya, Garifuna, Xinka, Afrodescendientes y Asociaciones y Organizaciones Indígenas Mayas Garifunas y Xinkas* [Alternative Report Prepared by Maya, Garifuna, Xinka, Afro-Descendant and Indigenous Mayan Authorities and Garifuna and Xinka Organizations], Report to Int'l Conv. on the Elim. of All Forms of Racial Discrimination, submitted March 28, 2019, retrieved from [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GTM/INT\\_CERD\\_NGO\\_GTM\\_34527\\_S.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GTM/INT_CERD_NGO_GTM_34527_S.pdf).

## COMMON AND COLLECTIVE LAND

CONAP has identified approximately 1,577,124 ha of communal lands throughout the country, which corresponds to 14 percent of Guatemala's total land area (CONAP 2009). Most of these communal lands are located in the Central and Western Highlands and correspond to Indigenous regions, although there are also communal land holdings in non-Indigenous regions (Instituto Nacional de Bosques [INAB] 2013). Communal land holdings in the Western and Eastern departments, while numerous, tend to be small in size, due to the higher population density in these areas, as compared to the Northern region (CONAP 2009).

Indigenous Guatemalans' struggle for land rights dates back to the colonial era, when the Spanish expropriated Indigenous lands to create plantations, granting colonial land titles for traditional Maya lands and displacing IPs to smaller parcels at higher elevations. These policies of expropriation and reallocation of Indigenous lands continued for 50 years after independence from Spanish rule, when reforms by the liberal-inspired government converted customary, communal land owned by Indigenous populations to private property by decree (Lovell 1988).<sup>31</sup> Much of this land was then acquired by ladinos/mestizos, Creoles, and European immigrants, effectively legalizing the confiscation of IC land, a process that continued in the decades after Independence.<sup>32</sup>

Following the 36-year Civil War, the 1999 Peace Accords included new rights for IPs and the state recognition of their languages and cultures, as well as a commitment to address the pervasive rural landlessness and dispossession across the country. As part of this commitment, forest concessions were designated as a new tenure category, and the FONTIERRAS program was established. The Agreement on the Identity and Rights of Indigenous Peoples, signed in 1995 as part of the Peace Accords, outlined wide-ranging commitments to recognizing the identity of IPs, thereby eliminating discrimination against them and guaranteeing their cultural, civil, political, economic, and

social rights.<sup>33</sup> The Agreement acknowledges the importance of land to addressing longstanding IP issues, but does not clearly elaborate solutions.

Article 67 of the Constitution ("Protection of the Indigenous Agricultural Lands and Cooperatives") establishes that Indigenous and other communities, possessing lands that historically belong to them and that have traditionally been managed by them in a special way, shall maintain that land management system.<sup>34</sup> The Constitution also provides that Indigenous lands are to benefit from special protection by the State, as well as preferential credit and technical assistance from the State, in order to improve the quality of life for all inhabitants (arts. 66–70). Further, International Labor Convention 169 (which Guatemala ratified through Decree 9-96) protects IP rights to own and possess the lands they traditionally occupy, and, where appropriate, imposes a duty on the State to take measures to safeguard IP rights, concerning the use of lands to which they have traditionally had access for their traditional and subsistence activities, and provide adequate procedures within the framework of the national legal system to resolve land claims.<sup>35</sup>

Yet Guatemala does not directly recognize IPs' rights to territory as a property right in the Civil Code or elsewhere, and custom is not a source of property rights in law. There are no specific laws establishing how Indigenous and collective land tenure are formally recognized, nor is there a legal mechanism for titling or documenting and registering Indigenous rights or provisions set out on how these rights should be governed, administered, or protected. The legal framework does not distinguish Indigenous land, land rights, and governance as such, but rather establishes rights, procedures, and provisions applying to communal or commonly held lands, including IP lands. Nevertheless, as described further in the section below, other laws and policies do recognize IPs' traditional claims to land and provide a process by which ICs can register land rights held in common.

31 Decree 170 was passed by Justo Rufino Barrios who also mandated anti-loitering provisions (Decree 177 of 1874) against Indigenous persons, thus instituting debt peonage (Lovell 1988; Reeves 2006).

32 *Mestizos or ladinos* are mixed Indigenous and Caucasian persons. Creoles are Caucasians born in Guatemala, mostly of Spanish descent.

33 Agreement on the Identity and Rights of Indigenous Peoples, Guat. - Unidad Revolucionaria Nacional Guatemalteca (URNG), March 31, 1995, <https://www.peaceagreements.org/viewmasterdocument/283>.

34 Const. Polit, art. 67.

35 Convention (No. 169) Concerning Indigenous and Tribal People in Independent Countries, art. 14 et. seq., 27 June 1989, 1650 U.N.T.S. 383 (entered into force 5 September 1991), adopted June 13, 1996.

The Municipal Code recognizes the right of ICs to have legal personality and provides that ICs must be registered in the civil registries of their respective municipalities. The Code states that the municipality will respect an IC's organization and internal administration as well as conveys to the IC the right to self-governance, according to its own standards and procedures, to its recognized traditional authorities (arts. 20 and 21).<sup>36</sup> Prior to the enactment of the Municipal Code, communities lacked legal recognition or status, and would often register their lands held under custom to the municipality, thereby creating *municipios indígenas*—IC lands titled in the name of the municipality. As a result, it is common for the rights holder (a municipality) to be distinct from the entity or community managing the land and resources (a community). The extent to which municipal and Indigenous land and resource governance bodies overlap and municipal lands are viewed as Indigenous collective lands thus varies from place to place and can also change with demographic shifts: in some cases, where the IP is no longer in the majority, these lands become viewed as municipal rather than Indigenous lands (RRG and Global Land Alliance 2021).

Municipalities exercise considerable autonomy with respect to the land planning and environmental administration of the municipality's natural resources, including being responsible for forest management activities.<sup>37</sup> However, the Municipal Code provides for a community consultation mechanism, stating that “the municipal government will establish, after consultation with the community authorities, the mechanisms that guarantee the members of the communities the use, conservation and administration of the community lands whose administration has traditionally been entrusted to the municipal government (art. 109).<sup>38</sup>

Nonetheless, the manner and degree to which this provision has been implemented, so as to provide for effective land and resource governance by IPs at the municipal level, varies considerably among municipalities. While these provisions in the Municipal Code instruct municipal

governments to consult with communities and respect the authority of traditional institutions,<sup>39</sup> there is no legal obligation for them to do so. As a result, the extent to which an IC, whose lands are titled to a municipality, can manage and administer these lands varies (RRG and Global Land Alliance 2021).

Several ICs hold legal titles to their traditional lands, having purchased and registered titles in the 19th century. While these titles have often been overwritten, ignored by municipal governments, and eroded through the expansion of private landholdings, communities can take legal action to reinstate their titles; in fact, several successful cases have been brought to the Constitutional Court (Environmental Defender Law Center n.d.; RRG and Global Land Alliance 2021). It was not possible from the literature or key informant interviews to learn more about how municipalities manage forest or other communal resources in practice, and whether there are any positive or negative practices or outcomes about ensuring gender equity. This could present an opportunity for further interventions (see recommendations below).

The 2005 Cadastral Information Registry Law created the Cadastral Information Registry (RIC) as the competent authority in land-related matters, whose role is to establish, maintain, and update the national land registry.<sup>40</sup> It defines the different types of property as owned, held (occupied), and communal. The law explicitly defines communal land as “the lands owned, possessed or held by Indigenous or peasant communities as collective entities, with or without legal personality. In addition, part of these lands are those that appear registered in the name of the State or municipalities, though they have traditionally been owned or held under the communal regime.”<sup>41</sup> Article 65 provides for the determination, certification, and registration of ownership, possession, or the communal possession of land rights, specifying that such regulations must be in conformance with the Constitution and ILO Convention 169. In 2009, the Specific Regulation for the Recognition and Declaration of

36 Código Municipal, Decreto 12-2002 [Municipal Code, Decree 12-2002], 2002, art. 20.

37 Cód. Munic, art. 3.

38 ERPD states that the dialog and public participation processes for each REDD+ early action project carried out to date have been extensive and detailed, both at the country and the project levels.

39 Chapter IV of Guatemala's 2012 Municipal Code requires that the municipal government “recognize, respect, and promote the indigenous mayoralty, when this exists, including its own forms of administrative function”. See also MARN, Emissions Reduction Program Document (2019), accessed at [https://forestcarbonpartnership.org/system/files/documents/Guatemala\\_ERPD\\_11\\_05\\_2019.pdf](https://forestcarbonpartnership.org/system/files/documents/Guatemala_ERPD_11_05_2019.pdf).

40 The 2005 RIC law is one of the actions agreed to in the 1996 Peace Accords. Cadastral Information Registry Law, Decree 41-2005, 2005.

41 *Id.*, art. 23.

Communal Lands was passed under the 2005 Cadastral Information Registry Law, providing legal security for communal tenure with *titulo especial*—a special title that establishes a single procedure for the recognition of communal lands belonging to two different types of communities—IPs and peasants—with determined criteria for each (Herrera Garibay and Edouard 2012).<sup>42</sup> In spite of these provisions for securing communal land rights, the titling of Indigenous communal land in protected areas is not permitted (Tramel 2009), and as of 2018, only 11 of 94 applications for *titulo especial* had been recognized (MARN 2019). We were not able to locate additional literature or key informants to understand why so few had been recognized or to learn whether the process for doing so is gender responsive. Because land rights are the basis for ERP benefit payments, this is a potential area for future research.

The 2010 Law on the Program for Small Forestry and Agroforestry Land Holders (PINPEP)<sup>43</sup> aims to provide financial incentives for environmental services. Participants can be either individuals (with or without titles) or groups and municipal communities (which include many ICs). PINPEP participants must present a certificate of possession certified by the municipal mayor (art. 8); this certificate is considered a just title of possession. In the case of beneficiaries in protected areas, the certificate of possession must be issued by CONAP. Among its objectives, the PINPEP Law includes the aim of promoting gender equity, prioritizing the participation of women in the management of natural forests, along with establishing and maintaining forest plantations and agroforestry systems.

Additional research is needed to assess whether there is gender equity in these certificates of possession or in the PINPEP regulations. Given that such a certificate is necessary to benefit from the program, working on ensuring that women have equal opportunity to be named on certificates of possession could be helpful. This might include regulations to mandate the joint certification of rights of possession for married persons, ensuring that the certification process is socially and physically accessible to women

and men, as well as raising awareness within target communities (women and men separately) on the value and importance of certification for women and men.

The 2015 Law for the Promotion of the Establishment, Recovery, Restoration, Management, Production and Protection of Forests in Guatemala (PROBOSQUE)<sup>44</sup> provides compensation for ecosystem services. Beneficiaries include landowners, such as municipalities; social groups with legal personality occupying land owned by the municipality; tenants of reserve areas in mangrove areas; and cooperatives, ICs, or any other form of communal or collective owners of agrarian property that has historically belonged to them and that they have traditionally managed in a special way.<sup>45</sup> This criterion is designed to allow for Indigenous and peasant organizations, without explicitly requiring formalized tenure. The law is silent on how groups that receive compensation should be organized or governed. And it also does not address how decisions are made regarding how compensation is paid, to whom, and whether the processes for decision-making on the use of the funds are gender equitable. This law has associated regulations; assuming that these matters are not covered in the regulations, these issues present another potential area of intervention.

Other Guatemalan institutions, such as INAB and CONAP, have included requirements of a formalized organizational structure as a criterion for engaging in forest programs. Specifically, in order to participate in concession or incentive programs, rural communities, whether Indigenous or not and whether owner or holder, must be organized and registered in the municipality. Therefore, many ICs are currently registered and have been constituted as legal entities (such as association or cooperative).

Recent cases brought to Guatemala's Constitutional Court have affirmed the Indigenous rights to the recognition of legal personality, land ownership, and the rights to receive government payments for environmental services; the Indigenous authorities' official status as government bod-

42 Reglamento Específico para Reconocimiento y Declaración de Tierras Comunes, Resolución 123-001-2009 [Specific Regulation for the Recognition and Declaration of Communal Lands, Resolution 123-001-2009], 2009.

43 Ley de Incentivos Forestales para Poseedores de Pequeñas Extensiones de Tierra de Vocación Forestal o Agroforestal – PINPEP [Forest Incentives Law for Owners of Small Extensions of Land for Forest or Agroforestry Vocation – PINPEP Law], Decree No. 51-2010, 2010.

44 Ley de Fomento al Establecimiento, Recuperación, Restauración, Manejo, Producción y Protección de Bosques en Guatemala – PROBOSQUE, Decreto 2-2015 [Law for the Promotion of the Establishment, Recovery, Restoration, Management, Production and Protection of Forests in Guatemala (PROBOSQUE Law)]. Although this law has regulations, they are not accessible via the internet.

45 *Id.*

ies. The Court has also ordered Guatemala's executive branch to take all corrective actions necessary to properly title community lands (Abbott 2020; Indian Law Resource Center, n.d.).

Nonetheless, land conflicts have continued to occur between peasant and ICs, between these communities and owners of commercial farms, as well as between ICs, in the midst of efforts to survey their landholdings. The violent taking of land from ICs over several centuries by military, political, and landholding elites, and more recently by commercial farmers and agri-business corporations, has complicated efforts to update titles and land cadastres, leaving land conflicts to fester for years. As a consequence, land conflicts are a very serious problem in Guatemala (World Bank 2006).

Another challenge relates to the customary tenure practices among Guatemala's Indigenous groups, which are patrilineal. Essentially, land rights are normally handed down from fathers to sons. Information gleaned from focus groups with ethnic groups and anecdotal cases draw a picture of ethnic women as mothers and keepers of the culture—a culture that criticizes women who talk about their access or rights to land and accuses them of creating divisiveness and fomenting individualism in their collective space (Deere and León 1999; Escoto et al. 1993).

## COMMUNITY MEMBERSHIP

Rural communities in Guatemala are based on race or ethnicity: smallholder *ladino* (non-Indigenous) communities and ICs. While there is some intermarriage between the two groups, many interactions are based on patron-client relationships. Of interest to this case study are the *ladinos/mestizos* who own small and medium forested landholdings as private property and the ICs, with their own rules regarding the access and use of forestland. The majority of forestland, which is not under state property, are Indigenous lands.

There is little literature on how the various Indigenous or other communities determine group membership. However, field interviews suggest that within their respective communities, women are often not considered full members. The cultural norm is that men are landowners. While only male heads of household were previously listed in the

community census, this is changing, with some communities now listing both spouses, and in some other communities, adult children are also listed (M. Chinchilla and T. Chinchilla, personal communication, August 2021; A. Ponce, personal communication, August 2021). If the land is private property, the male household head passes the land to his eldest son or divides it among all his sons; his wife and daughters are not considered to have land rights. If the community land is held in common, it is often titled to a cooperative or to the municipality, and thus it is not clear how members of those groups are treated, or whether women are considered members. Still, there has been a modest increase in women buying land for themselves (A. Ponce, personal communication, August 2021).

## GOVERNANCE OF COMMON RESOURCES

BSP groups land and forest management rules for Indigenous groups and local communities under four categories according to their source (MARN 2020):

- The community has established rules based on local initiatives and criteria. These are mostly followed and enforced by customary law; some of them, however, have been approved by the State and are published in the form of statutes and regulations.
- The State has established rules that are included in agreements for the management of the protected areas, reserve lands, and lands granted by the Land Fund (FONTIERRAS). This applies mainly to communities in, or around, protected areas, such as community forest concessions.
- Forestry institutions have rules oriented specifically toward forest management and include elements ensuring compliance with forest management commitments made to INAB, Programa de Incentivos Forestales (Forest Incentives Program [PINFOR]), or any other government entity supporting forest activities.
- Municipalities negotiate rules with communities for the use and management of resources on communal lands. They generally apply to communities using municipal lands.

## WOMEN'S PARTICIPATION IN COMMUNAL LAND AND FORESTS GOVERNANCE

As numerous authors have observed, the cultural norm in the Mayan communities is that women have a lower status than that of men (Krishnamurthy and Schüssler 2007; MARN 2018; USAID 2018a; World Bank 2006). Men represent and economically support the family, while the community and women are relegated to the home and household chores. Most local and Indigenous organizations are led by men; women's participation in discussions, negotiations, and decision-making is minimal.

While there have been incremental improvements in women's participation in public events and activities over the last two decades, the cultural norms shaping local organizations still discourage women from assuming new roles and accessing greater resources. Indigenous women exercise only nominal participation in governance. While they are considered members of their community, they do not generally attend community meetings, participate in community-level discussions, and consult on natural resource management decisions. Very few women hold positions of authority. Indigenous authorities and Indigenous mayors are almost exclusively men. There is little evidence that men support affirmative initiatives to empower women, either in the household or the community (MARN 2018). Moreover, given the dominance of male governance, women leaders and Indigenous women would likely have comparatively less experience in the public sphere than their male counterparts.

Considering the exclusion of women from governance and decision-making within communities (ladino and Indigenous), another potential area of intervention would be to encourage the positive adaptation of community-level governance and decision-making so that it responds equally to the needs and interests of both women and men.

## REGULATIONS AND LAWS RELATED TO THE RIGHTS TO FOREST RESOURCES

The distribution of forests in Guatemala shows that the State and private companies are the major owners of the total forestland area, accounting for 34 percent and 38 percent, respectively. Communal groups, which would include ICs, own only 15 percent, with municipalities owning eight percent and other groups five percent (MARN 2019).

Unlike many other jurisdictions, Guatemala's 2013 Framework Law on Climate Change (Ley Marco de Cambio Climático [LMCC]) clearly ties the rights over emission reduction units to the ownership or possession of the underlying land. It also establishes the creation of a national registry of emission reduction projects. Article 22 of LMCC stipulates that the rights, ownership, and negotiation of ER belong to project owners, which may be individual persons, legal entities, or the State, if they are the owners or legal holders of the land or property on which the project is carried out and that it is registered in the National Registry. The law states that the principle of "Integrity" must be observed in decision-making and implementation; the law defines this to mean "[...] considering cultural and ethnic relevance as well as the gender perspective in the design of plans, programs and actions" (art. 6).

The regulations for the operation of Article 22 have not yet been approved. In April 2020, the Guatemalan Congress passed Decree 20-2020. This supplementary budget law affirms that landowners, as well as the persons or entities implementing the measures described in ERP, are considered the beneficiaries and owners of the ERs titles; the article also states that municipalities can be ERP beneficiaries.<sup>46</sup>

Another relevant law is the 1996 Forestry Law that invokes reforestation and forest conservation as a matter of national urgency and social interest.<sup>47</sup> Its objectives are to reduce deforestation and the expansion of the agricultural frontier, increase forest productivity with rational and sustained management, encourage public and private investments in forestry activities, as well as improve the living standards of communities. There are no articles re-

46 Ampliación del Presupuesto General de Ingresos y Egresos del Estado para el Ejercicio Fiscal Dos Mil Veinte, Decreto 20-2020 [Expansion of the General Budget of State Income and Expenditures for Fiscal Year Two Thousand Twenty, Decree 20-2020], 2020.

47 Ley Forestal, Decreto 101-96 [Forestry Law, Decree 101-96], 1996.

ferring to gender, ICs, or tenure in the law. The updated 2005 regulations for this law<sup>48</sup> are similarly silent on gender, although they do make an indirect reference to ICs by permitting forestry licenses to agricultural communities of any nature that can “reliably” show ownership.<sup>49</sup> However, the regulation does not outline what principles apply for making a determination of “reliability,” who makes the determination, along with whether and how the determination can be appealed.

Created in 2000, MARN has, as one of its objectives, the promotion and encouragement of the equal participation of women and men in the use and sustainable management of natural resources (MARN n.d.).<sup>50</sup> In 2015, MARN issued the Gender Environmental Policy (Ministerial Agreement 248-2015) to promote gender equity and the inclusion of women and men who work for the protection, conservation, and improvement of natural goods and services by adopting an effective gender perspective in the Ministry’s policies, strategies, plans, programs, projects, and environmental instruments.

Finally, INAB’s gender and ethnic strategy, formulated in 2013 (Gender Equity Institutional Strategy with Ethnic Relevance), seeks to promote the equal participation of men and women in programs and services as well as strengthen the capacities of the INAB staff to incorporate a gender and ethnicity/Indigenous perspective into the institution’s operational plan. One of the strategy’s four principal lines of action deals with natural resources, land, and housing; it outlines plans to organize the experiences of Indigenous women and men in INAB’s principal forestry activities.

The extent to which women and men will equally benefit from changes in forest management and use will depend on intra-household and intra-community dynamics. Field interviews suggest that there is a clear division of labor on forestland and cropland. The cutting down of trees and their transport to sawmills is done by men. The work at sawmills is also performed by men, although this is showing signs of change. Women collect seeds (for example, breadnut tree, pimiento, and chate palm) from the forest and classify them for export. Women oversee growing

food for the household. The principal objectives of the Gender Units in CONAP, the Ministry of Agriculture, the Ministry of Natural Resources, and INAB are to reduce the limitations women face in the management of forestland through training programs in areas, such as the production of forest foods and the caring of the forest. Unfortunately, the COVID epidemic has put this plan on hold (M. López, personal communication, August 2021; M. Oliva, personal communication, August 2021; I. Velásquez, personal communication, August 2021).

## IV. INDIGENOUS GROUPS AND GENDER

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There are some commonalities among Guatemalan Indigenous groups regarding gender and property and decision-making, but there are also some differences, as described below, which could impact the gender equity of ERProgram. For instance, the inheritance of plots and homes allocated to households tends to run along the male line and exclude women, but among inheriting male children, the youngest sons might inherit more than other sons. Also, inheritance and property-related decisions are not just linked to blood lines in all groups, but also can include family and non-family relationships. Some of the traditional inheritance patterns have changed over time with outside influence. In some groups, the gendered division of labor means that women may not be involved in the activities entitling them to ERP participation, and some women may be excluded from participating in public consultations or decision-making, where men are present, because of social taboos. All these variations will have an impact on how benefits are distributed within ICs and who within a community will have the right to make decisions about benefit distribution. More details on the specific practices for a few different groups is provided below to illustrate these differences.

Guatemala is home to 22 Indigenous Mayan groups, including the Achi’, Akateco, Awakateco, Chalchiteco, Ch’orti’, Chuj, Itza’, Ixil, Jacalteco, Kaqchikel, K’iche’, Mam,

48 Reglamento de Ley Forestal, Resolución 02.43.2005 [Regulations for the Forestry Law, Resolution 02.43.2005], 2005.

49 *Id.*, art. 50: “Licencias a colectividades pequeñas y medianas. Las comunidades agrícolas de cualquier naturaleza podrán tramitar y solicitar licencias colectivas para lo cual deberán comprobar fehacientemente la propiedad o tenencia legal de la tierra y la representación que ejercen quienes comparecen a hacer la solicitud, además de llenar los otros requisitos que establece la Ley Forestal y el presente Reglamento.”

50 Creación de Ministerio del Ambiente y Recursos Naturales, Decreto 90-2000 [Creation of the Ministry of the Environment and Natural Resources, Decree 90-2000], 2000, art. 3.

Mopan, Poqomam, Poqomchi', Q'anjob'al, Q'eqchi', Sakapulteco, Sipakapense, Tektiteko, Tz'utujil, and Uspanteko. In addition, there are two non-Mayan Indigenous groups: the Garifuna and Xinca. The K'iche', with nearly one million speakers, is the largest group, followed by the Mam (686,000 speakers) and then the Kaqchikel (400,000 speakers) (International Work Group for Indigenous Affairs [IWGIA] n.d.).

Regarding inheritance, research carried out across various Indigenous and multi-ethnic communities in Guatemala shows that, in general, a married couple will agree, or the husband will decide unilaterally how to distribute marital properties, taking into account the behavior of their children, who provided support, the needs, etc. (Dirven 2002). In general, although all children have an obligation to care for their parents when they are elderly, it is the youngest son who carries the most significant responsibility, and often, he will receive the family home and its contents as an inheritance (Coordinación de los Pueblos Maya de Guatemala 1999). Once the distribution decision is made, children are presented their inheritance or taken to their land. See Annex 2 for a detailed example (the Q'eqchi) of how typical Mayan communities are organized around gender.

Inheritance practices among the Kaqchikel differ from those of the Q'eqchi. For the Kaqchikel, inheritance follows male lines; children carry the surnames of the mother and father, but a female child will drop her mother's name when she marries (taking her husband's name). Kaqchikel tend to be patrilocal (a woman will go to live with her husband and his family). The Kaqchikel also have a complex kinship system that distinguishes both sex and relative age. The number of family members residing in the same compound can be large, and two or more related nuclear families often live together on the same property (Fischer and Hendrikson 2018).

Historically, the K'iche' Indigenous group was organized in patrilineal clans and lineages. However, due to the influence of the missionaries and governors of the Spanish colonial period, who stressed the importance of the nuclear family, this affected kinship relations among the K'iche'; and now, inheritance patterns show traits that are generally bilateral (Everyculture n.d.). Remnants of the patrilineal system include a prohibition against marrying members of the patrician of one's mother. In some cases, patrilineal relatives are less important than fictive kinship (for exam-

ple, godparents) (Whipple and Hawkins 2013). Among the K'iche' Indigenous group, visiting and communication are highly regulated by gender roles and environmental constraints; cross-gender conversation is dangerous and highly taboo in most social situations (Whipple and Hawkins 2013).

## V. SOCIAL AND ENVIRONMENTAL SITUATION ANALYSIS

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Although Guatemalan law gives all citizens equal rights including equal property rights, gender bias and racism have denied many Guatemalans, especially Indigenous women, the opportunity to enjoy equal rights in practice.

Since ICs are mostly located in forested areas, the issue of racism is relevant to this case study. Guatemala's Indigenous population has experienced social exclusion based on race and ethnicity, which has contributed to its poverty, and they continue to suffer economic, legal, and social discrimination. Racism is utilized to keep the Indigenous population from participating fully in civil society as well as deny ICs their property rights, keep agricultural wages low, prevent access to basic social services, such as schools and health care, as well as perpetuate their continued political powerlessness vis-à-vis the minority ladino population.

Furthermore, Indigenous women are given the responsibility of continuing the traditional customs: the women across all Mayan groups wear traditional dress daily and use traditional languages. However, this expectation that they speak the traditional language has been shown to have a negative impact, if it is the only language they speak (globally, monolingualism mainly affects women) (USAID 2018a). Even among Indigenous women who speak Spanish, cultural norms sometimes prevent them from using that language with an outsider until they get to know that person better. This restriction likely limits women's access to public services in many sectors (Instituto Nacional de Estadística 2015). Table 1 summarizes other social and environmental factors influencing women.



**Table 1. Statistics illustrating the social and environmental context for women in Guatemala.**

Education	Workforce	Political Participation	Gender-based Violence (GBV)	Social Status
In urban areas, the average level of education is eight years; in rural areas, the average is four years. Indigenous women have three years of schooling (4.2 for Indigenous men), compared to non-Indigenous women who have 5.3 years (5.9 for non-Indigenous men) (UN Women n.d.)	The Labor Code is discriminatory, stating that “work for women and minors must be suitable to their age, condition, physical state, and intellectual and moral development.” <sup>51</sup> Women’s work on family farms is only focused on supporting the male head of household (HH). <sup>52</sup>	Indigenous women are limited in their ability to participate politically under customary law (USAID 2017, 2018a).	The country is ranked among the countries with the highest rates of violent deaths among women (9.7 in 100,000) (UN Women n.d.)	Women exercise little decision-making power over assets or income, and often receive no payment or recognition for their work. (UN Women n.d.)
Only 12% of the population attends university, but today, more women graduate than men (SEPREM 2013).	Of the economically active population (EAP), male labor force participation is 83% in contrast with 40% for women (Instituto Nacional de Estadística 2015).	In terms of political participation, 51% of registered voters were women for the 2011 elections. Women accounted for 69.3 percent of voters in 2011 (UN Women n.d.)	The passage of the Law against Femicide and other Forms of Violence against Women (2008) was followed by the increase in the number of criminal complaints (UN Women n.d.)	Nearly 82% of men indicated that women needed to ask permission to leave home; 58.9% to use contraceptives; 67% to manage household income; and 77.8% to carry out other activities (INE 2015).
		Six women candidates (two of them Indigenous) participated in the presidential nominations— three presidential and three vice-presidential candidates. For the first time in Guatemala’s political history, a woman was elected to the Vice-presidency.		Only 26% of women reported having influence over decisions pertaining to the use of income, compared to 90% of men (INE 2009).  Autonomy is especially restricted for married women in the rural areas, particularly in the Mayan communities.
		Only 31 women of 158 available seats in Congress (19.4%) were elected in 2021 (IPU Parline 2022).		

51 Código de Trabajo, Decreto no. 1441 [Labor Code, Decree no. 1441], 2014, art. 147.

52 *Id.*, art. 139.

## VI. WOMEN'S ORGANIZATIONS

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Very little information is available on organizations working with women on land issues in Guatemala. These are the few mentioned in FCPF-related documentation:

- **Municipal Women's Directorates;**
- **Secretaría Presidencial de la Mujer**, SEPREM; and
- **Defensoría de la Mujer Indígena**, DEMI (Ombudsman for Indigenous Women).

## VII. CLIMATE CHANGE PROGRAMING AND GENDER INCLUSION

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Among the guiding principles of the 2013 Framework Law on Climate Change is the inclusion of cultural, ethnic, and gender perspectives in the design of plans, programs, and actions.<sup>53</sup> Another principle highlights the need for Guatemala's cultural identity to incorporate the identification and promotion of traditional practices in the use and management of natural resources that contribute to the adaptation to climate change and the mitigation of greenhouse gas emissions (art. 6).

It is important to point out that there are no specific mandates or strategies in the law for including women, *ladina*, or Indigenous women, in the design and implementation of the law, nor is there language as to how climate change could affect women, particularly Indigenous women. The makeup of the National Board for Climate Change (art. 8) did not initially include any women's organizations or women's advocacy groups.

Back in 2014, the Interinstitutional Coordination Gender Group (GCI) organized a series of workshops across Guatemala for those interested in the REDD+ process, particularly groups of women who worked in the management of the forest, in order to train them in gender issues, climate change, and REDD+. This resulted in the development

of the gender roadmap (Ruta de Trabajo para la Incorporación de Consideraciones de Género en el Proceso Nacional REDD+ de Guatemala [*Ruta*]). The 2017 Ruta document, which is the REDD+ Gender Plan, includes a strategy, an action plan, along with specific goals and indicators, as well as designates institutions to carry out the activities.<sup>54</sup> It is based on the REDD+ safeguards and the United Nations Framework Convention on Climate Change (UNFCCC), of which Guatemala is a signatory. It includes strategic actions for the equitable distribution of benefits between women and men, including the following (MARN 2020):

Promote the participation of women in decision-making in relation to benefits distribution at all levels;

- Carry out a permanent information process on the equitable distribution of benefits at the local level in each region;
- Encourage joint work programs between the Gender Directorates or Units of the GCI institutions to guarantee a consistent application of the gender approach in BSP;
- Ensure that the design and implementation of BSP are gender sensitive;
- Ensure the adequate implementation of benefit-sharing mechanisms so that women can access payments for results and other non-carbon benefits;
- Identify concrete actions to prevent or mitigate impacts associated with benefit distribution;
- Prepare a baseline and monitoring of income derived from forestry actions targeting women; and
- Prepare a baseline on the types of productive activities targeting women within REDD+ initiatives under ERP.

Ruta also emphasizes the different ways that women and men use the forest and its resources, as well as describes how women are limited in their ability to participate effectively in decision-making and access forest resources, economic benefits, education, and information. On the one hand, these differences provide economic, social, and environmental opportunities, such as incorporating the different knowledge and experiences of women and men, based on their different roles, responsibilities, and use of forest resources. On the other hand, the limiting of gender

53 Ley Marco para Regular la Reducción de la Vulnerabilidad, la Adaptación Obligatoria ante los Efectos del Cambio Climático y la Mitigación de Gases de Efecto Invernadero, Decreto Legislativo 7-2013 [Framework Law to Regulate Reduction of Vulnerability, Mandatory Adaptation to the Effects of Climate Change, and the Mitigation of Greenhouse Gas Effects, Decree of the Congress 7-2013], 2013, art. 4.

54 There is no REDD+ national Gender Action Plan (GAP) document for Guatemala.

differences highlights the need for improving the equitable distribution of REDD+ benefits among women and men.

The Inter-Institutional Gender Group coordinated the drafting of the Ruta document for the REDD+ program. It consists of the Gender Units of CONAP, the Ministry of Natural Resources, the Ministry of Agriculture, and INAB. The Ruta process involved many governmental offices and consultations with local women from all over the country. After Ruta was published in 2018, the Gender Group worked to ensure that the National Information System for Climate Change (SNICC) incorporated sex-disaggregated variables into its data collection.<sup>55</sup> However, these commitments have not materialized, and sex-disaggregated data is still not being collected (M. López, personal communication, August 2021; M. Oliva, personal communication, September 2021; I. Velásquez, personal communication, August 2021). At the very minimum, support and resources for better data collection among the ministries and agencies responsible for implementing ERP need to be provided.

Field interviews confirmed that another achievement of the Gender Group was the inclusion of community women leaders in the complaint mechanism so that they could make known the needs articulated by women. The Gender Group worked with the women leaders so that they understood the complaint process and would be able to access this mechanism (M. López, personal communication, August 2021; M. Oliva, personal communication, September 2021; I. Velásquez, personal communication, August 2021). Some informants expressed disappointment at the lack of political will on the part of governmental and REDD+ managerial personnel to implement the Ruta strategy and activities. Interviewees suggest that when budgets are cut, the first activities to be dropped are those working on social and gender issues (M. López, personal communication, August 2021; M. Oliva, personal communication, September 2021; I. Velásquez, personal communication, August 2021). Essentially, there is insufficient political will to implement Ruta (L. Lorenzo, personal communication, August 2021).

The one gender activity that the Inter-institutional Gender Group has successfully seen through to fruition took place in the Western Highlands (San Miguel Sigüilá, Quet-

zaltenango). It was coordinated between the international non-governmental organization (NGO), Helvetas, and the local Municipal Women's Office, with support from INAB's Gender Unit and the Inter-Institutional Gender Group. The objective was to establish small reforestation parcels on private land that would provide women and their households with firewood for their cooking needs. Indigenous women from 14 women's groups (288 women) received training in negotiating with their husbands or male family members to gain access to a small family parcel. INAB technicians accompanied the women in selecting an appropriate parcel and then trained them in preparing the parcel and planting the recommended native tree species. Most of the parcels were also successfully registered in PINPEP's forestry incentive program. (I. Velásquez, personal communication, August 2021; M. López, personal communication, August 2021; M. Oliva, personal communication, September 2021).

In addition to the activities of Ruta, BSP requires the Project Implementing Units of REDD+ initiatives to monitor gender inclusion in the design and implementation of REDD+ initiatives, as outlined in the Readiness Document (2018). It uses the following checklist (MARN 2020):

Was the participation of women considered during the REDD+ initiative design?

- Were actions targeting women identified and defined, from the beginning of the REDD+ initiative?
- Is there a baseline disaggregated by the gender of the REDD+ initiative beneficiaries?
- Do men and women participate equally and actively in the activities carried out in the REDD+ initiative?
- Does the REDD+ initiative have an efficient mechanism so that the distribution of benefits for men and women is equitable?
- Do women participate in REDD+ initiative decision-making bodies?
- Do women participate in the board of directors/Project-level Benefit-Sharing Committee of the REDD+ initiative?
- Does the REDD+ initiative consider the needs related to productive improvement?
- Does the REDD+ initiative consider capacity building in relation to market access?

55 By law, State institutions are supposed to collect sex-disaggregated information, but these types of data are seldom analyzed or published.

- Do women have access to credit for income-generating initiatives, either outside or inside the REDD+ initiative?
- Have women received information on climate risks and impacts?
- Do women have access to capacity building for organizational strengthening?
- Do women have inputs to maintain and/or improve their agricultural and/or forestry activities?
- Are women's organizations or groups explicitly identified as beneficiaries from the start of the project?
- Is a gender analysis carried out in the project to influence the decrease in the burden of domestic work for women so that all the housework is not only left to the women?

This comprehensive checklist includes not only the different ways that women are to participate in the REDD+ program, but also the obstacles to their full participation.

The checklist is a good first step for identifying potential issues with the inclusion of gender. However, it could be taken a step further by also providing guidance on how to check whether the needs of differently situated women (for example, *ladina* and Indigenous) have been integrated, and also what should be done, if the answers to these questions suggest that gender considerations are lacking. A recommendation for an intervention might be to take this checklist to the next step and identify who is responsible for ensuring that gender is considered, how that person or entity is accountable and to whom, and then what must be done to address gender-related issues or challenges identified in the application of the checklist. This could be addressed through procedures or regulations and program design, as well as supported through the creation of tools and provision of training. Importantly, sufficient budget and resources must be dedicated to these activities to ensure that they are implemented.

## EXISTING REDD+ PROJECTS

Field interviews were conducted with individuals and organizations familiar with two important REDD+ projects: Guatecarbon and Conservation Coast. Almost all the interviewees listed these limitations and challenges to women's involvement in REDD+:

- Patriarchal culture considers only men as the household head.
- Women do not have self-confidence in their abilities.
- Women, particularly Indigenous women, have little knowledge of the law and do not know their legal rights.
- Women's household responsibilities make it difficult for them to engage in official processes, travel to governmental offices, which are usually far away, and participate in capacity-building courses or workshops (K. Aguilar, personal communication, September 2021; S. Guzmán, personal communication, August 2021; A. Ponce, personal communication, August 2021).

There have been no assessments conducted of the benefits distributed because no carbon units have been sold in Guatemala; thus, there is no income to distribute. Ruta has a strategy for the equitable distribution of benefits, but it does not have a distribution plan.

The **Guatecarbon REDD+ project** was developed jointly by CONAP and ACOFOP to carry out effective actions for the reduction of carbon dioxide (CO<sub>2</sub>) emissions in MBR (ACOFOP n.d.). ACOFOP lobbies for a share of the funds coming into the Guatecarbon area for productive activities from international donors. Since the land for this REDD+ project belongs to the State, the carbon units belong to the State and the income from carbon sales goes to the State (S. Guzmán, personal communication, August 2021). No carbon units have been sold yet because CONAP has not approved any sales. The benefits to the nine communities holding the forest concessions will be distributed by ACOFOP, in the form of social and economic investments in the communities (no money will be distributed). There is no plan to monitor these distributions with sex-disaggregated indicators (S. Guzmán, personal communication, August 2021).

Within the context of the Guatecarbon project, it is observed the level of women's participation in REDD+ depends on the internal organization of their respective communities; no specific requirements related to gender have been insti-

tuted (S. Guzmán, personal communication, August 2021). While ACOFOP—a peasant organization in the Peten—has over 500 women members, it is dominated by its male leadership and the men in the smallholder communities.

Nonetheless, ACOFOP has formed a gender unit recently, with the aim of raising the visibility of women's productive roles within the organization and the communities (M. Chinchilla and T. Chinchilla, personal communication, August 2021; A. Ponce, personal communication, August 2021). The gender unit has also exerted pressure to get women elected to the community leadership (*juntas directivas*); as a result, some communities have women leaders. It is now pushing for the statutes to be modified to allow for the election of women and promote it (M. Chinchilla and T. Chinchilla, personal communication, August 2021; A. Ponce, personal communication, August 2021).

The ACOFOP gender unit has also achieved some success with land titling: land titles and certificates only listed the male household head as the owner in the past, they are now given to both husband and wife. Since the land in the Guatecarbon REDD+ project is State land, the households living and working on that land do not receive titles but certificates, as possessors of the land. However, the gender unit pointed out that the cultural norm is that the land belongs to the male household head and that it will be passed on to their sons, and that these gender norms are stronger than the law. In many of the cooperatives, the men, considered to be the co-op members, make the decisions, while women are perceived to be reserve labor whom the co-op counts on for labor-intensive tasks (M. Chinchilla and T. Chinchilla, personal communication, August 2021; A. Ponce, personal communication, August 2021).

Overall, it would seem that ACOFOP's gender unit has been strong and active in working to show that it takes its gender work seriously. However, the ACOFOP authorities are not open to integrating gender into the REDD+ project and the rest of their REDD+ program activities (M. Chinchilla and T. Chinchilla, personal communication, August 2021; A. Ponce, personal communication, August 2021).

In fact, IPs do experience discrimination in government offices due to racial bias and prejudice. Women face a double dose of bias: racial and gender. One of the ACOFOP respondents recounted an anecdote of confronting a female government employee for displaying racist behavior.

The employee replied, "How do I know if I'm discriminating against you?" It would seem that people do not even know that they have racial attitudes because they are not conscious of their racist behavior (M. Chinchilla and T. Chinchilla, personal communication, August 2021; A. Ponce, personal communication, August 2021).

The **Conservation Coast** REDD+ project is situated on private land owned by individuals and communities possessing ownership title to the land. The Fundación para el Ecodesarrollo y la Conservación (FUNDAECO), the co-manager of this REDD+ project, has a gender strategy for several of its projects, including the REDD+ project. FUNDAECO provides several services, including scholarships for girls to attend high school and university; sex and reproductive education for teenage girls; health clinics for women; along with technical assistance for women who want to engage in productive activities (K. Aguilar, personal communication, September 2021).

Furthermore, FUNDAECO has been working with rural communities in Guatemala for some time and has had an institutional gender policy since before the REDD+ project. It has also worked in this area of Guatemala, and therefore, knows the communities. In addition to its gender programs (mentioned above), FUNDAECO has a complaint program for women, with clearly laid out rules and processes. Its past work on gender issues has gained it the trust of the women (K. Aguilar, personal communication, September 2021).

With regard to the REDD+ Conservation Coast project, FUNDAECO works with families to legalize their land titles. In this process, it makes sure that the titles are in the names of both spouses. It also assists widows with the paperwork they need to register their husbands' lands in their names. When community land is titled, they ensure that all the households in the community and both spouses in each household are included through the signing of the land title (K. Aguilar, personal communication, August 2021).

FUNDAECO, as the proponent of this REDD+ project, holds all the property titles for the carbon units. Benefits are distributed in direct monetary payments to each household according to how much of their forest land is in the REDD+ project. CONAP has not yet paid out the income from carbon sales (K. Aguilar, personal communication, August 2021; M. López, personal communication,

August 2021).

A recommendation for future interventions would be to conduct in-depth assessments or evaluations of both projects and collect sex-disaggregated data on outcomes to date. This information would be useful in refining ERP, based on the lessons learned from the existing projects.

## VIII. ANALYSIS AND RECOMMENDATIONS FOR GENDER INCLUSION

### **Make the eligibility for benefit sharing equally available to women and men.**

Regarding Carbon Fund payments where monetary benefits are paid to individuals based on ownership or being a landholder on private land, women are at a disadvantage because they are less likely to own land than men. Additionally, because the term, “landholder”, is not well-defined by law, it is not clear whether women would be considered landholders on equal terms with their male counterparts. Traditional gender norms would preclude women from being landholders, unless there is an affirmative statement in the law that requires it. On land customarily held by Indigenous groups on a collective basis, women’s experience with sharing in benefits will likely depend on the practices of the group, which are typically structured to exclude women from authority, control, or decision-making over land and resources.

If there is political will for a land redistribution program (to address the issues of landlessness or land poverty), then this program could be undertaken in ERP accounting areas, and it must be done with affirmative commitment to gender equity in all procedures, processes, and outcomes. This could mean the joint titling of marital property as well as ensuring that women and men have the documentation allowing them to assert a claim of right. It also calls for the sex-disaggregated tracking of the program and its results to drive programmatic adaptation to ensure that women are not excluded.

The certification of possession processes should be assessed and revised to ensure that they are equally available to women and men. Also, efforts should be made to

ensure that certification processes are equally accessible to women and men, and that both their possessory rights are treated equally in the process. Collecting sex-disaggregated data will be important for this process as well. Likewise, to the extent that the titling of community land is undertaken under the Cadastral Law to establish the legal right to carbon payments, every effort must be made to ensure that the processes for titling are responsive to the different needs of women and men in those communities. Essentially, the titling processes must ensure that both women and men have an equal opportunity to meaningfully influence how benefits are distributed within the community.

As such, both the respective processes for titling and decision-making in these communities need to be addressed.

### **Take advantage of the implementation of the municipal code currently used to protect Indigenous lands as a way to also provide guidance on gender-transformative management approaches.**

More research is needed to evaluate how municipalities manage forest or other communal resources in practice, in terms of determining whether any positive or negative practices or outcomes concerning gender equity can be identified. Without intervention, entrenched gendered roles, customs, practices, and social norms working to the disadvantage of women will also influence the operation of municipal decision-making on natural resources. This is a potential area of additional intervention: for example, supplementary regulations to the Municipal Code could be drafted to provide specific guidelines for gender-equitable decision-making processes, governance bodies, consultations, and the planning process. The end-goal should be to ensure that there are equal opportunities for both women and men to influence the municipal decision-making on natural resources and advance their interests, respectively.

### **Improve benefit distribution within households and communities in existing programs.**

Within the existing incentives programs—PINPEP and PROBOSQUE, the rules can be amended to make affirmative commitments to women, specifically regarding how benefits are paid and to whom, thus ensuring that these rules are not inadvertently disadvantageous to women. They can also include affirmative requirements for how

funds paid to Indigenous or other groups are used in order to ensure that the interests of women and men are given equal weight in their influence on decisions made. The law can also include minimum guidance on how, and to whom, compensation is paid, so as to make sure that any funds paid are equally accessible to women and men (that is, for married couples, funds should be paid to joint bank accounts, of which both spouses are signatories). Further, some investments can be made to assess whether there are good practices that can be supported or lessons learned from these programs about gender equity that can be addressed in the future. It will be critical to ensure that one does not assume that benefits allocated to a community, cooperative, association, or household will be equally shared among all members of those groups or shared with all those people who rely on the forests. Active steps will be needed to ensure the equal distribution of benefits to people within those communities.

There is an opportunity to learn more about the experience of the existing Guatecarbon and Conservation Coast REDD+ programs, as well as to collect sex-disaggregated data on outcomes to date from the environmental payment incentive programs—PINPEP and PROBOSQUE. This information would be useful in refining ERP, based on the lessons learned from existing projects. At a minimum, steps can be taken to address the known issues with the programs, such as removing the household head as the representative of the household and focusing on both heads of household; addressing women's lack of confidence through training and experiential learning; improving Indigenous women's knowledge of the rights and the law; along with providing support for household duties to enable women to attend meetings and receive training.

### Support the meaningful representation of women's interests at the national level.

The 2013 Framework Law on Climate Change can be amended to require affirmative steps for including *ladina* and Indigenous women in program design, programs, and actions. A simple first step might be to engage with existing civil society organizations (CSOs) and associations representing these groups. Specifically, they could be given a formal seat on any climate change or REDD+ decision making bodies at the national and subnational levels, for example, on the National Board of Climate Change. Budget and resources should be added to these bodies,

specifically concerning the needs of Indigenous and *ladina* women. Moreover, where necessary, support in skills and knowledge development should be provided so that representatives can play a meaningful role in these bodies.

### Enhance resourcing for gender-related commitments already made and accountability.

Regarding addressing gender in the REDD+ activities, while there is Ruta and other guidance for gender integration, more can be done to ensure that those initiatives have the effect of changing practices and generating positive outcomes for women. Specifically, guidance should be provided on how to check whether the needs of differently situated women (for example, *ladina* and Indigenous) have been integrated, and also what must be done, if the answers to these questions suggest that gender considerations are lacking. A recommendation for an intervention might be to build on the Ruta checklist to identify who is responsible for ensuring that gender is considered, how that person or entity is accountable and to whom, and then what must be done to address gender-related issues or challenges identified in the application of the checklist. This could be addressed through procedures, regulations, or program design, as well as supported through the creation of tools and the provision of training. It will be essential that sufficient budget is allocated to ensure that these commitments are realized.

An important recommendation from this deep dive is that an investment should be made to internalize Ruta in the four institutions and to hold the managers and leaders of these institutions accountable for gender-related results. This could also include developing special incentives or implementing Ruta.

While Ruta describes activities that should be undertaken for BSP to be gender-inclusive, it lacks funding. Funding its implementation would be one option for a pilot project. Guatemala has gender action plans and gender mandates throughout its laws and policies, but it is unclear why implementation is lagging behind their existence to such a degree. Additional interventions are presented below:

- **Addressing the lack of information and data on Indigenous women's tenure rights.** The search for information on women's land rights in Guatemala, particularly in ICs, turned up very few studies and data

sources. We could find no information on whether any kind of baseline study has been done in any of the REDD+ areas. Carrying out a baseline survey on women's land rights and their productive activities in ICs would not only provide a benchmark dataset for an impact analysis down the road, but would also provide information on women's land ownership status and productive roles in REDD+ areas.

- **Addressing women's secondary status within the family and the community.** Indigenous and peasant communities often have internal regulations governing the use and exploitation of natural resources, including, for example, the distribution of community resources, access to land, and common uses of resources. While these customary practices and rules are very important for REDD+ projects, given that these same principles can inspire ways to implement REDD+ projects as well as benefit-sharing models in the communities (MARN 2019), a qualitative study of the women's status within the family and the community, along with their tenure relationship to cropland and forestland, is needed. Such a study would not only prevent the exclusion of women from REDD+ activities, but also ensure their inclusion in the receipt of REDD+ benefits on an equal basis.
- **Facilitating the distribution of identity cards to women.** Indigenous women's lack of identity cards limits the activities they can participate in, including land adjudication and titling. Facilitating the process of obtaining identity cards would help to raise the status of women in REDD+ activities as well as other activities and processes.
- **Providing information in Indigenous languages.** Indigenous women have low educational and literacy levels. In addition, a sizable proportion of them are monolingual: they speak only their Indigenous language, not Spanish. Therefore, REDD+ field offices and local activities should be staffed and attended by bilingual personnel, and if possible, bilingual women personnel.



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## INTERVIEWS CONDUCTED JULY 28–AUGUST 11, 2021

Name	Organization
Karen Aguilar	Manager, Conservation Coast REDD+ Project, Fundación para el Ecodesarrollo y la Conservación (FUNDAECO)
Marielos Chinchilla Teresita Chinchilla	Gender Unit, Asociación de Comunidades Forestales del Petén (ACOFOP)
Anabela Cordón	Gender Unit, Ministerio de Agricultura, Ganadería y Alimentación (MAGA)
Sergio Guzmán	Project Manager, Guatecarbon REDD+ Project
Marina López	Gender Unit, Consejo Nacional de Áreas Protegidas (CONAP)
Lissbeth Lorenzo	Lead author, Ruta document
Marleny Oliva	Gender Unit, Ministerio del Ambiente y Recursos Naturales (MARN)
Ana Ponce	Gender Unit, Asociación de Comunidades Forestales del Petén (ACOFOP)
Irene Velásquez	Gender Unit, Instituto Nacional de Bosques (INAB)

All interviews were conducted via Zoom conference, with follow-up communication via email.

## APPENDIX 2: Q'EQCHI CASE STUDY

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The Q'eqchi' provide an example of how typical Mayan communities are organized around gender. Q'eqchi' define kinship according to the *junkab'al* or “house”—a social group based on shared residence and participation in household activities. It encompasses the categories of genealogical relatedness, consanguinity, affinity, and adoption. For example, most Q'eqchi' *junkab'als* consist of married couples and their children, their parents, and other “extended” blood family members, as well as numerous individuals with no blood ties to the house, including servants, godchildren, adopted children, and other employees residing in the home. Affinal kin, such as parents-, daughters-, or sons-in-law, also form the *junkab'al* when they reside within it (Wilk 1991).

Moreover, individuals residing within the household over an extended period become kin by developing rapport, trust, support, and affection with one another through their mutual participation in daily activities in every sphere of their lives. They include daily production (including agricultural production on land) and—in the case of market women's families—market sales, the redistribution of goods and food products, the rearing and socialization of children, and the practicing of rituals (Wilk 1991).

The inheritance of property is central to the identities of the Q'eqchi' in their local society. Q'eqchi' *junkab'als* persist as bodies over time by passing on their possessions, wealth, along with other valuable titles and items. All *junkab'al* members may inherit the family's estate, including land, titles, and other possessions (Wilk 1991).

Household hierarchy is based on the length of time that one has been a part of the *junkab'al* or the nature of their connection to the *junkab'al* (that is, consanguinity, affinity, *compadrazgo*<sup>56</sup>, etc.). In general, Q'eqchi' women occupy a low social status in their local hierarchical systems. This status differentiation may stem from the marked gendered division of labor that prevails in Q'eqchi' society. Q'eqchi' women are typically relegated to domestic labor and assigned responsibilities centered in the home (Adams 1999; Ghidinelli 1975).

The Q'eqchi' community actively excludes women from participating in agricultural production or any type of wage labor, meaning that ultimately, women have no control or influence over the ultimate sources of food and wealth for the household (Wilk 1991). While Q'eqchi' men play a public role in society—building houses, working in milpas, and taking on other occupations away from the home, women typically perform domestic activities (Adams 1999; Hatse and DeCeuster 2001).

Nevertheless, there are important cultural sites, such as in the market, where women have more power than in agricultural spaces or the home, and where that power is transferred intergenerationally within the kin *junkab'al*. In Chamelco, Indigenous Q'eqchi market women have achieved positions of stature through their houses' long-standing participation in the marketplace (Kistler 2007). Many contemporary marketers trace their family market histories back for generations, relating that their mothers, grandmothers, or great grandmothers also sold in the market. Chamelqueños view marketing as the inheritance or gifts passed down to them from their most ancient ancestors. As a result, marketing has become a vocation for many of Chamelco's women; they state that they market because they were “called by their ancestors” to do so (Kistler 2007). The positions are of such high status that women continue to work in these positions, even in cases when it is financially less advantageous to do so. A woman's market position can be inherited by female children, adopted children, godchildren, or household employees living in the family home, in addition to blood relatives (Kistler 2007). Market women are often the sole earners of their household, while their husbands often hold no steady form of employment—picking up odd jobs wherever possible to help make ends meet—engaging in farming or working as truck or taxi drivers (Kistler 2007).

56 *Compadrazango* (literally co-fatherhood) is the Spanish form of ritual kinship established through the rites of the Catholic Church between a person, their biological parents, and their godparents (Mintz and Wolf 1950).

# Indonesia

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## I. INTRODUCTION

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The Accounting Area for Indonesia's East Kalimantan Jurisdictional Emissions Reduction Program (ERP) includes the boundaries of the East Kalimantan provincial jurisdiction, covering seven districts and three cities, 103 subdistricts, and 1,032 villages. ERP will be implemented by the East Kalimantan Provincial Government, with guidance from the Ministry of Environment and Forestry (MOEF) (MOEF 2020).

East Kalimantan is Indonesia's third-largest province, covering 12.7 million hectares (ha), of which 6.5 million ha (54 percent) are covered by forests. East Kalimantan's land area is divided by function into the following categories: protection forest, conservation forest, limited production forest, convertible production forest, and land for other purposes (MOEF 2019).

Between 2006 and 2016, around 15 percent of that forest was lost, mainly due to the expansion of oil palm areas, timber plantations, and mining. Indonesia's vulnerability to climate change is linked to its high population density and dependence on natural resources, particularly among its rural poor. Those drivers will be addressed by this ERP, through the improvement of land governance and the livelihoods of local communities, the development and implementation of policies supporting habitat and species protection, along with the enabling of active participation by stakeholders in reducing deforestation and forest degradation in their areas (MOEF 2020).

East Kalimantan has a population of about 3.5 million, of which approximately 6.11 percent is classified as poor (MOEF 2019, citing 2016 statistics). The distribution of poverty is skewed toward rural areas, where 10.1 percent of the population is classified as poor, compared to four percent of the urban population (MOEF 2019).

Although Indonesia is among the fastest-growing economies in the world, with an average annual per capita gross domestic product (GDP) increase of four percent, this economic growth has spurred rising inequality, with a Gini coefficient for income increasing from 28.6 in 2000 to 38.2 in 2019.<sup>1</sup> Tackling income inequality is becoming a major challenge. Gender-based inequalities are even more complex to address,

<sup>1</sup> The Gini coefficient measures the inequality among values. A Gini coefficient of zero expresses perfect equality, while a Gini coefficient of one (or 100 percent) expresses maximal inequality. World Bank, Indonesia, Gini index - World Bank estimate, <https://data.worldbank.org/indicator/SI.POV.GINI?locations=ID>.

as the inequalities go beyond the economic sphere, being embedded in social and cultural norms (Habtezion 2016; United Nations Development Programme [UNDP] 2019).

East Kalimantan's population includes the Indigenous Dayak and Kutai, as well as the Javanese, Chinese, Banjarese, Bugis, and Malay people. Dayak is a loose term for over 200 ethnic subgroups. The Kutai people number around 300,000 and have their own language. The Bugis and Malay, mostly Muslim, dominate the southern part and most of the coastal areas of the country, while the northern and northwestern parts are home to the minorities of Christians and Indigenous Peoples (IPs). Communities in remote areas often practice traditional lifestyles governed by customary law; most of the people who live in the rural upstream areas still practice swidden agriculture (MOEF 2019). Both the Islamic Law and the Civil Law are formalized as part of Indonesia's national law.

The Benefit Sharing Plan (BSP) is designed to reach a diverse group of beneficiaries, including the four levels of government (National, Provincial, District, and Village), the private sector (palm oil and timber/forestry), and local communities often located in remote areas. The eligibility criteria for beneficiaries are designed to ensure that all relevant contributors to emissions reduction (ER) receive benefits from the program.

ERP benefits will be transferred to all beneficiaries by the newly formed Environmental Fund Management Agency (*Badan Layanan Umum - Badan Pengelola Dana Lingkungan Hidup* [BLU-BPDLH]) at the national level based on the beneficiaries' performance in implementing ERP. The provincial government will report to the national government on the beneficiaries' ERP implementation performance and will make the key decisions for benefit disbursement at the subnational level. Benefits will be allocated, based on the amount of reduced emissions during the ERP Agreement term as well as the past sustainable practices of local communities (especially the *adat* communities)<sup>2</sup> who have managed their forests sustainably for decades (MOEF 2020).

Local communities will be the ones to implement activities leading to ER, such as alternative livelihoods, fire protection, or forest monitoring. They can take the form of community groups, such as *adat* communities or farmers groups. Community groups who meet the eligibility criteria may receive the ERP benefit directly or indirectly through the village government, according to the program activities, as all communities fall under the village government (MOEF 2020). To be eligible for the ERP benefit, local communities, including *adat* (customary) communities, need to be recognized by the village government or have their *adat* claims recognized by the district. While formal title is not necessary, local communities must prepare a village planning document to be recognized. This process is difficult, usually requiring the support of nongovernmental organizations (NGOs) to help with preparing a map to define the area of the village, due to several reasons. In 1978, the government developed a migration plan to move people from the high-density to the low-density areas of East Kalimantan. At the same time, the government also grouped villages together, leading to the mixing of ethnic groups. Therefore, defining the area of a village can be challenging (S. Agosto, personal communication, August 2021).

Nonetheless, this recognition as a community or village is important as the first step in the process for ensuring that *adat* communities (*masyarakat adat*—MHA) can own and manage their own land. Securing land tenure for *adat* communities is one of the activities in this ERP. The World Bank is currently funding the East Kalimantan Project for ER Results, which will ensure that the paid amounts are distributed according to BSP (World Bank 2011).

Although Indonesia is progressive in its push toward gender mainstreaming in all aspects and all levels of the government, women can still be disadvantaged at the local level because of gendered social norms, which generally consider men to be the head of the household. Because women's rights and opportunities are often dependent on social norms, they may differ in accordance with the rules of the diverse ethnic or religious communities. Poverty, education, along with marital and social status, also play a role.

2 *Adat* refers to the systems of customary law for different ethnic groups in Indonesia. *Adat* communities (primarily Indigenous and living on outlying islands) are the communities of people who follow customary law.

## II. NATIONAL LEGAL AND POLICY FRAMEWORK ON THE RIGHTS OF WOMEN

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Although it does not mention gender directly, the 1945 Constitution serves as one of the basic legal foundations for women's rights in Indonesia, stating in article 27(1) that “all citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.”

Beginning in 1999 with the Guidelines on State Policy, Indonesia's planning and policy framework has highlighted women's empowerment. Under the leadership of President Abdurrahman Wahid, there was a significant move toward gender equality and women's empowerment. Presidential Instruction No. 9/2000 was enacted in 2000, instructing all ministries and government agencies, including district and provincial offices, to conduct gender mainstreaming. A series of laws, policies, and instructions followed, focusing on gender mainstreaming and advancing women's empowerment (Berman et al. 2013).

Indonesia's commitment toward women's empowerment continued with the National Mid-Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional* 2015–2019). It focuses on three strategic objectives: “(i) Promoting the quality and role of women in development; (ii) Increasing the protection of women against violence, including trafficking in persons; and (iii) Strengthening institutional capacity on gender mainstreaming as well as protecting women against all forms of violence.”<sup>3</sup> This Plan has also been used to establish the performance indicators for each ministry, national state agency, and local government in the implementation of gender mainstreaming (Bennet et al. 2019).

The Ministry of Women Empowerment and Child Protection (MoWECP) serves as the focal point in promoting and coordinating gender-mainstreaming efforts across all ministries, institutions, and local governments. Since 2008, when it was established in its current configuration, MoWECP's budget and human resource capacities have

more than doubled. There are now 33 agencies focusing on women's empowerment and child protection issues at the provincial level and 514 at the municipal level. Moreover, units or focal points on women and children have also been established under relevant ministries and agencies. Provincial governments are also mandated to take specific measures in promoting the rights of women and children, including the empowerment of women (United Nations Committee on the Elimination of Discrimination Against Women [UN CEDAW] 2020). Gender-mainstreaming strategies have been integrated into long-, medium-, and short-term national development planning, and Gender Responsive Planning and Budgeting has been operationalized (UN CEDAW 2020).

Indonesia also has a National Strategy on Access to Justice (2016–2019) that is focused on the provision of legal assistance, access to basic services, and rights for the poor, the vulnerable, and the marginalized; the institution of dispute settlement mechanisms; along with the management of rights to land and natural resources (UN CEDAW 2020). Furthermore, Supreme Court Regulation No. 3/2017 on the Guidelines on the Hearing of Cases Involving Women in Conflict with Law acknowledges the State's duty to ensure that women have access to justice and are free from discrimination under the judicial system (UN CEDAW 2020).

## III. LEGAL AND POLICY FRAMEWORK FOR WOMEN'S LAND TENURE AND FOREST MANAGEMENT

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Indonesia's Constitution states that “Every person shall have the right to own personal property, and such property may not be unjustly held possession of by any party.”<sup>4</sup> According to the Basic Agrarian Law (BAL), every Indonesian citizen, both men and women, have an equal opportunity to obtain the rights to land and its benefits for themselves and their families.<sup>5</sup>

3 UN CEDAW, *Eighth Periodic Report Submitted by Indonesia under Article 18 of the Convention*, January 8, 2020, CEDAW/C/IDN/8 at 4/42, <https://undocs.org/pdf?symbol=en/CEDAW/C/IDN/8>.

4 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [Constitution], art. 28H (4).

5 Law No. 5 of 1960 on Basic Regulation on Agrarian Principles [Basic Agrarian Law], art. 9, para. 2.



There are three types of land tenure: (1) individual-ownership rights (certified land); (2) land held by descent groups under communal-ownership rights; and (3) land held by local groups, namely village communities (Darwin, Winarso, and Zulkaidi 2019).

## INDIVIDUALIZED LAND

Certified land is governed by the 1960 BAL and registered at the local land office. Article 16 of BAL states that the rights associated with certified land are as follows: (1) the right of ownership—the right to sell, transfer, inherit, and mortgage the land; (2) the right of exploitation/cultivation—the right to work on State-owned land for a period of up to 25 years on a land area of at least five ha, and the certificate can be mortgaged; (3) the building use right—the right to establish and possess structures on land that is owned by another party for a maximum period of 30 years; (4) the right of use—the right to use and/or to collect produce from land directly controlled by the State or owned by another individual providing the holder with powers and obligations; along with (5) the right to lease—the right to use land owned by another person for building purposes, upon the payment of a rent (Food and Agriculture Organization [FAO] n.d.).

*Adat* land can be managed or controlled by individuals, although the land remains in the possession of the customary holders. Customary communities generally have a common resource forest and individualized plots of household land for the cultivation of gardens, rubber, palm oil, or fruit trees. The household trees usually provide money for school fees and other necessities (S. Agustiorini, personal communication, August, 2021).

Under Land Agency guidelines (No. 5/1999), a land title covering customary land will not apply to plots of land already possessed by individuals or legal entities with a land title, nor will it extend to land already acquired or

appropriated by government institutions, legal entities, or individuals pursuant to the prevailing procedures.<sup>6</sup> These individualized plots of land can be held by members of the customary community and registered as a land title pursuant to BAL. Furthermore, they may be held by government agencies, legal entities, or individuals who are not members of the customary community, if a title to the land was already granted by the State, with the community's permission. The guidelines also provide that a customary community can lease out its communal land for a set period of time (art. 4). Thus, the marriage and family rules discussed in the following section would apply to individual households within a customary land system, if they have the individual rights to the land within that system.

Indonesia has a pluralistic legal system: the applications of family law and personal law differ in accordance with the religion of the citizen. Under this system, family law, as set out in the remainder of the discussion in this section, applies only to the land used, managed, and/or owned by individuals or households, and does not apply to common resources.

**Marriage Law.** Article 51 of the Human Rights Law No. 39/1999, which applies to all Indonesians, states that during marriage, a wife and husband have equal rights and responsibilities with regard to all aspects of the marriage, contact with their children, and rights to joint control of assets. The 1974 Marriage Law is also applicable to all Indonesians, regardless of religion.<sup>7</sup> The Law exclusively recognizes religious marriages, which must be registered in order for them to be legally recognized.<sup>8</sup>

Polygamy is only allowed if (i) a man's wife is unable to perform her conjugal duties; (ii) his wife suffers from a physical infirmity or an incurable disease; or (iii) his wife cannot bear children.<sup>9</sup> The man must petition the court to enter into a second marriage, and his existing wife/wives must agree.<sup>10</sup> Male civil servants have to obtain permission from their office to enter into a polygamous marriage. The appli-

6 Reg. of State Min. of Agrar. Affairs/Head of the Natl. Land Agency No. 5/1999: Guideline for the settlement of problems related to the communal reserved land of the customary-law-abiding community (June 24, 1999), art. 4, available at <http://www.fao.org/faolex/results/details/en/c/LEX-FA-OC036559>.

7 Law of the Republic of Indonesia, No. 1 of the Year of 1974, On Marriage (*Undang-undang Republik Indonesia, Nomor 1 Tahun 1974, Tentang Perkawinan*) [Marriage Law], available at <https://www.scribd.com/doc/53066173/Undang-undang-Republik-Indonesia-No-1-Tahun-1974-Tentang-an>.

8 *Id.*, art. 2.

9 *Id.*, art. 3.

10 *Id.*, art. 4.

cation must be in writing, stating his reasons for his polygamous marriage; female civil servants are not allowed to be second, third, or fourth wives (Musawah 2017). Polygamy is not common in Indonesia; and according to Indonesia's 2012 Demographic and Health Survey, only 0.7 percent of marriages in Indonesia are polygamous (Statistics Indonesia et al. 2013). However, where polygamy exists without the permission of the court (illegal), subsequent wives would have no protection under the marriage law.

Indonesian law does not interpret equality to mean that men and women have the same rights and obligations. Rather, the law lays out specific legal obligations that differ by gender. Article 31 of the Marriage Law provides that the rights and position of both the wife and the husband are equal, both in family and social life; at the same time, it also states that the husband is the head of the family and the wife is the homemaker. Article 34 provides that the husband shall protect his wife and provide for all necessities of life required in a family to the best of his ability, while the wife shall manage the household to the best of her ability.<sup>11</sup>

The Marriage Law states that property purchased during the marriage is held in joint ownership, while property obtained as a gift or inheritance during the marriage, as well as property brought into the marriage, is separate property (owned by the recipient); each married person has control over his or her separate property.<sup>12</sup> The Marriage Law also provides that the transfer of joint property requires the agreement of both joint owners, but each individual has full control over his or her separate property (art. 36). A couple can stipulate different terms for marital property rights in the marriage contract (art. 29). If there is no contract in place, general law applies to the marital property. Bilateral kinship is prevalent in Indonesia, which means that women and men are both likely to have separate property.

In October 2019, the Government of Indonesia (GOI) passed Law Number 16 as an amendment to the 1974 Law on Marriage. The main amendment is to Article 7: it stipulates that marriage is only permitted, if the man has reached the age of 19 and the woman has reached the age of 16. In the new Law, Article 7 establishes a minimum legal age of 19 for both men and women. Parents can request a

dispensation from the court on the grounds that a marriage is very urgent; such a request must be accompanied by sufficient supporting evidence (United Nations 2020).

**Compilations of Islamic Law.** Since the mid-1980s, the *Compilations of Islamic Law in Indonesia*, authored by officials from the Ministry of Religion and Supreme Court judges, have been used to clarify points on personal law and inheritance for application by sharia courts. The 1991 Compilations of Islamic Law consist of three books: Book I (Marriage Law); Book II (Inheritance Law); and Book III (*Waqf Law*).<sup>13</sup> They are based on arguments from various schools, comparisons of the application of Islamic law in different countries, decisions from religious courts, etc. They are presented as Presidential Instructions, which have a lower status than statutes in the Indonesian legal system. As the Compilations draw from eclectic sources, the Supreme Court judgments, on appeal from the religious appellate courts, can diverge from classical Islamic law on many matters (An-Na'im n.d.).

At the same time, it is important to point out that the marriage law provisions of the Compilations essentially restate the 1974 Marriage Law and its implementing regulation (Cammack, Bedner, and van Huis 2015). The Compilations limit the rights of husbands to unilateral divorce (*talak*) by requiring all divorces to be heard in court and regulates the rights to spousal maintenance and child support post-divorce (Afrianty 2016). Although a Supreme Court regulation requires courts to offer mediation to both parties, regardless of who applies for the divorce, data from Indonesia's Religious Courts show that there has been a significant increase in the number of State-sanctioned divorces over the past decade. In fact, divorce cases form the single largest group of contested cases in the Indonesian judicial system. The rise in the number of successful divorces may be a result of a series of judicial reforms, which started in the 1990s, with the introduction of a fee waiver and the increases in the number of circuit courts travelling to rural areas, as well as capacity-building programs that strengthened the judges' awareness of women's rights and gender (Afrianty 2016). About 80 percent of divorce applications during this period were made by women and granted by the courts.

<sup>11</sup> Marriage Law, art. 34.

<sup>12</sup> *Id.*, art. 35.

<sup>13</sup> Waqf refers to charitable giving or permanent endowment of property for the general welfare or the benefits of certain groups or family members (UN Habitat, "Islamic Principles and Land: Opportunities for Engagement," 2011).

**Inheritance.** The 1847 Civil Code is the source of personal law and family law for non-Muslims, and provides for equal rights to inheritance, while the Compilations detail the inheritance laws for Muslims and generally follow the dominant interpretations of sharia (Musawah 2017). The Compilations, which codify Islamic law, are used as the basis for legal decisions made by religious courts that have jurisdiction over family law, inheritance, and divorce matters for Muslims.

In 1989, the Law on the Islamic Courts both solidified the legal standing of the Islamic judiciary and made changes to the organization and powers of the courts, putting them on the same footing as the parallel civil courts. The law also restored power to decide inheritance disputes, which had been eliminated in the 1930s, to the Islamic judiciary. Nonetheless, Article 63 of the Marriage Law states that all decisions of the Religious Court require the confirmation of the General Court.

**Land Titles to Individualized Land.** Most land titles are held in the name of male household heads (except in the case of households headed by females). Available data suggests that only about one-third of land titles are formally owned by women, either individually or jointly with their spouses (Asian Development Bank [ADB] 2016). One study of Dayak Modang communities in East Kalimantan found that the shift from customary tenure to formal titling has enabled men to accumulate land for plantations, at the expense of women's rights to land (Toumbourou and Dressler 2020).

According to the Emissions Reduction Program Document (ERPD), there is a widespread lack of understanding within communities, particularly among women and village leaders, regarding the possibility and benefits of joint titling of land and property rights. This is coupled with a prevailing, conservative attitude in the land offices and the lack of field staff training related to joint titling, thereby resulting in the low demand from women to register land titles in their names (MOEF 2019). ERPD further notes that when a woman's name is not on a title, she cannot claim her husband's land upon separation or divorce. Without registering their names, neither widows nor women-headed households can apply for inheritance. The titling of land in

the name of men only is a problem, particularly among the Dayak people. Dayak men traditionally move to the land of their wives' families; under the Marriage Law, as the woman is bringing the land into the marriage, this land should be treated as her individual property. As such, the women, not men, should be the primary owners of this land, which should be titled in the women's names (S. Beraan, personal communication, August 2021).

The increase in the cultivation of oil palm has further intensified the demand, scarcity, and monetary value of land across Indonesia. This has increased the formalization of land, which may erase customary social relations, usufruct holdings, and accumulation that had once enabled women's access to land through conjugal partnerships and village customs. Village governments, from which women face significant exclusions, now administer land and its property rights (Toumbourou and Dressler 2020).

## COMMON/COLLECTIVE LAND

Sixty-three percent of the nation's land area is designated as Forest Area (KH). These areas are known as Forest Areas (Kawasan Hutan [KH]). The Forest Areas are managed in accordance with three functions: Production Forests (*Hutan Produksi*, [HP])—57 percent of the Forest Area; Conservation Forests (*Hutan Konservasi* [HK])—18 percent; and Protection Forests (*Hutan Lindung* [HL])—the remaining 25 percent (World Bank 2020). Two other types of forest are also legally recognized within the Forest Areas: (1) State Forest (Hutan Negara [HN])—forest located on lands that have not been encumbered by any tenure right and (2) Titled Forest (Hutan Hak [HH])—forest located on lands that have been encumbered by a tenure right.<sup>14</sup> Most of Indonesia's remaining land area is made up of non-forest land, known as Areas for Other Purposes (APL).

BAL governs all land (urban and rural) in Indonesia. The Forestry Act of 1967 transferred tenure rights to all of Indonesia's forest lands to the State, to be governed by the Ministry of Forestry. Under the 1999 Forestry Act, these rights to forest land have remained with the State. Essentially, the State, through MOEF, determined areas that are to be functionally maintained as permanent forests.<sup>15</sup>

<sup>14</sup> *Id.*, arts. 1 and 5.

<sup>15</sup> Law of the Republic of Indonesia, No. 41 On Forestry (*Undang-Undang Republik Indonesia Nomor 41 Tahun 1999 Tentang Kehutanan*) [Forestry Law].

MOEF is responsible for managing the forest and administering the relationships between the people and the forest in the Forest Areas (KH) and managing all forests, including the State Forest (HN) and the Titled Forest (HH). This management responsibility forms the basis of MOEF's issuance of the various types of forestry licenses and permits in the State Forest land (HN).

Despite the differences in demarcations, the Forest Areas (KH) are in practice assumed to be State Forest (HN)—the State land administered by MOEF, and the forest area (KH) boundaries are deemed to be state land boundaries, instead of functional boundaries. In the past, when a land title belonging to a community located in a KH was to be issued, MOEF would normally change the forest area designation for that land parcel into titled land, in effect taking such titled land out of the designated forest area (KH) and reassigning it under Areas for Other Purposes (APL). This practice took place, even though the Forestry Law recognizes the existence of titled forests (HH), which may include Private Forest and *Adat* Forest (HA), within KHS.

BAL also endows the Ministry of Agrarian and Spatial Planning/National Land Agency (ATR/BPN) with the responsibility for the administration of all lands, regardless of their land cover (including forest cover), and the oversight of all land registration and the issuance of various types of land tenure rights. The resulting dualism in land administration has led to a lack of clarity in the legal and regulatory framework for the recognition of land rights and tenure arrangements in forest areas. As a result of the practice of forest areas being treated as MOEF-administered State lands, ATR/BPN has largely restricted its role to issuing land titles in APL (land outside KH) (World Bank 2020).

The dualism in land administration practice has impeded the recognition of land rights for communities living in forest areas, limiting their access to resources and leading to land conflicts that simultaneously threaten the livelihoods of forest communities and contribute to forest loss and degradation. Given that all forest areas (KH) have in practice been treated as State lands administered by MOEF, community rights in these areas were in the past overruled by State control. This has led to long-term conflicts be-

tween communities (including *adat* groups) and the State.

However, on May 16, 2013, in its decision on Case Number 35/PUU-X/2012 (hereinafter referred to as MK 35), Indonesia's Constitutional Court ruled that the forest lands of customary communities, normally known as MHA, should not be classified as falling under State Forest Areas. This judicial review was requested by the Alliance of Indigenous People of the Archipelago (Aliansi Masyarakat *Adat* Nusantara [AMAN])<sup>16</sup> and two of its member communities—the Kuntu community from Riau and the Kasepuhan Cisitu from Banten. The Indonesian Constitutional Court affirmed that the State's sole authority in owning almost all forest areas in the country is a violation of the Indonesian Constitution, which has resulted in the subjugation of the Indigenous communities' traditional rights (Arizona et al. 2015).

Nonetheless, the rules regarding local communities or *adat* communities owning and managing their own land are complex, requiring the recognition of a community or village as a first step before they can become a legal entity entitled to the land they claim. The initial stage of the MHA process is the formation of the MHA committee, which is usually not difficult. Gaining the local government's (Regent) commitment to provide MHA status is the most difficult (N. Alamsyah, personal communication, August 13, 2021). It is difficult for the district government to clearly define who exactly should constitute this new legal entity (MHA), as migration and intermarriages often blur boundaries between community members and outsiders (Bedner and Arizona 2019). The recognition process is complicated and expensive, requiring intense lobbying and cumbersome assessments by research institutions. The requirements include documentation on customary law; a map of the customary territories; along with a description of the community origin or the history of culture, language, and traditions that still exist today (N. Alamsyah, personal communication, August 13, 2021). The nature of the procedure also creates a dependency of rural communities on intermediary institutions, especially NGOs (Arizona, Wicaksono, and Vel 2019).

Today, there are two recognized Indigenous communities (MHAs) in East Kalimantan: the Mului Indigenous group,

16 AMAN is a large and influential NGO that has become the main vehicle for *adat* communities in the country to help them voice their political aspirations. AMAN receives financial support from international donors, such as the Ford Foundation, the Forest for the People, the Consultative Group on International Agricultural Research (CGIAR) and others, to conduct advocacy and programs on behalf of numerous *adat* communities in Indonesia.

part of the Paser tribe, in the Paser Regency; and Hemak Beniung, part of the Dayak Tunjung tribe, in the West Kutai Regency.<sup>17</sup>

From a gender standpoint, women will not have trouble being completely engaged in the management of the forests in customary law communities (MHA), if the community gains recognition and a title, according to the Forestry Agency in East Kalimantan Province (N. Alamsyah, personal communication, August 13, 2021). Women, as well as men, are pushing for this recognition. In several villages in the Paser district, the village head is a woman who is pushing for MHA recognition (N. Alamsyah, personal communication, August 13, 2021). For IPs, their main objective in obtaining the MHA status is to protect their land or village area from plantation and mining permits, which the State issues without community knowledge or consent. They also want recognition from the State as IPs attached to their customary territory (N. Alamsyah, personal communication, August 13, 2021).

While the State continues to own most of the forest land, the Government of Indonesia launched the Social Forestry Program in 2015 to reduce inequality by ensuring the availability of land for the members of local communities, including *adat* communities. In 2016, GOI passed Social Forestry Decree No. 83: it expressly states that the community is the main subject of forest management and codifies in a single decree the foundations of community and village forest management (UNDP 2019).<sup>18</sup> The regulations articulate an aim to solve tenurial and legal issues of local, Indigenous, and tribal communities living within or surrounding forest areas for the sake of improving community welfare and preserving forest functions (MOEF 2019). Component 4 of ERPD references GOI's Social Forestry Program as a means to address deforestation linked to agriculture and encroachment. Social Forestry is an approach to forest management and protection that prioritizes social and environmental development through the restoration of degraded forestlands (World Bank 2019). A national strategic project, Social Forestry is one of the four policies of economic equality put forth by President Joko

Widodo within the framework of Agrarian Reform, and is a national strategic project (World Resources Institute 2018).

The Social Forestry Initiative can be implemented in either State Forest Areas or Titled Forests and *Adat* Forests, in which Community Forest Utilization Permits are issued to local communities as Village Forest, Community Forests, Community Forest Plantations, and *Adat* forests (UNDP 2019). Furthermore, Forest Farmer Groups (KTHs), which are formed, can apply for Community Forest Utilization Permits. Guidelines established in 2018 for forming a KTH provide that at least 15 members are required to make up a KTH; the membership must include both males and females (N. Alamsyah, personal communication, August 13, 2021).

The forestry office accepts the KTH's registration and often facilitates the registration process. KTHs often need skill and business management development; several KTHs in East Kalimantan are assisted by forest management units (FMUs) and development partners. There are 132 KTHs in East Kalimantan, and of these, two groups are all-female. Located in the Muara Pantuan village and Bontang Kuala, the female groups process seafood, snack products, or household products. KTHs generally produce non-timber products. In 2020, the forestry service received funds to assist KTH formation (N. Alamsyah, personal communication, August 13, 2021).

In 2019, UNDP did an environmental and social assessment of the Social Forestry Initiative. This assessment found that although the Social Forestry regulations of 2016<sup>19</sup> affirm that the beneficiaries are "entitled...to get fair treatment on the basis of gender or other forms," the Social Forestry Program did not address gender equity or the advancement of the rights, equality, and interests of women in practice (UNDP 2019). Most often, leaders of villages and communities apply for licenses, and in cases where individuals need to be listed as beneficiaries or requestors of the license, there is no express obligation to include women (UNDP 2019). Decree 83, in fact, requires that when the license is requested for an area outside of the existing forest maps, the village head must list com-

17 In East Kalimantan, the Padi Foundation works in the Paser Regency (MHA Mului), Yayasan Konservasi Alam Nusantara (YKAN) or The Nature Conservancy (TNC) in East Kutai and Berau Regencies, while AMAN assists the IP in West Kutai and Mahakam Ulu, and Conscience Women work in Mahakam Ulu, the Long Isung village, and several villages in West Kutai (N. Alamsyah, personal communication, August 13, 2021).

18 There are three regulations for this Decree: Regulations 7, 8, and 9. Regulation 9 was passed in 2021 and covers customary forests and classifications of forests; gender mandates are also included in Regulation 9.

19 Ministry of Environment and Forestry [MOEF] Decree 83 / 2016.

munity members “that are known by the village head.”<sup>20</sup> This is potentially an important issue to address for gender inclusion. It is less likely that village heads will list women’s names, who would presumably be less known, which could be harmful to the women who are left out.

## COMMUNITY MEMBERSHIP

Statutory community membership is fairly straightforward in Indonesia. Certificates of domicile (KTP) are issued when a child turns 17 or gets married. All “vital events” must be recorded, including birth, death, fetal death, marriage, divorce, child recognition, child legitimization, child adoption, the change of name, and the change of nationality status.<sup>21</sup>

Customary law does not seem to create any issues related to community membership. For example, in the Wahau district of East Kunai, the Wahau Kenyah Dyak consider women to be members of the *adat* when they have participated in a traditional marriage; married women immediately become members of the community. The division of land, if there is a divorce, depends on mutual agreement, but both women and men will have land rights, as will their children, even if it is the traditional land of the husband. For many tribes, the husband follows the customs of his wife and moves to her family’s land (M. Triany, personal communication, August 10, 2021).

## GOVERNANCE OF COMMON RESOURCES

An issue raised almost universally concerning forests in Indonesia, if gender differences are raised at all, is women’s lack of engagement in the governance of common resources. According to the GOI report on Beijing+25, “one of the greatest challenges in actualizing full access and participation of women in Natural Resources and Environmental management is the lack of women’s involvement in decision and policy-making regarding environmental issues in various executive and legislative agencies” (Republic of Indonesia 2020, para. 221). The report goes on to say that policies meant to improve women’s role often places an additional burden of environmental preserva-

tion efforts upon women (Republic of Indonesia 2020).

Women’s engagement in the governance of resources is limited from the top national level to the community and project levels. Key institutions governing forest management in Indonesia tend to employ fewer women than men. This is despite the fact that women are generally more dependent on forests and play a more critical role than men in collecting and using forest products to meet their family’s daily needs. Village development planning consultative meetings are often dominated by village elites and men, thereby excluding women from management and decision-making. Women’s interests and needs are at risk of being disregarded due to the lack of participation and voice, for example, in the case of preparing small-project proposals or village management plans (MOEF 2019).

Although women’s roles in forest management are crucial to ensure good forest governance as they are often involved in forest protection, their heavy burden of work responsibilities, limited capacity and knowledge of governance responsibilities, high rates of illiteracy, along with the prevalent perception that forest-related activities and income-generating activities are “men’s work”, have kept them politically and culturally marginalized (Di Persio 2019). Limited women’s participation can also be attributed to cultural factors and religious beliefs, which do not allow women to be outspoken (MOEF 2019). Women have less access to extension services and capacity-building programs related to agriculture and forestry, mainly because the heads of the households, who tend to be men, rather than women, are invited to such activities (Women Organizing for Change in Agriculture and Natural Resource Management [WOCAN] 2012).

Projects that do consult women and succeed in creating “safe spaces” for them to voice their opinions and assume positions of leadership have better outcomes and sustainability of results than those that do not. Women use their detailed knowledge of landscapes to selectively nurture important species or build assets, collect non-timber forest products (NTFP), and protect High Conservation Value (HCV) areas or resources. These areas are part of traditional usufruct patterns that may be lost, if women are not consulted (World Bank 2020).

20 *Id.*, art. 19.

21 Law of the Republic of Indonesia, No. 24 of 2013 Amendment to Law No. 23 of 2006, on Population Administration (*Undang-undang tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan*), art. 17.

One avenue for gender inclusion in forest management could be through the implementation of Village Law 6 (2014). It has replaced the previous Law No. 32 of 2004 on Regional Autonomy and incorporates a number of key community-driven development principles and institutions, including participatory village planning, implementation of village-level projects, intervillage collaboration, community facilitation, and community oversight.<sup>22</sup> The Village Law directs the activities of the village government administration, which plays a major role in forest management, although the groups defined in the Social Forestry decree directly manage the forest (MOEF 2019).

Under the Village Law, village governments are responsible for administering village funds and accommodating community needs through democratic processes (hamlet and village deliberations). Under the framework of the law, villages now have the autonomy to determine how they want to develop, based on their own understanding and needs through a participatory process from the hamlet to the village level. Hamlet deliberation is often perceived by villagers, especially women, to be more participatory and receptive to proposals from various community groups. This is, however, not the case for village deliberation, where men and village elites usually dominate the meeting. Under the Village Law, the hamlets will propose activities and the villages will shortlist them and complete them. There is a concern that in these deliberations, women's interests and needs will be disregarded (MOEF 2019). Article 58 of the Village Law states that there must be an odd number of members of the Village Consultative Body, with at least five and at most nine individuals, taking into account the region, women, population, and the financial capacity of the village. This provision is fairly weak in that it does not establish a quota or provide clear guidance. Another nod to gender equality comes in the form of the obligations of the Consultative Council (art. 63b) and the Village Head (art. 26e), which include creating a "gender equitable" society.

## REGULATIONS ON LAND RESOURCES (FORESTS AND TREES) AND WOMEN'S RIGHTS

In the Forestry Department, a Gender Mainstreaming (*Pengarusutamaan Gender* [PUG]) Working Group was established in 2000 to promote gender-responsive forestry development. The Working Group's main activity is capacity building for internal department staff and other stakeholders, particularly forest-dependent communities. In 2000–2005, the Working Group conducted a series of workshops in numerous provinces involving different levels of Forestry Department officials to disseminate information about gender mainstreaming in forestry and improve gender analysis capacities (Gurung et al. 2011). A few active PUG members have continued this work (N. Alamsyah, personal communication, August 13, 2021). In its East Kalimantan office, the Forestry Service employs three females and one male division head, a male head of the forest service, and a male secretary. Institutionally, 70 percent of the leaders there are women (N. Alamsyah, personal communication, August 13, 2021). The head of the Gender department at MOEF states that MOEF is at the forefront of gender mainstreaming and is mentoring other ministries (Ir. Indriastuti, personal communication, August 16, 2021).

Furthermore, regulations, such as Ministry of Forestry Decree No. 528 (2004), have been instituted to promote gender mainstreaming in the development of the forestry sector. MOEF Regulation P. 65/2011<sup>23</sup> also provides guidelines for gender-responsive planning and budgeting in the forestry sector as a follow-up to the 2004 Decree. This ministerial regulation emphasized that the development of the forestry sector in realizing national development should be "pro-poor, pro-jobs, and pro-environment." In addition, a Memorandum of Understanding (MoU) was signed, on December 21, 2016, between MOEF and the Ministry of Women's Empowerment and Child Protection (MWECP), concerning the Acceleration of Implementation of Gender Mainstreaming, Women's Empowerment and Child Protection in the Environment and Forestry sector and Climate Change Control. Finally, based on the recognition that almost all community groups who have obtained manage-

22 Law of the Republic of Indonesia No. 6 of 2014 on Village (*Undang-Undang Republik Indonesia Nomor 6 Tahun 2014 Tentang Desa*) [Village Law], available at <https://www.kemenkeu.go.id/sites/default/files/pdf-peraturan/16.pdf>.

23 Regulations of the Minister of Forestry of Indonesia No. P.65/Menhut-II/2011 concerning guidelines for gender responsive planning and budgeting in the forestry sector (*Peraturan Menteri Kehutanan Republik Indonesia Nomor P.65/Menhut-II/2011 tentang pedoman perencanaan dan penganggaran responsif gender bidang kehutanan dengan*), October 11, 2011.

ment rights are led by men, and that men and women do not equally participate in forest management, both Ministerial Decree No. 528/2004 and Ministerial Regulation P. 65/2011 were later revised by Ministerial Regulation P. 31/2017 on the guidance of the implementation of gender mainstreaming in the environment and forestry sector (Siskawati, 2020). Specifically, it calls for a gender analysis, gender-responsive planning, gender-responsive budgeting, and the collection of gender-disaggregated data.<sup>24</sup>

## IV. INDIGENOUS PEOPLE AND OTHER CUSTOMARY GROUPS

In much of Indonesia, customary law is favorable to women, and gender is seen as less significant than other social factors like age, marital status, and sibling birth order. The structural importance of women in land and resource management has been attributed to several socioecological conditions. They include the historical availability of frontier land and the role of women as pioneers in land development; the low population densities making women's labor essential for extracting resources in some places; the rice-based agrarian systems; the late development of a centralized state; the predominance of bilateral kinship and the ability of daughters to inherit land and other resources; along with women's control over money and finances (Atkinson and Errington 1990; Colfer 2008; Elmhirst et al. 2017a; Elmhirst et al. 2017b).

As mentioned in the introduction, Indigenous populations in the ERP area include the Dayak (200 sub-groups) and the Kutai peoples. Indigenous Dayak and other older Dayak migrants to East Kalimantan have more egalitarian gender norms than the Indigenous Berau Malay community in Gunung Sari and the Javanese and Bugis migrant groups (who arrived later). Resource investments, including plantation agriculture, brought migrants and increased ethnic diversity in East Kalimantan, which has had some impact on gender norms and resulted in conflict between groups and industries.

Hierarchies in East Kalimantan are dictated according to ethnicity, social factors like age or marital status, and the histories of each specific community, along with the overlapping socio-legal systems in which people live. The most heavily documented research on gender norms in East Kalimantan are those of the Dayak, Bugis, and Javanese groups (Elmhirst et al. 2017b). Ethnographic research has focused on the Dayak groups and the shifts in forestry to plantation agriculture, along with the subsequent displacement and land conflict between them and new migrant groups.

### DAYAK

Located in the interior of Indonesian and Malaysian Borneo, the Dayak are riverine and upland ethnic subgroups with distinct languages and practices. The majority of the Dayak people are Christian. Social relationships are not ordered by a fundamental code of gendered differentiation, and there is limited evidence of norms restricting or enabling activities purely on the basis of gender. Women and men are able to inherit plots of land. While men traditionally travel for work or hunting, women are central to rice cultivation (Elmhirst et al. 2017b).

The Dayak community living at Long Segar, once a tropical forest, was relatively egalitarian: men and women were both involved in domestic tasks, and everyone took care of children and worked in the rice fields, though rice cultivation was seen as women's real profession (while men focused on hunting, fishing, and wage work) (Colfer 1982). However, as logging and plantation agriculture was introduced in the 1980s and 1990s, the Indonesian government settled tens of thousands of Javanese migrants nearby, who had contrasting patriarchal views of gender. The Javanese would talk to plantation headmen and not women, and viewed Dayak women as promiscuous due to their comparative freedom.

Women's public activities began to decline following the fears of harassment by outsiders, while missionaries, government and industry representatives, and television programs began promoting a patriarchal view of men as

24 Regulation of the Minister of Environment and Forestry of the Republic of Indonesia No. P.31/MENLHK/SETJEN/SET.1/5/2017 Concerning Guidelines for Implementing Mainstreaming of Gender in the Environment and Forestry Sector (*Peraturan Menteri Lingkungan Hidup Dan Kehutanan Republik Indonesia Nomor P.31/MENLHK/SETEN/SET.1/5/2017 Tentang Pedoman Pelaksanaan Pengarusutamaan Gender Bidang Lingkungan Hidup Dan Kehutanan*), 2017.



breadwinners and women as homemakers. Despite concerns that the Dayak's gender norms would shift following these changes, particularly following the spread of oil palm cultivation, research found that many egalitarian beliefs have remained intact (Elmhirst et al. 2016; Haug 2017). The centrality of rice cultivation remains an important pillar, not only of household food security, but also of feminized identities within the community. However, younger Dayak women are less involved in field work and receive more pressure to pursue formal education and seek government roles or work in the office of a plantation company (Evans 2016).

**Uma Jalan Dyak.** Among the Uma Jalan Dyak in East Kalimantan, even if plantation work is considered to be important, women tend to prioritize rice cultivation in order to fulfill their roles as providers of the household food and preserve their gendered identities within their community (Sijapati Basnett et al. 2016). Women are able to attend the *adat* dispute resolution meetings; however, they tend to sit at the side or are positioned as “audiences” to men's arguments (Colfer 2008; Tsing 1990).

**Dayak Bahau** is the majority tribe in Mahakam Ulu District. Ulu Mahakam, larger than the Mahakam Ulu District, is the customary territory of the Bahau and the Tunjung Dyak.

While men are the traditional heads of communities, Bahau women are the ritual leaders (Dayung) in the community; the latter also serves as the dispute resolution judge. The Dayung is a powerful member of the community and leads the community in customary practices (M. Kapung, personal communication, August 12, 2021).

Like all Dayaks, Bahau are matrilineal. Men generally follow the customs of their wives and move to their wives' homes. Women have their own inheritance rights, and the Bahau people use their mother's names. If the husband dies, land rights fall to his wife; if the wife dies, the rights will return to the wife's family or to their children, or to someone else as a result of a customary agreement. Domestic violence is strictly prohibited among the Bahau, and fines are levied against offenders. If a non-Bahau wife of a Bahau man wants to join the Bahau community, she must find adoptive parents from the Bahau tribe to act as her protectors. In such a case, the wife would be given the name Bahau, and there would be a traditional ritual and ceremony indicating that she will follow Bahau customs

from that point on (M. Beraan, personal communication, August 14, 2021).

Typically, the man provides dowry to his wife's family and gold to his wife. If a mixed marriage occurs, the male usually moves to his wife's home and follows the tradition of her family. If a divorce occurs, both parties agree on who occupies the house. If there is an inheritance from the male's parents, it is registered in his name; if it is inherited from a female's parents, the woman's name will be used on the certificate (M. Beraan, personal communication, August 14, 2021).

The customary council is chosen by the community, and either a man or woman can lead the council, but the leader must be a descendant of *hipuy* (nobility). In general, *hipuy* are prohibited from marrying *pangin* (common people).

Note that, even with the relative equality of men and women, village meetings (an administrative rather than customary designation) are participatory, but women do not often speak or express their opinions at meetings. This is the case, even though it is not a safety issue for women to speak up. Women are more likely to participate in women-only meetings.

Most Bahau women are not afraid to ask for their land rights, but in Mahakam Ulu and West Kutai, many people do not want to get land certificates because it is difficult and expensive to obtain a certificate, and many people are reluctant to pay taxes on certified land, as is required. At the same time, many Bahau people are concerned about land companies taking land (M. Setting Beraan, personal communication, August 14, 2021).

## KUTAI

Beyond historical facts, it is difficult to find information about the customs of the Kutai. Several sources describe the Kutai as being similar to the Dayak, but these accounts lack specificity. Kutai is the oldest kingdom in Indonesia and was established around the fourth century when Hinduism arrived in Indonesia. In the 15<sup>th</sup> or 16<sup>th</sup> century, Kutai adopted Islam. Before and during Dutch colonialism, East Kalimantan was divided into sultanates, one of which was Kutai on the Mahakam River.

In 1825, the Sultan of Kutai recognized the sovereignty of the Dutch government by signing an agreement with the Dutch Resident. The Dutch began mining Kutai coal in 1888 and petroleum in 1899. In 1902, the Dutch gave Kutai self-governing status.

The Sultanate of Kutai was incorporated into Indonesia as a special region in 1950. In 1959, Kutai was declared a normal province, and in 1960, the Sultanate of Kutai was abolished. Kutai is now used as a general name for the Indigenous inhabitants of Kalimantan who are Muslim (Vargas 1985).

## BUGIS

The Bugis are the second-largest ethnic group in East Kalimantan. They originate from the southwest peninsula of Sulawesi and are historically known as seafaring traders. Many influential migrant workers, repatriated from Malaysian oil palm companies, belong to this group, which has led to the dispossession of the Berau Malay community in Gunung Sari. The Bugis and Javanese groups are Muslim, as are the Beau Malay (the original inhabitants of north East Kalimantan). In these groups, cultural flows associated with Islam intersect with gendered *adat* practices and discourses, and social factors like generation or class are more significant compared to Dayak communities (Elmhirst et al. 2017b).

In everyday life across groups, a national gender ideology promotes a household model in which men are breadwinners and the heads of the household, while women are caregivers. This means that while women are not restricted from having their names on land titles, in practice, the State defaults to titling in men's names. This ideology has resulted in conflicts with the local Dayak and Malay communities, where these actions contradict local gendered *adat* practices.

## V. SOCIAL AND ENVIRONMENTAL SITUATIONAL ANALYSIS

Indonesia is ranked in Category 3 out of 5 in the 2019 Gender Development Index, scoring medium on equality in the Human Development Index (HDI) achievements between women and men. The Gender Inequality Index (GII) indicated that in 2019, Indonesia placed 121 out of

162 countries, reflecting gender-based inequalities in three dimensions: reproductive health, empowerment, and economic activity.<sup>25</sup> The GII score can be interpreted as a loss in human development due to the inequality between female and male achievements in these three GII dimensions (UNDP 2020). According to Indonesia's 2012 Demographic and Health Survey, about 15 percent of the households in Indonesia are headed by women (Statistics Indonesia et al. 2013). Table 1 presents more details related to the women's social and environmental situation.

**Table 1. Statistics illustrating the social and environmental status context for women in Indonesia**

Education	Workforce	Political Participation	Gender-based Violence (GBV)	Social Status
46.8% of adult women reached secondary level of education, compared to 55.1% of males (HDI for 2019).	Female participation is 53.1% compared to 81.9% for men. 27.68% of women work in the agriculture, forestry, and hunting sectors (Republic of Indonesia 2020).	17.4% of parliamentary seats are held by women (2019 HDI).	41% of ever-married women report emotional, sexual, or physical violence by their partners or husbands during their lifetime. (US-AID 2019).	For every 100,000 live births, 177 women die from pregnancy-related causes; the adolescent birth rate is 47.4 births per 1,000 women, ages 15–19.
	A study in West Kalimantan showed that opportunities for women smallholder farmers and workers to profit from oil palm are limited (Li 2015).	All political parties must include >30% women representation in their lists of candidates. <sup>26</sup>		In 2018, one in nine girls were married. The number of girls aged 20–24, who married before 18, is estimated to have reached 1,220,900 (UN CEDAW 2019).
		MWECF issued a regulation with step-by-step guidance to create a conducive environment for women.		
		The Ministry of Agriculture (MoA) and MOEF have a focal point on women and children (RoI 2020).		

25 With GII, reproductive health is measured by maternal mortality and adolescent birth rates; empowerment measured by the share of parliamentary seats held by women and attainment in secondary and higher education by each gender; and economic activity by the labor market participation rate for women and men (UNDP, "The Next Frontier: Human Development and the Anthropocene—Briefing Note for Countries on the 2020 Human Development Report: Indonesia," 2020, available at [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/IDN.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/IDN.pdf).)

26 Law No. 8/2012 on Elections; Law No. 2/2011 on Political Parties.

## VI. WOMEN'S ORGANIZATIONS

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Indonesia has an existing infrastructure to support efforts at gender inclusion. Informal and formal women's institutions at the village level are commonly found in rural areas. The most well-established institution found in every village is the *Pembinaan Kesejahteraan Keluarga* (Family Welfare Movement [PKK]), usually led by the wife of the village head. Many PKK members use this institution to promote sustainable local economic development, through establishing women's cooperatives, improving women's skills to manage home gardens for improved family nutrition, and planting traditional medicinal plants for alternative medicine (Gurung et al. 2011).

The most active NGO in the Indonesian environmental sector is the Indonesian Alliance of *Adat* Communities (AMAN). AMAN was founded in 1999 as an independent organization, and its membership consists of the various IP communities throughout Indonesia. One of its main objectives is to revive and adapt the right of communities to manage their own socioeconomic, legal, and cultural systems, including the control of their rights to their land and natural resources, as well as other livelihoods, through the promotion of appropriate government acts (FAO, n.d.). A more complete list of organizations can be found in Annex C.

## VII. CLIMATE CHANGE PROGRAMING AND GENDER INCLUSION

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The main REDD+ subnational focus is in the East Kalimantan Province. Further REDD+ subnational activities are taking place in the Kalimantan and Jambi Regions. Subnational REDD+ institutions have been developed in 11 provinces. Subnational REDD+ institutions in an additional 23 further provinces are under development. There is also planning at the national level (Rights and Resources Group and Global Land Alliance 2021).

The East Kalimantan ERP has four components:

- **Component 1** will address weaknesses in the licensing regime, seek to accelerate the recognition of Indigenous land claims, and address conflicts over land access.
- **Component 2** will strengthen the capacity of the government to protect the remaining forests by strengthening the capacity of FMUs to oversee State Forest Areas, sustainable development planning at the village level, and the role of government agencies in supporting sustainable estate crop plantations.
- **Component 3** will support more sustainable management practices of oil palm and forestry companies and protect remaining HCV Forests within their licensed areas. ERP will work with key actors to support them in adopting and implementing sustainability approaches that are centered around the recently developed HCV and Sustainable Forest Management (SFM) policies. In addition, the component will address the underlying drivers of fire through the provision of technical assistance for fire prevention and support for Community-Based Fire Management and Monitoring Systems.
- **Component 4** will address deforestation linked to encroachment and agriculture, mainly by providing alternative livelihood opportunities. The component will support the government's social forestry programs, as well as partnerships around conservation areas, and will provide sustainable livelihood opportunities to local communities, including through village development programs.

ERPD recognizes that inclusive participation remains a challenge, and that addressing this issue is vital, “considering the current implementation of the Village Law—particularly on village funds—presents an important opportunity for mainstreaming low carbon emission initiatives, conservation efforts and sustainable livelihoods at the village level” (MOEF 2019, 264).

ERP intends to mainstream gender-sensitive and inclusive development approaches to address gender and exclusion issues in Natural Resource Management (NRM), including these specific areas:

- (a) discovering how to ensure the equal participation and active engagement of women as well as vulnerable and marginalized groups in the process of consultations and overall ER Program implementation;
- (b) ensuring that the design and implementation of the ER Program seek to promote improved conditions for women as well as vulnerable and marginalized groups;
- (c) ensuring gender equality and social inclusion concerns are well addressed in the IPPF [Indigenous Peoples Planning Framework] to address Indigenous Peoples concerns as well as RPF [Resettlement Planning Framework] and PF [Process Framework] to address resettlement and access restriction risks. A minimum standard for gender mainstreaming and social inclusion will be developed in consultation with all relevant stakeholders prior to ER Program implementation. (MOEF 2019, 272).

As is often the case, women are not excluded by the law or by programs, but they are not intentionally included either, which results in their effective exclusion from NRM.

The Indonesia Gender Table identifies two ongoing projects that have a gender component (Di Persio 2019):

- **Strengthening Rights and Economies of Adat and Local Communities, Dedicated Grant Mechanism (DGM, World Bank), 2017–2021.** The focus of the project is to improve the capacity of participating Indigenous Peoples and Local Communities (IPLCs) to engage in tenure security processes and livelihood opportunities from sustainable forests and land.

One of the main components of the project is sub-grants that are focused on the strengthening of the

IPLC capacity to enhance tenure security and improve livelihoods, which is supported by DGM. Activities will be directed to clarify and secure the rights of IPLCs to land (including forestland) in rural areas and improve livelihoods. The project aims to issue 60 subprojects over the duration of the project.

Another component of the project—Inform Policy Processes and Dialogues—consists of the strengthening of the capacity of the national steering committee and emerging IPLC leaders, along with the identification and support of strategic engagement in policy processes and dialogues. The proposed project carried out a social assessment to identify key areas to strengthen a gender-sensitive approach and will work with IPLC communities to address women’s livelihood needs. Within the subprojects, communication and outreach will be developed in a gender-sensitive manner.

- **Promoting Sustainable Community Based NRM and Institutional Development Project—Forest Investment Program (FIP) (World Bank, Asian Development Bank), 2016–2021.** The focus of the project is to strengthen institutional and local capacity for decentralized forest management and generate improved forest-based livelihoods in targeted areas. The development objective of the Investment Plan is to reduce barriers to subnational REDD+ implementation and increase provincial and local capacity for REDD+ and sustainable management of forests. The components of the project are (1) the strengthening of legislation, policy, and institutional capacity in decentralized forest management; (2) the development of the knowledge platform; and (3) the improvement of forest management practices. The project will make an explicit effort to involve vulnerable communities, ethnic groups, and women in project activities through the project’s community participation framework.

There are four ongoing and related World Bank projects, including the FCPF-CF Program.

**Table 2. Ongoing projects relevant to the FCPF ERP**

Project Name	Location	Funder	MM USD	Dates
East Kalimantan Project for ER Results FCPF-CF Program	East Kalimantan	World Bank	110	2020–NA
Program to Accelerate Agrarian Reform (One Map Project) <sup>27</sup>	National	World Bank	200	2018–2023
Jambi Sustainable Landscape Management <sup>28</sup>	National	World Bank	13.5	2020–NA
Strengthening of Social Forestry in Indonesia <sup>29</sup>	National	World Bank - Global Environmental Fund (GEF)	14.3	05/2020–06/2025

The World Bank Project, *Strengthening of Social Forestry in Indonesia (05/20/20–06/20/25)*, has four Project Development Objective indicators:

- Area under social forestry schemes with social forestry permit accorded to communities (ha);
- Land area under sustainable landscape management practices (ha);
- Greenhouse gas (GHG\_ emissions mitigated (metric tons of carbon dioxide equivalent [MtCO<sub>2</sub>e]); along with
- People in targeted forest and adjacent communities with increased monetary or non-monetary benefits from forests, of which 30 percent are women.

## VIII. ANALYSIS AND RECOMMENDATIONS FOR GENDER INCLUSION

At the national level, Indonesia is fairly gender progressive, with laws and regulations requiring gender mainstreaming and budgets to support those efforts. The difficulty, as is often the case, is at the local level, where ethnic groups, customary norms, religion, class, and education shape gender norms. For example, gender parity may exist at the household level, but not at the village level, and at the hamlet level, but not the regional level. What comes across very clearly in the research is that women use forests for the benefit of their families and often participate in protecting the forest. But, in general, women participate less than men in managing the forests, especially where land still belongs to the State and is managed at the local administrative level.

Moreover, the process for local communities to obtaining Community Forest Utilization Permits (IUPHKm), based on the categories of Village Forest, Community Forests, Community Forest Plantations, *adat* forests, and Forest Farmer

27 “Indonesia - Program to Accelerate Agrarian Reform (One Map Project) (English),” Project Appraisal Document, 2018, Washington, D.C.: World Bank Group, <http://documents.worldbank.org/curated/en/393931532143851037/Indonesia-Program-to-Accelerate-Agrarian-Reform-One-Map-Project>.

28 BioCarbon Fund, n.d., “Jambi Sustainable Landscape Management Project – Program Overview,” <https://www.biocarbonfund-isfl.org/programs/jambi-sustainable-landscape-management-project>.

29 World Bank, 2020, “Strengthening of Social Forestry In Indonesia Project,” May 20, 2020, <https://www.worldbank.org/en/news/loans-credits/2020/05/22/indonesia-strengthening-of-social-forestry-in-indonesia-project>.

Groups (KTH), and small groups of community members, is somewhat complicated, often requiring assistance from FMUs. As well, there is no obligation to include women's names in the application for the permits. An administrative process such as this creates many barriers for women. As discussed above, rural women may be illiterate. Because they are generally not the public face of the family, they do not go to government buildings or interact with authorities. Furthermore, due to their obligations in the home and their responsibility of caring for their children, they also lack the time and ability to be outside of the home for long periods of time.

In contrast, women of many Indigenous groups are important to the management structure. They can participate and even lead customary councils (but only if they are among the nobility). Even so, women are unlikely to speak up in village meetings or administrative meetings where men are present, but rather listen quietly. They are much more likely to participate in women-only meetings.

Several recommendations have emerged from this information. Component 2, with its focus on strengthening FMUs to oversee State Forest Areas, could support FMUs in working together with women's groups (PKK or others) to form and oversee Forest Farmer Groups (KTH), as a way for women to participate in forest management. There are two all-women KTHs in East Kalimantan already, and perhaps those groups could help form and mentor other groups. Capacity building and training for FMU staff and women forest farmers would be required. Women who hold traditional knowledge might be able to reciprocate by offering training to FMUs to develop a positive and mutually supportive working relationship.

Our interview with a consultant to the government on the FCPF project and a former member of the BSP team provided some specific ideas (Forestry Agency, East Kalimantan Customary Area, personal communication, August 2021):

- Women need to be included in the management of natural resources, specifically NTFP. Any capacity building or training and support should be specific, and before training begins, women should be grouped according to their situation. For example, a beginning group would be provided with basic information about the mapping plans for the village and general information about what is happening in the village. An

advanced group would focus on market information, supply chains, and small and medium enterprise development. There are also different groups interested in the different areas of the supply chain: while some are invested in rehabilitating the forest and would want to know about environmentally friendly seeds and fertilizers, others might like to find out about how to manage the production of NTFP. For women in conservation areas, their focus could be on how to participate in the conservation partnership.

- More support for local organizations working toward gender inclusion in resource management and decision-making should be provided. PKK is a good vehicle for training and programs, because their budgets are flexible.

Component 4 provides several opportunities to meaningfully include women in forest management, as well as increase and improve women's livelihood options. It will support the government's social forestry programs, as well as partnerships around conservation areas, and will provide sustainable livelihood opportunities to local communities, including through village development programs.

As with Component 2, assisting women to participate in the social forestry programs through organizations that women know and trust is one possibility. Our interviews indicate that women have been engaged in pushing for an independent status through the process to establish customary communities (MHA) that is currently underway. Our literature review and interviews indicate that the MHA process requires external support. One way to support the process would be to keep the community informed about rules and regulations, along with the next steps. To include women may require separate meetings, which have not taken place because of budget constraints, according to the forestry department reports. Women must be informed in order for them to participate meaningfully; there are many ways to get information to women, for example, through separate meetings, communication from groups they attend, or their children's school. Funding local organizations that work with women to provide ongoing information and ensure their availability to answer questions as they arise is one option. Women should be separately asked to share their memory of their communities' history, land area, and customary rules. In many cases, women, not men, are the keeper of traditions.

Ensuring that women receive funding from the village development program to provide sustainable livelihood options was also mentioned by many of the interviewees. Women use NTFP that are available. Capacity building is needed to improve women's knowledge and technical skills in the use of NTFP, as well as starting and building businesses, and understanding the entire value chain for their products and what is required to make a profit.

Outside of the FCPF project, one possible entry point for supporting women would be through the World Bank's support of the One Map project. Given the bilineal<sup>30</sup> nature of land in all of Indonesia, but especially in East Kalimantan and among the IP who live there, titling land without understanding the community dynamics could end up disempowering women and dispossessing them of their land. For example, jointly titling land that belongs to women by law (land that she inherits, for example) would actually take women's rights away. It is true that far fewer women than men have land titles in their name, but the issue may not be social norms as much as a misunderstanding of the land distribution system in IP territory. In many instances, "matrilineal" may not necessarily mean that women have control over land, but where women do have individual rights to their parents' land, for example in the Dayak community, it will be important to protect those rights.

Finally, forestry policies are being determined without adequate gender-disaggregated data (RECOFTC 2015). Therefore, the collection of gender-disaggregated data should be a mandatory contribution to available national and local-level databases. For example, in the Indonesia Domestic Household Survey, gender-disaggregated data should aim to capture women's non-monetary contributions for the household and the family (Sijapati Basnett et al. 2016).

A summary of potential areas for support are presented below:

- Support FMUs to work together with women's groups (PKK or others) to form and oversee KTHs as a way for women to participate in forest management.
- Provide capacity building and training for FMU staff and women forest farmers.
- Women who hold traditional knowledge might be able to reciprocate with training for FMUs to develop a positive and mutually supportive working relationship.
- Any capacity building or training and support should be specific, and before training begins, women should be grouped according to their situation.
- More support should be provided to local organizations working toward gender inclusion in resource management and decision-making; PKK is a good vehicle for training and programs because their budgets are flexible.
- Keep the community informed about rules and regulations, as well as the next steps in the MHA process.
- Include women by providing separate meetings at a time and place to enable women to attend.
- Fund local organizations working with women to provide ongoing information and ensure their availability to answer questions as they arise.
- To support the MHA process, speak to women to document their memory of the community history, the land area, and the customary rules.
- Ensure that women receive funding from the village development program to provide sustainable livelihood options.
- Build capacity to improve women's knowledge and technical skills in the use of NTFP where needed, as well as starting and building businesses, and understanding the entire value chain for their products and what is required to make a profit.
- Provide support to the One Map Project to ensure that women fully understand their rights, the value of having a land title in their name, and what is necessary to receive a land title.
- Collect gender-disaggregated data whenever possible.

30 This means that an individual is a member of both the matrilineage of his or her mother and the patrilineage of his or her father.



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## INTERVIEWS CONDUCTED

Name	Position and Institution	Date
Sarah Agustiorini	Researcher, Research Institute for Geospatial Information Infrastructure Development Center, Malawaman University	August 2021
Nasrudin Alamsyah	Forestry Agency of East Kalimantan, Customary Forestry Area Consultant	August 14, 2021
Setting Beraan	Benefit Sharing Plan Team of East Kalimantan and consultant for FCPF	August 2021
Monica Kusneti	Coordinator—East Kalimantan, Indigenous People Alliance (AMAN)	August 14, 2021
Ir Indriastuti, MM	Tropical Forest Conservation ACT Kalimantan (TFCA Kalimantan)	August 2021
Martha Kapung	Gender Mainstreaming Supervisor, Ministry of Environment and Forestry—National level	August 16, 2021
Mega Triany	Coordinator, Naranai Perempuan	August 12, 2021
	GIZ Program Officer—Palm Oil and Smallholder Community, East Kutai	August 10, 2021

\*All interviews were conducted via Zoom conference, with follow-up communication via email.

## APPENDIX 2: LAWS AND REGULATIONS PERTAINING TO ADAT COMMUNITY RIGHTS<sup>31</sup>

Regulations	Relevance to <i>adat</i> rights
Article 18B(2) of the 1945 Constitution (second amendment)	It declares that “The state recognizes and respects Indigenous Peoples and their traditional rights providing these still exist and are in accordance with the development of the people and the principles of the Unitary State of the Republic of Indonesia, which shall be regulated by law.”
Article 28I(3) of the 1945 Constitution (second amendment)	It declares that “The cultural identities and rights of traditional communities shall be respected in accordance with the development of the times and civilization.”
Law 5/1960 on Basic Agrarian Law (BAL)	<ul style="list-style-type: none"> <li>• It recognizes rights over customary territories (<i>hak ulayat</i>), but requires that the right be proven, and that the right could be overridden by the public interest (BAL art. 2(4) and art. 3).</li> <li>• It recognizes <i>adat</i> law, as long as it still exists.</li> <li>• It states that traditional communities’ resource rights should be in accordance with the national interest.</li> </ul>
Law 39/1999 on Human Rights	It acknowledges the importance of the protection of the <i>adat</i> communities’ rights as basic human rights, which must be appropriately considered and protected by the law and the government.
Law 41/1999 on Forestry (as amended after 2013 MK 35)	<ul style="list-style-type: none"> <li>• It declares the <i>adat</i> forest to be part of the <i>adat</i> communities’ territories.</li> <li>• It declares that the <i>adat</i> forest is not a part of the State forest areas.</li> <li>• It declares that <i>adat</i> communities who have been recognized as such by provincial or district legislation have the right to own and manage their forest areas, using traditional practices, provided that they are in accordance with the law.</li> </ul>
Minister of Agrarian Affairs Regulation 5/1999	<ul style="list-style-type: none"> <li>• It is the first regulation ever to contain a procedure for the recognition of <i>adat</i> law communities and their right to avail of them (<i>hak ulayat</i>).</li> <li>• <i>Hak ulayat</i> can only be recognized, if the land concerned has never been the object of a BAL land right or concession.</li> <li>• The regulation does not apply to forest areas (Bedner and Arizona 2019).</li> </ul>
Laws 22/1999 and 32/2004 on Regional Government	They recognize the rights of <i>adat</i> communities to organize and administer their aspects of life, in the form of an “autonomous village”, in accordance with traditional customs.
Law 27/2007 on Management of Coastal Areas and Small Islands	It confirms the existence, recognition, and protection of <i>adat</i> communities who have lived in the coastal areas for generations, according to their traditional wisdom.

31 Table adapted from Chip Fay and Ho-Ming So Denduangrudee, 2016, “Emerging Options for the Recognition and Protection of Indigenous Community Rights in Indonesia, in *Land and Development in Indonesia: Searching for the People’s Sovereignty*, edited by John F. McCarthy and Kathryn Robinson, Singapore: ISEAS-Yusof Ishak Institute.

Regulations	Relevance to <i>adat</i> rights
Law 32/2009 on Environmental Protection and Management	<ul style="list-style-type: none"> <li>• It confirms the protection of the <i>adat</i> communities' rights, including the communities' involvement in decision-making, based on free, prior and informed consent (FPIC) and the right to be compensated for any loss.</li> <li>• It confirms the importance of <i>adat</i> communities in the process of crafting policies related to the management and control over natural resources.</li> </ul>
Law 39/2014 on Plantation Development	<ul style="list-style-type: none"> <li>• Article 12(1) declares that companies and businesses must seek an agreement from the traditional land right holders.</li> <li>• Article 17(1) declares that authorities are not allowed to issue concessions over the <i>adat</i> communities' territories.</li> <li>• Article 55 (b) declares the prohibition of individuals to use, occupy, and/or control <i>adat</i> land for plantation business purposes.</li> <li>• Article 103 declares that any government apparatus that issues a permit over <i>adat</i> communities' territories will be punished with imprisonment of five years or a fine of IDR5 billion.</li> </ul>
Law 6/2014 on Villages	<ul style="list-style-type: none"> <li>• It declares that local/<i>adat</i> communities have the opportunity to apply for the status of <i>adat</i> village (<i>desa adat</i>), which means that they will have the ability to self-govern, based on <i>adat</i> laws.</li> <li>• Article 76 declares communal land (<i>tanah ulayat</i>) to be part of the village assets, if a village has been legally recognized as an <i>adat</i> village by district or provincial bylaws.</li> <li>• It mandates that women have to be included in the decision-making process of the management of the villages.</li> <li>• It offers hardly any new means of contesting land dispossession, especially in forest areas (Bedner and Arizona 2019).</li> </ul>

## APPENDIX 3: WOMEN'S ORGANIZATIONS IN INDONESIA

### GOVERNMENT ORGANIZATIONS:

*Pembinaan Kesejahteraan Keluarga* (Family Welfare Movement [PKK]) was officially recognized as a national movement in 1975. It is a voluntary movement, consisting mainly of women, which focuses on development primarily at the village neighborhood level. Around two million PKK volunteers are actively involved in village development programs in more than 66,000 villages (FAO n.d.).

Another organization focused on women is PEKKA (Program for Women Headed Households). PEKKA began in 2001 and operates in 19 provinces in Indonesia, supporting 750 groups in 475 villages.<sup>32</sup> PEKKA was funded by the World Bank at the request of the Government of Indonesia (GOI) and continues to be funded by grants from donors. PEKKA's work includes owning and managing cooperative microcredit schemes; post-disaster rebuilding in Aceh; training paralegals to assist with obtaining birth certificates, accessing village courts and prosecuting intimate partner violence; running education centers targeted at young children and illiterate women; establishing community-based learning centers and radio stations; along with training grassroots women leaders to engage actively in community decision-making and development planning (World Bank 2012). PEKKA also facilitates women's participation in village government bodies and village discussion forums. It has made an effort to encourage villages to make more gender-conscious choices for the Village Fund, but these efforts are ad hoc, that is, capitalizing on existing collaborations, programs, projects, or staff (Atmadja et al. 2020).

Additionally, a number of semi-governmental organizations exist, such as the Indonesian Women's Congress, the Provincial Women's Council, and the District Women's Council (FAO n.d.).

### NONGOVERNMENTAL ORGANIZATIONS:

In addition to AMAN, Solidaritas Perempuan (Women's Solidarity for Human Rights) and international organizations (for example, UN-REDD) also support gender-mainstreaming efforts in REDD+ programs in Indonesia. These initiatives focus mainly on mainstreaming gender into REDD+ safeguards, since these are considered to be the most significant area in the REDD+ architecture for mitigating gender inequalities. However, these mainstreaming efforts often take place only at the national level and do not recognize gender-based gaps in forest governance at the local level (Arwida et al. 2020).

Indonesian environmental civil society organizations (CSOs) currently lack accurate sex-disaggregated data and gender expertise. According to one study, a "gender-blind" approach impedes the effectiveness of many forestry programs; in general, environmental CSOs make assumptions that gender is not relevant to advocacy work for improving environmental policies (Marcoes 2015).

Women's Conscience (Nurani Perempuan [NP]) is an NGO that mentors women in villages on how to participate in community meetings. The organization has been working in Mahakam Ulu (Long Isun and Long Iram) since 2000. The women in Mahakam Ulu are very active and they have played a major role in gaining recognition for their *adat* community (M. Kapung, personal communication, August 12, 2021).<sup>33</sup>

NP has regular discussions in the community and works with groups of both women and men separately. Although they were initially only working with women, this changed after complaints from the men. NP also assist women in creating items from non-timber forest products (NTFP) and developing sugar cane businesses. Traditional food is grown on the shoulder of sugarcane crops.

32 As of March 31, 2012, *World Bank, Indonesia: Women Headed Household Empowerment Program (PEKKA)*, World Bank: Projects and Operations, <https://www.worldbank.org/en/results/2012/04/19/indonesia-women-headed-household-empowerment-program-pekka>.

33 Nurani Perempuan (Women's Conscience) works to establish customary communities (MHA) in three districts in East Kalimantan:

- West Kutai, Long Kelian Village, Dayak Tunjung-Benuaq community;
- East Kutai, Busang Village, Dayak Modang Community; and
- Mahakam Ulu, Long Pahangai and Long Isun Villages, Dayak Bahau community.

# Laos

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## I. INTRODUCTION

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The proposed Emission Reduction (ER) Program area for the Lao People's Democratic Republic (Lao PDR) encompasses six of the northern provinces of the country, covering 8.1 million hectares (ha) and constituting approximately 35 percent of the national territory. The rugged and remote northern region of Lao PDR, home to unique ethnic minority communities, is a contiguous landscape, covering the entire administrative areas of Bokeo, Houaphan, Luang Namtha, Luang Prabang, along with the provinces of Oudomxay and Sayabouri. Historically the poorest and most rural region of the country, it is characterized by limited public and industrial infrastructure, along with persistent and prevalent poverty (Ministry of Agriculture and Forestry [MAF] 2020).

In the area covered by the ER Program, 89.5 percent is estimated to be designated forest land (Kukkonen 2019; MAF 2018). Forestland designation in Laos is legally and administratively determined and does not necessarily reflect forested areas or areas used for forestry-related activities today.

The ER Program, promoting REDD+ through Governance, Forest Landscapes & Livelihoods in Northern Lao PDR, aims to reduce deforestation and forest degradation, along with greenhouse gas emissions, by addressing the main drivers of forest loss (MAF 2020). The Emissions Reduction Program Document (ERPD) provides that program components are designed for supporting a transition to more strategic and efficient land use through participatory and integrated planning design. They are targeting over 70,000 ha and 320,000 ha in their promotion of improved agriculture interventions, as well as sustainable forest management and forest landscape restoration and management, respectively (MAF 2018). ER Project's Benefit Sharing Plan (BSP) estimates that 42,000 rural households and approximately 254,000 people will benefit from the ER Program, at least 40 percent of whom will be women and ethnic group members (MAF 2018).

## II. NATIONAL LEGAL FRAMEWORK ON THE RIGHTS OF WOMEN

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The foci of the FCPF REDD+ activities are set out here:

1. Strengthening the legal framework and improving law enforcement and monitoring, land registration, and land use planning;
2. Adopting climate-smart agriculture and sustainable livelihoods; as well as
3. Implementing sustainable forest management.

The three main beneficiary categories are presented below:

1. Government agencies;
2. Rural forest-dependent communities, including village institutions, farmer groups, cooperatives, and women enterprise groups; along with
3. Results-based payments allocated as grants, available as pilot initiatives, through calls for proposals to the private sector, civil society organizations (CSOs), and education/research institutions (Kukkonen 2019).

Funds will be channeled by the Village Management Committee through the Forest Protection Fund. Communities that have agreements with local authorities in relation to ERP activities will be eligible to receive the funds, when the village institutions have been put in place. They include communities holding land and forest rights that have been authorized by the village authority. In the absence of forest and land rights, communities will be eligible as beneficiaries, if their ER Program activities are recognized and registered by the village authority through instruments of village land use and forest management agreements (Kukkonen 2019).

The Lao Constitution is favorable toward women and gender equality. Article 35 provides that all Laos citizens are equal before the law, and Article 37 states that “Citizens of both genders enjoy equal rights in the political, economic, cultural, and social fields and in family affairs.” It is significant that the family is called out because this is often the place where governments do not mandate equality by law. Furthermore, the Constitution specifies that women must be served by education<sup>1</sup> and healthcare.<sup>2</sup> Article 29 requires that “the State, society, and families attend to implementing development policies and supporting the progress of women and to protecting the legitimate rights and benefits of women and children.”

The Constitution also states that social organizations, including the Lao Front for National Construction, the Lao Federation of Trade Unions, the Lao People’s Revolutionary Youth Union, and the Lao Women’s Union (LWU) are set up “to unite and mobilize all strata of the multi-ethnic people to take part in the tasks of protection and construction of the country; to develop the right of self-determination of the people; and to protect the legitimate rights and interests of members of their respective organizations.” LWU has representation in every village, with one member of LWU representing women on each village council.

Article 45 lays out the obligations of LWU, which include drafting policies, programs, projects, and laws and regulations related to the development and protection of women; proposing them to concerned authorities for consideration; educating communities about these laws and regulations; as well as overseeing and promoting the implementation of such policies, laws, plans, programs, and projects.<sup>3</sup>

In addition to the Constitution, the Law on the Development and Protection of Women (2004) broadly provides equal rights for women and touches on gender-based violence and human trafficking.<sup>4</sup> There are a few provisions of note in the law, including under the Rights and Obligations

1 Const., art. 22

2 *Id.*, art. 25.

3 *Id.*, art. 45.

4 Law on Development and Protection of Women, No. 08/NA, 2004.



of Women, which states that “women, together with family and society, shall protect the fine customs and traditions, [and] good cultural practices that are unique to the nation and Lao women.”<sup>5</sup> However, it is not clear what the intended effect of this provision is, as there are no implementing laws, regulations, or policies.

The provisions on violence against women include Article 32, which deals with economic violence. It states that violence includes intentionally impacting the assets of any individual in the family through causing damage to the assets that results in consequences to the livelihoods of family members, such as using the family assets for his or her own interests in an unlawful way, the nonperformance of obligations to take care of the family that causes women to lose their inheritance rights as provided in the laws and destroying the house or property of the family.<sup>6</sup>

According to the UN Population Fund (UNFPA), a new Law on Gender Equality was formally adopted at the 2019 National Assembly (UNFPA 2019).

The National Commission for the Advancement of Women and Mother-Child (NCAWMC) is responsible for formulating and implementing the national policy for the advancement of women, as well as mainstreaming gender aspects in all sectors. NCAWMC is also responsible for formulating the National Strategy for the Advancement of Women (NSAW), which is renewed every five years. The Strategy seeks to promote and enhance equality between men and women in Laos in all spheres. While the inclusion of the NSAW goals in other strategies and plans, including the National Socio-Economic Development Plan (NSED), is a step in the right direction, it generally lacks any real power to implement projects and programs and has only very limited access to funding (MAF 2019). All in all, NCAWMC’s capacity and institutional support have remained limited, despite donor support for capacity development.

5 *Id.*, art. 23.

6 *Id.*, art. 32.

7 Land Law of Lao PDR (Revised), No. 70/NA, Unofficial translation supported by LIWG and GIZ Land Program, Land Information Working Group, [https://laolandinfo.org/wp-content/uploads/2021/05/Land-Law-2019\\_Eng-Unofficial-Translation.pdf](https://laolandinfo.org/wp-content/uploads/2021/05/Land-Law-2019_Eng-Unofficial-Translation.pdf) (last visited September 14, 2021).

8 *Id.*, art. 3.

9 *Id.*, arts. 31 and 41.

10 *Id.*, art. 31.1.

11 *Id.*, art. 32.

12 *Id.*, art. 37.

13 *Id.*, art. 38.

14 *Id.*, art. 39.

The National Growth and Poverty Eradication Strategy, which specifically targets rural women, plans to strengthen land tenure security by incorporating women’s customary land rights into land reallocation (Rights and Resources Group [RRG] and Global Land Alliance, 2021). However, the strategy does not indicate how this will happen in practice.

### III. LEGAL FRAMEWORK FOR WOMEN’S LAND TENURE AND FOREST MANAGEMENT

#### OVERVIEW OF LAND TENURE

Under the new Land Law (2019),<sup>7</sup> all land in Laos PDR is owned by the national community, with the State representing the community’s ownership; thus, it holds and manages the land centrally.<sup>8</sup> The Ministry of Natural Resources and Environment (MONRE) delegates responsibility for land management to different Ministries in relation to their respective land use categories;<sup>9</sup> as such, MAF is responsible for the management of agricultural and forest land.<sup>10</sup>

The Land Law recognizes a number of different categories of land; agricultural land and forest land are relevant for the ER Program. Under the law, agricultural land is land that has been determined to be used for cultivation, animal husbandry, and the like.<sup>11</sup> It is allocated to individuals or legal entities for their long-term use<sup>12</sup>; the State recognizes the long-term use of agricultural land by issuing land titles.<sup>13</sup> Forest land is land defined as forest land by the State, even if the land is not forested.<sup>14</sup> The State recognizes land uses by people who have been living and making their living on land categorized as forest land, prior to

its designation as forest land; forest land can be used for a public purpose and by families and businesses.<sup>15</sup> Article 130 of the Land Law provides that customary land use rights can be acquired by those who occupy, clear, protect, and regularly use land for more than 20 years before the passage of the law, but that such rights are subject to certification from village administration authorities and the owners of adjacent parcels, regarding continuous occupation and use.<sup>16</sup> Importantly, whereas rights to land categorized as agricultural land can be registered and documented with a title, the rights to land of individuals or families, designated as forest land, are documented with land use certificates (not titles).<sup>17</sup>

## INDIVIDUALIZED LAND

Rural women constitute a large proportion of the agriculture sector labor force in the country: they are involved in 50–70 percent of paddy and upland rice growing, 50 percent of household animal husbandry, at least 50 percent of cash crop production, and most of the household vegetable gardening. Essentially, women across all ethnic groups are farmers who participate actively in farming systems. Their reduced rights to a secure livelihood are also structural, with some of the causes induced by policies that have resulted in their decreased access to productive resources, especially land (MAF 2018).

The State grants land use rights to citizens (including legal entities and organizations) to use land for a specific purpose, in accordance with the land allocation master plan and the government's land use plan, including customary land use rights.<sup>18</sup> Laos PDR citizens can acquire land use rights by allocation, transfer, sale, and inheritance.<sup>19</sup> There are two types of allocations by the State: (1) definite and (2) indefinite. "Definite" assignment is for a land use right that is compensation for loss, because of compulsory acquisition by the State, the recognition of customary land use

right, or the conversion of a State use right.<sup>20</sup> These rights can be transferred or inherited, with the holder reaping benefits associated with the right.<sup>21</sup> "Indefinite" allocation is for land used for living or the pursuit of a livelihood, with some restrictions on its transfer, lease, and mortgage.<sup>22</sup>

The district or municipal administration approves the allocation of agricultural land by issuing land certificates. These land certificates are valid for three years. During this period, if land has been used in conformity with objectives and regulations, and if there is no objection or claim, then the individuals and organizations have the right to apply to the land management authorities at the provincial or city level for the issuance of land titles for long-term use rights (MAF 2018).

Under the Land Law of 2019, a land title is the sole document providing evidence of a land use right.<sup>23</sup> To be issued, a title requires a certificate of the acquisition of a land use right (for example, the certificate of a land grant by the State, or an agreement of transfer), proof of identity, and the declaration of payment of a land use fee.<sup>24</sup>

The Government of Laos (GOL) implemented the Land Use Planning and Land Allocation Program from the late 1990s to early 2000s. This program implemented land use planning and land allocation in rural areas, covering 5,000–7,000 villages, but with differing levels of implementation among villages. Where budgets and resources were constrained, implementation was limited to demarcating boundaries between villages on maps. Elsewhere, villages received a whole package of support to produce detailed maps of current and future land use, which were registered with the Government and resulted in land allocation. In this program, it seems as though land allocation meant the certification of the rights to use land the household was already using without documents. There are examples of Land Use Planning being done in a way that was positive from a social and gender equity perspective, as when the

15 *Id.*, art. 44.

16 *Id.*, art. 130 (amended).

17 *Id.*, art. 44.

18 *Id.*, art. 127.

19 *Id.*, art. 126.

20 *Id.*, art. 127.1.

21 *Id.*

22 *Id.*, art. 127.2.

23 *Id.*, art. 99 (amended).

24 *Id.*, art. 100 (amended).

planning was done using participatory approaches and supported by a donor with an interest in equitable results (A. Inoguchi, personal communication, August 2021; K. Rickersey, personal communication, August 2021).

However, Land Use Planning across the country has been inconsistent: in some places, it has been a check-box exercise, rather than an inclusive process. Essentially, the process largely depends on who is administering the planning process. It is also influenced by the cost in time and resources that genuinely participatory processes require (A. Inoguchi, personal communication, August 2021; Phetsakhone, personal communication, 2021). The Land Use Planning process is time- and resource- intensive (M. Kukkonen and R. Hackman, personal communication, September 2021).

Within the ER Program area, Land Use Plans cover roughly 40 percent of the area, of which roughly 40 percent is considered forest area. Titles have been issued on less than four percent of the land area, mostly to individuals and households. State-designated forest areas are not among the areas titled (MAF 2018). Over time, the proportion of land, titled in the ER accounting area, may change: plans are underway to evaluate and excise lands used for agriculture and/or settlement from designated forest land, which will likely change the relative proportion of forest land areas with titles (M. Kukkonen and R. Hackman, personal communication, 2021). Forest lands may only be issued certificates; thus, they cannot be titled. However, these future excised lands could be titled (A. Inoguchi, personal communication, August 2021; M. Kukkonen and R. Hackman, personal communication, September 2021; K. Rickersey, personal communication, August 2021).

To date, land titling has occurred for around 1.5 million parcels (M. Kukkonen and R. Hackman, personal communication, September 2021), mostly in urban and peri-urban settings, or donor-funded projects in select rural areas. Most people in these areas are part of the majority ethnic group—the Lao-Tai. At the district and provincial levels, sex-disaggregated data on land titles are not collected. For a period, some donor-supported land titling projects in the urban and peri-urban areas collected disaggregated data and showed promising results: 67 percent of land titles from the World Bank’s Land Titling Project II (LTP-II) were issued jointly or solely in the name of women (M. Kukkonen and R. Hackman, personal communication, September 2021).

Article 43 of the former Land Law (2003) stipulates that for marital property, both the names of the husband and wife must be included in the Land Register Book. However, the 2019 Land Law omits this requirement and is silent on how to register the marital property of spouses. The effect of this omission has not yet been tested in practice. However, land experts interviewed indicate that the omission will be regressive, with early numbers showing a decline to 38 percent of titles issued jointly or solely in the name of women in the period 2018-2019 (M. Kukkonen and R. Hackman, personal communication, September 2021). Even though drafters justify the omission on the grounds that there are other laws and policies protecting the rights of women, none of them is specific enough to protect the rights to property through titling (M. Ingalls, personal communication, August 2021; C. Insouvanh, personal communication, September 2021; P. Somphongbouthakanh, personal communication, August 2021).

While the effect of the omission remains to be seen and could be assessed in practice in upcoming titling and registration programs, some information would suggest that the omission will work against equitable results for women and men.

First, despite the matrilineal and matrilineal nature of some of the ethnic groups, which permit women’s ownership of land through inheritance, there still may be procedural and administrative barriers to women’s rights to land being equally documented along with those of men. The effectiveness of a land titling program for women involves not just the basis for rights (legal or otherwise), but also the social and cultural accessibility to asserting a claim of right to land, as well as the willingness of those documenting rights to go beyond the gendered assumptions of how rights are distributed within households.

In Laos, particularly in rural areas, social norms dictate that a good woman is also a “good wife,” meaning that she allows her husband to be the head of household, and the associated norm is that men represent the household in public forums and when making public acts, such as might be needed to apply for a land title. Combined, these norms could have the effect of limiting the titling of women’s rights, along with those of men in the same household, or women’s ownership or rights to land they have inherited on their own, as their ownership might be seen as challenging their husbands’ rightful place as heads of the household.

This has been the case in several titling programs globally.

Moreover, regulations, procedures, and forms can inadvertently limit women's participation when coupled with existing social norms. For example, if there is only space for one name on an application form, then officials, as well as women and men, will likely insert the name of the head of household, even if the head of the household is not the original landowner.

Finally, mandating joint titling can trigger other important activities that have an impact on how rights are titled: lessons from previous land titling programs in Laos found that when joint titling was not specifically promoted by the program through specific outreach and support, and when sex-disaggregated monitoring data was not collected, joint titling was less likely to happen and women's rights less likely to be titled overall (M. Kukkonen and R. Hackman, personal communication, September 2021). The effect of exclusion of women from titling is significant, because the Land Law provides that the land title is the only evidence of a land right.

The forthcoming land registration program (Enhancing Systematic Land Registration), funded by the World Bank and other donors, promises to increase the percentage of women having their name on land titles and reestablish monitoring systems. The following activities will be adopted to achieve these targets: targeting information and awareness campaigns to women; ensuring women participate in the design and implementation of registration activities; as well as collecting and recording gender-disaggregated data on land rights systematically. The activities will be monitored through the following indicators: (i) land titles or use certificates issued in Lao PDR (disaggregated by titles/certificates, gender, and ethnicity); (ii) the number of annual land transactions registered, excluding first-time registrations (disaggregated by transfers, mortgages, leases, and inheritance, as well as by gender); (iii) customer satisfaction with land administration services in selected offices (disaggregated by gender); (iv) land titles or use certificates, issued in the name of women or jointly (disaggregated by titles/certificates and ethnicity); and (v) female beneficiaries who participate in public awareness campaigns from total village population (M. Kukkonen and R. Hackman, personal communication, September 2021).

A related intervention that might assist with these targets would be to ensure that program-related rules on how titling and registration will be done in rural areas in Laos could aim to have a presumption of the joint titling of marital property that places the onus on the parties to prove why it should be otherwise. To support such an intervention, further research might be needed in the targeted areas that goes beyond the gender dynamics of customary tenure to also cover how those gender dynamics intersect with the Civil Code's provisions for marital property (see below), the Land Law, along with titling and registration regulations, procedures, and forms. In addition, while it is important to track the number of titles issued in women's names (jointly or solely), it might also be significant to know what the status quo was before the titling program, in terms of the perceptions of women and men on their ownership of the rights to land and compare the number of titles issued to women against this number to show whether the titles issues reflect a positive or negative change in the pre-titled situation. Finally, the content of the public awareness campaigns could be tailored to address the gendered social norms known to create barriers to the meaningful participation of women in titling efforts.

Another key piece of legislation is MONRE's Ministerial Direction on Land Registration and Land Titling.<sup>25</sup> This administrative instruction explains the technical aspects of land registration and how the adjudication process should be done. This includes a "village public consultation" and a "public meeting on gender issues." The purpose of the gender meeting, supported by the district LWU, is to raise awareness about the land rights of both the women and the communities. It is supposed to be facilitated by the LWU of the district and attended by the village authorities, land registration teams, and women representing each family in the village (Somphongbouthakanh 2020). This Ministerial Direction is dated 2016 and it is not clear whether it will be updated, in light of the newly adopted Land Law and Civil Code (see below). But if it is, it presents an opportunity to mandate gender-equitable procedures, such as the gender meeting described above, and make local authorities accountable for the gender equity in land titling and registration results.

25 Ministerial Direction No. 6036, Direction on Land and Land Titling (Ministry of Natural Resources and Environment 2014).

## FAMILY LAW

Lao PDR introduced its first Civil Code on May 26, 2020.<sup>26</sup> The Civil Code is a comprehensive piece of legislation (630 articles) and replaced the Contract and Tort Law, Family Law, Property Law, Inheritance Law, certain Articles of the Secured Transaction Law, and other laws with respect to civil matters. It does not replace the Land Law or the Forest Law (International Cooperation Department [ICD] 2020).

The Civil Code establishes the freedom to marry a person of choice and only recognizes monogamous unions, even though polygamy is practiced by some ethnic groups (ICD 2020). The Civil Code establishes the equality of men and women in family relationships in all aspects, and the equal right to decide family matters.<sup>27</sup> The Civil Code (chapter of Family Law) provides that there are two kinds of estates of spouses. The first is “initial assets” and the second is “acquired assets.” Initial assets are property owned by the husband or wife prior to marriage, or the inheritances or gifts acquired by the husband or wife specifically while married.<sup>28</sup> Acquired assets are those acquired by the spouses in common during their married life.<sup>29</sup> Under Article 169, during the life of the marriage, both husband and wife have equal rights over marital properties, independent of whether the property is defined as initial or acquired assets.<sup>30</sup> The Civil Code is silent on what happens, if one spouse mortgages, sells, or otherwise transfers his/her own initial assets, without the consent or knowledge of the other spouse; and in this silence, the Civil Code leaves a significant question on the effectiveness of Article 169. However, in the case of divorce, the initial assets belong to the original owner and acquired assets are divided equally between divorcing spouses.<sup>31</sup>

The Civil Code also outlines two types of inheritance: inheritance by law and inheritance by a will. Under pro-

visions governing inheritance “by law”, the first order of heirs is the children, and the surviving spouse is the second order of heirs.<sup>32</sup> If the deceased is survived by a spouse with children, then children receive three-fourths of the deceased’s initial property and the surviving spouse receives one-fourth of the deceased’s initial property.<sup>33</sup> The acquired property of the deceased is divided equally between the surviving spouse and children.<sup>34</sup> This suggests that the type of joint ownership between spouses for property acquired during the marriage does not include the right of survivorship. Essentially, while married property acquired by either spouse is co-owned by the spouse in equal shares (that is, each spouse owns a 50-percent share in the acquired property), when one spouse dies intestate, the rights of the deceased to the acquired property devolves to his/her heirs and his/her spouse equally. If the deceased leaves a spouse and no children, the surviving spouse inherits one-third of the initial property of the deceased and 100 percent of the acquired property.<sup>35</sup> For inheritance “by a will”, the Civil Code includes a limitation on the amount of property that can be bequeathed by a will, so that the children and surviving spouses cannot be completely dispossessed by the will.<sup>36</sup>

Under the custom of the various ethnic groups in Laos, inheritance is linked to marriage residence and goes beyond just the transfer of property at death. The ramifications of inheritance extend to “the reproduction of rights, obligations and feelings between relatives as well as the reproduction of property relations, and hence social hierarchies based on gender and class, from one generation to the next. Inheritance patterns shape the whole template or terrain upon which family relations are based” (Law Research and International Cooperation Institute [LRIC] 2011, 4).

Under the custom of matrilineal ethnic groups, residence is usually linked to matrilineal inheritance, where the land and property are inherited by the daughters. In the Lao case, it

26 Civil Code No. 55/NA, May 2020 (gazetted); *Civil Code: Unofficial Translation*, Ministry of Justice, February 2021. <https://www.jica.go.jp>.

27 *Id.*, arts. 140 and 161.

28 *Id.*, art. 167.

29 *Id.*, art. 168.

30 *Id.*, art. 169.

31 *Id.*, art. 181.

32 *Id.*, art. 574.

33 *Id.*, art. 575.

34 *Id.*, art. 576.

35 *Id.*, art. 578.

36 *Id.*, art. 592.

is usually the youngest daughter who inherits—a practice known as ultimogeniture. This daughter is then responsible for the care of her parents until their death. Conversely, patrilocal post-marriage residence systems usually follow patrilineal inheritance patterns, in which land and property are inherited by the sons. In patrilineal groups, such as the Hmong, Phounoy, Makong, Mien, and Lolo, sons inherit the land and the parental house. The son caring for the parents until their death will receive a larger share of the inheritance, as well as the house. There are also bilinear inheritance systems in which either daughters or sons, or both, can inherit. Matrilocal residence patterns or bilinear residence and inheritance patterns create powerful economic, religious, and public roles for women, enabling them to play greater roles in the economic and political realms and participate more in public decision-making. In Laos, the Pray ethnic minority of the Sayaboury province is matrilocal and matrilineal (LRIC 2011).

The combination of the Civil Code's rules of marital property and inheritance, as well as the practice of customary inheritance, raise important procedural questions for how rights should be titled in a systematic titling program, especially when the joint titling of property is the default through the provision in the Land Law. In groups who continue to practice customary inheritance, married women in matrilineal groups would continue to be the sole owner of what they have inherited as their initial assets, and likewise for men in patrilineal groups. This would suggest that when it comes to titling marital property, the titling procedures should identify the source of the right to determine whether the parcel in question should be titled in the sole ownership of one spouse as an "initial asset" inherited, or titled jointly if the parcel was acquired during the marriage by State allocation or purchase. Similarly, if the property was acquired, following statutory inheritance under the Civil Code's rules (less likely in practice), then the title to a given parcel may need to name the surviving spouse and heirs in shares that are determined by whether the property was originally classified as initial or acquired (under the Civil Code). Given that the title will be the only evidence of a right to land, these questions are significant for protecting the interests of both women and men in the long term.

To summarize, rural women are very involved in all kinds of agriculture in the ER Program area, but most of the women do not have any documentation of their land rights. Land in the accounting area that was once designated as

forest land, but is subject to permanent uses, may be titled, or otherwise documented, once they have been excised from designated forestland (as part of the inter-ministerial discussion between MAF and MONRE). Before certification or titling occurs, the law requires a "public meeting on gender issues" to ensure that women in the village know about the process and understand it. However, it is not guaranteed that these meetings happen in practice, and, if they do, it may be more of a check-box exercise, rather than a sincere effort to ensure that women have an equal understanding of the certification or titling process.

Under the new Civil Code, land inherited by one spouse (whether inherited before or after marriage) is owned by the inheritor and considered "initial property." The difference between initial property and property acquired during a marriage is relevant, if the marriage ends in divorce or death, when property must be divided; while the marriage continues, even inherited land is subject to the legal provisions of full equality between spouses in all aspects of family matters. Even so, neither these legal provisions related to marital property in the new Civil Code nor the new Land Law prescribe how marital rights to land should be titled, leaving wide room for discretion, which is likely to be filled with gendered social norms that can result in significant gender inequity in the results. Presumably, land inherited by one spouse and considered their "initial" property should be titled in the inheritor's name alone, as the inheritor owns the property. This should also mean that, barring any other gendered barriers, the results of titling efforts for women and men will be different in matrilineal and patrilineal communities following customary inheritance, thus presenting both policy and procedural challenges. Furthermore, while there may be targets for titling in women's names (jointly or individually), given the customary contexts for inheritance —matrilineal, patrilineal, or bilinear, it would be important to do a baseline assessment in order to be able to ensure that these targets are positive.

The question of how the Civil Code's designation of initial and acquired marital property are handled in practice during certification and titling is not well understood within Laos, and we could not find research or a local expert who has conducted analyses on how these provisions intersect with the Land Law and regulations around titling and registration. This is complicated by the fact that the new Land Law has omitted any reference to the joint titling of marital property, which would have otherwise provided guidance

on this question. This is important, because inheritance is included in initial property in a marriage under the Civil Code, and inheritance continues to be a significant source for how land rights are acquired by individuals.

## COMMON/COLLECTIVE LAND (INCLUDING INDIGENOUS COMMUNITY/ COLLECTIVE LAND/RESOURCES)

The revised Forestry Law (2019)<sup>37</sup> defines all natural forests and forest land as the property of the nation, managed by the State.<sup>38</sup> However, planted trees are the property of the planters, and trees growing on individual land are the property of the individual (or organization or legal entity) who owns the land.<sup>39</sup> The Forestry Strategy 2005–2020 states that the official policy is to adopt a participatory approach to the management of forests and increase the involvement of villagers in the sustainable management and use of village forestland (MAF 2018).

The Forest Law mentions the National Forest Strategic goal of 70 percent forest cover<sup>40</sup> and designates three types of forest: protection, conservation, and production.<sup>41</sup> At the village level, a local production forest is referred to as a Village Use Forest (VUF). In practice, areas categorized as forests by the State, which are not forested, but are legally considered as abandoned, unused, degraded, or unstocked, may, in fact, be productively used and fallowed by villagers for food and income, and may have been used traditionally for many years (Clint, n.d.).

The categorization of lands as forestland by the State is important because an estimated 35 percent of Laos PDR villages are on lands designated as forest (Flint n.d.). Also, while forestland represents about 70 percent of Lao PDR, in terms of area, current forest cover is estimated to be only around 48 percent, suggesting that much of the land designated as forestland is not being used as forest today. In fact, a significant portion of that land is used for agriculture and land concessions (Flint n.d.). This situation is complicated further by the inconsistent official gazettement of forestland, with no maps or poor-quality ones to substanti-

ate the gazettement of those forests. Thus, forest boundaries and boundaries between the different categories of forests for the different uses permitted and prohibited (see below) are not known (Flint n.d.). The result is that customary users of land, now designated as one or another type of forestland, may even be engaging in prohibited uses without their knowledge.

Moreover, land designated as forestland in areas used for residential purposes or for permanent agriculture pose a challenge by creating an overlap in jurisdiction between MAF and MONRE. According to key informants, a meeting was held between MAF and MONRE in early 2021 in order to resolve these matters. From that meeting, an agreement that will be memorialized in an Inter-Ministerial Agreement was made. However, this document is not yet available.

Among the agreements made are that (a) the law will remain as it is and (b) any permanent residential land use and permanent agricultural uses can be surveyed and excised from the State forest designation (M. Kukkonen and R. Hackman, personal communication, September 2021). This means that within the boundaries of State-designated forestlands, there may be pockets or areas that are held as individualized rights and governed by the rules for agricultural land. This will not include land that is used for shifting cultivation, which is practiced by some ethnic groups, and land that is part of village forests. The land that will remain within the State forestland boundaries can be issued land use certificates at the village level, in which it is likely that the village as whole will be named on the certificate (M. Ingalls, personal communication, August 2021). Despite the progress that the forthcoming inter-ministerial agreement represents for State-designated forestland that is used on a more permanent basis, a few questions remain, which may have implications for the ERP:

- To the extent that the land excised from the forest land will be titled (or otherwise documented), questions remain about the assurance of gender equity in the results of that activity (for more details, see the section below).

37 Forestry Law (revised Jun. 11, 2019) (unofficial translation, on file with the author).

38 *Id.*, art. 4.

39 *Id.*, art. 4.

40 *Id.*, art. 10.

41 *Id.*, art. 14.

- The rights that are attached to a land use certificate are not clear: land use certificates were created as a temporary right that would become permanent, if certain criteria were met; they were not created as a long-term option (M. Ingalls, personal communication, August 2021).
- The question of whether such land that is excised from the designated forest areas will be issued titles or certificates (or some other documents) remains undecided (M. Kukkonen and R. Hackman, personal communication, September 2021).
- It is not clear how much of the land in accounting areas might be subject to this new management approach. ERPD estimated that only four percent of land in the accounting area was titled (and thus not likely forestland).
- It is not clear how the new approach will affect participation in the ER Program activities.
- It is not clear how the new approach will impact how benefits are paid under the ER Program.

The ministerial instruction on land registration and titling (2015) distinguishes collectively owned land or land belonging to a group of people within “a collective, production unit, or association” from communal land, that is, “commonly owned by a village or ethnic group, including communal ponds, forests, agricultural lands, and cemeteries.”<sup>42</sup> Communal tenure refers to situations where villagers or ethnic groups, living in one or more villages, have well-defined, exclusive rights to jointly manage particular areas of land or forests. **In the changing legal and regulatory framework, comprehensive guidelines are still needed on how collective, customary tenure will be recognized, documented, and registered.** While it is clear in the law that the State owns all land, including land that would have been traditionally held under customary, collective tenure,<sup>43</sup> some ambiguity on the nature and scope of customary, collective rights remains.

The Land Law also provides for a category of land known as “cultural land”. However, that category is limited to land of cultural heritage and is related to historical items, artefact sites, heritage sites, traditional objects, archaeological sites, memorials, temples, religious sites, cultural buildings including cultural sites, and other places classified by the State as “cultural land”.<sup>44</sup> It does not provide for customarily held common lands used for other purposes, such as shifting agriculture. Likewise, the Land Law (art. 130) provides for custom as a legitimate basis for acquiring land use rights, yet requires regular productive use for over 20 years and other criteria,<sup>45</sup> which may exclude customary uses that include fallowing periods or shifting use patterns.

There was some basis for formalizing communal land tenure in Prime Ministerial Decree No. 88 (2008). Article 3 of that Decree states that communal land is the land and natural resources for which the State has granted the right to communal use by villagers, organizations, and State organizations. However, that decree relates to provisions in the 2003 Land Law, and it has not been amended to align with the new Land Law of 2019, thus it is not yet known how this matter will be handled going forward. Presumably, this would be among the decrees and regulations that would need to be updated following the passage of the new Land Law and informed by additional studies, such as those supported by the World Bank on customary tenure among minority ethnic groups (M. Kukkonen and R. Hackman, personal communication, September 2021).

There has been some progress toward registering and titling communal land throughout Laos. The legal bases for this are Ministerial Instruction 564/NLMA (2007) on Adjudication of Land Occupation Right for Issue of Land Title; Ministerial Recommendation 6036/MONRE (2014) on Land Registration and Issuance of Land Titles; and Decree 88/PM (2008) on the Implementation of the Land Law. Instruction 564 defines collective land as land belonging to cooperatives and communal organizations, or village lands commonly used by groups of people or ethnic groups in a village. Communal land also includes

42 Ministerial Direction No. 6036, Direction on Land and Land Titling (MONRE 2014).

43 Note that the term, “collective tenure”, is used here to refer to a tenure system that is based on collective rights. This is not to suggest that within those collective tenure systems, there are not also individualized rights included within the bundle of rights. The collective system may include land areas used and managed on a communal basis, and may also have other areas that are used on an individual basis, but this does not change the collective nature of the tenure regime.

44 Land Law of Lao PDR (Revised), No. 70/NA, Unofficial translation supported by LIWG and GIZ Land Program, Land Information Working Group, [https://laolandinfo.org/wp-content/uploads/2021/05/Land-Law-2019\\_Eng-Unofficial-Translation.pdf](https://laolandinfo.org/wp-content/uploads/2021/05/Land-Law-2019_Eng-Unofficial-Translation.pdf) (last visited September 14, 2021), art. 62.

45 *Id.*, art. 130.



lands allocated to households for seasonal agricultural production without any household owning such lands; village use forests (production forests); sacred forests; lands for traditional or religious rites; common grassland used for livestock grazing or other purposes; and other lands commonly used by the community (Kenney-Lazar 2017). As for other supplementary laws and regulations, it is not yet known how and whether these legal provisions will be revised in light of the new 2019 Land Law.

Aside from the lack of clarity on the definition of common or collective land in law, people and communities also differ in how they understand these terms. For example, one study interviewed people in 20 villages across five provinces and found that communal land was defined simultaneously as a village territory that has no individual claim; preserved and protected lands for the common good; land available to households in the village with equal rights and duties; and land used to facilitate communal public services (Kenney-Lazar 2016). Furthermore, within these diverse understandings of communal land, there are also inconsistent approaches to allocating and managing individual rights to common land (Kenney-Lazar 2016).

A separate and critical issue for women is the lack of formal rules for communal land use and management. In practice, the rule-making and decision-making power over rural lands in Laos is typically held by the village chief (*nai ban*) and the village committee, as well as committee members responsible for land and natural resource use, such as the village land official and village forester. These are formal roles at the village level. However, in practice, customary village elders often play an important role in enforcing customary rules and regulations concerning land (Kenney-Lazar 2017).

For customary leadership, the situation may differ, depending on the village composition, among other things. Due to a number of village consolidation policies in the past, the village unit is not typically made up of a singular ethnic group, and because customs differ, a woman's rights and interests in land and natural resources may shift, depending on which ethnic group she is a part of (for example, whether it is the dominant ethnic group of that village), her social status (Kenney-Lazar 2017), and/or the status of the men in her family and their connection to power.

One legal challenge concerning the registration and titling of communal land is that it is not always clear what land is eligible for formalization. The legal distinction between communal and State land is a challenge that has long vexed land governance in Laos, especially as communal land is often referred to as State land so that it can be granted in concessions to agribusiness and resource extraction companies (Baird 2011). Contributing to this challenge is the fact that much communal land, customarily used in Laos, has not been officially granted to communities for use, and thus, can easily be claimed by government agencies as State land. Under the new Land Law, if such lands were to be offered as concessions to outside investors, at a minimum, the lessee or concessionaire would be obliged to pay compensation to those affected by the operations, and would be prohibited from violating the rights or interests of persons in the community.<sup>46</sup> This suggests that, even without the formally recognized rights to collectively-used land, if the land use was converted resulting in a government taking, all those who are affected or have an interest in the land should be compensated for their loss. It remains to be seen how this will play out in practice.

According to key informants, the issuance of land use certificates to villages for State-designated forest land is unlikely to present gender equity issues, because the certificates will be issued to the village as a whole, and then the village committee will determine how those lands are used. However, there may be issues related to gender equity in governance and decision-making, which are covered below.

One potential challenge with the legal use of the two terms—“collective land” and “communal land”—interchangeably is the possibility for collective land to exclude some village members, such as marginalized or vulnerable populations within the village, because collective land, unlike communal land, is land that is used for collective production. Additionally, it is possible for collectively owned land to be managed like private land—bought and sold by private groups of people; the only difference is that there are multiple owners, rather than one individual owner.

46 *Id.*, art. 122.

## COMMUNITY MEMBERSHIP

At this point, there do not appear to be any laws or regulations defining who is considered a member of a community and therefore has the right to engage in community-level decision-making and access benefits accruing to the community. However, over time, Laos has enacted several policies that aim to consolidate villages; and as a result, at least from an administrative perspective, a village may be made up of different hamlets and composed of many different ethnic groups. Thus, residence in administrative units may be more determinative of village-level rules for membership than customary norms. The customary rules for membership in an ethnic group, which can cut across villages, are defined by the lineage and residence practices of that group, but they do not necessarily align with decision-making on land, which is determined at the administrative village level (M. Ingalls, personal communication, August 2021).

## GOVERNANCE OF COMMON RESOURCES

Laos PDR legislation does not currently cover the governance of common resources at the local level; thus, this might be a matter that could benefit from some additional legislative attention.

Among all ethnic groups, household and clan heads, or village elders, still play a significant role in resolving conflicts within the community. Although arrangements vary, it is common among all ethnic groups for customary authorities to manage unassigned land and resources as common property. This allows flexibility, according to the changing needs of different families. Communal areas consist of grazing land, forest and fishing areas, sacred forests, burial areas, and upland shifting cultivation land, including fallow areas. Forest areas are used for different purposes, often by several communities (Ironsides 2017).

Decision-making at the village level has a significant bearing on the gender equity results of the ER Program, because BSP is based on the distribution of benefits in the form of community development projects decided, based on the consensus of the community. If no existing structure is in place to ensure that women can participate in the consensus-making process, then there is a risk that women's interests will not be among those considered and ad-

ressed when benefits accrue to the community. Respondents have suggested that, even with the effort toward incorporating women into these decision-making processes, more is needed to ensure that such a consensus truly represents the interests of women and men equally. There are, however, good examples of projects that have made a point of working on village decision-making to ensure gender equity. A possible intervention might be to draw from those experiences and pilot them in ER Program areas, in advance of the decision-making on how resulting benefits will be used.

When looking at group-level customary decision-making, none of the ethnic groups has a tradition or the contemporary practice of including women as decision-makers (LRIC 2011). Within a village, which is the primary political, economic, and social unit, ethnic groups allocate power and decision-making, either through a clan-based system or a council of elders. The Hmong-mien and Sino-Tibetan groups follow patriarchal clan systems, while the Mon-Khmer are generally led by a council, presided over by males of the “founding” lineage (the family who founded the village) (LRIC 2011). This suggests that a possible intervention to address women's meaningful participation in decision-making and ensure equal access to benefits from ER Program payments would be to work with traditional leaders and formal leaders.

In practice, social norms around gender and the expectations of who the head of the household is may be the most determinative of gender equity in the governance of collectively held land and resources. Processes for developing village land use plans may shed some light on this and could signal areas of future intervention. In village land use planning, there are mandated processes to hold separate meetings for women and for men and develop separate corresponding maps reflecting the uses of land by men and women. In practice, the weight given to women's voice in the planning process depends on the education, experience, and interest of the officer leading the village planning process (M. Kukkonen and R. Hackman, personal communication, September 2021). This suggests that there may be some room for an intervention that helps to build the capacity of officials to deliver programs in a way that is equally responsive to the needs of both women and men; this is especially pertinent, given that BSP relies on consensus building at the village level to determine how the benefits from the ER Program will be used.

When it comes to decision-making, across all ethnic groups, women are interested in making decisions related to land, but are typically time-poor; on the other hand, men have more time and are considered the heads of households, thus leading them to engage more in land management processes (Somphongbouthakanh and Schenk-Sandbergen 2020). In some ethnic groups, a lack of language skills among women can also exclude them from land decision-making (Somphongbouthakanh and Schenk-Sandbergen 2020).

In terms of governance at the national level, Lao PDR's proportion of women in national parliaments is among the highest in the region. In all government departments at the ministerial level, 19 percent of director generals and 24 percent of vice director generals are women. However, these achievements are not mirrored at the subnational level, where significant gender gaps persist. At the provincial level, there are no female governors, and of the 43 vice governors, only three are females. At the district and village levels, women's representation is also very low. According to the statistics from the Government's Office in 2014, there were only 145 female village chiefs from the total of 8,651 villages (two percent), while deputy female village chiefs numbered 1,200 out of 16,786 post holders, accounting for only seven percent (Association for Development of Women and Legal Education [ADWLE] 2016).

One possible outlet for women with concerns about their land and resource rights at the village level is the Village Mediation Unit (VMU). VMUs were established in 1997,<sup>47</sup> with new guidelines issued in 2005.<sup>48</sup> It is composed of one Chairman; 1–2 deputies; and 3–5 members from the Lao Front for Construction, the Village Administrative authorities, LWU, Revolutionary Youth, elders, ethnic representatives, and the police.<sup>49</sup> According to the Law on Civil Procedures, small civil and family disputes, such as easements and parcel boundaries, as well as minor criminal cases, must be mediated at the village level through the Village Mediation system, which exists in almost all 10,527 villages throughout the country, prior to taking a case to court. The VMUs thus play an integral part in the local adminis-

tration of justice, where the villagers themselves resolve disputes through discussions and negotiations, based on legal provisions and customary rules (Mahaphonh 2007).

According to one key informant, the Ministry of Justice is establishing District Legal Clinics, which may warrant further research to see how they anticipate addressing gender equity and land-related matters (M. Kukkonen and R. Hackman, personal communication, September 2021).

## REGULATIONS ON LAND RESOURCES (FORESTS AND TREES) AND WOMEN'S RIGHTS

The revised Forest Law defines customary utilization as the use of forest, timber, and non-timber forest products (NTFPs) that has been practiced for a long time within village forest areas, and include such uses as traditional festivals and religious ceremonies.<sup>50</sup> These uses are permitted, if the forest area is allocated by the state for that use. In certain forest areas, the Forest Law also permits the harvesting of NTFPs<sup>51</sup> and the use of forests for sacred sites, cemeteries, and the trading of carbon credits.<sup>52</sup> Absent from these permissive uses is the use of forest land for agricultural purposes, even though some lands designated by the State as forests are used for agricultural purposes, and some of that use involves shifting cultivation practices.

Article 53 of the revised Forest Law expressly aims to restrict uncontrolled shifting cultivation, and to shift those who engage in such practices to alternative livelihoods. This could be seen as a positive provision: under the former legal framework, shifting cultivation was to be eradicated completely, whereas the new law moved from eradication to the institution of restrictions on uncontrolled shifting cultivation that is seen as a driver of deforestation (Inoguchi 2021). While this has the potential to negatively impact rural communities practicing shifting cultivation on State-designated forests, if the controls envisioned by the law incorporate land use plans developed through commu-

47 Minister of Justice, Decision No. 304/MOJ (dated August 7, 1997).

48 Minister of Justice, Decision No. 08/MOJ, (dated February 22, 2005).

49 Minister of Justice, Decision No. 02/MOJ, (dated March 19, 2007).

50 Forestry Law (revised June 11, 2019) (unofficial translation, on file with the author), art. 64.

51 *Id.*, art. 31.

52 *Id.*, art. 62.

nity participation and address the incentives for practicing shifting cultivation, this could help address deforestation in those areas.

The customary use rights of forests were also recognized in the Order on Customary Rights and the Use of Forest Resources (1995); the Order on Traditional Uses of Forests (1996); the former version of the Forestry Law (2007); along with ministerial instructions and directives. These instruments outline the permitted customary use of forests, forestland, and forest products, without the need to obtain a permit from MAF. Permitted customary uses include harvesting products for the community's needs, as specified in a Village Forest Management Agreement, and the use of abundant NTFPs without a forest management contract (Chatham 2017). However, it is anticipated that these earlier orders, instructions, and directives will be updated to align with the passage of the revised Forestry Law in 2019.

Women across all ethnic groups are involved as much as, or more so than, men in the collection of NTFPs. In villages and communities with longer and more interdependent relations with the forest, and where there is adequate access to a forest of reasonable quality, women tend to be involved in NTFP collection daily. They collect forest foods, such as wild bananas for pigs, along with various greens, insects, mushrooms, shoots, and fruits for family consumption. Men may hunt and trap small mammals and birds, as well as gather wild honey. A household's dependence on the forest areas varies by ethnic group. Furthermore, when families collect NTFPs for sale, there is a greater allocation of both male and female labor to this task (MAF 2018).

Subcomponent 1.4 of ERPD discusses "enhanced land and resource tenure security through land registration and other processes." To ensure land and resource tenure security, steps will be taken to register land allocation and resource rights and formalize these rights through land titling and forest management agreements. According to ERPD, standard templates for Village Forest Management Agreements (VFMA), including provisions to strengthen legal implications of the management agreements, will be developed.

Given that the current management of communal resources is governed at the village level with a mix of village-level and customary rules, a potential intervention to ensure gender-equitable outcomes could be to support the adoption of standardized VFMA templates that include built-in protections for women. This would help to ensure that women's needs and interests in forest resources are given equal weight to those of men. A template is an excellent tool for ensuring that women's rights and needs are respected, but poorly drafted templates can easily create a situation in which women lose rights through the process of formalization. In addition, capacity development for local officials, local elders, and local men will be needed so that they are supportive of women's increased involvement in this process. Support for women will also be important to ensure that they have the skills needed to be actively involved in matters affecting their interests.

Gender is mentioned in very few legal documents related to forestry and environment. The relative rights, roles, and knowledge of women versus men in forest management are not well acknowledged, especially in rural areas (MAF 2020). However, MAF was the first ministry to create a Division for the Advancement of Women (the Subcommittee for the Advancement of Women, or SubCAW) and an internal ministry Gender Network with focal points in each department. While MAF's commitment to gender mainstreaming and the established structures are quite good, the gender division remains understaffed, and therefore, has limited capacity for implementation of laws and regulations, or absorb external support (MAF 2019).

On the strategic side, MAF developed a Strategy for Gender Equality in the Agriculture and Forestry Sector (2016–2025) and Vision 2030 that aim for men and women of all ethnic groups to have equal access to natural resources, agricultural land, shelter, development funds, and technical support. Vision 2030 additionally states that women should hold at least 30 percent of the managerial leadership positions (MAF 2019). MAF's Strategic Plan to restore forest cover to 70 percent of the country's landscape before 2020 includes the goal of having at least 30 percent of all government positions in conservation work held by women.

## IV. INDIGENOUS WOMEN

The Government of Lao PDR officially recognizes 49 different ethnic groups: 23 different ethnic groups are found in the six ER Program provinces— the Bokeo (BK), the Houaphan (HP), the LuangNamtha (LNT), the Oudomxy (ODX), the Sayabouri (XAY), and the LuangPrabang (LPB) (MAF 2018). Officially, all ethnic groups have equal status in Laos, and the concept of “Indigenous Peoples” is not recognised by the government, even though Laos voted in favor of adopting the United Nations Declaration on the Rights of Indigenous Peoples. The Lao government uses the term, “ethnic group”, to refer to IPs (International Work Group on Indigenous Affairs, 2020).

The 49 ethnic groups can be classified as belonging to four different ethno-linguistic families: Lao-Tai, Mon-Khmer,

Hmong-Mien, and Sino-Tibetan. The Lao-Tai ethno-linguistic family is numerically dominant, and together with the seven other ethnic groups in the Lao-Tai, these eight groups represent almost two-thirds (64.7 percent) of the national population (Kukkonen 2019). However, the proportion of each group varies by region. See Appendix 2 for a summary of ethnic groups in the ERP area.

The different ethnic groups in Laos are either based on matrilineal/patrilineal or bilineal systems. Marriage residence—matrilocal or patrilocal—has a significant influence on the rights and obligations of women and men (LRIC 2011). Table 1 shows relevant kinship, residence, and inheritance practices across each lineage system (adapted from Somphongbouthakanh and Schenk-Sandbergen 2020).

**Table 1. Definitions of kinship principles and their implications.**

	<b>Kinship</b>	<b>Residence</b>	<b>Inheritance</b>	<b>Rights</b>
<b>Matrilineal</b>	Women might use their own surnames.  Children can take either the name of the father or the mother.	Man moves to the wife’s residence.  If there are no daughters in the husband’s family, the wife may reside in the husband’s village, but retains her right to the land.	Daughter (or son) who looks after parents gets the parental homestead and a larger part of the land from other siblings.	Women are the main holders of land rights, but this varies according to the number of children, the number of female children, and other factors (described below).
<b>Patrilineal</b>	Children take the father’s surname.	Wife moves to the husband’s residence.	Son(s) inherit.	Women gain rights in marriage.
<b>Bilineal</b>	Children can take either the name of the father or the mother.	Either	Male and female children can inherit.	Either

Despite these general differences, other factors influence who inherits land rights from parents, with variations across ethnic groups. By way of illustration, among patrilineal groups, there is differentiation in how inheritance is determined: in the Teuka ethnic group, the custom is that private land is divided between sons after they are married, and the son who stays with his parents to care for them receives a greater share of the parents' land and the family home. If there are no sons, then a village man is asked to become the "son-in law" who then takes on the responsibility of a son. In this ethnic group, if a daughter marries a man who has no land, the parents may give her some land, if they have enough to also give to their sons (Somphongbouthakanh and Schenk-Sandbergen 2020).

In the Lue ethnic group, which is patrilineal, land is considered a family asset. A widow is cared for by a son on her late husband's land. Even if the widow is named on a title, land will follow customary inheritance after the widow dies (Somphongbouthakanh and Schenk-Sandbergen 2020).

Polygamy is relatively common in Lao PDR, mostly in the Hmong communities, but it is also sometimes practiced in the Mon-Khmer villages (LRIC 2011).

For all ethnic groups, cases involving family members are usually resolved within the household. Cases involving people sharing the same ancestry are typically resolved by their clan. Cases involving people from different clans, or who are not blood-related, are normally resolved by the village chief or elders. Finally, cases having a potential impact on customary village rules are usually addressed by the village leader (LRIC 2011).

Women are traditionally excluded from participating as parties in conflict resolution processes amongst Laos' ethnic groups. In some groups, if a woman wishes to bring a case, she asks a male relative to do so on her behalf. In cases where women are pitted against men, their veracity is more likely to be questioned and less weight given to their testimony. In short, the words of a woman have much less credibility than those of a man. A woman is usually discredited when it is her word against that of a man (LRIC 2011).

The foregoing shows that there are considerable variations among the ethnic groups across Laos. Furthermore, program design should be based on a strong understanding of the gender dynamics of local communities across and within villages, and have some built-in flexibility to adapt to the local circumstances.

## V. SOCIAL AND ENVIRONMENTAL SITUATIONAL ANALYSIS

Women’s rights, of all kinds, vary by ethnicity, religion, marital status, economic status, and geography. This diversity is one reason that gender inclusion is so difficult: to design and implement good programs requires that the de-

signer knows how these factors affect women’s behavior, their ability to participate in decision-making in the home and the community, earn and keep their own money, and fully engage in a program and benefit from it. And these significant details may vary in a single village or district, depending on how intermixed ethnicities and customs are. Table 2 provides a few insights into the women’s social and environmental situation.

**Table 2. Statistics illustrating the social and environmental context for women in Madagascar.**

Education	Workforce	Political Participation	Gender-based Violence (GBV)	Social Status
Women from poor households (HHs) have low educational and literacy rates.	Seventy percent of rural women are involved in agriculture (Kukkonen 2019), while 81% contribute to agricultural exports (Russell et al. 2015).	Targets were established in the National Plan of Action for Gender Equality 2016–2020 for each sector. At least 15–20% of women are in leadership and decision-making positions.	Decree No 309/PM (2013) on Poverty and Development Standards for 2012–2015 mandates gender equality and combats violence against women at the family, village, and district levels (United Nations 2018).	The Law on Development and Protection of Women (2004) specifies women’s right to file a legal claim, if an individual or organization hinders, limits, or violates gender equality in “politics, the economy, society, culture, and family”; including fees waivers.
Among all ethnic groups, there is a lack of access to education for girls; in patrilineal groups, marriage takes precedence (LRIC 2011).	Thirteen percent of women are salaried workers, while 38% are classified as contributing household workers (Kukkonen 2019).	Among all ethnic groups, women are largely excluded from power in the political sphere, though they play important roles in rituals (LRIC 2011).		Female-headed households (FHHs) account for 14% in urban areas and 8.7% in rural areas. They are mostly widows, although 20% are married women with husbands who are in migration (World Bank and Asian Development Bank [ADB] 2012).
	Opportunities, especially in rural areas, are often limited to traditional gendered roles (LRIC 2011).			There are significant differences between women from the Lao-Tai groups and other ethnic groups, in terms of education, level of welfare, and participation in decision-making (World Bank and ADB 2012).

## VI. WOMEN'S ORGANIZATIONS

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The main women's organization is **LWU**—a governmental organization with offices all the way down to the village level. GOL depends on LWU to assist in all things gender-related, with LWU asked to support and implement many projects with a gender component. Through its extensive networks, LWU has been able to bring women's voices into the public administration at all levels, often providing the only female voice at the table. LWU also has its own policy research center (Gender Resource Information and Development Center, Vientiane). It has undertaken research tasks on issues, such as violence against women and gender budgeting on behalf of donors.

However, in many of the ER Program villages, especially in the non-Lao-Tai ethnic villages, LWU is not considered to be the voice of most women (MAF 2019). Furthermore, the FCPF Gender Integration Development (GID) study stated that the Lao Front for National Construction (LFNC), along with LWU, are for the most part, systemically captured by elites at all levels.

See Appendix 2 for additional women's organizations.

## VII. CLIMATE CHANGE PROGRAMMING AND GENDER INCLUSION

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The following ongoing programs in Lao PDR have made some effort to be gender inclusive:

**Lao Landscapes and Livelihoods Project (Global Environment Facility, Canadian Clean Energy and Forest Climate Facility, International Development Association), 2021–2027.** This USD57.34-million project seeks to promote sustainable forest management, improve protected area management, and enhance livelihood opportunities in selected landscapes in Lao PDR. The project has four components: (1) investing in natural wealth and resilience in forest landscapes through improving protected areas and nature-based tourism, sustainable forestry, along with the resilience of the village infrastructure; (2) creating livelihood opportunities from sustainable forest landscapes; along with (3) strengthening institutions, incentives and information. The project sites include eight provinces that have some overlap with those of FCPF.

A gender analysis was conducted to inform the Gender Action Plan and related results indicators. Actions to address identified gender gaps include the following:

- Targeted efforts to ensure that women can actively participate in training that is responsive to their vocational interests and job market opportunities;
- Technical assistance and communication efforts targeted at women household members on what Village Land Block Grants are, along with how to access and implement them as well as report on them;
- Delivery of extension and outreach services in a way that community-based development, resource management, and livelihood development opportunities can be equally accessed by both women and men (for example, addressing language barriers, low literacy, and low financial literacy);
- Earmarking of 20 percent of the grants for the most vulnerable households in target villages, with the monitoring of the use and impacts of the grants, particularly for female-headed households (FHHs); and



- Initiation of the closing of the decision-making gap in Village Committees and on the use of Village Development Funds through the establishment and empowerment of a Village Committee Lao Landscapes and Livelihoods (LLL) Team, with active participation by women and leadership roles for them, which will be monitored in the project results framework.

The Village Committee LLL Team members will receive specialized training on bookkeeping, accounting, livelihoods, and Sustainable Forest Management (SFM) activities, ensuring that female members have the confidence and knowledge to implement financial and technical project-related activities and resolve issues. Women's increased representation, power, and voice in the Village Committee, through the Village Committee LLL teams, will secure active participation in decision-making on forest and land use issues, and enable them to gain experience to take on higher-level positions in the Village Committees.

This project has made a significant effort to address gender and will manage project activities and results accordingly. It will be important to see, through further inquiry, whether the social norms around gender, which put women in a service role to men, will influence whether women's interests can have equal influence with men's interests in this project, particularly in its focus on improving women's role in decision-making through the Village Committee activities.

**Implementation of the Lao PDR Emission Reductions Program Through Improved Governance and Sustainable Forest Landscape Management 1, 2, 3 (Green Climate Fund), 2020–2029.** This project focuses on strengthening an enabling environment for REDD+, by enhancing the availability of finance and strengthening the forestry sector's legal and regulatory framework. It also encourages deforestation-free agriculture and agroforestry by enhancing agricultural productivity.

To ensure the effective engagement of women, the project relies on the support of LWU. The project will conduct training related to business skills development for women and will further expand new economic opportunities for women related to agroforestry, forest management, and agricultural activities through integrating gender assessments in value chain studies and providing targeted technical and financial support to women. The gender action plan states

that the project will review and adopt gender-sensitive future regulations and guidelines, review the potential for community-based women-led patrolling groups and the introduction of the fully inclusive land-use planning processes, as well as develop women's capacities to adopt sustainable land-use practices and support local women in cultivating practical business skills to enhance their participation in businesses that support sustainable land management (Kukkonen 2019).

**Sustainable Forest and Land Management in the Dry Dipterocarp Forest Ecosystems of Southern Lao PDR, 2016–2022.** The focus of the project is to facilitate a transformative shift toward sustainable land and forest management in the forested landscape of Savannakhet Province to secure the critical wildlife habitats, conserve biodiversity, and maintain a continuous flow of multiple services, including quality water provision and flood prevention. Gender considerations will ensure the equal participation of men and women in stakeholder consultations, decision-making, and project implementation. Several activities to ensure gender mainstreaming will be conducted, such as the use of sex-disaggregated data, the introduction of a gender and livelihood specialist as a key member of the project, and the incorporation of gender-sensitive indicators (Kukkonen 2019).

**Integrated Conservation of Biodiversity and Forests (ICBF) 2016–2022.** The focus of the project is the effective management of two conservation landscapes for sustaining and enhancing biodiversity in forest ecosystems, while supporting the livelihoods of forest-dependent communities. Women in the project villages are being supported in their attempts to promote family planning, as well as improvements to the village water supply systems and the sustainable management of NTFPs. These activities are being supported, based on the priorities of the village women (Kukkonen 2019).

## VIII. ANALYSIS AND RECOMMENDATIONS FOR GENDER INCLUSION

The three direct drivers that the ER Program responds to are presented below:

1. Permanent agricultural expansion (including rubber) into forest areas;
2. Shifting cultivation in its different dimensions encroaching into forest areas and preventing forest regeneration; and
3. Illegal and unsustainable timber harvesting.

### Box VIII. 1. Emission Reduction (ER) Program Components

#### Component 1: Strengthening the enabling conditions for REDD+

- 1.1 Strengthening policies and the legal framework
- 1.2 Improving forest law enforcement and monitoring
- 1.3 Improving provincial-, district- and village-level land use planning
- 1.4 Enhancing land and resource tenure security through land registration and other processes

#### Component 2: Establishing Country-led Safeguards Approach (CSA) and enabling sustainable livelihoods for forest-dependent people

- 2.1 Establishing an enabling environment to promote CSA and REDD+
- 2.2 Implementing climate-smart agricultural models

#### Component 3: Implementing Sustainable Forest Management (SFM)

- 3.1 Establishing an enabling environment to implement and scale up SFM
- 3.2 Implementing and scaling up village forestry
- 3.3 Implementing and scaling up Forest Landscape Management (FLM) of sustainable forest plantations

## ANALYSIS

### Key remaining questions and recommendations

- Despite the progress that the forthcoming inter-ministerial agreement represents for State-designated forest land that is used on a more permanent basis, a few questions remain, which may have implications for the ER Program:
  - To the extent that the land excised from the forest land will be titled (or otherwise documented), questions remain about how gender equity will be ensured in the results of that activity (for more details, see the section below).
  - The rights that are attached to a land use certificate are not clear: land use certificates were created as a temporary right, which would become permanent if certain criteria were met; but they were not created as a long-term option. If land use certificates are issued for land that is designated as forest land and that does not meet the criteria for being excised, then the nature and scope of the rights attached to a certificate for that land will be unclear.
  - The question of whether land excised from the designated forest areas will be issued titles or certificates (or some other documents) remains undecided.
  - It is not clear yet how much of the land in the ER Program accounting area might be subject to the changes envisioned in the Inter-Ministerial Agreement, as it is still in the process of being finalized, whereas ERPD was drafted in 2018. At the time that it was drafted, ERPD estimated around 96 percent of the land was designated forest land. It is possible that some of the land so designated in ERPD would be excised according to the approach outlined in the Inter-Ministerial Agreement and may be treated differently and follow a different management approach. Such land could, for example, be issued titles (rather than certificates). Whatever is decided on these excised lands, there will be implications for the ER Program, and in particular, for program benefit sharing, because secure land tenure is a criterion for determining how benefits are dis-

tributed under BSP. This is an area that will need to be closely watched, as things progress, particularly regarding whether as land shifts categories, the implications for gender equity also shift, or if additional steps might be needed to ensure that women and men have equal opportunities to share in the benefit.

- It is not yet known how excising forest land (per the Inter-Ministerial Agreement) will affect the respective landholders' participation in the ER Program activities, if at all.

## SUMMARY OF FINDINGS AND RECOMMENDATIONS

- **In the changing legal and regulatory framework, comprehensive guidelines on how collective, customary tenure will be recognized, documented, and registered are still needed.** Beyond developing such guidelines, it will be important to ensure that new regulations and procedures related to how these lands are governed and used have built-in protections to protect women's interests and needs. At a minimum, they should include meaningful requirements for women's interests and needs to be equally represented alongside those of men.
- **A possible intervention might be to ensure that program-related rules for conducting titling and registration in rural areas include a presumption of the joint titling of marital property that places the onus on the parties to prove why it should be otherwise. To support such an intervention, further research might be needed in the targeted areas to cover how gender dynamics intersect with the Civil Code's provisions for marital property, the Land Law, as well as titling and registration regulations, procedures, and forms.** The effect of the exclusion of women from titling is significant, because the Land Law provides that the land title is the only evidence of a land right. The Civil Code provides for joint marital property but has an exclusion of inheritance by one spouse as part of the marital estate, even though both spouses have the absolute right to make decisions on all property (including inherited property) during the life of the marriage. For matrilineal groups, this means that a woman's inherited land should remain her individual

property, and the opposite for patrilineal groups. For bilineal groups, it could be either.

Assuming that land is titled on a parcel rather than a household basis, an important consideration is whether land rights are titled to reflect these Civil Code provisions, which could mean that within a household unit, different parcels would be treated differently, depending on when and how they are acquired (that is, land allocated to husband and wife, while they are married, is jointly owned and titled, while land acquired by inheritance by one spouse is titled in the name of that spouse alone). In an alternative version, the titling could include a presumption of joint ownership of all household property, with a requirement that the challenger must prove that the property was owned separately in order to overcome the presumption. It would be important to know which of these (or other options) is of the greatest interest to the women and men in target communities, once they are aware of the long-term, inter-generational implications of the options available. Noting that there are considerable variations among ethnic groups, there may be a need for different procedural options, depending on the group.

- **To the extent that part of the ER Program implementation involves some documentation of rights to land in the accounting area, the processes for titling or certifying rights should be accessible to women and men, and should also address specific barriers that women in minority ethnic groups might face.** Lessons from earlier titling programs on urban and peri-urban land suggest that, even with matrilineal and matrilineal practices among some groups, and with the mandatory joint titling under earlier versions of the Land Law, there were still barriers to women being named equally with men on land titles. Part of the reason for this was that no matter the legal and customary rights, social and customary norms about the proper role of women and men in public life and about the head of household strongly influence how rights are documented. These norms may be more pronounced, or at least different, in different ethnic groups, particularly those that are patrilineal and patrilocal, and the procedural steps that are designed to support land titling and certification efforts for these groups should take this into account. For example, procedures and forms must have built-in protections requiring women's

participation, by having room for more than one name on an application form, certificates, or transfer documents. Also, special efforts for outreach should aim to address social norms that encourage women to be passive in public matters or matters that implicate their present and future interests in land.

- **Ensure that positive provisions in the existing legal framework are not lost, but rather strengthened, by supplying resources and instituting accountability to ensure their implementation.** For example, MONRE’s decree on Land Registration and Titling is important because it explains the technical aspects of land registration and how the adjudication process should be done. This includes a “village public consultation” and a “public meeting on gender issues.” The purpose of the gender meeting, which is facilitated by the LWU of the district and attended by the village authorities, land registration teams, and the women representing each family in the village, is to raise awareness about the land rights of both women and the community. This decree is dated 2015, and it is not clear whether this decree will be updated, considering the newly adopted Land Law and Civil Code. But if it is, it presents an opportunity to mandate gender-equitable procedures, such as the gender meeting described above, and hold local authorities accountable for ensuring gender equity in land titling and registration results.
- **Incorporate positive lessons from inclusive village-level decision-making to help ensure that the consensus on how the benefits from the ER Program will be used is truly based on gender-equitable consensus.** While each village committee must include an LWU representative, this does not guarantee that women will participate meaningfully in these processes, or that women’s interests are given equal weight to those of men. This has a significant bearing on the gender equity results of the ER Program because BSP is based on the distribution of benefits in the form of community development projects that are decided on based on the consensus of the community. If there is no structure in place to ensure that women are able to participate in the consensus-making process, then there is a risk that women’s interests will not be among those served when benefits accrue to the community. Respondents have suggested that even

with effort toward incorporating women into these decision-making processes, more is needed to ensure that such a consensus would truly represent the interests of women and men equally. There are, however, good examples of projects that have made a point of working on village decision-making to ensure gender equity, and a possible intervention might be to draw from those experiences and pilot them in ER Program areas, in advance of community decision-making on how benefits paid will be used.

- **Work with traditional leaders, village officials, and men in communities to help ensure that village-level decision-making considers the perspectives of both men and women equally.** None of the ethnic groups has either the tradition or the practice of including women as decision-makers. Social norms around gender and expectations of the head of the household may be the most determinative on the question of gender equity in the governance of collectively held land and resources. Processes for developing village land use plans may shed some light on this and may signal areas of future intervention. There may be some room for an intervention that helps to build the capacity of officials, elders, and men to deliberate in a way that is equally responsive to the needs of both women and men. This is especially pertinent, given the reliance of BSP on consensus building at the village level for how benefits from the ER Program will be used.
- **Ensure standard VFMA templates include the required steps to promote women’s meaningful involvement and hold leaders accountable for that involvement.** According to ERPD, the standard templates for VFMA, including the provisions to strengthen the legal implications of the management agreements, will be developed. Given that the current management of communal resources is governed at the village level in a mix of village-level and customary rules, a potential intervention to ensure gender-equitable outcomes could be to implement standardized VFMA templates with built-in protections for women, so that women’s needs and interests in the forest resources are given equal weight to those of men. Poorly drafted templates can easily create a situation where women lose rights in the process of formalization.

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## INTERVIEWS CONDUCTED

Name	Organization	Date
Markus Olavi Kukkonen Richard Hackman (consultant)	World Bank	September 2021
Micah Ingalls	Team Leader, Mekong Land Governance Group	Aug 2021
Akiko Inoguchi	UN FAO Laos	Aug 2021
Chansouk Insouvanh	Social Safeguards Specialist, Consultant	September 2021
Kate Rickersey	Managing Director, Land Equity International (leading organization for the Mekong Land Governance Group)	Aug 2021
Phetsakhone Somphongbouthakanh	Independent Consultant, Gender Specialist	Aug 2021
Manoly Sisavanh	Deputy Director of Wildlife Conservation Society	Aug 2021
Maurice Andres Rawlins	Senior Environmental Specialist & Task Team Leader (TTL), World Bank, Lao PDR	October 2021
Luck Bounimixay	Land, Gender, and Forest specialist, World Bank	October 2021
	Laos Women's Union	Pending*

\*All interviews were conducted via Zoom conference, with follow-up communication via email.

## APPENDIX 2: ETHNIC GROUPS IN THE ERP AREA

**Table 3.** Ethnic Groups in the ERP Area and their kinship principle.

Linguistic Family/ Ethnic Group	HP	LPB	XAY	LNT	BK	ODX
<b>Lao-Tai Ethno-Linguistic Group—Matrilineal</b>						
Lao	✓	✓	✓	✓	✓	✓
Tai	✓	✓	✓	✓	✓	✓
Lue		✓	✓	✓		
Nyouan		✓	✓	✓	✓	
Nyang				✓		✓
Tai Nue				✓		
<b>Mon-Khmer Ethno-Linguistic Group—Mostly patrilineal</b>						
Khmu	✓	✓	✓			
Pong	✓					
Xing Moon	✓					
Moy	✓					
Thene		✓				
Bidh				✓		
Lamet				✓	✓	✓
Sam Thao				✓	✓	
Akha				✓	✓	✓
Prai			✓			
<b>Hmong-Mien Ethno-Linguistic Group—Mostly patrilineal</b>						
Hmong	✓	✓	✓	✓	✓	✓
Emient	✓	✓	✓	✓	✓	✓
<b>Sino-Tibetan Ethno-Linguistic Group—Patrilineal</b>						
Phou-Noy		✓		✓	✓	✓
Ho		✓		✓	✓	✓
Sila				✓		
Lahu					✓	
Lanten				✓		

Note: Table adapted from Forest Carbon Partnership Facility's (FCPF) Carbon Fund Emission Reductions Program Document (ERP), Ministry of Agriculture and Forestry, 2018.

The Mon-Khmer groups were the first inhabitants of the territory that is now modern-day Laos. The ethnic groups within this linguistic family share customs, such as the exchange of great wealth at marriage, postpartum rituals, cemetery burials, sacred forests, and festivals for the territorial spirit at the end of the agricultural year. They normally engage in swidden cultivation on the higher lands. A field is cultivated for one season and then left fallow. Communities, split into smaller production units, live in their fields during the agricultural season in the North (LRIC 2011).

Practicing a matrilineal culture, the Lao-Tai people are characterized by a sedentary geographical frame. They practice permanent paddy cultivation farming mostly in the Mekong Valley and on its tributaries (LRIC 2011).

The Hmong-Mien settled mostly in Northern Laos, and traditionally practice pioneer swidden cultivation, cultivating land until soil exhaustion forces the community to move to a new location. Ancestor worship is widespread among such patrilineal clanship structures. In some Hmong-Mien societies, leadership structures combine both secular and religious functions. Therefore, the religious leader and the head of the tribe are the same person: a leader or clairvoyant who has responsibility for the worship of place spirits. By contrast, the Hmong usually distinguish political from ritual leadership, with the head of the clan being a different person from the leader of beliefs. However, sometimes, the political leader is also invested with the responsibility for upholding beliefs and traditional customs (LRIC 2011).

Sino-Tibetan groups traditionally practice swidden cultivation, cultivating soil until it is exhausted (Somphongbouthakanh and Schenk-Sandbergen 2020).



## APPENDIX 3: WOMEN'S ORGANIZATIONS

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There is a diverse range of civil society organizations (CSOs) in Laos that are active in the areas of particular relevance to gender equality, including women's rights and development, child protection, the support of people with disabilities, environment, education, and health. However, they are usually not actively invited by the Government of Laos (GOL) to participate in policy dialogs at any stage. Most CSOs are implementers at the local level, but have limited opportunities to feed their implementation experiences into the policy processes (MAF 2019).

Organizations, non-profit associations, and nongovernmental organizations (NGOs) that are active in the nexus of forestry and gender in Laos are presented here:

- **The Center for People and Forests** (RECOFTC);
- **Green Community Alliance** (GCA);
- **Green Community Development Association** (GCDA);
- **Love Natural Resources Association** (LNRA); and
- **Maeying Huamjai Phattana** (MHP).

Organizations that are not directly active in the forestry sector, but are valuable partners with in-depth gender expertise, are set out below:

- **Gender Development Association** (GDA): Gender, law, community development, and education (GDA helped to implement community land titling in the Vientiane Province [Kenney-Lazar 2017]);
- **Participatory Development Training Center** (PADE-TC): Participatory community development; and
- **Association for Development of Women and Legal Education** (ADWLE): Law and gender.

The Gender Integration Development (GID) Team and others agree that RECOFTC appears to have the strongest ties to the Department of Forestry and MAF (MAF 2019). RECOFTC 's Country Engagement Strategy for Lao PDR for the 2013–2018 period focuses on social inclusion and gender equity through a rights-based approach, which has been continued with its recently announced strategy for the 2018–2023 period.

# Madagascar

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## I. INTRODUCTION

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The program area for the Emissions Reduction Program (ER-P) called “Atiala Atsinanana ER-P” is located along the escarpment of the mountain range in the eastern part of the country. It includes five regions (Sava, Atsinanana, Analanjirifo, Sofia, and Alaotra-Mangoro) among the 15 priority regions to have achieved the REDD+ national strategy objectives (Di Persio 2019). Forest Carbon Partnership Facility’s (FCPF) REDD+ activities are focused on the agricultural sector, the forest sector, the energy sector, and cross-cutting activities touching on other sectors (Bureau National de Coordination REDD+ [BNC] 2018).

The ER-P area is crucial for both Madagascar’s biological diversity and food security. It represents more than 50 percent of the remaining rainforest of Madagascar and includes 0.9 million hectares (ha) of primary forests and 1.1 million ha of disturbed forests (Di Persio 2019). In addition, local communities count on this area, with the riparian areas adjacent to forests comprising two large irrigated rice production areas that are dependent on water resources. Irrigated agriculture accounts for 70 percent of agricultural production and 88 percent of rice production (Di Persio 2019). Agriculture represents the main driver of deforestation. Moreover, the forests are exploited for firewood and charcoal production to meet 80–90 percent of the energy needs of rural households (BNC 2020).

ER-P aims to reduce deforestation and forest degradation in its area by 16 percent on average against the reference level in the first 2.5 years of the Program implementation and by 39 percent in the following three years. Afforestation and reforestation activities over an approximate area of 53,000 ha are expected to be implemented during the first five years of implementation.

Carbon benefits will only be allocated to municipalities that have shown “top-performance”, in terms of Emission Reductions (ER) in the reporting period, in comparison with other municipalities (BNC 2020). According to the Benefit Sharing Plan (BSP), at least 58 percent of the carbon benefits will finance field activities that will ultimately benefit local communities and serve to further address deforestation and forest degradation (BNC 2020). Specifically, the carbon benefits allocated to field activities will finance both the continuation of existing REDD+ activities (70 percent of 58 percent ) to secure the sustainability of past efforts, as well as the extension of REDD+ activities (30 percent of 58 percent ) to increase the level of ambition in existing REDD+

initiatives and cover new areas (BNC 2020). Ten percent of the total carbon revenue will be allocated to communities as rewards in the form of community goods, such as social infrastructure investment and income-generating activities.

The sharing of the carbon benefits across ER-P will be done through REDD+ Initiatives validated (“homologée”) by the REDD+ governance structure. Recipients of carbon benefits may be final beneficiaries, or may act as REDD+ activity managers with the capacity to technically and financially manage the implementation of REDD+ activities. Validated REDD+ Initiatives can have access to carbon finance, provided that they submit a Utilization Plan that is prepared in consultation with the relevant stakeholders represented in their respective governance structures (including municipalities, regional platforms, local communities, associations, etc.) (BNC 2020). The Utilization Plans must also be validated by the National Office in charge of REDD+ Coordination—the Bureau National des Changements Climatiques, du Carbone et de la REDD+ (BN-CCCREDD+, REDD+ National Office of Coordination).

## II. NATIONAL LEGAL AND POLICY FRAMEWORK ON THE RIGHTS OF WOMEN

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Discrimination based on sex is prohibited according to Article 6 of the 2010 Constitution of Madagascar. It states “All individuals are equal before the law and enjoy the same fundamental freedoms protected by law, without discrimination on grounds of sex, education, wealth, origin, religious belief or opinion.” The law promotes equal access and the participation of women and men in public employment, as well as the functions of political, economic, and social life.

Since the early 2000s, the Government of Madagascar (GOM) has enacted several key programs to strengthen the rights of women (Food and Agriculture Organization [FAO] 2020). The National Gender and Development Action Plan (Plan d’Action National Genre et Développement [PANAGED]),<sup>1</sup> adopted for the 2004–2008 period, endeavors to integrate gender into all development interventions. It includes action research, advocacy with the heads of in-

stitutions and development programs, the capacity building of PANAGED actors (institutions, beneficiary groups, and partners), communication, along with monitoring and evaluation. Additionally, it proposes strengthening women’s participation in decision-making processes (FAO 2020).

PANAGED has also provided two specific programs intended to redress situations of flagrant inequality observed during the development of the Policy for the National Promotion of Women (2000), including a specific program to improve women’s economic efficiency. Targeted at rural and suburban women, it focuses on access to factors and means of production, specifically land ownership and credit (FAO 2020).

Nonetheless, according to the World Food Program’s Strategic Plan for Madagascar (2019–2024), “most government policies and strategies make specific reference to the promotion of gender equality and equity; however, capacity limitations hamper the enabling of national policies for the achievement of these objectives” (World Food Programme 2019, § 1.4.13).

GOM has set a series of social safety net programs funded by development partners (including the World Bank), implemented by the Fonds d’Intervention pour le Développement (FID), and overseen by the Ministry of Population, Social Protection and Promotion of Women (MPSPPW). The programs target those in extreme poverty and provide cash transfers and livelihood grants. More than 80 percent of the safety net beneficiaries are women (World Bank 2017a). FID also supports the establishment of a national social registry of households who receive social safety net and recovery support. The eventual goal is to incorporate all ongoing social safety net beneficiaries in Madagascar into one database (World Bank 2017a). One such social safety net program, funded by the World Bank, is the productive cash-for-work program (ACTP). It involves building assets or upgrading infrastructure that benefit the entire community, while also providing supplemental income to the poorest people, many of whom are women (World Bank 2019).

In addition, GOM has developed a National Strategy for Combating Gender-Based Violence that ran from 2018 to 2020. While there is no law covering gender-based vio-

1 Décret n° 2003-1184 du 23 décembre 2003 portant approbation du Plan d’Action National Genre et Développement: PANAGED [National Gender and Development Action Plan, Decree 2003-1184], 2003.

lence (GBV), violence against women was criminalized in 2019. GOM has also established a National Bureau for Sexual Gender-Based Violence that provides free legal aid and psychological social services for victims of GBV and other violence (Mahmud and Rabary 2019).

### III. LEGAL AND POLICY FRAMEWORK FOR WOMEN'S LAND TENURE AND FOREST MANAGEMENT

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#### OVERVIEW OF LAND TENURE

Private property is protected in the Constitution; Article 34 provides that the State guarantees the right to individual property. No one can be deprived of it, except by means of expropriation for public utility, and if so, with fair and prior compensation. The State is expected to ensure the ease of access to land ownership through appropriate legal and institutional arrangements as well as the transparent management of land information.<sup>2</sup>

Land legislation, passed in July 2005, defines the categories of land as State land, private land, and land of special specification.<sup>3</sup> “Private property” can be with or without title, and “State land” is designated as either eligible or not eligible to be sold. The following year, the government passed Law No. 2006-031 that allows individuals and groups asserting rights to untitled land called “untitled private property” to obtain the recognition of their rights and receive certificates from communal land offices.<sup>4</sup>

Madagascar launched the National Land Program (2005) to decentralize land administration to the commune level and formalize the rights to land. Communal Land Offices (CLO) were set up and tasked with verifying and regularizing land rights at the local level for individuals or associations using land, but do not have a title to it. The land

certificates have the approximate legal weight of a national land title. A landowner can convert a certificate to a title. The regularization is not based on old formalization documents; rather, it is primarily based on land that has been developed for many years and is currently being used. Newly cleared land is not eligible for regularization. A local recognition commission, generally composed of elders, is appointed and trained with the responsibility to mediate the process. They do not make a “ruling” on who owns what land. Instead, a map is made of all land where there is no disagreement between parties. After an awareness campaign, the process of issuing certificates begins. While certificates are standardized, they are printed locally by each office (Giovarelli 2006).

Between 2006 and 2009, CLOs were set up in 524 out of the country's 1,550 communes. When the coup occurred in 2009 and donors withdrew funding, one-third of these offices closed, while one-third continued to function partially and one-third remained open and functional. A few communes set up new CLOs, using their own resources (World Bank 2019). Nonetheless, an assessment of the land reform conducted in 2015 found that rural households' access to formalization and demand for it was very low. Only five percent of plots were certified. Of these plots, only 20 percent of land certificates were in women's names (Andrianirina Ratsialonana and Raparison, 2015).

In 2015, when political stability returned, the second National Land Program (2016–2020) was launched (World Bank 2019). It focused on improving the decentralized land administration system and harmonizing its rules and regulations (United States Agency for International Development [USAID] 2018). Improving land certification for women was also a program focus, primarily through educating local government authorities about the mandate to “[e]nsure registration of rights of women on proof of right to land ownership” (both titles and certificates) and through awareness campaigns encouraging women to claim their right to land (Ministry of State in Charge of Presidential Planning of Territory and Equipment Projects [M2PATE] 2016).

2 Madag. Const., art. 34.

3 Loi n° 2005 - 019 fixant les principes régissant les statuts des terres [Law n° 2005 - 019 establishing the principles governing the statutes of lands], hereinafter [Land Law], 2005.

4 Land certificates are delivered by the CLO or *Birao Ifoton'ny fananantany* (BIF), which is located in the commune (local decentralized authority) and under its supervision.

## TRADITIONAL RIGHTS TO LAND

The customary tenure systems of the Malagasy are based primarily on individual property rights, rather than collective rights (Randrianarisoa and Minten, 2001). The rights to resources held in common tend to be differentiated by gender. Women participate in agricultural activities throughout Madagascar's various ethnic groups (A.L. Rakotosoa, personal communication, August 2021). Traditionally, women gather and use non-timber products, and thus, they control the land and resources that provide non-timber products. In contrast, men use and control the land and resources related to timber products (logging and charcoal production) (P. Ranjatson, personal communication, August 2021).

For these local people, the environment is an active and dynamic space that not only provides physical resources and supports livelihoods, but also houses their spiritual cosmology, thus making it a location of moral structure and supernatural communion as well. It is both visible and invisible (Cole 1997). Conservation and environmental movements are one form of outside force that local people must negotiate: fear of dispossession from their land is not only about losing resources, but also a fear of losing connection to their ancestors and communion with other spiritual forms. Giving up the management of the land could equally threaten their spiritual existence, if the new managers do not believe in the traditional authorities that are rooted in the forest or respect them. While conservation managers value land for its biodiversity and ecological functions, and generally attempt to limit land use from agricultural extensification or natural resource extraction, it is different from the Malagasy conception of land, which has both productive and spiritual dimensions. Losing the forest would mean losing living *kalanoro* and *hiagna*—the life forces within all living beings (Golden 2014).

Based on the census data, there are 18 ethnic groups in Madagascar. The largest group, the Merina, make up about 25 percent of the population. Three main ethnic groups reside in the ER-P area:

- Betsimisaraka (Atsinanana, Analanjanirifo regions);
- Tsimihety (Sava and Sofia regions); and
- Sihanaka (Alaotra mangoro region).

Although there is much internal migration, the historically predominant ethnic groups in the region remain intact and distinct: “[E]ach of the regions of Madagascar has their specificities, (...) their culture, their assets as well as their constraints and risks, and thus have their own challenges. Even if some are similar, they have their specificities which deserve to be considered in-depth for better appropriation and participation” (Ministère de l’Environnement et du Développement Durable [MEDD] 2019).

The traditional practices of the three ethnic groups (Betsimisaraka, Tsimihety, and Sihanaka) differ, in terms of marriage and land, and these differences do have an impact on women. In spite of these differences, a key finding is that women do inherit land from their natal family in all three of these ethnic groups.

**Betsimisaraka.** Betsimisaraka determine descent through both the lineages of their mothers and fathers, inclusive of the eight great-grandparents. People also make new connections through marriage, which is ideally conceived as the exchange of children and hence the acquisition of new sets of parents. Some people also make relationships through blood sibblingship (*fatidrà*)—a bond created by means of a ritual in which people subject each other to a mutual curse should one person betray the bond, but which, if honored properly, creates a whole new network of kin on which people may rely. The fact that there are different ways of creating relationships, combined with a belief in personal lot or destiny (*anjara*), means that among the Betsimisaraka, people seem to be able to choose where to live and are attached to numerous different places and land (Cole 2001).

The use of plants from the forest is regulated by community rules called *dina*. For example, plants used for house construction, beehives, medicine, the fermentation of the local alcohol drink, or dead trees for fuel can be taken from the part of the forest that is intended for traditional uses. However, those forest resources used for house construction, beehives, and fermentation always need authorization from the president of the local community-based management committee, *Membres des Comités de Gestion* (COGE), who regulate the use of forest products. If the trees are used for a personal purpose, duty should be paid in advance in order to get the authorization. If needed, it can be renewed after this period. Furthermore, plants taken from the forest cannot be sold; they are for personal use only (Rakotoarivelo et al. 2014).

*Ravenala* trees (commonly known as the Traveler's Tree, or Traveler's Palm) are culturally the primary material used for house building within the Betsimisaraka tribe. Two varieties of *Ravenala*— *Bemavo* and *Horonorona*—have economic value, because they are found outside the forest, and thus can be sold. The leaves, petioles, and trunks of *Bemavo* and *Horonorona* are sold in the market (Rakotoarivelo et al. 2014).

**Tsimihety.** Among the Tsimihety, an individual's status, with respect to land, is determined in a general way by the rule of descent. All those of the status of *fokondray* (patrilineal ascent into a named *foko* or association), defined with respect to the collective ancestors who first settled in the region, are entitled to cultivate rice fields within the boundaries and pasture their cattle. Those of specific *foko* status who have collective rights to a given area of land are termed the *zafintany* (grandchildren of the land) of that area. It is possible, and often happens, for there to be more than one *foko* who are *zafintany* in a given region, or for one *foko* to be *zafintany* in more than one area. Nor do all those of one *foko* live together.

However, any individual who lives on land where he is not *zafintany* should seek permission to cultivate the land from those who are. Ideally, this permission must be renewed annually. Nonetheless, once a particular piece of land has been cleared and cultivated, the rights to its use belong to the individual, and they are inherited from the individual. Permission to continue cultivating land, once cleared, is rarely withheld. Within the *zafintany*, the rights to inherit particular parcels of cleared land pass through individuals (Wilson 1967).

Those who are *zafintany* in the context of village affairs are regarded as *tompontanana*—the seniors of the village. They carry the most weight and influence in the village council or assembly, not only because they are often in the majority, but also because of their seniority and their ritual control of the land (Wilson 1967).

Those who are living in their mother's village, and who have exercised their right to claim their mother's inheritance of land to cultivate, can assume primary status in their *fokondreny*. This varies with individual circumstances, but when a man comes to live in his mother's village, and it is a long way from his father's village, he may request a ceremony, through which he becomes of full status

in his mother's village, and may even choose to be buried in his mother's tomb (Wilson 1967).

Persons who reside in the village of their mothers are described as *ambenivavy*. As such, they enjoy only a secondary status in the village; they have less influence in the *fokon'olona* (council) and they may return to their father's village for rituals to be offered on their behalf. Frequently, a man will send his son to cultivate land that his wife has inherited. Even more frequent are the cases where a man sends one or more of his sons to his mother's village to continue to cultivate land that she has inherited, especially if it is good land. Though residing patrilocally, a man, after marriage, observes the taboos of his wife's father and her ancestors, just as she observes her husband's father's taboos (Wilson 1967).

Makira Natural Park—one of two existing Protected Areas in ER-P already implementing REDD+ activities—is predominantly inhabited by the Betsimisaraka and Tsimihety (BNC 2018). The Betsimisaraka and Tsimihety of this region are primarily agriculturalists. They practice mainly clearing and slash and burn activities to acquire land for cultivation, which differs from the Sihanaka ethnic group (described below), who manage an irrigation system (A.L. Rakotosoa, personal communication, August 2021).

Nearly all households grow their own rice crops, in addition to tubers (cassava, yams, etc.), vegetables, fruits, and cash crops (primarily vanilla and cloves). In addition to agriculture, local people obtain a variety of resources from their surrounding environment. They harvest wildlife for food, honey, ethnobotanical and ethnozoological medicines, firewood, and construction materials, among others. This intimate relationship with their surroundings fosters a strong sense of respect for their natural environment and spiritual connections (Golden 2014).

**Sihanaka.** The Sihanaka live primarily on the eastern side of Lake Alaotra—the largest lake in Madagascar located in the Alaotra-Mangoro Region on the island's northern central plateau. Alaotra is also called Antsihanaka—the land of the Indigenous Sihanaka people (Jarosz 1994).

All Sihanaka children inherit land from both their mothers and fathers. Normally, the lands are divided equally among all the children. If the women leave their native villages to follow their husbands, or men leave to farm elsewhere, they

sharecrop their lands with their brothers who stay behind. The absentee sibling provides the land, while the brother furnishes seed and labor. The harvest is divided in half. This arrangement is common between siblings in the professions or in government service who live in urban areas and their brothers who stay to farm their parents' land (Jarosz 1990).

Marital status, class, and age are the key determinants of women's sharecropping practices in Alaotra. Sharecropping is virtually imperative for female-headed households farming one or more hectares of irrigated rice. Married women who have inherited lands near their ancestral villages, and then have moved away, generally sharecrop their lands with their brothers, uncles, or nephews who live near their fields. If a married woman and her husband remain near her ancestral village, she will work her land with her husband and children. Upon divorce, the husband claims two-thirds and the wife one-third of the property accumulated since their marriage. Divorced women and widows who have small children sharecrop their irrigated and swamp fields with their brothers, uncles, nephews, or grandsons (Jarosz 1990).

Even though all children inherit land from their mothers and fathers, the male head of the household determines the timing and organization of agricultural activities, and rice is considered his possession. Settlement and land use patterns—in which people cluster in villages near ancestral fields and concessions—have, in some cases, been found to present a challenge to irrigation schemes, in which land is partitioned as a homogenous plot and allocated by efficiency considerations (Jarosz 1994).

**Discussion.** From these brief descriptions, we find several important themes related to women's land rights. First, in all three ethnic groups, both daughters and sons inherit land. Even if women move from their natal homes, they consider their inheritance as their land and may receive some compensation for the use of their land. Thus, under traditional rules, women have individual rights to some assets and control over them, which is essential information for programs documenting land rights.

Second, land is both productive and spiritual, that is, tied to the ancestors' tombs and wellbeing. This is an issue to be considered and understood in developing rules and regulations for the titling and certification of land rights as well.

Third, community oversight/management is generally the role of an elder male, thus making it difficult for women to participate in forest management, without an intervention focused on including women. However, there are other considerations for priority rights in land management. For example, among the Tsimihety, the *zafintany* (grandchildren of the land) of that area have priority rights.

## INDIVIDUALIZED LAND

Men and women within households who hold land without certificates verifying ownership have “untitled private land” under the 2005 Land Law.<sup>5</sup> During land certification, among married couples, it is typically only the husband who is registered on the land certificate, even when the land is defined as joint property, and even though under customary law, they have complementary<sup>6</sup> rights to the land. Under customary rules, the access, withdrawal, management, and exclusion rights are directed by the capabilities of the men or the women who use the land and resources to fulfill their duties (P. Ranjatson, personal communication, August 2021).

The joint titling of marital property is not mandatory under the current law, although joint land ownership between husband and wife on both titles and certificates is allowed.<sup>7</sup> As discussed above, there has been an effort under the second National Land Program (2016–2020) to include women's names on land certificates and land titles (M2PATE 2016).

When land certificates are distributed with only the name of the male head of household, the title/certificate holder is able to unilaterally sell the land and is not required to divide the land equally in the case of divorce (P. Ranjatson, personal communication, August 2021). The Marriage Law<sup>8</sup>

5 Land Law, art. 35.

6 As women mainly have responsibility for non-timber products, for example, zozor or aravola, to manufacture baskets, bags, and mats, they have control over the land and resources that provide these non-timber products. The same is true for men, who are responsible for timber products (logging and charcoal production) or who plow land for agriculture; they control the use of these lands and resources.

7 Loi No. 2006 - 031 fixant le régime juridique de la propriété foncière privée non titrée [Law No. 2006-031 Establishing the legal regime of non-titled property ownership], 2006.

8 Loi No. 2007-022 du 20 août 2007 relative au mariage et aux régimes matrimoniaux [Law No. 2007-022 Related to Marriage and Matrimonial Regimes] *hereinafter* [Marriage Law], 2007.

does provide some protection because it states that the unilateral sale of marital property is illegal without the consent of both parties (art. 23), and women are protected in the case of divorce (art. 135).<sup>9</sup> However, without joint titling, to exercise this right, women would need to go to court, which is difficult and requires time and money.<sup>10</sup> Women also have the right to dispute their husbands' claim to jointly-owned marital property that is registered and titled in the husband's name only (art. 123); but again, this dispute would need to be resolved in the courts. Note that men and women bring their own land to the relationship and use their land for the benefit of the household. Only land acquired during marriage is considered marital property and divided equally in case of divorce. Article 111 of the Marriage Law states that common law marriage, which is not defined, follows the same rules regarding property ownership. Without joint titling, enforcing property ownership rules would require additional steps as well (L. Ravoniarisoa, personal communication, August 2021).

In one study on women's land rights, the most commonly stated reason for only listing men's names on land certificates was that men are the head of household, which confirmed that men were considered to be in charge of marital property (Widman, 2014). In Malagasy society, *adidy* or social expenses (for example, to cover exhumation, funerals, marriage, traditional ceremonies, etc.) are men's responsibility and a man who can't fulfill his *adidy* is dishonored. So properties acquired within marriage are mainly claimed and owned legally by the man, even when a woman has rights to it (L. Ravoniarisoa, personal communication, August 2021). Another important reason that land was registered in only the husband's name was social constraints. Women in focus group interviews stated that it could be construed as questioning the husband's authority, if they were to ask to be registered in a joint certificate with their husband. And as indicated by the study's regression results, factors associated with women's empowerment had a positive effect on certificates being registered in the woman's name (Widman 2014).

Moreover, according to the study, when joint property was registered in a woman's name, the most commonly stated reason was that it would make the division of inheritance easier. In focus group discussions, it was also mentioned that joint property registration operates like insurance for women and the children, should anything happen to the husband (Widman 2014).

The Marriage Law sets the legal age of marriage for both sexes at 18 years and guarantees the same rights and obligations to both spouses.<sup>11</sup> For legally (civil) married couples, the Marriage Law states that the earnings, common funds, and property, acquired with earnings or common funds, are community property (art. 116). Article 22 of the Marriage Law states that "the spouses jointly administer the property of the community"—a right formerly reserved exclusively for the husband; nonetheless, article 54 states that "the husband is the head of the family" (Marriage Law, arts. 22 and 54).

A further difficulty for women with the current land certification process relates to inheritance. In the ER-P regions, under customary law, land is bequeathed to both daughters and sons, and the right to inherited land includes the right to alienate it (P. Ranjatson, personal communication, August 2021).<sup>12</sup> If this land inheritance, which is used by the household, but "owned" by the wife, is titled in the name of the male household head only, the wife will lose even the rights to the land she holds as an individual.

The Law on Inheritance provides that daughters and sons should receive inheritance equally.<sup>13</sup> However, in article 83, it does make one distinction between daughters and sons: "co-heirs may agree that *female heirs* [emphasis added] will receive their share of the estate in the form of a sum of money" (Inheritance Law, art. 83). By applying this provision only to female heirs, the law makes stronger allowances for males to inherit land. Given the social and gender norms of the Malagasy, it would also be exceedingly difficult for a female to refuse money over land from her brothers, if that were what they decided (Madagascar Coalition of Civil Society Organisations 2015).

9 Article 135 states that all community property remaining after the debts are paid shall be divided into two equal parts.

10 Article 80 of the Marriage Law does state that the effective residence of the wife is where the divorce case should be heard.

11 Marriage Law, 2007.

12 Patrilineal inheritance, only practiced in the southwest region, is the exception in Madagascar.

13 Loi No. 68-012 du 4 juillet 1968 relative aux successions, testaments et donations [Law on Succession, Wills, and Donations] (1968) hereinafter [Inheritance Law], art. 16.



Wives and husbands are eighth in the line of succession under the Inheritance Law (Art. 16). However, a separate law related to marriage and inheritance provides some protection for spouses who are engaged in agriculture together.<sup>14</sup> When a marital couple shares agriculture, craft, industrial, or commercial operations constituting an economic unit, the surviving spouse living on the premises and operating by himself or herself can ask in court that the land remain undivided for a period of up to six years. Thus, rural women can be protected, up to a certain time, regarding the management of operations constituting an economic unit.<sup>15</sup> But, if there were a dispute, it would need to be resolved in court.

As stated above, land certificates are not distributed with both names of a married couple, even if they both have equal rights to the land under the Marriage Law (World Bank 2017b). The World Bank Madagascar Agriculture Rural Growth and Land Management Program received additional financing to tackle “the existing gender gap in women’s land rights, by registering rights under women’s names (either alone or jointly) on 1.1 million parcels” (World Bank 2019b). The total number of certificates targeted for issuance is 2.5 million. According to the project appraisal document, the lack of women’s names on documents is related to, among other things, the assumption that the rights granted through marriage are sufficient and do not need further documentation (World Bank 2019b).

The additional financing provided by the World Bank is intended to include capacity building for local actors (agents, mayors, and local land recognition committees), partners, and land services, with specific training provided on women’s land rights, matrimonial law, succession and inheritance law, and advocacy. As well, the additional financing supports the development of a national awareness campaign on the benefits of registering women’s land rights. At the local level, as part of the sensitization campaign before and during the certification process in each commune, the additional financing supports the development of a communication strategy to encourage the joint registration of land. It provides both men and women with innovative tools, such as focused discussions and the distribution

of printed materials, videos, and/or local theaters (World Bank 2019b).

Land recognition committees are important to the process of land rights certification. Their main task is to recognize that land is developed, that the development is not recent, and that the land is currently being used by the owner who requests the land certificate. The committees are often made up of elders, and in many cases, exclusively male. The committee does have the power to protect women’s rights by recognizing and validating the applicant’s marital relationship, especially if there are children, and then requiring joint titling. Women’s lack of involvement in the committees may be a barrier to realizing the program’s gender equity objectives (Giovarelli 2006).

## COMMON/COLLECTIVE LAND

In 1996, Madagascar passed the Secure Local Management Law (relative à la gestion locale des ressources naturelles renouvelables—GELOSE): it allowed for the devolution of the management rights of natural resources to rural communities.<sup>16</sup> In 2000, a further decree established the contractual management of the forest law (*Gestion Contractualisée des Forêts* or GCF), which defined the details of the contracts to transfer forest management rights and streamline the GELOSE process (Mansourian et al. 2014). The Community Forest Management (CFM) contracts are now negotiated between the central government, the commune, and local communities. Under this process, all management contracts are mediated by external agencies such as international NGOs. As of 2014, an estimated 750 co-management contracts had been signed, covering an area of more than 1.2 million ha (Mansourian et al. 2014).

The CFM contracts, which constitute an agreement between individuals from the local community and the local administration, set out clear terms of use of the resource, land tenure rights, and environmental mediators (World Bank 2015). A typical CFM contract is established, with support from NGOs and the expertise of an environmen-

14 Loi No. 67-030 du 18 décembre 1967 relative aux régimes matrimoniaux et à la forme des testaments [Law No. 67-030 relating to matrimonial regimes and the forms of wills] (1967), art. 44.

15 *Id.*

16 Loi No. 96-025 relative à la gestion locale des ressources naturelles renouvelables [Law No. 96-025 relating to local development of renewable natural resources], hereinafter [Secure Local Management Law], 1996.

tal mediator who ensures that the needs and objectives of all stakeholders involved in the negotiations are given equal weight.<sup>17</sup>

The process starts with the creation of a local natural resources community group, *Vondron'Oloha Ifotony* (VOI). VOIs provide a mechanism for individuals to participate in Protected Area governance—from their establishment to daily management decisions (Ward et al. 2018). VOIs may be established by an existing NGO, or they can be based on existing village associations. The VOIs do not need to correspond to a geographic area or family group. A base community is defined as “a group formed, organized, and functioning in accordance with provisions of Decree No. 2000-27 of January 13, 2000 relating to grassroots communities responsible for the local management of renewable natural resources” (art. 3).<sup>18</sup> As joining a community is voluntary, this can “bring together the inhabitants of a hamlet, a village, or group of villages” (art. 2). Any inhabitant residing within the limits of the territory of the base community can be a member, if she or he respects the operating rules of the community and carries out the activities and objectives set by the VOI.<sup>19</sup> The application to become a member is then submitted to the General Assembly of the VOI.

Communities have a legal personality (art. 2) and function as NGOs, according to the regulations in force.<sup>20</sup> VOI members elect a management committee—a COGE (Ward et al. 2018). While the members of the VOI make up the General Assembly, the day-to-day governance is done through the COGE. The operating rules of the grassroots community are set by its statute, its interior regulations, and its *dina* (customary bylaws) (art. 15). The *dina* are established, adopted, and modified by the General Assembly according to the customary rules governing the VOI (art. 18). The decree discusses financial management but does not mention anything about the decision-making process within the VOI.

Once created, the VOI can request for the transfer of management of a given resource from its legal owner—the State. The contract is signed by three parties—the VOI, the owner of the resources (the State), and the municipi-

ality (commune), the most decentralized institution—with elected leaders (World Bank 2015).

## COMMUNITY MEMBERSHIP

The 2000 regulations state that only VOI members can participate in forest governance at the community level. A critical issue facing FCPF in Madagascar is that women have low levels of VOI membership, and overall, lack decision-making power in resource management (Rakotobe 2014). Women are not only not members of the smaller management committee (COGE), they are also not members of the community, as it is defined for forest management by law (the VOI). Nonetheless, membership in the community is voluntary, and women are eligible. The phenomenon of women’s lack of membership is driven by the following factors:

- Illiteracy and lack of education among women limit their ability to access critical information about forest management.
- Household responsibilities prevent women from having the time to participate in activities outside the home, such as attending forestry training or meeting with local government authorities (Kellum et al. 2020). In addition to household duties and childcare, women are also required to provide additional revenue to the household by engaging in market gardening, non-timber products, small breeding (small-scale poultry), etc. (L. Ravoniarisoa, personal communication, August 2021). This is despite the fact that men are traditionally responsible for providing the primary source of income for the household and fulfilling social duties, including community meetings/decision making (L. Ravoniarisoa, personal communication, August 2021).
- In some rural and more conservative parts of the country, such as the southwest, it is even taboo for women and men to hold meetings together (Kellum et al. 2020).<sup>21</sup>

17 Décret No. 2000-028 relatif aux médiateurs environnementaux [Decree no. 2000-028 relating to environmental mediators], 2000.

18 Décret No. 2000-027 relatif aux communautés de base chargées de la gestion locale de ressources naturelles renouvelables [Decree No. 2000-027 relating to communities responsible for the local development of renewable natural resources], 2000.

19 *Id.*, art 5.

20 *Id.*

21 As well, the inheritance system in the southwest is patrilineal only, and women do not inherit land from their fathers (P. Ranjatson, personal communication, August 2021).

- Women’s leadership lacks social acceptance (L. Ravoniarisoa, personal communication, August 2021). Even in the places where women and men may be present at meetings together, women’s participation is often marginalized. Therefore, the majority of rural women are not involved in the process of drafting and implementing local development plans or any other public process.

With the promotion of gender inclusion by donors, more women are becoming members in the VOI. However, women have difficulties expressing their opinions in front of men because of cultural restrictions, and their voices are not effectively recognized (D. Ramiarimana, personal communication, August 2021; L. Ravoniarisoa, personal communication, August 2021).

Nonetheless, there have been some notable and exceptional advances in women’s participation in local forestry management. For instance, in the northern area of Menabe, a woman proposed a shared vision on forestry management for her community and all the members accepted and validated it (Kellum et al. 2020).

For women to be included in decision-making, accommodations must be provided to encourage their participation. These may include having women-only meetings, providing childcare, holding meetings at a time and place where women can attend, along with conducting training for women to better understand the issues related to forest management and the skills needed to meaningfully engage in such activities. Several interviewees stated that if women’s participation in the VOI allowed them to increase their ability to earn revenue for the household, their husbands would support their participation (D. Ramiarimana, personal communication, August 2021; S. Solo, personal communication, August 2021). In other words, if they receive technical training to improve their use or manufacturing of forest products, allowing them to access reliable markets, their husbands would support them (D. Ramiarimana, personal communication, August 2021). Moreover, to ensure the full participation of women in decision-making processes, support is needed to enhance their leadership skills related to resource management (D. Ramiarimana, personal communication, August 2021; L. Ravoniarisoa, personal communication, August 2021). The challenge is to change behaviors and social norms.

A recent study examined access to ecosystem services (ES), defined as the capacity to gain benefits from the environment in Protected Areas where the resource is co-managed (Ward et al. 2018). One of the questions the study tried to answer is “what factors are important in determining whether a person can access ES?” (Ward et al. 2018). Qualitative and quantitative data were collected, using questionnaires, focus groups, and interviews with stakeholders in the Mangabe Forest, along with a case study on a Protected Area located in eastern Madagascar and co-managed by 10 VOIs and a national NGO.

The study found that institutions and social identity had the largest impact on access to ES. VOI members and individuals who knew VOI committee members had greater access to ES than non-members (Ward et al. 2018). These findings are similar to those of an earlier study (Hicks and Cinner, 2014). The latter study, which looked at ecosystem service benefits across 28 coral reef fishing communities in four countries, found that social, institutional, and knowledge mechanisms were associated with the greatest number and diversity of benefits. In Madagascar, specifically, access through authority was associated with fishery benefits (Hicks and Cinner 2014). Traditional Malagasy village-level institutions are often dominated by older men, which may undermine the aim of the Protected Area co-management to improve the rights and natural resource access of local communities (Ward et al. 2018).

Finally, an impact analysis of CFM in Madagascar (2015) set out the following findings: (1) the decentralization of forest management to local communities might not have, on average, achieved its forest conservation goal; (2) non-commercial CFM appeared to have had more success than commercial CFM, albeit a small one; and (3) the transfer of forest management rights to local communities had not improved household economic living standards in Madagascar at the municipality level. However, CFM had enhanced the economic living standards, at a more local scale, for households living along the forest edges (World Bank 2015).

## REGULATIONS ON LAND RESOURCES (FORESTS AND TREES) AND WOMEN'S RIGHTS

Environmental regulations, put in place in 2004, have established a requirement for all private and public investment projects likely to harm the environment to prepare an Environmental and Social Impact Assessment (ESIA).<sup>22</sup> The ESIA document must be approved by the Ministry of Environment, and the approved document and environmental permit must be attached to any investment authorization. Therefore, any environmental or social risks, as well as the adverse impacts of any future or existing investments, can be managed and potential impacts reduced in an acceptable manner through ESIA (World Bank 2017a).

## IV. ETHNIC COMMUNITIES

**Marriage, Children, and Ancestors.** The relationship between children and ancestors is fundamental to the Malagasy worldview. The Betsimisaraka marriage ceremony explicitly states that each family gains a child. Typically, a woman leaves her natal household to go live with her husband's family, but there is no concern that a woman's loyalties would be divided between her family of birth and that of marriage. In contrast, men are supposed to be primarily concerned with reproducing ancestral connections, with people often perceiving a man's loyalty to his spouse to be conflicting with his loyalty to his parents, and sometimes, even to his children. It is a tension that runs throughout the people's lives (Cole 2001).

Among the Tsimihety, the descent rule emphasizes the genealogical link between a father and his children, and this emphasis is related to the ancestors. The Tsimihety are patrilineal, but a female may transfer her patrilineal descent status to her children. It is a cultural given that every Tsimihety must be buried by his descendants in a tomb with his ancestors. Every Tsimihety is expected to have access to the ancestors, which is achieved through rituals and the establishment of an identity towards specific ancestors.

Furthermore, every Tsimihety must have land (Wilson 1967). Once a child is named in a ceremony, the child has a right to inherit land, a place in his father's tomb, the protection of his kin, his secondary rights to be buried in his mother's tomb (rights guarded for her by her brother) to inherit his mother's land, etc., and all are now public. In exchange, he incurs a number of obligations to obey the authority of his senior kin, observe taboos, as well as give of his labor, respect, hospitality, and obedience (Wilson 1967).

In Tsimihety practice, the bride-price (*moletry*—paid by the groom's family) is correlated with the children expected to follow in a marriage. The *moletry* belongs to the woman, not her family. It is refundable in full, if the marriage breaks up within a year, unless a child has been born, in which case the woman may retain a portion of the *moletry*. After a year, the *moletry* is not refundable, even if the marriage breaks up and the woman has borne the man children. If she has borne him no children, he may negotiate for a partial return of the *moletry* (Wilson 1967).

If a child is not claimed by his/her father, s/he remains with his mother and is granted the full rights or the primary status to burial in the mother's father's tomb and to all that this entails. S/he is fully protected by the ancestors of the mother and has the right to inherit the property of the mother. If the mother does not marry, her rights to cultivate land are activated and her child will inherit them. If a woman does marry, her husband has the option of becoming the father of the child. If he does not, then the child is brought up by the mother's brother and/or mother's parents and is granted full status rights to their land, tomb, and ancestors (Wilson 1967).

Among the Tsimihety, two specific statuses are associated with the group meetings for a political or a ritual purpose. The senior male of the senior generation, who hosts meetings of the elders of the village at his house to discuss anything at any given time, is termed the *soja*. Women take no direct part in such meetings, although they often gather at a neighboring house and shout their suggestions. For major rituals, the officiant (male or female) is the senior person of the senior generation of the particular aggregate assembled (Wilson 1967).

22 Décret no. 2004-167 du 03 février 2004 relatif à la mise en compatibilité des investissements avec l'environnement (MECIE) [Decree No. 2004-167 of February 3, 2004 Relating to the Compatibility of Investments with the Environment], 2004, stipulates the requirement of preparing an ESIA.

## V. SOCIAL AND ENVIRONMENTAL SITUATION ANALYSIS

Of the population in Madagascar, 75 percent live on less than USD1.9 per day. Taking into account the weak economic position of women and the limited opportunities, especially for women heads of the households, poverty is much more common among women than for their male

counterparts (World Bank 2020). Approximately 22 percent of households in Madagascar are headed by a woman, and of those households, 65 percent are headed by a woman who is a single mother with children under the age of 15. Of female-headed households, 77.5 percent live in rural areas (USAID 2019). Table 1 provides more details about the women's social and environmental situation.

See **Appendix II** for regional differences.

**Table 1. Statistics illustrating the social and environmental context for women in Madagascar**

Education	Workforce	Political Participation	Gender-based violence (GBV)	Social Status
The limited or low level of education of women in rural areas is significant, as it may be contributing to their fear of undertaking the administrative process to request a joint title.	65% of women are employed in the agricultural sector, but only 8.3% are registered as wage and salaried workers (UN Women, 2021).	Women hold less than 20% of the places in parliament. Less than 30 percent of all ministerial positions are held by women (UN Women, 2021).	Slightly more than 40% (41%) of ever-married women report emotional, sexual, or physical violence by their partners or husbands during their lifetime. (USAID 2019).	Men control the use of agricultural land acquired during marriage and the use of forest land for logging or charcoal production (P. Ranjatson, personal communication, August 2021).
Almost 4% (3.8%) of married women, aged 15 to 49 contracted loans, in 2012. A 2013 survey found that 14.4 percent of women who contracted a loan had difficulties repaying it (USAID 2019). Reasons include the lack of education and the dearth of collateral (L. Ravoniarisoa, personal communication, August 2021).	Almost 60% (58.5%) of women are contributing family workers, as opposed to 23 percent of men (World Bank 2020).	Traditional authorities are always men in all parts of the country (UN Women, 2021).	The high rates of maternal mortality and GBV are a result of poverty as well as the low social and economic statuses of women (World Bank n.d.).	Women are in charge of the harvesting and commercialization of agricultural products (D. Ramiamanana, personal communication, August 2021) and the use of non-timber products (P. Ranjatson, personal communication, August 2021).
Fifty percent of women have access to newspapers, radio, and television at least once a week, compared to 55% of men. Eight percent of women and 12% of men report having used the internet at least once over the previous three months (USAID 2019).	Women are responsible for the care and maintenance of household gardens and subsistence agriculture, while men are more engaged in for-profit cash crops.			A woman has full rights and control over the use of the land she inherits, and makes decisions about daily expenses. Decisions about large expenses are decided jointly (P. Ranjatson, personal communication, August 2021).

Education	Workforce	Political Participation	Gender-based violence (GBV)	Social Status
	Eighty-seven percent of working women work in the informal sector, but they are not adequately protected by legislation (Mahmud and Rabary 2019; MEDD 2019).			Women have less control over income, land, and credits, while men generally own land, cash, and opportunities to participate in decision-making.

## VI. WOMEN'S ORGANIZATIONS

Social norms influence women's roles and participation in community activities. A national survey from 2012 found that the highest level of community involvement among women was through religious activities and associations that improve education and health (Institut National de la Statistique 2012). Forty-three percent of women are involved in religious associations and 25.6 percent in groups related to education and culture. Only 5.5 percent of women are involved in political bodies and 15 percent in professional organizations (Kellum et al. 2020).

There appears to be an exceptional network of NGOs working with women. In addition, there are women farmer's associations in many communes, along with other NGOs having offices and outreach in rural areas. These NGOs may be ideal for training and communication activities. See Appendix 4 for a brief description of several women's organizations.

One interviewee pointed out that working with existing women's organizations can help a project achieve success more quickly, because the community already has had some awareness raising and the women generally have had some training and some familiarity with working in groups with other women. However, in Madagascar, many communities are located far from the nearest road and have had little outside intervention. While these communities would pose logistical difficulties and be less prepared for a focus on women, they are also in need of assistance (L. Rakotondraso, personal communication, September 2021). It is hard to know what is happening in remote areas, and it would be good to do some research into this aspect.

## VII. CLIMATE CHANGE PROGRAMING AND GENDER INCLUSION

Neither ERPD nor BSP puts any emphasis on gender inclusion, although there are a few mentions of women. The ER-P area in eastern Madagascar was selected based on several criteria. The main goal in choosing this area was the desire to capture the upstream and downstream drivers and impacts of forest loss by including several watersheds using the government-designated boundaries of communes. The ER-P area also includes protected land areas already implementing REDD+ activities. Communes are the level at which land-use decisions happen in the context of decentralization, and they are the political level around which GOM has built its implementation strategy at the national level (BNC 2020). BSP states that agriculture represents the main driver of deforestation (BNC 2020). The collection of firewood and charcoal, which contributes to 80–90 percent of the energy needs in rural households, are also drivers for deforestation.

ERPD describes expected non-carbon benefits, although they are not part of BSP itself, which is limited to monetary and non-monetary benefits only. The priority non-carbon benefits of ER-P are listed below:

- Improved conservation and strengthening of the management of protected areas;
- Increased environmental services at all levels;
- Reduction of poverty and unemployment; along with
- Increased access to markets, health system, and education.

## GENDER AND REDD+ STUDY AND ACTION PLAN 2019–2023

While ERPD does not include a focus on gender, the National REDD+ GAP was submitted on September 8, 2019 and validated at a National Workshop on June 9, 2019, and then subsequently amended to incorporate recommendations for improvement from stakeholders. GAP follows a study based on a consultation with stakeholders at the macro and meso levels, as well as field interviews carried out in eight rural communes in four regions. The study reinforced the perception of gender inequalities, because the direct and indirect causes of deforestation and forest degradation overlap with poverty and tradition, which means that women and men face the risks associated with climate change and the resulting vulnerability differently. Social inequalities have serious repercussions for many rural Malagasy women, who represent half of the population, due to the fact that they limit women's access to land ownership, housing, education, health care, and especially participation in decision-making (MEDD 2019).

The study identifies six causes of deforestation and their relationship to gender differences:

1. The conversion of forests into agricultural land (*tavy*) is linked to access to land, from which mainly men benefit.
2. Rural Malagasy have the right to cultivate land, and must cultivate it so that they can own it. This right and this obligation are part of the customary bylaws (*dina*) in some communities, and therefore, part of the culture that mainly benefits men.
3. Livestock, which often generate bush fires, are a sign of wealth for men in certain regions, while women tend to raise poultry, unrelated to the use of the forest.
4. The production of charcoal, which is increasing from year to year and is part of a subsistence economy, is difficult to regulate. Men cut the trees and prepare the oven, while women market the charcoal, but do not always share in the income.
5. Women mainly collect products in the forests for fuel (firewood), food, and medicine. The decline or disappearance of housing materials in the forest, which men collect, will jeopardize the well-being and the quality of life of these women and their families.
6. The illegal trade in precious woods mainly benefits men, who very quickly squander the income they receive.

In creating GAP, four key principles have formed the foundation:

1. Consideration and optimization of the interdependence of the three pillars of sustainable development—environmental, social, and economic dimensions;
2. Inclusion and participation of all stakeholders in all challenges, especially women for whom empowerment and leadership are conditions for the success of the REDD + mechanism, but also men, young people, the elderly, the disabled, and children;
3. Consideration of property rights and rights over women's resources in order to correct myths and mentalities, as well as help women to have agency and evolve economically and socially, just like men and young people.
4. Equitable participation of women and men in decision-making and in the distribution of REDD + carbon benefits.

GAP states that women's "inclusion in the management models of the REDD + mechanism cannot be an option but an imperative, not because women are 'more vulnerable', but because they have experience and knowledge of forests, as well as perspectives for the protection of the environment to be shared" (10).

As for gender inequality in the context of deforestation and forest degradation, individual and household interviews, focus group discussions, and exchanges and debates during the regional workshops highlighted the low rates of inclusion of women in the decision-making and management spheres of forest areas. Other factors include social and cultural factors in grassroots communities near forest areas; women's low level of education; the lack of female leadership skills; the low economic capacity of women; along with the dearth of information, education, and training.

The development of this GAP adopted a participatory, iterative, and progressive approach, involving various stakeholders in all phases of the process. They include officials of the BN-CCCREDD+; the World Bank; the key sector ministries, in particular, the Ministry of the Environment and Sustainable Development, the Ministry of Population, Social Protection and the Promotion of Women, and the Ministry of Agriculture; decentralized national authorities; elected officials at the municipal level; opinion leaders; civil society representatives; grassroots communities; women's associations; and youth clubs.

See Appendix 3 for excerpts from GAP.

## EXISTING PROJECTS IN MADAGASCAR

- **Sustainable Landscapes in Eastern Madagascar, 2017–2026 implementation, Green Climate Fund (GCF).** This project focuses on improving the resilience of climate-vulnerable smallholder farmer families, reducing greenhouse gas emissions from deforestation, and leveraging on private-sector climate investments. The project is based on the establishment of a model that addresses smallholder vulnerability through non-profit activities, which prepares smallholding farmers to eventually access private sector investments, thus providing a pathway out of extreme vulnerability and dependency.

The project includes a gender plan that incorporates full-time gender specialists; equitable access to information, services, and technology; a quota requiring that 50 percent of direct beneficiaries of subprojects are women; along with gender-specific outreach and education (GCF 2019).

The 2019 annual performance report noted that there was “persistence at the community level of negative attitudes and stereotypes towards women that are common and persistent in Malagasy rural societies. Conducting activities that run contrary to these stereotypes is one of the continual challenges facing the field team, and strategies are continuously adapted to increase the effective participation of women in Project activities” (GCF 2019, 67). Thus, “the participation of women in training, their membership in the structures responsible for forest management, and their access to positions of responsibility in these structures remain a challenge” (GCF 2019, 67). However, the project report also noted that the promotion of women’s participation in activities through women’s associations has demonstrated the most success in the project for improving women’s participation and empowerment.

- **Sustainable Landscape Management Project (PADAP), 2017–2022 implementation, World Bank.** The focus of the project is to increase access to improved irrigation services and agricultural inputs. Furthermore, it seeks to strengthen the integrated management of natural resources in selected landscapes by local actors as well as provide an immediate and effective response to an eligible crisis or emergency.

The project is intended to support interventions where women’s participation is particularly important for agroforestry’s long-term development impacts; take into account gender differences in tree plantations in the establishment of community forestry; incorporate women’s priorities and their knowledge on trees and forests, species diversity, and conservation practices into the setting of sustainable community forestry; and search for mechanisms to increase women’s participation. The projected goal is for 40 percent of direct beneficiaries to be women, but the actual percentage falls short at 16 percent (World Bank 2017b).

- **Northern Madagascar REDD+ Project, NAMA Facility.** This project, currently in the Detailed Preparation Phase for funding consideration under the NAMA Facility, will seek to address deforestation in the Northern Highland region of Madagascar, covering the region of Sava and Sofia (NAMA Facility n.d.). Challenges in the project intervention area include deforestation triggered by the production of vanilla, rice, and other cash crops. The project target is that at least 20 percent of the project’s beneficiaries in the following activities are women through the adoption of sustainable and improved techniques related to cash crops (vanilla and rice); the diversification of cash crop production; and the support of transformation to enable women to carry out appropriate activities.

## VIII. ANALYSIS AND RECOMMENDATIONS FOR GENDER INCLUSION

There is overlap between the ERPD-suggested activities and the Gender Action Plan (GAP) in relation to forests and agriculture. For example, ERPD calls for better forest management, surveillance, and monitoring; reforestation and rehabilitation; as well as the improvement of “the contribution of the forest sector to economic development by promoting the use of non-wood products and other subsectors that do not affect the carbon stock” (BNC 2018). Objective 2 of GAP calls for developing the inclusive resilience capacities of forest-dependent communities, with 2.1.1 and 2.1.2 supporting the diversification of regional economic activities and activities as an alternative to agricultural practices harmful to the environment.



Supporting non-timber forest products (NTFP) is one area for increasing gender inclusion. Women are responsible for collecting NTFP; thus, focusing on these uses and providing financial assistance and training for the development of small enterprises would have a positive impact for women. As well, involving women in forest management will help improve forest management, increase women's agency, and encourage gender equity.

ER-P activities, which focus on improving the management of cash crop production and food security (ERPD Activity AD 2), should be an area of focus for women. Improving women's skills in harvesting, conditioning, and processing of cash crops like vanilla and cloves would help women's employment and economic empowerment. Strengthening women's technical capacity to earn money from land will empower them within the household (P. Ranjatson, personal communication, August 2021). The Madagascar World Bank country team suggests identifying and promoting activities that women are already engaged in, rather than initiate new activities. For example, where women are growing vegetables, assist by increasing output, resolving some of the issues related to marketing, etc. Furthermore, the team suggests helping women form groups to work together where those groups do not currently exist (L. Rakotondrasoa, personal communication, September 2021).

What is clear from GAP (and missing in ERPD) is that gender inclusion—bringing women to the table so that they are included in decision-making about the forest, land, and economic activities—requires effort and focused attention. One interviewee stated that women are involved in decisions behind the scenes, but this is not captured in the research. If that is the case, it may not be that difficult to include women in the meetings, if some groundwork has already been done (L. Rakotondrasoa, personal communication, September 2021). Including women in a proactive way will require disseminating information to them, providing training, and strengthening their capacity to have a meaningful voice in forest management.

Furthermore, gender awareness training for both men and women will be necessary. Interviews with members of the Federation of Malagasy Rural Women (FVTM) and African Women's Network for Community Management of Forests (REFACOF) emphasized these measures as well. More specifically, FVTM provided the following recommendations:

- Information, education, and sensitization of both men and women to change social behavior, which currently doesn't accept women's leadership or recognize the effectiveness of women's participation in the decision-making process;
- Capacity building to enhance the leadership skills of women in community organizations;
- Organization of advocacy and awareness campaigns to inform both men and women about the laws concerning equal rights to land tenure security;
- Advocacy targeted at authorities responsible for divorce proceedings to support the protection of women's rights; and
- Facilitate women's access to economic opportunities, but also provide mentoring to enhance their life skills for social and economic fulfillment.

REFACOF recommended the following actions:

- Capacity building to enhance women's leadership related to resource management and ability to defend their interests and have a voice in decision-making;
- Advocacy and awareness raising of local authorities regarding women's rights;
- Awareness raising of women about their equal rights to secure land tenure;
- Technical training to enhance the skills of women
  - to produce quality products from natural resources, thus allowing them to access a larger market and reduce their financial vulnerability; as well as
  - to document land rights and thus have control over its use.

GAP suggests supporting and working through local NGOs and CSOs focused on women's rights, which we concur is a good starting place. Existing women's organizations understand the issues that affect women, and generally have female leadership. Furthermore, they work in rural communities. Considering the discussion above on remote villages, locating CSOs in these remote villag-

es and supporting them might be beneficial to a project as well as to the women in these communities. Note that several people interviewed suggested that if women could earn money as community members (VOI members), their husbands would not object to their participation. Technical training focused on NTFP for VOI members may provide this opportunity.

Aside from meaningful inclusion in the VOI and COGE, a second priority area for intervention is in documenting women's rights to land, either jointly with their husbands in the case of marital property, or individually as heirs to their natal land. The land tenure expert we interviewed was very concerned about the title and certification of land rights, which places the whole bundle of rights to land (access, withdrawal, management, exclusion, and alienation rights) under the name of only one person, when the different rights are traditionally held by different people, depending on their use of the land. At the very least, the joint titling of marital property is necessary to protect women (P. Ranjaton, personal communication, August 2021).

REFACOF, which focuses on forest rights, supports mandatory joint certificates for marital property. It states that land tenure issues have not been considered effectively in ER-P. To improve this situation, advocacy and the awareness raising of local authorities are needed to protect women's rights. At the same time, women also need to be aware that they have equal rights as men, in terms of land tenure. One entry point for this work would be the World Bank Madagascar Agriculture Rural Growth and Land Management Program, which is already providing assistance for joint titling. Engaging local organizations in this effort could be useful.

A final recommendation comes again from the Madagascar Country Team, who is currently designing a new NRM project. It would like to know how it could be gender inclusive in this major project from the beginning. One way to better understand what works and what is not working would be to do a mid-term review of the existing Sustainable Landscape Management Project (PADAP) implementation and collect lessons learned. The project was designed to be gender intentional, and looking at what is actually happening at the mid-term would provide useful information for the new project (E.W. Reed, personal communication, September 2021).

## SUMMARY OF RECOMMENDATIONS

- Support women's membership in the VOIs, including providing regular and understandable information, holding women-only meetings, scheduling meetings at a time and place where women can attend, providing childcare, and conducting training/information campaigns focused on assisting women in understanding issues related to forest management where their voice is needed.
- Support women's membership in the VOIs by educating and informing male leaders, elders, and other community members about the value of women's engagement, along with the need for social and behavioral change.
- Advocate for regulations that make joint titling/certification of marital property mandatory.
- Promote the use of non-timber products and other subsectors that benefit women.
- Provide training and support for small businesses.
- Fund the manageable and achievable REDD+ Gender Action Plan, validated by a wide segment of the population, which clearly and specifically describes what is necessary for gender inclusion in forest management.
- Conduct a mid-term review of the PADAP project to understand what was successful in their efforts at gender inclusion and what needs to be done differently in the next project.

# APPENDIX 1: REFERENCES

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## INTERVIEWS CONDUCTED

Name	Position and Institution	Date
Pascaline Razafimiasa	CSO and Gender Officer, BNCCCREDD+, Ministry of Environment and Sustainable Development	August 2021
Andrianina Lydia Rakotosoa	Freelance Researcher and Forest Engineer	July 2021
Patrick Ranjatson	Social Anthropologist and Forest Engineer, University of Antananarivo—École Supérieure des Sciences Agronomiques	August 2021
Lilia Ravoniarisoa	General Secretary, FVTM (Federation of Malagasy Rural Women)	August 2021
Danièle Ramiamanana	Focal Point, REFACOF (African Women's Network for Community Management of Forests)	August 2021
Serge Solo	Senior Officer—Social Development, World Wildlife Fund	August 2021
Erik Winter Reed Laza Rakotondrasoa	World Bank Country Office Task Team Leader (TTL) Environment and Natural Resources Specialist	September 29, 2021

\*All interviews were conducted via Zoom conference, with follow-up communication via email.

## APPENDIX 2: OVERVIEW OF REGIONAL DIFFERENCES

Gender- Related Attributes	ER-P Regions				
	Sava	Atsinanana	Analanjirifo	Sofia	Alaotra-Mangoro
<b>Female Participation in Household (HH) Decisions</b>	61.6%	59.5%	67.7%	71.6%	59.4%
<b>Female Participation in Civic Decisions</b>	20.1%	5.9%	2.4%	7.3%	0.9%
<b>Gender Development Indicator</b>	5.2%		1.2%	2.7%	9.8%
<b>Main Ethnic Affiliation</b>	Tsimihety, Betsimisaraka Multi-ethnic	Betsimisaraka Multi-ethnic	Majority Betsimisaraka; Besileo and Merina immigrants; Chinese	Tsimihety Sakalava Multi-ethnic (SE and S)	Majority Sihanaka, Bezanozano
<b>Main Occupation</b>	Agriculture:  Women—91.4%; Men— 87.6%  Zone of excellence for cash crops—vanilla, coffee, clove, pepper and rice tourism, fishing and fish farms	Agriculture:  Poorly irrigated rice; food—tavy, cassava, corn, potato; cash crops (sugar cane, coffee, cloves, pepper); fruit crops (bananas, lychees, pineapples, citrus fruits); and livestock (cattle)	Agriculture:  Primarily cash crops—cloves, Arabica and Robusta coffee, vanilla, and fruits  Fishing and fish farming	Agriculture: (large scale)  Food—rice, cassava, and corn  Cash— tobacco, coffee, sugar cane	Agriculture: Main rice granary  Fishing reserves  Short-cycle breeding animals (pigs and poultry)
<b>Education Level</b>	Secondary Girls (G)—18.4% Boys (B)—24.3% Literacy—78% (G); 77% (B)	Secondary Girls (G)— 73.5% Boys (B)— 75% Literacy—78% (G); 77% (B)	Secondary Girls (G)— 9.5% Boys (B)— 71.3% Literacy—78% (G); 61% (B)	Secondary: Girls (G)— 8.9%; Boys (B)— 12.8% Literacy— 75.85 (G); 85.5% (B)	Secondary: Girls (G)— 24.1%; Boys (B)— 22.8% Literacy— 77.3% (G); 83.8% (B)
<b>Notes</b>	75% immigrant population; Illegal export of Rosewood	Abundant water		Majority women	Large mining operation Significant tourism

Source: Ministère de l'Environnement et du Développement Durable (MEDD 2019).

# APPENDIX 3: SUMMARY OF THE MAIN ACTIVITIES PROPOSED BY GENDER

## SPECIFIC OBJECTIVE 1: PROMOTE INCLUSION AND GENDER EQUALITY IN THE REDD+ MECHANISM.

Strategic axes	Main activities
<p>1.1 Improve knowledge on the fundamental rights of women and the laws governing the forestry sector and land laws.</p>	<p>1.1.1 Develop a communications strategy on women's rights linked to sustainable development—the right to property and access to land; the rights to use natural resources; along with the rights to education and health, employment, etc.</p> <p>1.1.2 Implement the REDD+ gender communications strategy aimed at changing individual attitudes and social behavior related to the challenges of the governance of natural resources.</p> <p>1.1.3 Widely disseminate the laws in force, the GELOSE Law, the Laws / Decrees / Orders on Land Security, and Forest Legislation, with the participation of women</p>
<p>1.2 Integrate women's platforms/ associations into the REDD+ planning structures so that they can participate in decision-making and feel co-responsible.</p>	<p>1.2.1 Strengthen women's capacities, including self-confidence, so that they can participate in spaces of power and decision-making in the REDD+ planning process.</p> <p>1.2.2 Advocate with SLCs, along with national and regional platforms, on an integrated approach to gender equality in the REDD+ planning process, so that women can make their needs heard and exercise their voice in decision-making, and thus feel co-responsible.</p> <p>1.2.3 Monitor the integration and impact of gender co-responsibility.</p>
<p>1.3 Strengthen the capacity of a gender-focused civil society to carry out effective advocacy to defend the interests of women and encourage solidarity in the fight against deforestation and degradation.</p>	<p>1.3.1 Train members of civil society on women's rights and the importance of asserting them within the framework of REDD+.</p> <p>1.3.2 Advocate for the integration and assumption of the responsibilities of women as active members in the Management Committees (COGE) of COBA/VOI for decision-making.</p> <p>1.3.3 Strengthen the capacities of women's associations to have a vision and development objectives, particularly those of environmental protection.</p> <p>1.3.4 Carry out awareness-raising activities with existing women's associations to increase their commitment to the fight against deforestation and forest degradation and the corresponding assumption of responsibilities.</p>
<p>1.4 Strengthen the capacities of the COGE members and all VOIs on the revenue-sharing mechanism and the development of the plan for the use of revenue from the ERP.</p>	<p>1.4.1 Train COGE/VOI members in an inclusive and participatory manner on the revenue-sharing mechanism.</p> <p>1.4.2 Support the COGE members and all VOIs in the development of the income use plan to achieve gender balance.</p>
<p>1.5 Strengthen the information and communication system on gender-specific initiatives and programs that can be used for guidance and decision-making.</p>	<p>1.5.1 Design a communication plan, which is part of a process of gender equality and a systemic vision, taking into account existing connections, as well as formal and informal communication channels.</p> <p>1.5.2 Publicize and disseminate initiatives and gender-specific programs that could serve as examples of best practice.</p>

## SPECIFIC OBJECTIVE 2: DEVELOP THE INCLUSIVE RESILIENCE CAPACITIES OF FOREST-DEPENDENT COMMUNITIES.

<p>2.1: Strengthen the economic capacities of forest-dependent communities, including providing support for women's platforms / associations that promote gender equality and IGA for women in fundraising.</p>	<p>2.1.1 Support the diversification of regional economic activities to increase the population's resilience to climate change.</p> <p>2.1.2 Support the training of women, men, and young people in the diversification of their activities, as an alternative to agricultural practices harmful to the environment, according to the sector approach and regional specificities, in terms of cash crops, food crops, and existing value chains in target regions, including tourism potential.</p> <p>2.1.3 Strengthen the capacities of communities in the development of income-generating micro-projects adapted to their needs and their scale of values, by suggesting innovations or best practices (for example, breeding, beekeeping, sericulture, fish farming, and crafts) and taking into account the specificities of regional opportunities.</p> <p>2.1.4 Train/educate communities.</p> <p>2.1.5 Build the capacities of communities on the revenue-sharing mechanism and the development of the revenue use plan.</p> <p>2.1.6 Strengthen the capacities of women's platforms and associations in the mobilization of resources to finance their economic and social activities at the level of their community, according to regional specificities.</p>
<p>2.2: Improve women's social capacities and skills (leadership and empowerment), with the aim of empowering them, as an actor and vector of change for the protection of the environment.</p>	<p>2.2.1 Facilitate the access of women and girls in rural areas to education, including literacy.</p> <p>2.2.2 Facilitate women's access to basic health centers, including family planning.</p> <p>2.2.3 Strengthen women's capacities in leadership and life skills so that they can make their voice heard and take part in all decisions related to forest management and protection.</p> <p>2.2.4 Facilitate the access of women, men, and young people to information and training related to sustainable development, through networks of Women's Associations of March 8 and Youth Clubs.</p>
<p>2.3 Set up a system of sponsorship of women's associations and platforms by women leaders (in power or services).</p>	<p>2.3.1 Identify women leaders or women in power, who are sensitive to the protection of women's rights and environmental protection.</p> <p>2.3.2 Carry out advocacy with targeted women leaders and encourage their commitment through sponsorships.</p> <p>2.3.3 Formalize sponsorship through communication actions.</p>
<p>2.4 Develop the ecological culture of communities aiming for a sustainable environment, particularly including young people.</p>	<p>2.4.1 Build the capacities of communities on improved carbonization techniques, replacing fuelwood and charcoal. Reduce the rate of charcoal use.</p> <p>2.4.2 Educate households to use clean sources of renewable energy (biomass, hydropower, biogas, solar, and wind power).</p> <p>2.4.3 Train communities in the manufacture of clay bricks as an alternative to the use of forest wood for housing.</p>



<p>2.5: Strengthen the professional capacities of young people in promising, high-value professions.</p> <p>Decrease the unemployment rate.</p> <p>Add economic value (vanilla, cocoa, honey, coffee value chain, etc.).</p>	<p>2.5.1 Equitably develop the skills of young people to improve their employability in rural areas (training / employment match).</p> <p>2.5.2 Develop the entrepreneurial culture of young people—both girls and boys.</p> <p>2.5.3 Support the revitalization of the REDD+ Gender Final Report.</p>
<p>2.6 Integrate the consideration of gender into the development of safeguard plans for REDD+ initiatives.</p>	<p>2.6.1 Carry out sensitization sessions for the consideration of gender balance when drawing up safeguard plans for REDD + initiatives.</p> <p>2.6.2 Evaluate the gaps in women’s capacity to draw up safeguarding plans.</p> <p>2.6.3 Strengthen the capacities of women and men, as well as young people, so that they can participate fully in the process of drawing up safeguarding plans.</p>

### SPECIFIC OBJECTIVE 3: PROMOTE SUSTAINABLE AND EQUITABLE DEVELOPMENT THROUGH EDUCATION AT ALL LEVELS.

<p>3.1 Promote the professionalization and specialization of jobs related to the environment and the forest (data collection, guards, cantonment managers, water engineers, and forests, guides, etc.).</p>	<p>3.1.2 Build the capacities of Data Collection Agents (DREDD) in an information system on initiatives and a gender-specific database related to REDD+.</p> <p>3.1.3 Create or revitalize forestry vocational training centers in order to contribute to professionalization, not only for forestry operators but also for key managers.</p> <p>3.1.4 Encourage the interest of young people (girls and boys) to move toward jobs that promote the environment and the forest.</p>
<p>3.2 Integrate “ environmental education “ at the level of all cycles of education and teaching (primary, secondary, and university), along with associative spaces.</p>	<p>3.2.1 Integrate “Green Education for Sustainable Development” into training modules in schools at all levels.</p> <p>3.2.2 Encourage the creation and/or revitalization of clubs, committed to environmental protection, for young people— girls and boys.</p> <p>3.2.3 Establish a culture of reforestation and arborization initiatives, by all and for all, in schools, associations, youth clubs, and social networks.</p>
<p>3.3 Promote the culture of responsibility and accountability of all stakeholders.</p>	<p>3.3.1 Integrate gender into REDD+ monitoring and evaluation mechanism.</p> <p>3.3.2 Strengthen the capacity of COGE members to report with gender-specific data.</p>

## APPENDIX 4: WOMEN'S NONGOVERNMENTAL ORGANIZATIONS IN MADAGASCAR

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Specific nongovernmental organizations (NGOs), identified through research, include the following:

- **Fédération pour la Promotion Féminine et Enfantine** (The Federation for Women and Children) works with Gender Links—a South African NGO—to popularize the South African Development Community (SADC) Protocol on Gender and Development at a local level. Awareness sessions held in village communities include the explanation and discussion of basic gender concepts (Razafindrakoto 2016).
- **Fédération'ny Vehivavy Tantsaha eto Madagasi-kara** (FVTM, Federation of Malagasy Rural Women) aims to sustainably improve the lives of rural women and promote their empowerment in social, economic, civic, and cultural life in a sustainable manner. More specifically, they advocate for the social movements of rural women and support them at the national and international levels. By providing capacity building and training to women's groups, they enable rural women to become recognized members and leaders, both in their communities and their homes. Operating in 15 of the 22 regions in Madagascar, including the five ER-P regions, FVTM has approximately 20,000 members.
- **Avenir**, a gender activist association, helps women to officially document their land inheritance, with the assistance of lawyers (Razafindrakoto 2016).
- Various local civil society organizations (CSOs) also raise awareness on land rights for women and advocate for greater land-rights protection for women, including **La Plateforme Solidarité des Intervenants sur le Foncier, Fiantso, L'Association des Femmes Juristes pour la Primauté du Droit (AFJPD)**, and **Le Collectif des Associations des Femmes de Fianarantsoa** (Kellum et al. 2020).
- **Vondrona Miralenta ho an ny Fampanandrosoana** (Gender Group for Development) and the **Conseil National Des Femmes Malgaches** (National Council of Malagasy Women) offer training and coaching for potential female political candidates, teaching skills such as public speaking and project drafting (Razafindrakoto 2016).
- **Réseau des Femmes Africaines pour la Gestion Communautaire des Forêts** (REFACOF, the African Women's Network for Community Management of Forests) advocates for the reform of national land tenure laws to secure women's rights in forestry and natural resource management. Their other activities, which involve men, include engaging traditional leaders at the local and national levels and providing training on the definition of gender in a culturally appropriate manner. They also offer capacity building for partners, actors, stakeholders, women, and Indigenous Peoples. Additionally, they build women's networks with technical knowledge, offer advocacy, and determine gender-sensitive monitoring and evaluation (Razafindrakoto 2016).