



What is the Legal Assessment Tool (LAT) for gender-equitable land tenure ?

PRESENTATION OF THE LAT

BACKGROUND

The positive implications of gender-equitable land tenure for poverty reduction, food security and rural development have been described extensively in numerous studies and have been the focus of attention of several international conventions and agreements.¹ The recent endorsement of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (VGGT) introduced the first comprehensive, global instrument on governance of tenure and can be expected to create momentum for gender equity in land tenure.²

Requests from governments for support in the implementation of the VGGT are likely to scale up in the coming years. Effective guidance tools and mechanisms should be developed to ensure that the interests and the needs of all people – women and men – are addressed, and that the principle of gender equality is mainstreamed in the governance of land tenure.

The national policy and legal framework provides a crucial foundation for gender equality. While law in itself cannot generate gender-equitable land tenure, it provides an authoritative framework for its realisation. We often read policy recommendations that push for the amendment and/or repeal of any existing discriminatory provisions in the legislation. It may be the case however, that these policy recommendations remain unapplied due to a lack of guidance on how to effectively implement them. Delivering effective policy advice and support for capacity building therefore requires a clear understanding of the gaps and discrepancies in

¹ Introduced below

² by the Committee on World Food Security on 11 May 2012

the legislation pertaining to gender and land, both on the part of development practitioners and on the part of their audience.

The Legal Assessment Tool (LAT) for gender-equitable land tenure was developed by FAO's Gender and Land Rights Database (GLRD) for the purpose of providing prompt, targeted and effective policy advice and capacity development to FAO's Member countries working towards gender-equitable land tenure.

CONTENT OF THE LAT

The LAT is built around 30 legal indicators, divided under 8 clusters of key elements for targeted policy intervention:

- 1.** Ratification of human rights instruments
- 2.** Elimination of gender-based discrimination in the Constitution
- 3.** Recognition of women's legal capacity
- 4.** Gender equality of rights with respect to nationality
- 5.** Gender equality in property rights
- 6.** Gender equality in inheritance
- 7.** Gender-equitable implementation, dispute mechanisms and access to justice
- 8.** Women's participation in national and local institutions enforcing land legislation

THEORETICAL FOUNDATION

The LAT indicators draw from a range of international instruments in the form of conventions, protocols and recommendations. International organisations and development agencies have further researched the issue and produced reports, tools and recommendations to document the state of land tenure from a gender perspective.

It relies primarily on hard law and soft law instruments developed in multilateral negotiations, which have already built international consensus and therefore provide a sound basis for the development of legal indicators:

- ✓ The *Convention on the Elimination of All Forms of Discrimination against Women*, 1979 (CEDAW)
- ✓ The *International Covenant on Civil and Political Rights*, 1966 (ICCPR)
- ✓ The *African Charter on Human and Peoples' Rights*, 1981 (ACHPR)
- ✓ The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 2003 (the Maputo Protocol)
- ✓ The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security*, 2012 (VGGT)

The LAT also relies on recommendations from international organisations and development agencies:

- ✓ The *Women's Economic and Legal Empowerment Database for Africa* (Women–LEED–Africa Database)
- ✓ The *Business, Women and the Law Project* (WBL)
- ✓ The *Land Policy Initiative* (LPI)

This range of international standards and good practices serves as a benchmark against which to assess the integration of the legal indicators into the national legal and regulatory instruments that affect men and women's tenure rights.

PURPOSE OF THE LAT

The LAT is designed to (1) highlight strengths, weaknesses and opportunities for gender-equitable land tenure in the legal framework (2) identify the sources of gender differentiation in the legislation and (3) help determine the appropriate course of action for reform.

It provides a global snapshot of the de jure situation of land tenure from a gender perspective to guide development practitioners when targeting key areas of work.

It allows policy makers to better visualise the legal intricacies surrounding men and women's access to land, the progress made, the existing positive elements in the legal framework. It also helps them identify areas where women are at a disadvantage and where legal reform is needed.

The results of the evaluation are intended to translate into targeted efforts to develop the policy and normative capacity of countries to formulate gender-equitable policies and laws on land tenure, including personal laws.

SOURCES OF INFORMATION AND DATA ANALYSIS

The LAT relies primarily on the information contained in the various sections of the GLRD Country Profiles. This database provides updated information on constitutions, family law, succession law, land law, customary and religious law as well as policies, whether they support the advancement of women or induce gender-differentiated access to land.

Each section of the GLRD has been populated over time using government sources that include official journals and ministries. The section on land legislation in the GLRD relies heavily on the legal material available in FAOLEX that has been collected over time from the official gazettes – compiling texts of laws and regulations – sent by FAO's Member Nations.

Except for the indicators of key element 1 where the LAT gives a value of yes or no, each indicator has been given an equal weight of 4 points to break down the different stages of policy and law making processes, ranging from complete absence to complete integration across the implementing legislation. In between, the policy process is broken down to identify how best to influence change.

METHODOLOGY

The LAT relies on these sources to determine the stage of incorporation of each legal indicator into the national legal framework. It can easily be verified in the GLRD if a legal indicator appears in multiple legal instruments (Stage 4), is reflected in primary legislation (Stage 3), if a draft bill will address the issue (Stage 2), or if the government has expressed an intention to formulate a new policy (Stage 1) or to define focus areas for new developments in the existing policy (Stage 1.5). The complete absence of an indicator (Stage 0) is also flagged in the GLRD.

In cases where the national circumstances do not allow for an indicator to be measured – for instance in countries where religious or customary practices have no incidence on the national legal framework – the LAT specifies that the indicator is not applicable (N/A).

Where no provision could be located, or no restrictions could be found, the LAT clearly states so.

Rationale	Stage
Absence of the indicator in the legal framework	0
A policy is being developed	1
A policy is in place	1.5
A draft legislation is to be submitted for deliberations	2
The indicator appears in primary law	3
The indicator appears in multiple legal instruments	4
Not applicable	N/A

LAT – Template

Key element 1: Ratification of human rights instruments		Yes/No	Legal basis	Recommendations
1	The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified.	Yes/no		
2	The African Charter on Human and Peoples' Rights (ACHPR) is ratified.	Yes/No		
3	The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is ratified.	Yes/No		
Key element 2: Elimination of gender-based discrimination in the Constitution		Stage	Legal basis	Recommendations
4	The Constitution prohibits gender-based discrimination.	0-4		
5	The Constitution recognises customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the Constitution.	0-4		
6	The Constitution recognises religious law but states that gender-based discrimination in religious law is superseded by the principle of non-discrimination in the Constitution.	0-4		
7	The Constitution promotes the adoption of special measures for the advancement of women.	0-4		

Key element 3: Recognition of women’s legal capacity		Stage	Legal basis	Recommendations
8	Men and women have the ability to conclude contracts under the same basic conditions, rights and obligations.	0-4		
Key element 4: Gender equality of rights with respect to nationality		Stage	Legal basis	Recommendations
9	Men and women are able to apply for identity documents under the same conditions.	0-4		
10	A female national can confer citizenship to her non-national spouse under the same conditions as a male national.	0-4		
11	Women can confer citizenship to their children under the same conditions as men.	0-4		
Key element 5: Gender equality in property rights		Stage	Legal basis	Recommendations
12	The law recognises gender equality in the right to own or control property regardless of the type of marriage.	0-4		
13	The law recognises full or partial community of property as the default marital property regime.	0-4		
14	Spousal consent is mandatory for any transaction involving matrimonial property.	0-4		

15	The law establishes a presumption of joint ownership of property in consensual unions.	0-4		
16	The legal framework includes special measures to guarantee women's equal rights to land ownership and/or control.	0-4		
Key element 6: Gender equality in inheritance		Stage	Legal basis	Recommendations
17	The surviving spouse is granted user rights to the matrimonial house for life.	0-4		
18	Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.	0-4		
19	The law allows partners living in consensual union to inherit from each other.	0-4		
20	Brothers and sisters have an equal right to inherit.	0-4		
21	Brothers and sisters receive an equal share of inheritance.	0-4		
22	A right to compensation of other siblings giving up their claims on the family property exists.	0-4		
Key element 7: Gender-equitable implementation, dispute mechanisms and access to justice		Stage	Legal basis	Recommendations

23	Decentralisation of land administration services is effected through recognised customary land institutions.	0-4		
24	Decentralisation of land administration services is effected through formal land institutions.	0-4		
25	The law guarantees equality before the law.	0-4		
26	The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	0-4		
27	The law makes provision for legal support in civil procedures.	0-4		
28	A human rights commission or gender-specific institution is in place.	0-4		
Key element 8: Women's participation in national and local institutions enforcing land legislation		Stage	Legal basis	Recommendations
29	The law sets quotas for the appointment of women in land management and administration committees.	0-4		
30	The law sets quotas for the appointment of women in land dispute resolution committees.	0-4		

For more information: <http://www.fao.org/gender-landrights-database/legislation-assessment-tool/en/>