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Developing gender-equitable legal frameworks for land tenure

A legal assessment tool

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Naomi Kenney
Legal Specialist

Ana Paula de la o Campos
Gender Policy Officer

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS	VII
ACRONYMS AND ABBREVIATIONS	VIII
INTRODUCTION	1
1. THEORETICAL FOUNDATION OF THE LAT AND ITS PURPOSE	3
1.1 Theoretical foundation	3
1.2 Identification of key legal indicators.....	4
2. NATURE AND SCOPE OF THE ASSESSMENT	11
2.1 Scope of the assessment.....	11
2.2 Methodology.....	11
2.3 Methodology, sources of information and data analysis.....	12
3. APPLICATION OF THE LAT: CASE STUDIES IN SIERRA LEONE, MADAGASCAR AND MOROCCO	14
3.1 Preliminary considerations	14
3.2 Ratification of human rights instruments (Indicators 1-3).....	14
3.3 Elimination of gender-based discrimination in the Constitution (Indicators 4-7)	15
3.4 Recognition of women’s legal capacity (Indicator 8).....	17
3.5 Gender-equality of rights with respect to nationality (Indicators 9-11)	18
3.6 Gender equality in property rights (Indicators 12-16)	19
3.7 Gender equality in inheritance (Indicators 17-22)	22
3.8 Gender-equitable implementation, dispute mechanisms and access to justice (Indicators 23-28)	24
3.9 Women’s participation in national and local institutions enforcing land legislation (Indicators 29-30)	27
3.10 General conclusions and mapping of key areas for reform	28
CONCLUSION	31
APPENDIX 1 - LAT RESULTS FOR MADAGASCAR, MOROCCO AND SIERRA LEONE	32
APPENDIX 2 - LAT METHODOLOGY AND TEMPLATE	45
BIBLIOGRAPHY	50

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ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and People’s Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
FAO	Food and Agriculture Organization of the United Nations
FAOLEX	Food, Agriculture and Renewable Natural Resources Legislation Database
GLRD	Gender and Land Rights Database
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LAT	Legal Assessment Tool for gender-equitable land tenure
OAU	Organisation of African Unity
VGGT	Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

INTRODUCTION

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 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 created momentum for gender equity in land tenure (FAO, 2012).²

Development practitioners recognize that secure land rights have a strong empowering effect on women: it reduces their reliance on male partners and relatives, increases their bargaining power within the household and improves their chances of accessing extension services and credit. The confidence gained from increased tenure security can further encourage them to undertake land and other agricultural investments and to join producer organizations. As such, placing women's land rights at the heart of national land and gender policies has the potential to significantly improve human wellbeing, promote women's economic empowerment and ultimately generate more productive agricultural systems.

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 therefore be developed to ensure that the interests and the needs of all people – women and men – are addressed, and that gender equality is mainstreamed into the governance of land tenure (FAO, 2013a).

National policy and legal frameworks provide a crucial foundation for the mainstreaming of gender equality. While law in itself cannot generate gender-equitable land tenure, it provides an authoritative framework for its realization. Gender-equitable legal frameworks can support national programmes for gender equality in land rights. We often read policy recommendations that push for the amendment and/or repeal of 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 and legal advice therefore requires a clear understanding of the gaps and discrepancies in the legislation pertaining to gender and land, both on the part of development practitioners and on the part of their audience.

This paper introduces a Legal Assessment Tool (LAT) for gender-equitable land tenure that was developed by the Gender and Land Rights Database (GLRD) of the Food and Agriculture

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- 1 International conventions include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1981) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1976). International policy instruments, guidelines and recommendations recognizing women's land rights include the 1995 Beijing Platform for Action adopted by the Fourth World Conference on Women, recent Special Rapporteur Reports on adequate housing, and the Right to Food movement. Women's land rights have also been addressed by regional legal and policy frameworks including the African Charter on Human and People's Rights of Women and the Framework and Guidelines for Land Policy in Africa.
 - 2 Both gender-equitable land governance and women's land rights have been a centrepiece of the VGGT. The process of consultation and negotiation of the VGGT has shown great commitment and overall agreement on the importance of gender issues. Gender equality is one of the ten principles of implementation of responsible tenure governance and has been fully mainstreamed throughout the VGGT by making specific provisions to improve gender equity in both formal and customary systems through, for instance, reforming or amending discriminatory inheritance and property laws.

Organization of the United Nations (FAO) for the purpose of providing prompt, targeted and effective policy and regulatory advice to countries working towards gender-equitable land tenure. The LAT aims to provide a contribution to the global efforts to achieve responsible governance of land tenure by focusing on the legal issues surrounding land policy and reform processes. In so doing, it tackles a number of persisting challenges such as *inter alia* the articulation between statutory law and customary law, tenure security in consensual unions, women's legal capacity, equality of rights with respect to nationality, property and inheritance, as well as women's representation in formal and customary land institutions.

The paper is structured as follows: Part 1 explores the range of legally and non-legally binding international standards developed in multilateral processes. It further highlights a number of good practices identified in expert sources from international organizations and development agencies that are of direct relevance for gender-equitable land tenure. Part 1 explains how the LAT draws from these sources to map out key legal elements and legal indicators for gender-equitable land tenure. Part 2 describes the evaluation process of the LAT, the scope of the assessment and the methodology. It describes the main features of a tool specifically designed to measure the extent to which the legislation of a country fosters gender-equitable land tenure. Part 3 provides the results from the application of the LAT in three African countries – Sierra Leone, Madagascar and Morocco.

1. THEORETICAL FOUNDATION OF THE LAT AND ITS PURPOSE

1.1 Theoretical foundation

In recent years, gender equality in land tenure has been the focus of a large number of international instruments in the form of conventions, protocols and recommendations. International organizations 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. The LAT draws from these sources to measure gender equity in land tenure. It relies primarily on hard law and soft law instruments developed in multilateral negotiations, which have already built international consensus and thus provide a sound basis for the development of legal indicators.

Among these hard law instruments, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979 by the United Nations General Assembly is perhaps the most fundamental, both in terms of relevance and in terms of adherence with its near universal ratification. The Convention came into force in 1981 and has so far been ratified by 187 countries. It defines what constitutes discrimination against women; provides a framework to identify and suppress all forms of discrimination, particularly in the political, social, economic and cultural spheres and sets up an agenda for national action to put an end to such discrimination. Nearly all of the LAT indicators find their legal basis in CEDAW, which serves as a benchmark to measure progress towards the elimination of gender-based discrimination in constitutions, personal laws, succession laws and land laws in areas as varied as legal capacity, nationality, property rights and inheritance.

The LAT indicators relating to gender equality before the law are supported by the International Covenant on Civil and Political Rights (ICCPR, 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), adopted by the United Nations General Assembly in 1966. The Covenants have so far been ratified respectively by 167 and a 164 countries.

The African Charter on Human and Peoples' Rights (ACHPR) - adopted in 1981 and ratified by 53 countries - sets standards for the promotion and protection of human rights in the African continent. It emerged in 1979 under the auspices of the Organisation of African Unity (OAU), which called upon a committee of experts to draft a human rights instrument that would mirror those that already existed in Europe (European Convention on Human Rights, Rome, 1950) and in the Americas (American Convention on Human Rights, San José, 1978). The Protocol to the ACHPR on the Rights of Women in Africa (Maputo Protocol, Maputo, 2003) came into force in 2005 and has so far been ratified by 28 countries. This instrument is particularly relevant for gender-equitable land tenure as it strives to ensure that the rights of women are protected, realized and promoted to enable them to fully enjoy all their human rights. The Protocol provided a sound basis for the development of indicators specifically designed to measure gender equity in countries with pluralistic legal systems, both in Africa and outside.

The indicators also draw from the non-legally binding VGGT that produced a set of internationally agreed standards for land tenure. In 2013, FAO produced a technical guide on Governing land for women and men (FAO, 2013a) to assist with the implementation of the principle of gender equality in national policies and laws. It identified the translation of

policy issues into law as one of the key steps for achieving gender-equitable governance of land tenure.

Finally, the LAT relies on recommendations from international organizations and development agencies, including the Women's Economic and Legal Empowerment Database for Africa (Hallward-Driemeier and Hasan, 2012), the Women, Business and the Law³ Project and the Framework and Guidelines on Land Policy in Africa (AUC-ECA-AfDB Consortium, 2010), which have identified good practices for gender-equitable legal frameworks.

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

1.2 Identification of key legal indicators

Land rights are determined by a range of different legal instruments. Aside from their most evident location in land and property laws, constitutions, family laws, successions laws, and laws on citizenship also have a bearing on land rights.

Discrimination in access to land may originate from a traditional understanding of gender roles, but the increased demand and pressure on arable land can sometime serve as a justification for the adoption or perpetuation of provisions that restrict access to land for women and minorities. On the other hand, a general land law may be gender-neutral in nature, but family law and succession law can directly or indirectly restrict women's right to own or control property, or inherit it. The LAT flags areas where the legislation contains gender-based distinctions, exclusions or restrictions which have the effect or purpose of impairing the realization of gender equality. The LAT goes beyond discrimination to highlight areas where gender neutrality or lack of gender sensitivity in the legislation, puts women at a disadvantage.

In addition, statutory law may be disregarded or misinterpreted in favour of pre-existing customary norms and practices in pluralistic legal systems. Constitutions and personal laws⁴ are gradually being revised, mainly in sub-Saharan Africa and Asia to introduce gender equality. However, legal reform in areas that touch upon religious and customary practices – inheritance in particular – has proved more difficult to achieve. The coexistence of several normative systems is especially challenging to the creation of an integrated, coherent and equitable system of protection of land rights. Where applicable, the LAT contains a number of legal indicators to facilitate the articulation between customary law and statutory law.

Building upon a wealth of sources, the LAT's first contribution is to identify relevant international standards and good practices that promote women's secure rights to land and to map out key legal elements for gender-equitable land tenure. The LAT is built around 30 legal indicators, divided under 8 clusters of key elements for targeted policy intervention. The sections below provide a description of the LAT's legal indicators.

3 <http://wbl.worldbank.org>

4 Laws pertaining to all matters related to an individual and his/her family.

1.2.1 Ratification of human rights instruments

The purpose of the first key element is to flag the ratification of human rights instruments and where appropriate, to confront policy-makers with their commitments towards the protection of human rights and gender equality. This cluster includes three indicators: The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified (indicator 1); The African Charter on Human and Peoples' Rights is ratified (indicator 2); and The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa is ratified (indicator 3).

1.2.2 The elimination of gender-based discrimination in the constitution

This key element examines the constitution of any given country and provides a first sense of the country's legal approach towards gender-based discrimination. In sub-Saharan Africa in particular, constitutions are increasingly recognizing customary institutions and practices in an attempt to bring them into the general legal system. In principle, the recognition of customary law by the general law is a positive step, as it communicates the intention to work through customary systems rather than against them. However, while most countries today have incorporated provisions in their constitution that prohibit gender-based discrimination, a large number of them still exclude customary law and religious law from this constitutional prohibition. The recognition of customary law should not legitimize discrimination in customary practices.

The LAT therefore verifies that the constitution works to preserve the benefits of customary legal systems in terms of accessibility and social legitimacy, but does not exempt them from the principle of non-discrimination in the constitution. This cluster includes the following four indicators: the constitution prohibits gender-based discrimination⁵ (indicator 4); the constitution recognizes customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the constitution⁶ (indicator 5); the constitution recognizes religious law but states that gender-based discrimination in religious law is superseded by principle of non-discrimination in the constitution⁷ (indicator 6); and the constitution promotes the adoption of special measures for the advancement of women⁸ (indicator 7).

5 Legal basis: CEDAW, Article 2(b): State Parties commit “to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women”; and CEDAW, Article 2(f): State Parties commit “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”

6 Legal basis: CEDAW, Article 5(a): States Parties commit to “take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

7 Identified by LEED as a good practice but not supported by any international legal basis.

8 Legal basis: CEDAW, Article 3: States Parties commit to “take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.” And CEDAW committee: General Recommendation No. 5 (seventh session, 1988). The Committee recommends that States Parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment.

1.2.3 The recognition of women’s legal capacity

Without full legal capacity women cannot freely exercise their property rights. However, the question of what constitutes full legal capacity is a valid question that has been subject to debate. The background conference document prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2005 for the Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, states that legal capacity “logically presupposes the capability to be a potential holder of rights and obligations [...] but also entails the capacity to exercise these rights and to undertake these duties by way of one’s own conduct, i.e. without assistance of representation by a third party” (OHCHR, 2005). In line with this interpretation, the LAT identifies provisions that place restrictions on women’s capacity to enter contracts on their own. The indicator pays particular attention to married women who may lose their legal capacity through marriage.

Article 15 of CEDAW requires States Parties “to grant women a legal capacity identical to that of men and the same opportunities to exercise that capacity”. More specifically, they are to give women equal rights to conclude contracts and to administer property. The LAT includes a key element that verifies the absence of provisions in the law that restrict women’s ability to conclude contracts: men and women – including married women – have the ability to conclude contracts under the same basic conditions, rights and obligations (indicator 8). This indicator looks at cases where such restrictions might include the requirement to seek the husband’s permission or the requirement to provide a marriage certificate for women to be able to enter a contract.

1.2.4 Gender equality of rights with respect to nationality

Nationality and access to identity documents have an important bearing on women’s property rights. The right to nationality is a basic human right recognized by the Universal Declaration of Human Rights (Art. 15). Men and women should therefore be able to apply for identity documents under the same conditions. However, some countries like Pakistan still require the husband or the husband’s brother to submit the application for a passport when the applicant is a female (IBRD/WB, 2016). In Saudi Arabia, the Citizenship System requires the Saudi naturalized male individual to apply for each female under his guardianship to acquire the Saudi citizenship (Sec. 15). In other cases, the law prevents the wife from transferring her citizenship to her non-national spouse and/or is required to take on her husband’s. This is the case in the Republic of Honduras where the married woman is required by law to adopt her husband’s nationality (Código Civil, Art. 48). Gender-based restrictions on nationality can in turn restrict access to property.

In this cluster, the LAT looks at three indicators: men and women are able to apply for identity documents under the same conditions⁹ (indicator 9); a female national can confer citizenship to her non-national spouse under the same conditions as a male national¹⁰ (indicator 10); and men and women can confer citizenship to their children under the same conditions¹¹ (indicator 11).

9 Legal basis: UDHR, Article 15(1): “Everyone has the right to a nationality.” Also identified as a best practice by the World Bank Report but not supported by any international legal basis.

10 Identified as a best practice by the World Bank Report but not supported by any international legal basis.

11 Legal basis: CEDAW, Article 9(2): States Parties shall grant women equal rights with men with respect to the nationality of their children.

1.2.5 Gender equality in property rights

The law should grant equal rights to own or control land, regardless of the type of marriage that a person has entered. In the legislation of some countries, the husband is made the manager, or the sole owner, of the household's assets.

The LAT considers whether the law establishes a legal presumption of joint ownership between husband and wife for property acquired during marriage. Typically, the property regimes that carry a legal presumption of joint ownership are the full community of property regime and the partial community of property regime.¹² These regimes are more favourable to women than the regime of separate ownership where husband and wife retain control over the property they owned before marriage as well as any property that they acquire during marriage. In countries where property is usually registered in the husband's name, a regime of separate ownership exposes women to the risk of losing their home in case of divorce or death of the husband. It is important to note however, that countries with a civil law tradition are more likely to establish regimes of full or partial community of property. In most common law countries the default matrimonial regime is separate ownership.

The LAT also assesses the level of protection of women's tenure rights in consensual unions and supports the inclusion of a legal presumption of joint ownership of property in consensual unions. Consensual unions (or *de facto* unions) are widespread in many countries but they usually don't fall under the scope of statutory law. Most countries in Latin America – with the exception of Chile, Peru and the Dominican Republic – have strengthened women's positions in consensual unions by extending property rights of married couples to those living in consensual unions. However, most of them require the consensual union to be established or registered. Colombia has gone further than any other Latin American country and requires only that the consensual union be stated (Law 54 of 1990 on consensual unions).

Finally, this cluster looks for provisions that promote women's secure rights to land. This is supported by the Maputo Protocol which requires States Parties to take all appropriate measures to promote women's access to and control over productive resources such as land and guarantee their right to property. Examples of such measures include giving priority to women heads of household under land distribution and titling programmes; the joint titling of private property (or user rights) in the registration process for husband and wife (FAO, 2007); as well as measures that establish targeted government funds to increase women's access to land.

The cluster on gender equality in property rights contains the following indicators: the law recognizes gender equality in the right to own or control land regardless of type of marriage¹³ (indicator 12); the law recognizes full or partial community of property as the default marital property regime (indicator 13); spousal consent is mandatory for any

12 In the full community of property regime the legal presumption of joint ownership applies to property acquired both before marriage and during marriage. In the partial community of property regime, the legal presumption only applies to property acquired during marriage.

13 Legal basis: CEDAW, Article 16(1)(h): States Parties commit to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and to ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."; Maputo Protocol, Article 6(j): "During her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely."

transaction involving matrimonial property (indicator 14); the law establishes a presumption of joint ownership of property in consensual unions (indicator 15); the legal framework includes special measures to guarantee women's equal rights to land ownership and/or control¹⁴ (indicator 16).

1.2.6 Gender equality in inheritance

In many developing countries, inheritance is the main channel by which women acquire property, largely because of the persistence of gender inequalities in employment and incomes, and in access to credit. Succession laws need to be fair, gender-sensitive and, where appropriate, should make special reference to widows, granting them lifetime user rights over the matrimonial home, and ensuring that they are entitled to a minimum share of the matrimonial property. In line with the previous cluster, the LAT also supports secure inheritance rights for men and women living in consensual unions.

Countries with large Muslim populations such as Bangladesh, Malaysia, Pakistan, and several African countries, have personal laws based on the Islamic Sharia. In this system, daughters are entitled to inherit half of what their brothers inherit, thereby establishing a minimum (although unfavourable) share. However, in some cultural contexts it is considered shameful for a woman to claim property. As a result, daughters often cede their share to their brothers. The law should therefore establish a right to compensation to ensure that other siblings do not lose out, especially women.

The cluster on gender equality in inheritance contains five key legal indicators, most of which find their basis in the Maputo Protocol: the surviving spouse is granted user rights to the matrimonial house for life¹⁵ (indicator 17); under the law of succession, women are entitled to a minimum share of matrimonial property¹⁶ (indicator 18); the law allows partners in consensual unions to inherit from each other (indicator 19); brothers and sisters have an equal right to inherit¹⁷ (indicator 20); brothers and sisters receive an equal share of inheritance (indicator 21) – a right to compensation of other siblings giving up their claims on the family property exists (indicator 22).

1.2.7 Gender-sensitive implementation, dispute mechanisms and access to justice

Decentralized land administration shifts the responsibility of state functions from central, statutory institutions to local governance institutions. Land administration is delegated to local authorities, such as those that allocate community land and are involved in land conflict resolution. The LAT verifies that the decentralization of land administration services is effected either through customary institutions, thus recognising their legitimacy and creating favourable conditions for formal legislation to be applied at the local level (indicator 23), or through formal institutions (indicator 24). It is important to note that

14 Legal basis: Protocol to the ACHPR, Article 19(c): "States Parties shall take all appropriate measures to [...] promote women's access to and control over productive resources such as land and guarantee their right to property."

15 Legal basis: Protocol to the ACHPR, Article 21(1): "A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it."

16 Legal basis: Protocol to the ACHPR, Article 21(1): "A widow shall have the right to an equitable share in the inheritance of the property of her husband."

17 Legal basis: Protocol to the ACHPR, Article 21(2): "Women and men shall have the right to inherit, in equitable shares, their parents' properties."

decentralization may not always have a positive incidence on gender equality – even if the general law is gender sensitive and non-discriminatory as local authorities may perpetuate discriminatory customary practices that favour men over women (Whitehead and Dzodzi, 2003). In some countries, a woman must be granted permission by a guardian before she can exercise her right to initiate legal proceedings. The LAT verifies that the law guarantees equality before the law¹⁸ and that women are also able to initiate these proceedings (indicator 25).

Besides, property rights can only be secure if women are able to seek redress through a formal system of courts and/or customary institutions. The VGGT encourage States to consider using customary and other local mechanisms that provide fair, reliable, gender-sensitive, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights to land, fisheries and forests. The LAT further assesses whether or not the law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights (indicator 26).

The LAT verifies the availability of legal support in civil procedures¹⁹ (indicator 27). Legal support has been defined by the FAO technical guide on gender and land as the practical support needed to pursue individual land claims. It includes information on procedures, financial assistance for related costs (legal aid), and professional support from paralegals or lawyers (legal assistance) (FAO, 2013a).

Finally, the LAT flags the existence of an independent authority or a gender-specific agency. These bodies are usually competent to investigate violations of women’s rights both upon complaint and *motu proprio* (on their own initiative) (indicator 28) and they can provide a speedy redress mechanism that is less costly and cumbersome than in ordinary courts. In Kenya for instance, Section 59 of the new Constitution of 2010 established the Kenya National Human Rights and Equality Commission to promote gender equality and equity and to facilitate gender mainstreaming. In South Africa, the Commission on Gender Equality can investigate violations of women’s rights (Constitution, Secs. 180 and 187).

1.2.8 Women’s participation in national and local institutions enforcing land legislation

CEDAW promotes the maximum participation of women on equal terms with men in all fields (Preamble). In this spirit, the national legal framework of State Parties should provide for their meaningful representation in land management and administration committees, as well as in dispute resolution committees. Establishing female quotas has proven to be successful when enforced. The Rwandan 2003 Constitution for example, mandates that 30 percent of members of all decision-making institutions be women (Article 9). As a result, two out of five members of thousands of local land committees across the country are

18 Legal basis: CEDAW, Article 15(1): “States Parties shall accord to women equality with men before the law.” ICCPR, Article 14(1): “All persons shall be equal before the courts and tribunals.” ICCPR, Article 26: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” ACHPR, Article 3(1): “Every individual shall be equal before the law.”

19 Legal basis: VGGT, Paragraph 21.6: “In providing dispute resolution mechanisms, States should strive to provide legal assistance to vulnerable and marginalized persons to ensure safe access for all to justice without discrimination. Judicial authorities and other bodies should ensure that their staff have the necessary skills and competencies to provide such services.”

women; this is also true for local government management committees and the traditional local justice system abunzi (Daley, Dore-Weeks and Umuhoza, 2010).

The CEDAW Committee also supports the use of temporary special measures to achieve gender equality of participation. These measures include recruiting, financially assisting and training women candidates; amending electoral procedures; developing campaigns directed at equal participation and setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies (CEDAW, 1997).

The LAT verifies that the law contains provisions for the promotion of women's participation in land management and administration committees²⁰ (indicator 29) and for their appointment in land dispute resolution committees (indicator 30).

20 Legal basis: CEDAW, Preamble: "Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields." Also identified by the Land Policy Initiative as a good practice.

2. NATURE AND SCOPE OF THE ASSESSMENT

As outlined in the introduction, the purpose of the LAT is twofold. On the one hand 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. On the other hand, it allows policy makers to better visualise the legal intricacies surrounding men and women's access to land, the progress made over the years and 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 LAT uses a “process approach” based on the premise that policy drives the law. Legal reform should therefore take place within a policy framework and it is important that a national land or gender policy be formulated in a participatory manner, before the existing legislation is amended and new legislation is drafted. For this reason, the LAT analyses the policy environment and the legal framework simultaneously.

2.1 Scope of the assessment

The LAT is designed to: (1) assess the extent to which the national legal framework of any given country fosters gender-equitable land tenure; (2) identify the sources of gender differentiation in the legislation; and (3) help determine the appropriate course of action for reform.

While we acknowledge that gaps may exist between the law and its enforcement, we focus on the development of an enabling legal framework for the realization of gender-equitable land tenure. As such, the scope of the assessment is limited to a *de jure* analysis of the legislation pertaining to gender and land and the LAT does not attempt to provide a *de facto* evaluation of gender-equitable land tenure.

To navigate between the complex system of rules that determine men and women's land rights, the LAT covers three sources of law: constitutions, statutes and regulations. Customary and religious sources of law are only covered insofar as they are incorporated into the formal legal system. The assessment applies to both primary and secondary legislations. Evidence shows that well-drafted and inclusive laws often remain unapplied because of the absence of secondary legislation, regulations and procedures for their implementation, or because of the lack of gender mainstreaming across the legislation.

2.2 Methodology

With the exception 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. These steps range from complete absence of a legal indicator in a legal framework to their complete integration across the implementing legislation. In between, the policy process is broken down to identify how best to influence change.

The LAT methodology:

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

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.

2.3 Methodology, sources of information and data analysis

The LAT relies primarily on the information contained in the various sections of the GLRD country profiles. The database provides updated information on constitutions, family law, succession law, land law, customary and religious law as well as policies, whether or not they strengthen women's rights or induce gender-differentiated access to land.

The legal information found in the GLRD highlights provisions that hinder or promote gender equity in land tenure, thus highlighting strengths and weaknesses in the legal framework. It further points out any relevant bill that is pending adoption.

The policy section contains updated information on the latest policy developments, highlighting statements that support women's rights and statements that relate to rural women and agricultural development. The section also features government commitments in favour of gender equality and/or rural development.

Each section of the GLRD has been populated over time using government sources such as official journals, ministries of justice, ministries of agriculture, and ministries for gender equality. The section on land legislation in the GLRD relies heavily on the legal material available in the Food, Agriculture and Renewable Natural Resources Legislation Database - FAOLEX that has been collected over time from official gazettes – compiling texts of laws and regulations – sent by FAO's Member Nations pursuant to Article XI of the FAO Constitution. In addition, the GLRD organizes regular online discussions to invite experts and members of the civil society to share information, experiences and concerns about women's tenure security in selected countries (FAO, 2013b; FAO, 2013c). These contributions are essential to the proper functioning of the database as they help update relevant sections – notably, the country profiles - and generate quality information for users.

The LAT relies on these sources to determine the stage of incorporation of each of its legal indicator. 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 is in the process of formulating a new policy (Stage 1) or if an existing policy supports legal reform to include the indicator (Stage 1.5). The complete absence of an indicator (Stage 0) is also flagged in the GLRD. However, 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.

To ensure reliability and accuracy in the assessment mechanism, the stages have been identified using the actual text of the legislation, referencing all relevant legal provisions.

3. APPLICATION OF THE LAT: CASE STUDIES IN SIERRA LEONE, MADAGASCAR AND MOROCCO

3.1 Preliminary considerations

This section compares the results of the application of the LAT in three African countries: Sierra Leone, Madagascar and Morocco. These countries provide interesting case studies to showcase the applicability of the LAT in contrasting legal approaches, and to carry out a comparative review in contexts where historical, political, legal and sometimes religious circumstances have shaped the legal framework in remarkably different ways.

In all three countries, the co-existence of different legal or normative systems is rooted in the colonial legacy. Sierra Leone has a dual legal structure that rests primarily on a system of English common-law, but which recognizes and incorporates a parallel and pre-existing system of customary law. The Western Area (Freetown) applies the general law, which according to the Constitution of Sierra Leone means the rules of common law and the doctrines of equity and all such enactments in force in Sierra Leone (Sec. 170(2)), while other areas, the Provinces, apply customary law. It is important to note that in case of conflict between customary law and statutory law, laws made by parliament will prevail.

Madagascar's legal system was largely inherited from the French civil law system but in practice, the general law is widely disregarded in favour of a pre-existing, more flexible and more practical system of customary law. In recent years, the Government of Madagascar has been working towards the creation of a single, coherent and unified system of land tenure in an attempt to bridge the gap between customary law and the general law. However, to this date, the country has not yet recognized customary law as a valid source of law under its constitution. Like Madagascar, Morocco's legal system is largely based on the French civil law system but incorporates elements of the Islamic Sharia, particularly in matters of family law and succession.

3.2 Ratification of human rights instruments

Key element 1: Ratification of human rights instruments		SL	MA	MO
1	The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified.	Yes	Yes	Yes
2	The African Charter on Human and Peoples' Rights (ACHPR) is ratified.	Yes	Yes	N/A
3	The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is ratified.	No	No	N/A

While Sierra Leone and Madagascar both ratified CEDAW at the end of the 1980s,²¹ Morocco only accessed in 1993, fourteen years after the adoption of the convention. In addition to this delay, it took an extra eight years for the government to give it binding force by

²¹ Sierra Leone in 1988 and Madagascar 1989.

publishing it in the *Bulletin Officiel* (Dahir n° 1-93-361). At the time of accession, Morocco submitted two declarations, one pertaining to Article 2 on policy measures and one pertaining to Article 15, Paragraph 4, on the movement of persons and the freedom to choose their residence and domicile. These declarations, which carry no legal force, were made on the ground that the Moroccan Code of Personal Status (1958) accorded women and men different rights that could not be repealed because they derive from the Islamic Sharia with the objective of striking “a balance between the spouses, thus preserving the coherence of family life”. In addition to these declarations, Morocco also made two reservations that exempted it from granting women equal rights with men with respect to the nationality of their children²² and with respect to the rights and responsibilities on entry into and at dissolution of marriage,²³ stating that such provisions were incompatible with the Islamic Sharia. However, in December 2008, on the occasion of the 60th anniversary of the Universal Declaration of Human Rights, Morocco announced the withdrawal of the reservations to CEDAW, which were made at the time of its ratification in 1993.²⁴

Sierra Leone and Madagascar both ratified the ACHPR,²⁵ and signed the Protocol to the ACHPR on the Rights of Women in Africa.²⁶ However, until it is ratified, the Protocol carries no binding force on any of them. Ratification of these two instruments is only open to State Parties of the OAU; therefore Morocco, which withdrew from the organisation in 1984, cannot ratify them.

3.3 Elimination of gender-based discrimination in the Constitution

Key element 2: Elimination of gender-based discrimination in the Constitution		SL	MA	MO
4	The Constitution prohibits gender-based discrimination.	3	3	0
5	The Constitution recognizes customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the Constitution.	0	0	N/A
6	The Constitution recognizes religious law but states that gender-based discrimination in religious law is superseded by the principle of non-discrimination in the Constitution.	0	N/A	0
7	The Constitution promotes the adoption of special measures for the advancement of women.	0	0	0

Legal indicator 4: The Constitution prohibits gender-based discrimination

Constitutions normally have supremacy over statutory law and lay out the fundamental principles which govern the state. As such, they provide a framework for the protection of human rights and a first step in the development of gender-equitable legal frameworks for land tenure. They should contain a provision that clearly prohibits discrimination on the basis of sex.

22 Morocco, Reservation to Article 9, Paragraph 2, of CEDAW.

23 Ibid, Reservation to Article 16 of CEDAW.

24 Morocco, royal letter to the Moroccan Consultative Council of Human Rights (CCDH) on 10 December, 2008.

25 Sierra Leone respectively in 1983 and 2003, and Madagascar respectively in 1992 and 2004.

26 The Protocol to the ACHPR on the Rights of Women, Maputo, 2003.

Sierra Leone's Constitution prohibits discrimination in the legislation (Secs. 27(1) and (3)) and in the treatment of people (Sec. 27(2)) and is therefore at Stage 3. Under the Constitution, "discriminatory" is taken to mean "affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description" (Sec. 27(3)). A review of the Constitution was officially launched in July 2013 and will hopefully revise this definition and bring more clarity to the provision.²⁷

Similarly, in Madagascar the indicator is at Stage 3 owing to the Constitutional provision that all individuals are equal in rights and fundamental freedoms, protected by law and without any discrimination based on sex, level of literacy, wealth, origin, religious beliefs or opinion (Constitution, Art. 6).

In contrast, Morocco is still at Stage 0, as its 2011 Constitution still does not explicitly prohibit gender-based discrimination. It merely provides a statement of the state's commitment towards gender equality through the creation of a special institution in charge of gender equality and equity, working towards the elimination of gender-based discrimination (Art.19).

Legal indicator 5: The Constitution recognizes customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the Constitution

In pluralistic legal systems, the Constitution plays a key role in shaping the articulation between statutory law and customary legal systems. Legal pluralism may lead to conflicting rights in the legal framework and the constitution can help balance and articulate contrasting rights, institutions and practices. As illustrated by Sierra Leone and Madagascar, most countries have now adopted non-discrimination provisions that include discrimination based on sex. However, taking a closer look at these provisions, we find that the Constitution of Sierra Leone excludes laws that make provision for, *inter alia* marriage, divorce, devolution of property on death and customary law, thus effectively stripping the principle of non-discrimination of much of its substance (Secs. 27(4)(d) and (e)). It is therefore at Stage 0 for this indicator.

Although Madagascar took a stance against gender-based discrimination, the indicator remains at Stage 0 as the 2010 Constitution still does not recognize customary law as a valid source of law and therefore does not explicitly prohibit gender-based discrimination in customary law.

This indicator was not applicable to Morocco where customary law has gradually been replaced by the general law, following independence. In 1956, immediately following independence, King Mohammed V of Morocco pushed for a unified system of law for the country, incompatible with the perpetuation of customary law. The promulgation of

27 Information posted on the State House of Sierra Leone. Available at: <http://www.statehouse.gov.sl/index.php/component/content/article/34-news-articles/705-constitutional-review-committee-launched>.

Dahir No. 1-56-014 19 in 1956 (Art. 3) was the first of a series that have gradually eliminated all possibilities for a customary legal system to survive (Aboulkacem, 2007).

Legal indicator 6: The Constitution recognizes religious law but states that gender-based discrimination in religious law is superseded by the principle of non-discrimination in the Constitution

While this indicator is not applicable to Madagascar whose Constitution protects freedom of religion but does not recognize religious law, Morocco's Constitution makes Islam the religion of the state (Art. 3) and the king ensures respect for Islam (Art. 41). The indicator was assigned a 0 as the Constitution does not contain any provision restricting the ability of religious sources of law to discriminate on the basis of gender. In the case of Sierra Leone, the legal framework contains statutes governing religious marriages, including the Christian Marriage Act, (Cap 95 of 1960) and the Mohammedan Marriage Act, (Cap 96 of 1905). Yet, the Constitution does not recognize religious law as a valid source of law. The indicator is therefore at Stage 0. It must be pointed out however, that while a constitutional recognition of religious law in Sierra Leone would have the advantage of integrating these sources of law into the formal legal system, such a recognition would not have any positive incidence for gender equality unless it was accompanied by an amendment of Section 27 of the Constitution to introduce an absolute prohibition of discrimination in all areas of laws, including family law and inheritance.

Legal indicator 7: The Constitution promotes the adoption of special measures for the advancement of women

None of the constitutions in this review promotes the adoption of special measures for the advancement of women. All three countries are therefore at Stage 0 with regards to this indicator.

3.4 Recognition of women's legal capacity

Key element 3: Recognition of women's legal capacity		SL	MA	MO
8	Men and women have the ability to conclude contracts under the same basic conditions, rights and obligations.	4	4	4

Legal indicator 8: Men and women have the ability to conclude contracts under the same basic conditions, rights and obligations

No restrictions could be located in any of the legal frameworks screened for this study. It therefore seems that under the general law, men and women have the ability to conclude contracts under the same basic conditions, rights and obligations in all three countries. Sierra Leone is Stage 4 as the Constitution recognized men and women equality of rights, obligations, and opportunities before the law (Sec. 8(2)(a)). This is supported by the Registration of Customary Marriage and Divorce Act (No. 1 of 2009), which granted the wife in a customary marriage the capacity to personally acquire and dispose of properties and to enter into contracts on her own behalf (Sec. 18). Similarly in Madagascar, the indicator is at Stage 4, as the Constitution recognized the equality of rights between all individuals (Art. 6) and the legislation governing marriage specifically states that marriage does not affect the

legal capacity of either of the spouses (Ordonnance No. 62-089 du 1er octobre 1962 relative au mariage, Art. 56). In Morocco, the indicator was also found to be at Stage 4 as the 2011 Constitution recognizes men and women’s equal ability to exercise civil, political, economic, social and cultural rights (Art. 19). The new Civil Code grants all persons who have attained their majority full capacity to exercise their rights and obligations (Art. 210).

3.5 Gender-equality of rights with respect to nationality

Key element 4: Gender equality of rights with respect to nationality		SL	MA	MO
9	Men and women are able to apply for identity documents under the same conditions.	3	3	4
10	A female national can confer citizenship to her non-national spouse under the same conditions as a male national.	0	0	0
11	Men and women can confer citizenship to their children under the same conditions.	3	0	3

Legal indicator 9: Men and women are able to apply for identity documents under the same conditions

In all three countries men and women can apply for identity documents under the same conditions. Sierra Leone and Morocco drafted gender-neutral provisions to regulate the application process for the issuance of identity documents (Sierra Leone, The National Registration Act, (No. 4 of 2008)). In Morocco, the indicator is at Stage 4 owing to the existence of an implementing decree that was also drafted in gender-neutral terms (Décret No. 2-06-478 pris pour l’application de la loi No. 35.06.06.). In Madagascar, Decree No. 2013-349 of 22 May 2013 is also gender neutral.

Legal indicator 10: A female national can confer citizenship to her non-national spouse under the same conditions as a male national

It is fairly common for countries to place restrictions on the acquisition of land by foreign nationals. In Sierra Leone, the Non-Citizen (Interest in Land) Act (No. 30 of 1966), still prevents non-citizens in the Western Area from purchasing land or receiving it as a gift without first obtaining a license from a board comprising the ministers of trade and industry, lands, finance, and development and chaired by the Minister of Lands (Secs. 3 and 4). To avoid situations where transnational couples are restricted by this provision, it is important that female nationals are able to transfer their citizenship to their non-national spouse under the same conditions as male nationals. In areas where women mainly gain access to land through their spouse, strengthening men’s citizenship rights and bringing them at par with women’s could strengthen their wife’s access to land.

This is an area where much progress is needed as all three countries examined are still at Stage 0. For the time being, all of them show provisions that make the transfer of citizenship between spouses only applicable to women marrying a male national (Sierra Leone, Sierra Leone Citizenship Act, Sec. 7; Madagascar, Ordonnance No. 60 – 064, Art. 22; Morocco, Code la Nationalité, Art. 10). In Morocco however, a bill allowing a male foreign national married

to a Moroccan woman to acquire her citizenship could soon be drafted but has not yet been submitted for deliberation.²⁸

Legal indicator 11: Men and women can confer citizenship to their children under the same conditions

This indicator shows remarkable progress in Sierra Leone and Morocco which are both at Stage 3. These countries have amended their legislation to remove all restrictions that, in the past, prevented women from transferring their citizenship to their children (Sierra Leone Citizenship (Amendment) Act, Sec. 3; Morocco, loi n° 62-06 promulguée par le dahir n° 1-07-80 du 23 mars 2007, Art. 6). Surprisingly, this indicator revealed that Madagascar still hasn't amended its own law on nationality – which dates back to 1960 – and prevents women from transferring their citizenship to their children (Ordonnance No. 60 - 064 du 22 juillet 1960 portant Code de la nationalité malgache, Art. 9).

3.6 Gender equality in property rights

Key element 5: Gender equality in property rights		SL	MA	MO
12	The law recognizes gender-equality in the right to own or control property regardless of the type of marriage.	2	4	3
13	The law recognizes full or partial community of property as the default marital property regime.	0	3	0
14	Spousal consent is mandatory for any transaction involving matrimonial property.	0	3	0
15	The law establishes a presumption of joint ownership of property in consensual unions.	0	0	0
16	The legal framework includes provisions for the promotion of women's rights to land, property, and/or productive resources.	1	0	1.5

Legal indicator 12: The law recognizes gender-equality in the right to own or control property regardless of the type of marriage

This indicator covers all the types of marriages recognized by the general law.

Sierra Leone recognizes civil marriages, Christian marriages, Mohammedan marriages and customary marriages. Civil marriages are still governed by the old English statute of 1882 that entitles every married woman to have and to hold as her separate property and to dispose of all real and personal property that belongs to her at the end of marriage, and that she acquires after her marriage, including wages, earnings, money and property (Married Women's Property Act (45 & 46 Vict. c. 75) of 1882, Sec. 2). In the Provinces, the Registration of Customary Marriage and Divorce Act, No. 1 of 2009 provides a wife in a customary marriage with the capacity to personally acquire and dispose of properties (Sec. 18). The Christian Marriage Act (Cap 95 of 1960) protects the right of the spouses to agree on the

28 Announcement made by the Minister of Justice, Mustapha Ramid, October 2013.

control and enjoyment of their respective properties, including for the purpose of preventing one spouse from disposing, by legal procedure and means, of the other's properties after death (Sec. 26). However, the Mohammedan Marriage Act (Cap 96 of 1905), does not make any reference to property management during marriage and the Matrimonial Causes Act (Cap 102 of 1960), does not explicitly recognize gender equality in the right to own and control property in marriage. A Matrimonial Causes Bill (2005) and a Gender Equality Bill (2011) are expected to harmonize the legal regimes and to eliminate discrimination and the right to own and control property. These bills are flagged by a 2.

On the other hand, while the Constitution of Madagascar does not recognize customary law, the law on marriage and matrimonial regimes recognizes both civil marriages and traditional marriages when they are registered (Loi N° 2007-022 du 20 août 2007 relative au mariage et aux régimes matrimoniaux (J.O. n° 3 163 du 28/01/08, p. 131), Art. 2). The law further states that the spouses jointly administer community property (Art.117). These progressive provisions are reflected in a Stage 4.

Morocco's Family Code does not explicitly recognize gender equality in the right to own or control property but it is implied that the spouses administer freely their own property (Art. 49). The country is therefore at Stage 3.

Legal indicator 13: The law recognizes full or partial community of property as the default marital property regime

Here, a distinction must be made between common law systems and civil law systems. As mentioned earlier, civil law countries generally recognize full or partial community of property as the default marital property regime and common law countries usually favour a regime of separate property. The law governing marital relationships in Sierra Leone implicitly establishes separate property as the only possible marital property regime (Married Women's Property Act (45 & 46 Vict. c.75) of 1882, Sec. 2). This was extended to customary marriages with the adoption of the Registration of Customary Marriages and Divorce Act (No. 1 of 2009) (Sec. 18). This indicator is therefore at Stage 0.

Despite the influence of civil law in Morocco's legal order, the Family Code also establishes separate property as the default property regime and was therefore found to be at Stage 0. However, the law offers the possibility to draft a separate agreement, distinct from the marriage certificate, whereby the spouses agree on the terms and conditions regarding the growth and distribution of the property that they will acquire during marriage (Art. 49).

In contrast, Madagascar follows the civil law tradition of community of property and is therefore at Stage 3. It makes it the default property regime, giving the couple the option to agree on a regime of separate property for personal property (Loi N° 2007-022 du 20 août 2007 relative au mariage et aux régimes matrimoniaux (J.O. n° 3 163 du 28/01/08, p. 131), Arts. 97 and 98). In the latter case, the spouses retain full ownership and control over private property (Art. 115). Under the law, private property can be the property the spouse owned before the date of marriage or the property that he or she acquires during marriage by way of succession, donation or will. Private property also consists, inter alia of the gains that accrue from the private property and the property acquired during marriage when it was acquired with personal money (Arts. 112 and 113). Property acquired during marriage is therefore still presumed to be jointly owned, unless proof of the contrary is established (Art. 153).

Legal indicator 14: Spousal consent is mandatory for any transaction involving matrimonial property

No provisions could be located in Sierra Leone and Morocco. In Morocco, the law is silent as to the extent of control that the spouses retain when they choose to agree on the terms and conditions of growth and distribution of the property that they will acquire during marriage (Code de la Famille, Art. 49).

Madagascar takes different approach, and was found to be at Stage 3. The law specifically prevents a spouse from alienating immovable property without the consent of the other spouse (Loi N° 2007-022 du 20 août 2007 relative au mariage et aux régimes matrimoniaux (J.O. n° 3 163 du 28/01/08, p. 131), Art. 118(2)).

Legal indicator 15: The law establishes a presumption of joint ownership of property in consensual unions

All three countries were found to be at Stage 0 for this indicator, as no such provision could be located in any of them. In Morocco, the Penal Code makes it a criminal offense for persons of opposite sex to engage in sexual relations outside of wedlock (Art. 490).

Legal indicator 16: The legal framework includes special measures to guarantee women's equal rights to land ownership and/or control

This indicator brought interesting results that could trigger positive developments in the legislation of both Sierra Leone and Morocco. The Government of Sierra Leone adopted a National Land Policy in 2015 which commits the government to enhance and guarantee women's access to land and their security of tenure (Sec. 6.2.1).

Similarly, the LAT indicates that Morocco is at Stage 1.5 for this indicator. The 2004 National Strategy for Gender Equality and Equity recognizes that agriculture is one of the main income-generating activities for rural populations, and that women and girls make an important contribution to farming activities as unpaid family workers. The strategy aims to *inter alia* mainstream gender into policies on agricultural and rural development, identify the best way to increase women's access to agricultural land, and promote the participation of rural women in the formulation of priorities and design of rural development programmes and projects (p. 19). This strategy leaves room to push for the adoption of provisions for the promotion of women's rights to land and property. Legal reform is envisaged to implement the principle of gender equality and equity in the strategy (p. 16).

In Madagascar, this indicator shows a Stage 0 as the government initiated a land reform process in 2005 and is now moving towards phase II of the reform but failed to define a strategy to strengthen women's access to land. Informal consultation with members of the Land Observatory and civil society in Madagascar showed that there is a deep concern that the current policy lacks a stated objective of gender equality that would promote women's access to land (FAO, 2013c). Madagascar is still in a process of political transitioning which could be an opportunity to bring the issue of gender equality back on the agenda.

3.7 Gender equality in inheritance

Key element 6: Gender equality in inheritance		SL	MA	MO
17	The surviving spouse is granted user rights to the matrimonial house for life.	3	0	0
18	Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.	3	0	0
19	The law allows partners living in consensual union to inherit from each other.	3	0	0
20	Brothers and sisters have an equal right to inherit.	3	3	3
21	Brothers and sisters receive an equal share of inheritance.	0	3	0
22	A right to compensation of other siblings giving up their claims on the family property exists.	0	3	0

Legal indicator 17: The surviving spouse is granted user rights to the matrimonial house for life

The LAT indicates that Sierra Leone is at Stage 3 for this indicator. In 2007, the government enacted a very progressive piece of legislation on succession, the Devolution of Estates Act (No. 21) which despite the lack of gender-sensitivity in the drafting of the provision, grants the surviving spouse a right to reside during his or her lifetime in any family property, chieftaincy property or community property in which he or she cohabited with the deceased as their matrimonial home (Sec. 15(2)).

In contrast, Madagascar and Morocco remain at Stage 0 for this indicator, as no such provisions could be located in their legislation. Interestingly, in Madagascar the law allows the surviving spouse who effectively contributed to the development of an agricultural holding to petition the court in order to maintain the state of joint ownership (*indivision*) but only for a period of six years (Loi N° 68-012 of 4 July 1968 relative aux successions, testaments et donations, Art. 44).

Legal indicator 18: Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property

Here, Sierra Leone was found to be at Stage 3 as the law protects the surviving spouse and considers three possible cases: where the intestate is survived by a spouse but no children or issue, the whole of the estate devolves to the surviving spouse (Devolution of Estates Act, Sec. 6(1)). Where the intestate is survived by more than one spouse but no children or issue, the estate is distributed among the surviving spouses in proportion to the duration of their respective marriages to the intestate and taking into consideration other factors such as their respective contributions to the estate (Sec. 6(2)). Where the intestate is survived by a spouse, child and parent, the surviving spouse receives 35 percent of the estate (Sec. 8(a)). In the case of testate succession, an aggrieved dependant can challenge the dispositions

made in a will if the testator has not made any provision for the maintenance of the dependant (Secs. 22(1) and (3)).

Morocco is still at Stage 0, as the Family Code prohibits succession between Muslims and non-Muslims (Art. 332). However, under the title on succession which is based on the Islamic Sharia, guarantees Muslim women a minimum share of matrimonial property. The widow receives a quarter of the estate when her husband dies without leaving any child or grandchild (Art. 343(2)). Otherwise she receives an eighth of the estate (Art. 344). The law further protects the widow, stating that she can never be fully evicted from the succession (Art. 357).

Madagascar was also found to be at Stage 0 in this indicator. We found that under Malagasy succession law, spouses do not inherit from each other, except in the absence of children, grandchildren, parents, brothers and sisters, children of the brothers and sisters, uncles and aunts, and first cousins (Loi N° 68-012 du 4 juillet 1968 *relative aux successions, testaments et donations*, Art. 16). This order of succession makes it practically impossible for spouses to inherit from each other.

Legal indicator 19: The law allows partners living in a consensual union to inherit from each other

As mentioned above, this indicator is not applicable to Morocco whose criminal law prohibits consensual unions. Madagascar does not recognize consensual unions either, despite their high occurrence throughout the country (SAHA, Observatoire du foncier, Plateforme SIF *et al*, 2011). In stark contrast, the law on succession in Sierra Leone does not require a couple to be legally married to be able to inherit from each other. Under the Act, a spouse can be: (a) a person married to the intestate or the testator; (b) an unmarried woman who has cohabited with an unmarried man as if she were in law his wife for a period of not less than five years immediately preceding the death of the intestate or testate; or (c) an unmarried man who has cohabited with an unmarried woman as if he were in law her husband for a period of not less than five years immediately preceding the death of the intestate or testate. It should be noted however, that consensual unions are relatively rare in Sierra Leone with only 3 percent of women and 4 percent of men living in informal unions (MEASURE DHS, 2013).

Legal indicator 20: Brothers and sisters have an equal right to inherit

The LAT indicates that all three countries are at Stage 3 of incorporation. In Sierra Leone, where an intestate is survived by two or more children and no spouse, parent or grandchild, the estate devolves to the children in equal shares (Devolution of Estates Act, No. 21 of 2007, Section 7(2)).

In Madagascar children are first in line to inherit and are able to do so without distinction of sex or primogeniture (Loi N° 68-012 of 4 July 1968 *relative aux successions, testaments et donations*, Art. 16). However, in practice it is very important to keep the father's name and estate. The law therefore contains a provision allowing coheirs to agree that female heirs will receive their share of inheritance in a sum of money, based on an inventory and estimation of the value of the property to be shared (Art. 83).

In Morocco, brothers and sisters have an equal right to inherit and neither can be evicted from succession. Morocco was found to be at Stage 3 despite the fact that brothers, by law, receive double the share of sisters (*Code de la Famille*, Art. 360 and 372).

Legal indicator 21: Brothers and sisters receive an equal share of inheritance

As mentioned above, under Morocco's law on succession, brothers receive double the share of their sisters (*Code de la Famille*, Art. 360 and 372). The country is therefore at Stage 0 for this indicator. Madagascar however is at Stage 3 as the law No. 68-012 of 4 July 1968 *relative aux successions, testaments et donations* guarantees brothers and sisters an equal share of inheritance (Art. 16). In Sierra Leone the Devolution of Estates Act, specifically states that it applies to all Sierra Leones with no distinction of sex or religion and guarantees brothers and sisters an equal share of inheritance (Arts. 1 and 7(2)). However, a number of articles allow for a certain proportion of the estate to be devolved according to Muslim law (Arts. 8(d), 10, 13, 14, 28). This creates a loophole for inequalities in inheritance among brothers and sisters to persist, which is flagged by a Stage 0.

Legal indicator 22: A right to compensation of other siblings giving up their claims on the family property exists

In Madagascar, when among the estate is an agricultural holding that constitutes an economic activity, a coheir can petition the court to be allocated the farm if he or she exploited it on his or her own or contributed significantly to its development. This devolution is subject to the payment of compensation (Loi No. 68-012 of 4 July 1968 *relative aux successions, testaments et donations*, Art. 82). No such provision could be located in Sierra Leone and Morocco which were therefore deemed to be at Stage 0.

3.8 Gender-equitable implementation, dispute mechanisms and access to justice

Key element 7: Gender-equitable implementation, dispute mechanisms and access to justice		SL	MA	MO
23	Decentralization of land administration services is effected through recognized customary land institutions.	4	N/A	N/A
24	Decentralization of land administration services is effected through formal land institutions.	N/A	4	0
25	The law guarantees equality before the law.	3	3	3
26	The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	3	3	3
27	The law makes provision for legal support in civil procedures.	3	4	3
28	A human rights commission or gender-specific institution is in place.	3	3	2

Legal indicator 23: Decentralization of land administration services is effected through recognized customary land institutions

This indicator directly reflects a country's position *vis à vis* customary law. Countries that recognize customary law as a valid source of law in their Constitution are more likely to decentralize land administration services through customary land institutions. Among the three countries in this study, only Sierra Leone formally recognizes customary law. It shows an intention to cooperate with local institutions, to take advantage of their legitimacy in the ground and gradually bring them under the umbrella of the general law. Such an approach has the advantage of fomenting better coherence and continuity between formal and informal legal systems. The indicator is at Stage 4 as several Acts organize decentralization through customary institutions. The Local Government Act (No. 14 of 2004), the Chieftaincy Act (No. 10 of 2009), and the Local Courts Acts (No. 10 of 2011) work towards the harmonisation of informal institutions, regulating their powers and functions. The Local Government Act establishes local councils as the highest political authority in a locality. The Act grants them legislative and executive powers to promote the development of the locality and the welfare of the people in the locality with the resources at its disposal and with the resources and capacity that it can mobilise from the central government and its agencies, national and international organizations, and the private sector. Among other things local councils are responsible for the development, improvement and management of human settlements and the environment in the locality (Sec. 20). Chieftdom councils cooperate with local councils in particular regarding their function of holding land in trust for the people of the Chieftdoms (Sect. 28(d)).

Decentralization through customary institutions carries the combined advantages of legitimacy and accessibility. In countries such as Sierra Leone where customary systems of tenure are still predominant, access to land, tenure security and land dispute resolution have remained embedded in local customs and practices. To avoid a situation where well-drafted, inclusive legislation formulated at the central level remains unapplied in rural areas, decentralization through customary institutions could enhance women's tenure security. In Sierra Leone the Chieftaincy Act (No. 10 of 2009) encourages women to run for the position of Paramount Chief (Sec. 8(1)). A Gender Equality Bill (2011) that is pending adoption provides for a 30 percent female quota in Paramount Chiefs across the 149 chieftdoms. These are examples of how statutory law and customary law can be articulated to empower women and increase their access to land, property and other resources.

In Madagascar the indicator was not applicable as the Constitution does not recognize customary law as a valid source of law and therefore does not recognize informal customary institutions. The indicator wasn't applicable to Morocco either as the gradual pervasion of the general law practically eliminated customary law.

Legal indicator 24: Decentralization of land administration services is effected through formal land institutions

Countries that do not recognize customary law as a valid source of law in their Constitution may still decentralize land administration services through formal land institutions.

For the reasons stated above, the indicator is not applicable to Sierra Leone, where land administration services are delivered through customary institutions. The General Registration Act (Cap 255) set up a system of registration of deeds but it only applies to the Freetown area.

This indicator however, is extremely relevant in Madagascar which is at Stage 4. The 2005 *Lettre de politique foncière* (land policy) started a process of harmonization between formal and informal law to bring legitimacy and legality closer together (Sec. 22). To this end, the land policy created a new formal institution: the Local Land Office (Sec. 40) (*guichet foncier*) which falls under the umbrella of the law 2003-29 on the management of state land and its implementing decrees. These local land offices were intended to bring land administration services closer to the people and have shown positive results in terms of increased tenure security. However the lack of gender-sensitivity of the land policy and the absence of stated objective of gender equality has meant that the implementation of the reform has so far benefitted more favourably to men than to women (FAO, 2013c).

This indicator is at Stage 0 in Morocco, where decentralization is operated through regions, prefectures, provinces and communes as laid out in Dahir n° 1-59-351 of 2 Decembre 1959 *relatif à la division administrative du Royaume*. It does not however apply to land administration. Dahir No. 1-02-125 of 13 June 2002 created the *Agence Nationale de la Conservation Foncière, du Cadastre et de la Cartographie* (ANCFCC), which is in charge of land titling and registration.

Legal indicator 25: The law guarantees equality before the law

All three countries are at Stage 3 as their constitutions all guarantee equality before the law (Sierra Leone, 1991: Sec. 8; Madagascar, 2010: Art. 6; Morocco, 2011: Art. 19).

Legal indicator 26: The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights

The indicator is at Stage 3 in all three countries. In Sierra Leone, the Local Courts Act, 2011 established a Local Court in each Chiefdom of Sierra Leone and any person aggrieved by an order or decision by the Local Court can appeal to the District Appeal Court (Secs. 2(1) and 39(1)). In Madagascar and Morocco where the Constitution guarantees the right to seek justice (Madagascar, 2010: Art. 16; Morocco, 2011: Art. 118).

Legal indicator 27: The law makes provision for legal support in civil procedures

As reflected in the LAT, in 2012, Sierra Leone enacted one of the most progressive legal aid laws in the African continent. The Act defines legal advice and assistance as the provision of information in both criminal and civil cases about the relevant law and legal processes, assisting with alternative dispute resolution, advising on legal issues, assisting with the drafting of documents. It further defines legal aid as provision of legal advice, assistance or representation to indigent persons (Legal Aid Act, Sec. 1). In Madagascar the Code of Civil Procedure provides for legal assistance to be available to anyone who does not have the necessary financial means to exercise their right before a court of law. Legal assistance is available for all civil claims (Code de la Procédure Civile, Art. 32). This provision is supplemented by a Decree setting out the conditions and application of legal assistance (Décret 2009-970 portant réglementation de l'assistance judiciaire). As a result, the indicator is at Stage 4. Morocco also makes legal assistance available in civil cases (Décret royal portant loi n° 514-65 du 17 rejev 1386 (1^{er} novembre 1966) sur l'assistance judiciaire, Art. 1).

Legal indicator 28: A human rights commission or gender-specific institution is in place

In Sierra Leone the indicator is at Stage 3 as in the years that followed the end of the civil war, the government established a Human Rights Commission for the purpose of investigating or inquiring into any allegations of human rights violations, both on its own and on complaint by any person, and to report on it in writing. Among its functions is the promotion of respect for human rights; the review of existing legislation, advising the Government concerning compliance of legislation with the obligations of Sierra Leone. While the promotion of gender equality is not explicitly listed in its functions, the Human Rights Commission of Sierra Leone Act (No. 9 of 2004), defines “human rights” as the rights relating to life, liberty, equality and dignity of the individual protected or guaranteed by the Constitution or embodied in the international conventions, treaties and other agreements to which Sierra Leone is a party. These include the CEDAW and the ACHPR. Importantly, the Commission also advises the government on draft legislation which may affect human rights and monitors and documents violations of human rights in Sierra Leone (Sec. 7(2)).

Madagascar is also at Stage 3 as the government set up a National Human Rights Commission in 2008. However, in October 2006 the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) flagged its non-compliance with the Paris Principles (ICC, 2014).

In Morocco, the indicator is at Stage 2. The 2011 Constitution makes provision for the creation of a gender-institution (Art. 19). This institution is yet to be established but the government announced that a bill would soon be presented for the creation of an Authority for Equality and for the elimination of all forms of discrimination (*Projet de loi portant création de l’Autorité pour la parité et la lutte contre toutes formes de discriminations (APALD)*, 2013)

3.9 Women’s participation in national and local institutions enforcing land legislation

Key element 8: Women’s participation in national and local institutions enforcing land legislation		SL	MA	MO
29	The law sets quotas for the appointment of women in land management and administration committees.	2	0	1.5
30	The law sets quotas for the appointment of women in land dispute resolution committees.	0	0	0

Legal indicator 29: The law sets quotas for the appointment of women in land management and administration committees

For this indicator, Sierra Leone was found to be at Stage 2 as a Gender Equality Bill (2011) is pending adoption. This Bill provides for the appointment *inter alia* of 4 women as Paramount Chief Representatives and of 112 women in local councils. It further provides that 30 percent of all appointed officials must be women (Dumbuya and Yukstas, 2011).

Morocco is at Stage 1.5 as the government initiated a National Strategy for Gender Equality and Equity in 2004. One of its stated objectives is to achieve equitable representation and

participation in decision-making through the introduction of special measures, including quotas for the gradual incorporation of women in decision-making. The strategy acknowledges that the formal recognition of gender equality in the formal law is not enough to bring about gender equality. It therefore promotes the use of temporary special measures to redress past and present inequalities for the purpose of accelerating social change through the law. It further encourages the use of quotas to neutralise cultural and political resistances to women's participation in decision-making.²⁹

In Madagascar the indicator is still at Stage 0 as the National Land Policy did not address women's participation in land administration institutions. However the Policy is entering its Phase 2 and there is a possibility of measures to increase women's participation in land administration institutions.

Legal indicator 30: The law sets quotas for the appointment of women in land dispute resolution committees

None of the three countries have adopted special measures for the appointment of women in land dispute resolution committees.

3.10 General conclusions and mapping of key areas for reform

The application of the LAT in Sierra Leone, Madagascar and Morocco has provided a clear and sound understanding of the *de jure* situation of land tenure from a gender perspective in these three countries. The tool highlighted a number of strengths, weaknesses and opportunities for the development of a gender-equitable legal framework for land tenure. This global snapshot provides an interesting basis for the formulation of policy recommendations.

The first striking conclusion from the LAT is that the Maputo Protocol has no binding force in any of the three countries. Therefore, indicators that were developed on the basis of this instrument have little influence on these countries. However, despite the absence of official ratification by Sierra Leone, the government has shown a remarkable commitment to the protection of women's property rights in its law on succession.

The LAT has also revealed that all three countries are still a long way away from full elimination of gender-based discrimination in their Constitution. However, all three countries have a sound legal basis for the development of an enabling framework for gender-equitable land tenure. First of all, no apparent discrimination was found with respect to legal capacity. Women and men are therefore able to enter into contracts under the same conditions. This screening also showed that despite the lack of provisions for the promotion of women's access to land and property, opportunities exist in the current policy frameworks.

The application of the LAT to these countries also brought to light a number of persisting challenges that will need to be addressed. With respect to nationality, at the moment none of the three countries allow women to transfer citizenship to their non-national spouse. Consensual unions also remain a big challenge, particularly in Madagascar where a high rate of unions are not formalized. The laws show extreme differences in their handling of this

29 Available at: <http://www.social.gov.ma/MdsfsFichiers/pdf/Strategie-GTZ-fr4.pdf>

issue, ranging from complete recognition in Sierra Leone, to prohibition in Morocco. None of the three countries provide appropriate protection for the property rights of men and women living in consensual unions. However, Sierra Leone's law on the devolution of estates shows a progressive approach to the issue by recognising a cohabitant's right to inherit property under certain conditions.

With respect to access to justice, all three countries should be commended for their laws on legal support as all make legal aid and legal support available to the poor in civil procedures. Importantly, the application of the LAT highlighted opportunities for women's participation and leadership in national and local institutions enforcing land legislation as all three countries have initiated policy reforms either on land or on gender.

Based on these results, a number of country priorities were identified as opportunities for legal reform.

Sierra Leone

In Sierra Leone constitutional reform is a country priority. Amending Section 27(d) to suppress the exemption of customary law from the principle of non-discrimination is a prerequisite for the adoption of new gender-sensitive legislation. Such an amendment would send a strong message in favour of gender equality and would contribute positively to the implementation of the series of gender-sensitive Acts that were adopted in the last decade. Besides, a constitutional recognition of religious law would integrate the laws that govern religious marriage and bring more clarity and coherence to the legal framework. This recognition however, would need to be accompanied by a statement that religious law is subject to the principle of non-discrimination. The Devolution of Estates Act (2007) initiated this integration by including a provision which specifically makes the Act applicable to all the people in Sierra Leone, irrespective of their religious preferences. The Constitutional Review Committee, launched in July 2013, will be looking into ambiguities, and can be expected to bring greater clarity and equity. The draft National Land Policy was screened for compatibility with the VGGT.³⁰ It is important that the policy includes a stated objective in support of women's access to land, property and/or productive resources and sets out clear mechanisms for their implementation.

So far, the government has targeted two priority areas: customary law and inheritance. The legal framework currently provides strong protection to the property rights of the surviving spouse. However, the legal reform should be continued to extend this protection to all types of marriage. The process was initiated in 2009 with the Registration of Customary Marriages and Divorce Act but has not yet been extended to Mohammedan marriages.

Madagascar

In Madagascar the first step would be the ratification of the Maputo Protocol. Another determining factor for the development of an enabling legal framework for gender-equitable land tenure would be the recognition of customary practices and institutions as a valid source of law under the Constitution, subject to the principle of non-discrimination. A burning issue in Madagascar is the situation of couples living in consensual unions who do not fall under the scope of the general law governing marriage and divorce. Extending

30 FAO.2015. Implementation of the Voluntary Guidelines on Responsible Governance of Tenure in the land legislation of Sierra Leone: Analytical assessment report, by Melinda Davies, Legal Paper No. 93. Rome, Italy.

property rights of married couples to those living in consensual unions could increase the tenure security of a large portion of the Malagasy population, especially of women.

As Madagascar is moving into phase II of its land reform, the incorporation of a stated objective of gender equality in the National Land Policy could translate into a legal provision that promotes women's access to land, property and/or natural resources. The National Land Policy should also address the issue of women's participation and leadership in national and local land institutions enforcing land legislation.

At the moment, the surviving spouse does not automatically inherit the family farm or the matrimonial property. The law should be amended to ensure that the surviving spouse retains minimum rights over the matrimonial property to avoid placing them in a situation of dependence on the family of the deceased.

Morocco

Despite the progress made in the 2010 Constitution, Morocco still does not expressly prohibit gender-based discrimination. The Constitution should ensure that gender-based discrimination in policies, laws and practices is prohibited, to support the realization of gender equity in land tenure.

The gender strategy provides an excellent opportunity to push for the amendment of the legislation and to include provisions for the promotion of women's rights to land, property, and/or productive resources especially in rural areas. The strategy should also encourage the introduction of quotas in the legislation, to ensure that women can participate and have access to leadership positions in national and local institutions providing land administration services.

CONCLUSION

This paper has set out to introduce a practical tool to support the efforts of development practitioners and policy makers working towards gender-equity in land tenure.

The application of the LAT in Sierra Leone, Madagascar and Morocco has highlighted strengths, weaknesses and opportunities in the legal framework for gender equity in land tenure. This global snapshot helped map out the main areas where legal reform is needed.

Clarity, coherence and applicability are three pillars of an equitable legal framework for land tenure. These pillars should be reflected in all the tools developed for the purpose of promoting responsible governance of land tenure. Part of the mandate of international organizations and development agencies is to identify sound benchmarks for equitable land tenure in a continuously changing environment. But coordination among partners is needed to ensure that the policy support delivered is coherent, equitable and comes fully equipped to bring about responsible governance of land tenure.

In the end, of course, a successful legal reform depends greatly on the readiness for change, and not only from government and traditional customary and religious authorities, but also from rural men and women. Some legislative changes may be more readily accepted than others, but dialogue, awareness-raising and civil society engagement can bring about new developments in a strive for gender equity in land tenure.

APPENDIX 1 - LAT RESULTS FOR MADAGASCAR, MOROCCO AND SIERRA LEONE

The LAT analyses national legal frameworks across 30 legal indicators to provide prompt, targeted and effective policy support to Member Countries to achieve gender-equitable land tenure. The list of indicators below reflect to what extent a country has incorporated the indicator in their national legal framework. The results are shown in different colour ranges on a scale from 0 (absence of the indicator in the legal framework) to 4 (the indicator appears in multiple legal instruments).

Le LAT analyse les cadres juridiques nationaux à travers 30 indicateurs dans le but de formuler des recommandations rapides, ciblées et efficaces aux pays membres, pour des régimes fonciers équitables entre les sexes. La liste d'indicateurs reflète le stade d'un pays à l'égard de l'indicateur et son incorporation dans le cadre politique et juridique national. Les résultats sont présentés dans différentes couleurs et sur une échelle de 0 (absence de l'indicateur dans le cadre juridique) à 4 (l'indicateur a été intégré dans plusieurs instruments juridiques).

La herramienta LAT analiza el marco legal de los países a través de 30 indicadores legales con el fin de dar asesoría rápida, focalizada y oportuna a los Países Miembros de la FAO. El objetivo de este ejercicio es el de avanzar la tenencia equitativa de la tierra en cuanto al género. La lista de indicadores muestra la etapa en la que se encuentra el país en cuanto a la integración de este indicador en el marco legal nacional. Los resultados se muestran en diferentes colores y en una escala que va de 0 (ausencia del indicador en el marco legal) a 4 (el indicador está integrado en diversos instrumentos jurídicos).

Madagascar			
Key element 1: Ratification of human rights instruments		Yes/No	Legal basis
1	The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified.	Yes	N/A
2	The African Charter on Human and Peoples' Rights (ACHPR) is ratified.	Yes	N/A
3	The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is ratified.	No	N/A

Key element 2: Elimination of gender-based discrimination in the Constitution		Stage	Legal basis
4	The Constitution prohibits gender-based discrimination.	3	Constitution de la République de Madagascar, 2010, Article 6.
5	The Constitution recognizes customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the Constitution.	0	No provision could be located.
6	The Constitution recognizes religious law but states that gender-based discrimination in religious law is superseded by the principle of non-discrimination in the Constitution.	N/A	N/A
7	The Constitution promotes the adoption of special measures for the advancement of women.	0	No provision could be located.
Key element 3: Recognition of women's legal capacity		Stage	Legal basis
8	Men and women, including married women, have the ability to conclude contracts under the same basic conditions, rights and obligations.	4	Constitution de la République de Madagascar, 2010, Article 6. *** Loi N° 66-003 du 2 Juillet 1966 relative à la théorie générale des obligations, Article 65.
Key element 4: Gender-equality of rights with respect to nationality		Stage	Legal basis
9	Men and women are able to apply for identity documents under the same conditions.	3	Decree n° 2013-349 of 22 May 2013.
10	A female national can confer citizenship to her non-national spouse under the same conditions as a male national.	0	Ordonnance n° 60 - 064 du 22 juillet 1960 portant Code de la nationalité malgache, Article 22.

11	Men and women can confer citizenship to their children under the same conditions.	0	Ordonnance n° 60 - 064 du 22 juillet 1960 portant Code de la nationalité malgache, Article 9.
Key element 5: Gender equality in property rights		Stage	Legal basis
12	The law recognizes gender-equality in the right to own or control property regardless of the type of marriage.	4	Constitution de la République de Madagascar, 2010, Article 34. *** Loi N° 2007-022 du 20 août 2007 relative au mariage et aux régimes matrimoniaux, Article 117.
13	The law recognizes full or partial community of property as the default marital property regime.	3	Loi N° 2007-022 du 20 août 2007 relative au mariage et aux régimes matrimoniaux, Article 97.
14	Spousal consent is mandatory for any transaction involving matrimonial property.	3	Loi N° 2007-022 du 20 août 2007 relative au mariage et aux régimes matrimoniaux, Article 118.
15	The law establishes a presumption of joint ownership of property in consensual unions.	0	No provision could be located.
16	The legal framework includes special measures to guarantee women's equal rights to land ownership and/or control.	0	No provision could be located.
Key element 6: Gender equality in inheritance		Stage	Legal basis
17	The surviving spouse is granted user rights to the matrimonial house for life.	0	No provision could be located.

18	Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.	0	Loi N° 68-012 du 4 juillet 1968 relative aux successions, testaments et donations, Article 16.
19	The law allows partners living in consensual union to inherit from each other.	0	No provision could be located.
20	Brothers and sisters have an equal right to inherit.	3	Loi N° 68-012 du 4 juillet 1968 relative aux successions, testaments et donations, Article 16.
21	Brothers and sisters receive an equal share of inheritance.	3	Loi N° 68-012 du 4 juillet 1968 relative aux successions, testaments et donations, Article 16.
22	A right to compensation of other siblings giving up their claims on the family property exists.	3	Loi N° 68-012 du 4 juillet 1968 relative aux successions, testaments et donations, Article 82.
Key element 7: Gender-equitable implementation, dispute mechanisms and access to justice		Stage	Legal basis
23	Decentralization of land administration services is effected through recognized customary land institutions.	N/A	N/A
24	Decentralization of land administration services is effected through formal land institutions.	4	Loi n° 2003-29 sur la gestion domaniale. *** Décrets de mise en œuvre.
25	The law guarantees equality before the law.	3	Constitution de la République de Madagascar, 2010, Article 6.
26	The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	3	Constitution de la République de Madagascar, 2010, Article 13.

27	The law makes provision for legal support in civil procedures.	4	Code de Procédure Civile, Article 32. *** Décret 2009-970 portant réglementation de l'assistance judiciaire.
28	A human rights commission or gender-specific institution is in place.	3	Loi No. 2008-012 portant institution d'un Conseil National des Droits Humains (CNDH).
Key element 8: Women's participation in national and local institutions enforcing land legislation		Stage	Legal basis
29	The law sets quotas for the appointment of women in land management and administration committees.	0	No provision could be located.
30	The law sets quotas for the appointment of women in land dispute resolution committees.	0	No provision could be located.

Morocco			
Key element 1: Ratification of human rights instruments		Yes/No	Legal basis
1	The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified.	Yes	N/A
2	The African Charter on Human and Peoples' Rights (ACHPR) is ratified.	N/A	N/A
3	The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is ratified.	N/A	N/A
Key element 2: Elimination of gender-based discrimination in the Constitution		Stage	Legal basis
4	The Constitution prohibits gender-based discrimination.	0	No express provision could be located.
5	The Constitution recognizes customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the Constitution.	N/A	N/A
6	The Constitution recognizes religious law but states that gender-based discrimination in religious law is superseded by the principle of non-discrimination in the Constitution.	0	No express provision could be located.
7	The Constitution promotes the adoption of special measures for the advancement of women.	0	No provision could be located.
Key element 3: Recognition of women's legal capacity		Stage	Legal basis
8	Men and women, including married women, have the ability to conclude contracts under the same basic conditions, rights and obligations.	4	Constitution du Royaume du Maroc, 2011, Article 19. *** Code de la Famille, 2004, Article 210.

Key element 4: Gender-equality of rights with respect to nationality		Stage	Legal basis
9	Men and women are able to apply for identity documents under the same conditions.	4	Dahir n°1-07-149 pris pour l'application de la loi n° 35.06 instituant la carte nationale d'identité. *** Dahir n° 1-07-149 instituant la CNIE portant promulgation de la loi n° 35.06.06. Implemented by the Décret n° 2-06-478 pris pour l'application de la loi n° 35.06.06.
10	A female national can confer citizenship to her non-national spouse under the same conditions as a male national.	0	Code de la Nationalité, 1958, Article 10.
11	Men and women can confer citizenship to their children under the same conditions.	3	Code la Nationalité, 1958, Article 6.
Key element 5: Gender equality in property rights		Stage	Legal basis
12	The law recognizes gender-equality in the right to own or control property regardless of the type of marriage.	3	Code de la Famille, 2004, Article 49.
13	The law recognizes full or partial community of property as the default marital property regime.	0	Code de la Famille, 2004, Article 49.
14	Spousal consent is mandatory for any transaction involving matrimonial property.	0	No provision could be located.
15	The law establishes a presumption of joint ownership of property in consensual unions.	0	No provision could be located.
16	The legal framework includes special measures to guarantee women's equal rights to land ownership and/or control.	0	No provision could be located.

Key element 6: Gender equality in inheritance		Stage	Legal basis
17	The surviving spouse is granted user rights to the matrimonial house for life.	0	No provision could be located.
18	Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.	0	Code de la Famille, 2004, Article 337.
19	The law allows partners living in consensual union to inherit from each other.	0	No provision could be located.
20	Brothers and sisters have an equal right to inherit.	3	Code de la Famille, 2004, Article 342.
21	Brothers and sisters receive an equal share of inheritance.	0	Code de la Famille, 2004, Article 372.
22	A right to compensation of other siblings giving up their claims on the family property exists.	0	No provision could be located.
Key element 7: Gender-equitable implementation, dispute mechanisms and access to justice		Stage	Legal basis
23	Decentralization of land administration services is effected through recognized customary land institutions.	N/A	N/A
24	Decentralization of land administration services is effected through formal land institutions.	0	Dahir n°1-02-125 du 1er Rabii II (13 Juin 2002) portant promulgation de la loi n°58-00 portant création de l'Agence Nationale de la Conservation Foncière, du Cadastre et de la Cartographie.
25	The law guarantees equality before the law.	3	Constitution du Royaume du Maroc, 2011, Article 19.
26	The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	3	Constitution du Royaume du Maroc, 2011, Article 118.

27	The law makes provision for legal support in civil procedures.	3	Décret royal portant loi n° 514-65 du 17 rejeb 1386 (1er novembre 1966) sur l'assistance judiciaire.
28	A human rights commission or gender-specific institution is in place.	2	Dahir n° 1-11-19 du 25 rabii I 1432 (1er mars 2011) portant Création du Conseil national des droits de l'Homme. *** Projet de loi portant création de l'Autorité pour la parité et la lutte contre toutes formes de discriminations (APALD), 2013.
Key element 8: Women's participation in national and local institutions enforcing land legislation		Stage	Legal basis
29	The law sets quotas for the appointment of women in land management and administration committees.	1.5	Stratégie nationale pour l'égalité et l'équité entre les sexes.
30	The law sets quotas for the appointment of women in land dispute resolution committees.	0	Stratégie nationale pour l'égalité et l'équité entre les sexes.

Sierra Leone			
Key element 1: Ratification of human rights instruments		Yes/No	Legal basis
1	The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified.	Yes	N/A
2	The African Charter on Human and Peoples' Rights (ACHPR) is ratified.	Yes	N/A
3	The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is ratified.	No	N/A
Key element 2: Elimination of gender-based discrimination in the Constitution		Stage	Legal basis
4	The Constitution prohibits gender-based discrimination.	3	The Constitution of Sierra Leone, 1991, Section 27(1) and (3).
5	The Constitution recognizes customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the Constitution.	0	The Constitution of Sierra Leone, 1991, Section 27.
6	The Constitution recognizes religious law but states that gender-based discrimination in religious law is superseded by the principle of non-discrimination in the Constitution.	0	No provision could be located.
7	The Constitution promotes the adoption of special measures for the advancement of women.	0	No provision could be located.
Key element 3: Recognition of women's legal capacity		Stage	Legal basis
8	Men and women, including married women, have the ability to conclude contracts under the same basic conditions, rights and obligations.	4	The Constitution of Sierra Leone, 1991, Section 8. *** The Registration of Customary Marriage

			and Divorce Act, 2009, Section 18.
Key element 4: Gender-equality of rights with respect to nationality		Stage	Legal basis
9	Men and women are able to apply for identity documents under the same conditions.	3	The National Registration Act, 2008, Sections 6 & 7.
10	A female national can confer citizenship to her non-national spouse under the same conditions as a male national.	0	The Sierra Leone Citizenship Act, 1973, Section 7.
11	Men and women can confer citizenship to their children under the same conditions.	3	The Sierra Leone Citizenship (Amendment) Act, 2006, Section 3.
Key element 5: Gender equality in property rights		Stage	Legal basis
12	The law recognizes gender-equality in the right to own or control property regardless of the type of marriage.	2	Matrimonial Causes Bill, 2005 and the Gender Equality Bill, 2011
13	The law recognizes full or partial community of property as the default marital property regime.	0	The Married Women's Property Act, 1882, Section 2.
14	Spousal consent is mandatory for any transaction involving matrimonial property.	0	No provision could be located.
15	The law establishes a presumption of joint ownership of property in consensual unions.	0	No provision could be located.
16	The legal framework includes special measures to guarantee women's equal rights to land ownership and/or control.	1	The Draft National Land Policy, Version 6, 2015.
Key element 6: Gender equality in inheritance		Stage	Legal basis
17	The surviving spouse is granted user rights to the matrimonial house for life.	3	The Devolution of Estates Act, 2007, Section 15.

18	Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.	3	The Devolution of Estates Act, 2007, Section 8.
19	The law allows partners living in consensual union to inherit from each other.	3	The Devolution of Estates Act, 2007, Section 2.
20	Brothers and sisters have an equal right to inherit.	3	The Devolution of Estates Act, 2007, Section 13.
21	Brothers and sisters receive an equal share of inheritance.	0	The Devolution of Estates Act, 2007. Sections 8(d), 10, 13, 14, 28 allow devolution according to Muslim law.
22	A right to compensation of other siblings giving up their claims on the family property exists.	0	No provision could be located.
Key element 7: Gender-equitable implementation, dispute mechanisms and access to justice		Stage	Legal basis
23	Decentralization of land administration services is effected through recognized customary land institutions.	4	The Chieftaincy Act, 2009. *** The Local Courts Act, 2011, Sections 2, 7 & 15.
24	Decentralization of land administration services is effected through formal land institutions.	N/A	The General Registration Act, Cap 255 set up a system of registration of deeds but it only applies to the Freetown area.
25	The law guarantees equality before the law.	3	The Constitution of Sierra Leone, 1991, Section 8.
26	The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	0	N/A
27	The law makes provision for legal support in civil procedures.	3	The Legal Aid Act, 2012, Section 1.
28	A human rights commission or gender-specific institution is in place.	3	The Human Rights Commission of Sierra Leone Act, 2004.

Key element 8: Women’s participation in national and local institutions enforcing land legislation		Stage	Legal basis
29	The law sets quotas for the appointment of women in land management and administration committees.	2	The Gender Equality Bill, 2011.
30	The law sets quotas for the appointment of women in land dispute resolution committees.	0	No provision could be located.

APPENDIX 2 - LAT METHODOLOGY AND TEMPLATE

LAT methodology

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.			
2	The African Charter on Human and Peoples' Rights (ACHPR) is ratified.			
3	The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is ratified.			
Key element 2: Elimination of gender-based discrimination in the Constitution		Stage	Legal basis	Recommendations
4	The Constitution prohibits gender-based discrimination.			

5	The Constitution recognizes customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the Constitution.			
6	The Constitution recognizes religious law but states that gender-based discrimination in religious law is superseded by the principle of non-discrimination in the Constitution.			
7	The Constitution promotes the adoption of special measures for the advancement of women.			
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.			
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.			
10	A female national can confer citizenship to her non-national spouse under the same conditions as a male national.			
11	Women can confer citizenship to their children under the same conditions as men.			

Key element 5: Gender equality in property rights		Stage	Legal basis	Recommendations
12	The law recognizes gender equality in the right to own or control property regardless of the type of marriage.			
13	The law recognizes full or partial community of property as the default marital property regime.			
14	Spousal consent is mandatory for any transaction involving matrimonial property.			
15	The law establishes a presumption of joint ownership of property in consensual unions.			
16	The legal framework includes special measures to guarantee women's equal rights to land ownership and/or control.			
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.			
18	Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.			
19	The law allows partners living in consensual union to inherit from each other.			
20	Brothers and sisters have an equal right to inherit.			
21	Brothers and sisters receive an equal share of inheritance.			

22	A right to compensation of other siblings giving up their claims on the family property exists.			
Key element 7: Gender-equitable implementation, dispute mechanisms and access to justice		Stage	Legal basis	Recommendations
23	Decentralization of land administration services is effected through recognized customary land institutions.			
24	Decentralization of land administration services is effected through formal land institutions.			
25	The law guarantees equality before the law.			
26	The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.			
27	The law makes provision for legal support in civil procedures.			
28	A human rights commission or gender-specific institution is in place.			
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.			

30	The law sets quotas for the appointment of women in land dispute resolution committees.			
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FAO Legal Office
Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla
00153 Rome, Italy