Developing gender-equitable legal frameworks for land tenure:

A Legislation Assessment Tool

The Gender and Land Rights Database Project

The Food and Agriculture Organization of the UN (FAO)

Conference on Land Policy in Africa

Thematic Session 3: Legislative and operational tools to secure land rights

12 November 2014
Gender-equitable land tenure in the Voluntary Guidelines on the Responsible Governance of Tenure
Gender-equitable land tenure in the VGGT
An overview

✓ Principles of implementation
✓ Policy, legal and organisational frameworks related to land tenure
✓ Human rights
✓ Multiple tenure arrangements and legal pluralism
✓ Access to justice, legal assistance and dispute resolution over tenure rights
The **Gender and Land Rights Database**
Overview of the GLRD

Launched in February 2010

83 Country Profiles

New developments and expansion


• **Data**: indicators mainly from census data, including total number of holders, women holders, number of holdings under co-ownership and communal property - and GINI Concentration index

• **Information on the status of ratification of international treaties and conventions**

• **Information on the national legal framework promoting or preventing the realisation of gender-equitable land tenure**:
  - Rights entrenched in the Constitution
  - Tenure rights in personal laws and labour laws
  - Inheritance
  - Land legislation
  - Policy measures and legal mechanisms

• **Information on customary law, land tenure systems and CSOs promoting gender-equitable tenure**
Objectives of the GLRD

The GLRD as a knowledge tool

• Identify the major political, legal and cultural factors that influence gender-equitable land tenure

• Highlight gender disparities in land tenure

• Provide gender and land-related statistics

The GLRD as a policy tool

• Support the integration of international standards and best practices into national policy and legal frameworks

• Support the realisation of gender-equitable land tenure
Partners

- FAOLEX
- The Land Portal
- Landesa
- The International Land Coalition
- The World Bank and the Women, Business and the Law Project
- IFPRI
The Legislation Assessment Tool
for gender-equitable land tenure
To what extent does the legal framework foster gender-equitable land tenure?

- A tool to facilitate the implementation of the VGGT and the FAO Technical Guide on Gender

- Targeting concrete areas for improvement by identifying:
  - Strengths, weaknesses and opportunities in the legal framework
  - The progress made towards gender equity in the legal framework
  - Areas where legal reform is needed

- Help visualise the legal intricacies surrounding men and women’s access to land:
  - Through clusters of **key legal elements**
  - Through **indicators** that analyse the articulation – when applicable – between:
    - statutory law and customary norms
    - statutory law and religious norms
Legal framework for gender-equitable land tenure

International instruments pertaining to gender-equitable land tenure

- Legally-binding instruments
- Non legally-binding instruments
- Pervasion of these instruments in national legal frameworks

Gender-equitable land tenure in the national legal framework

- Different national legal systems
  - Common law systems
  - Civil law systems
  - (Religious -e.g. Sharia- legal systems)

- Different legal instruments
  - Constitutions
  - Statutes
  - Regulations

- Different normative systems (legal pluralism)
  - Customary law
  - Religious law
Theoretical foundation

- **International standards** (legally and non-legally binding):
  - Developed in multilateral negotiations
  - Have already built international consensus
- **Good practices**: to fill in the gaps

7 Clusters of Key Elements
(for a total of 27 Indicators)

1. Elimination of gender-based discrimination in the Constitution
2. Recognition of women’s legal capacity
3. Gender-equality of rights with respect to nationality
4. Gender equality in property rights
5. Gender equality in inheritance
6. Gender-equitable implementation, dispute mechanisms and access to justice
7. Women’s representation in national and local institutions enforcing land legislation
Methodology (1/2)

The LAT promotes an integrated system of land tenure:

- Promotes the incorporation of informal normative systems into the general legal system
- Customary and religious sources of law are only covered insofar as they are incorporated into the formal legal system

The LAT assessment covers three sources of law: constitutions, statutes and regulations:

- Contained in the various sections of the GLRD
- Sources include FAOLEX, official journals, ministries of justice, ministries of agriculture, and ministries for gender equality.
- Reliability and accuracy: the stages have been identified using the actual text of the legislation, referencing all relevant legal provisions.

The LAT assessment is limited to a de jure analysis of the legislation pertaining to gender and land

- Not a de facto evaluation of gender-equitable land tenure
### Methodology (2/2)

<table>
<thead>
<tr>
<th>Rationale</th>
<th>Stage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Absence of the indicator in the policy and legal framework</td>
<td>0</td>
</tr>
<tr>
<td>A policy is being developed</td>
<td>1</td>
</tr>
<tr>
<td>A policy is in place</td>
<td>1.5</td>
</tr>
<tr>
<td>A draft legislation is to be submitted for deliberations</td>
<td>2</td>
</tr>
<tr>
<td>The indicator appears in primary law</td>
<td>3</td>
</tr>
<tr>
<td>The indicator appears in multiple legal instruments</td>
<td>4</td>
</tr>
<tr>
<td>Not applicable</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Application of the LAT
Results from Ghana – Morocco – Rwanda – Sierra Leone

Photo credit: ©FAO/Riccardo Gangale
Comparative study

Key element 1: Elimination of gender-based discrimination in the Constitution

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Ghana (Gh)</th>
<th>Morocco (Mo)</th>
<th>Rwanda (Rw)</th>
<th>Sierra Leone (SiL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3 0 3 3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>0 N/A 3 0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>0 0 N/A 0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>0 0 3 0</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Sierra Leone - Constitution, 1991

Section 27 (1):
“Subject to the provisions of subsection (4), (5), and (7), no law shall make provision which is discriminatory either of itself or in its effect.”

Section 27 (4):
“Subsection (1) shall not apply to any law so far as that law makes provision [...] d. with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law; or e. for the application in the case of members of a particular race or tribe or customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons”
## Comparative study

### Key element 2: Recognition of women’s legal capacity

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Gh</th>
<th>Mo</th>
<th>Rw</th>
<th>SiL</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Men and women have the ability to conclude contracts under the same basic conditions, rights and obligations.</td>
<td>0</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>


**Section 3(1)**

“Person competent to Conclude Contracts: (1) Any person other than those mentioned below may be competent for concluding a contract; (a) Those who have not attained 16 years of age. (b) Those who are of unsound mind.”

**Ghana**

No provision located
### Comparative study

**Key element 3: Gender-equality of rights with respect to nationality**

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Gh</th>
<th>Mo</th>
<th>Rw</th>
<th>SiL</th>
</tr>
</thead>
<tbody>
<tr>
<td>6  Men and women are able to apply for identity documents under the same conditions.</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>7  A female national can confer citizenship to her non-national spouse under the same conditions as a male national.</td>
<td>4</td>
<td>0</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>8  Women can confer citizenship to their children under the same conditions as men.</td>
<td>4</td>
<td>0</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>

**Morocco - Nationality Code, 1958**

*Article 10*

Women can acquire their husband’s nationality but the reverse is not possible.

“La femme étrangère qui a épousé un Marocain peut, […] souscrire, pendant la relation conjugale, une déclaration en vue d’acquérir la nationalité marocaine”

## Comparative study

### Key element 4: Gender equality in property rights

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Gh</th>
<th>Mo</th>
<th>Rw</th>
<th>SiL</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 The law recognises gender equality in the right to own or control property regardless of the type of marriage.</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>10 The law recognises full or partial community of property as the default marital property regime.</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>11 Spousal consent is mandatory for any transaction involving matrimonial property.</td>
<td>2</td>
<td>0</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>12 The law establishes a presumption of joint ownership of property in consensual unions.</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>13 The legal framework includes provisions for the promotion of women’s rights to land, property, and/or productive resources.</td>
<td>0</td>
<td>1.5</td>
<td>1.5</td>
<td>1</td>
</tr>
</tbody>
</table>

### Sierra Leone - Draft National Land Policy

#### Section 5.5 Constitutional amendments

"Without prejudice to the above provisions, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition and custom."

#### Section 7.1.4 Discrimination and Denial of Land Rights of Women and Children

"The Government shall [...] v. Make provision for joint spousal registration and documentation of land rights, and for joint spousal consent to land disposals, applicable for all forms of tenure"

### Ghana – The Property Rights of Spouses Bill, 2009
## Comparative study

### Key element 4: Gender equality in property rights

<table>
<thead>
<tr>
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<th>SiL</th>
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<td>9  The law recognises gender equality in the right to own or control property regardless of the type of marriage.</td>
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<td>3</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>10 The law recognises full or partial community of property as the default marital property regime.</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
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<tr>
<td>11 Spousal consent is mandatory for any transaction involving matrimonial property.</td>
<td>2</td>
<td>0</td>
<td>3</td>
<td>0</td>
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<td>12 The law establishes a presumption of joint ownership of property in consensual unions.</td>
<td>2</td>
<td>0</td>
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<tr>
<td>13 The legal framework includes provisions for the promotion of women’s rights to land, property, and/or productive resources.</td>
<td>0</td>
<td>1.5</td>
<td>1.5</td>
<td>1</td>
</tr>
</tbody>
</table>

**Rwanda - National Gender Policy, 2010**

*Section 4.5.2.3.*

“Facilitate and support revision of existing gender discriminatory laws to ensure equal rights for women and men”

**Rwanda Agriculture Gender Strategy, 2010**

*Objective 3.1.*

“MINAGRI has facilitated and supported local authorities to ensure equal access to and control of key resources (land, livestock, credit, inputs, etc.) through PSTA programs”
# Comparative study

## Key element 5: Gender equality in inheritance

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Gh</th>
<th>Mo</th>
<th>Rw</th>
<th>SiL</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>The surviving spouse is granted user rights to the matrimonial house for life.</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>15</td>
<td>Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.</td>
<td>3</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>16</td>
<td>The law allows partners living in consensual union to inherit from each other.</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>17</td>
<td>Brothers and sisters have an equal right to inherit.</td>
<td>3</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>18</td>
<td>Brothers and sisters receive an equal share of inheritance</td>
<td>3</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>19</td>
<td>A right to compensation of other siblings giving up their claims on the family property exists.</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>

**Rwanda - Law No. 22/1999 of 12/11/1999 regarding matrimonial regimes, liberalities and successions**

**Article 50**
Caveat for illegitimate children

***

**Draft Law regarding matrimonial regimes, family donations and successions**

**Article 45.** Equal treatment of children in succession
Removes the distinction between legitimate and illegitimate children

“All children of the de cujus, as defined by the Civil Code, shall inherit in equal parts without any discrimination between male and female children”
## Comparative study

### Key element 6: gender-equitable implementation, dispute resolution and access to justice

<table>
<thead>
<tr>
<th>Indicator</th>
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<th>Rw</th>
<th>SiL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>20</strong> Decentralisation of land administration services is effected through formalised customary land institutions.</td>
<td>4</td>
<td>N/A</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td><strong>21</strong> Decentralisation of land administration services is effected through formal land institutions.</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td><strong>22</strong> The law guarantees equality before the law.</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td><strong>23</strong> The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td><strong>24</strong> The law makes provision for legal support in civil procedures.</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td><strong>25</strong> A human rights commission or gender-specific institution is in place.</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>

**Morocco - Dahir n° 1-59-351 du 1er joumada Il 1379 (2 décembre 1959)**
relatif à la division administrative du Royaume and implementing decrees

**Morocco/Nepal/Sierra Leone -**
No explicit provision that guarantee equal access to judicial systems
Comparative Study

Key element 7: Women’s representation in national and local institutions enforcing land legislation

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Gh</th>
<th>Mo</th>
<th>Rw</th>
<th>SiL</th>
</tr>
</thead>
<tbody>
<tr>
<td>26</td>
<td>0</td>
<td>1.5</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>The law sets quotas for the appointment of women in land management and administration committees.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Gh</th>
<th>Mo</th>
<th>Rw</th>
<th>SiL</th>
</tr>
</thead>
<tbody>
<tr>
<td>27</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>The law sets quotas for the appointment of women in land dispute resolution committees.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Rwanda Constitution, 2003**

Article 9

“The State of Rwanda commits itself to conform to the following fundamental principles and to promote and enforce the respect thereof:

[...] 4° building a state governed by the rule of law, a pluralistic democratic government, equality of all Rwandans and between women and men reflected by ensuring that women are granted at least thirty per cent of posts in decision making organs”

But not mainstreamed in the Draft Organic Law modifying and complementing Organic law No. 02/2010 of 09/06/2010 on organisation, jurisdiction, competence and functioning of the mediation committee.
Using the LAT

Piloting of the LAT in Sierra Leone

- LAT assessment
- Policy recommendations
- Next steps
Thank you!

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