



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).

Kenya			
Key element 1: Ratification of human rights instruments		Yes/No	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	Basis
4	The Constitution prohibits gender-based discrimination.	3	The Constitution, 2010, Section 27
5	The Constitution recognises customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the Constitution.	3	The Constitution, 2010, Section 2(4)
6	The Constitution recognises religious law but states that gender-based discrimination in religious law is superseded by the principle of non-discrimination in the Constitution.	0	The Constitution, 2010, Section 24(4)
7	The Constitution promotes the adoption of special measures for the advancement of women.	3	The Constitution, 2010, Section 27(6)
Key element 3: Recognition of women’s legal capacity		Stage	Basis
8	Men and women have the ability to conclude contracts under the same basic conditions, rights and obligations.	4	The Constitution, 2010, Section 27(3) *** The Legal Age of Majority Act, 1980 *** The Land Act, 2012, Sections 4(1) and 5(2)



Key element 4: Gender-equality of rights with respect to nationality		Stage	Basis
9	Men and women are able to apply for identity documents under the same conditions.	4	The Constitution, 2010, Section 12 *** Kenya Citizenship and Immigration Act, 2011, Sections 22(1)(g), 24 and 27
10	A female national can confer citizenship to her non-national spouse under the same conditions as a male national.	4	The Constitution, 2010, Section 15(1) *** Kenya Citizenship and Immigration Act, 2011, Article 11
11	Women can confer citizenship to their children under the same conditions as men.	4	The Constitution, 2010, Section 15(1) *** Kenya Citizenship and Immigration Act, 2011, Article 6
Key element 5: Gender equality in property rights		Stage	Basis



12	The law recognises gender-equality in the right to own or control property regardless of the type of marriage.	4	<p>The Marriage Act, 2014, Section 5(2) ***</p> <p>Kenya Citizenship and Immigration Act, 2011, Section 22(1)(d) ***</p> <p>The Lands Act, 2012, Section 5(2)</p>
13	The law recognises full or partial community of property as the default marital property regime.	0	<p>Married Women’s Property Act of 1882, Article 2</p>
14	Spousal consent is mandatory for any transaction involving matrimonial property.	0	<p>No provision could be located -</p> <p><i>But the Constitution, 2010 Section 68(c)(iii) mandates Parliament to enact legislation to regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage</i></p>
15	The law establishes a presumption of joint ownership of property in consensual unions.	0	<p>No provision could be located</p>



16	The legal framework includes special measures to guarantee women’s equal rights to land ownership and control.	3	The Land Registration Act, Act No. 3 of 2012, Section 93(1) and (2)
Key element 6: Gender equality in inheritance		Stage	Basis
17	The surviving spouse is granted user rights to the matrimonial house for life.	0	The Law of Succession Act, 1972 Section 35 and 40 - <i>Recognised but caveat for Islamic devolutions which do not fall under the scope of the Act</i>
18	Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.	3	The Law of Succession Act, 1972, Section 35
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	The Law of Succession Act, 1972, Section 39(1)



21	Brothers and sisters receive an equal share of inheritance.	0	The Law of Succession Act, 1972 Section 2(1)(3) - <i>Caveat for Islamic devolutions which do not fall under the scope of the Act</i>
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	Basis
23	Decentralisation of land administration services is effected through recognised customary land institutions.	2	The Community Land Bill, 2011
24	Decentralisation of land administration services is effected through formal land institutions.	4	The Constitution, 2010, Section 13 <i>On local authorities</i> *** The Constitution, 1991, Section 67 <i>On the National Land Commission</i>
25	The law guarantees equality before the law.	3	The Constitution, 2010, Section 27(1)



26	The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	3	The Constitution, 2010, Section 159 <i>- Recognises traditional dispute resolution</i> <i>- Also recognises Kadhis' Courts (Muslim courts) for questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts.</i>
27	The law makes provision for legal support in civil procedures.	2	The Legal Aid Bill, 2013



28	A human rights commission or gender-specific institution is in place.	4	<p>The Constitution, 2010, Section 26 - <i>The Kenya National Human Rights and Equality Commission</i> ***</p> <p>The National Gender and Equality Commission Act, 2011 ***</p> <p>Kenya National Commission on Human Rights Act, 2011</p>
Key element 8: Women’s participation in national and local institutions enforcing land legislation		Stage	Basis
29	The law sets quotas for the appointment of women in land management and administration committees.	2	The Community Land Bill, 2011
30	The law sets quotas for the appointment of women in land dispute resolution committees.	0	No provision could be located