



*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).*

## South Africa

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.	Yes	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, 1996, Sections 9(3) and 36
5	The Constitution recognises customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the Constitution.	4	The Constitution, 1996, Sections 15(3)(a), 15(3)(b), 39 and 211(3) *** Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000) Section 8(d)
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.	4	The Constitution, 1996, Sections 15(3)(a) and 15(3)(b) *** Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000) Section 8(d)



7	The Constitution promotes the adoption of special measures for the advancement of women.	0	The Constitution does not specifically target women but Section 9(2) supports the adoption of legislative measures to promote the achievement of equality by advancing “persons, or categories of persons, disadvantaged by unfair discrimination.”
<b>Key element 3: Recognition of women’s legal capacity</b>		<b>Stage</b>	<b>Basis</b>



8	Men and women have the ability to conclude contracts under the same basic conditions, rights and obligations.	4	<p>The Constitution, 1996, Section 9 ***</p> <p>The Matrimonial Property Act, Ch. III, Section 12 ***</p> <p>The Recognition of Customary Marriage Act, No. 120 of 1998, Section 6 ***</p> <p>The Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000) Section 8(h)</p>
<b>Key element 4: Gender equality of rights with respect to nationality</b>		<b>Stage</b>	<b>Basis</b>
9	Men and women are able to apply for identity documents under the same conditions.	3	The Identification Act, No. 68 of 1997, Section 3
10	A female national can confer citizenship to her non-national spouse under the same conditions as a male national.	3	The South African Citizenship Act, No. 88 of 1995, Section 5(5)



11	Women can confer citizenship to their children under the same conditions as men.	3	The South African Citizenship Act, No. 88 of 1995, Section 2(1)(b)
<b>Key element 5: Gender equality in property rights</b>		<b>Stage</b>	<b>Basis</b>
12	The law recognises gender-equality in the right to own or control property regardless of the type of marriage.	4	<p>The Matrimonial Property Act, Ch. III, Section 14 ***</p> <p>The Recognition of Customary Marriage Act, No. 120 of 1998, Section 6 ***</p> <p>The Civil Union Act, No. 17 of 2006, Section 13</p>
13	The law recognises full or partial community of property as the default marital property regime.	4	<p>The Matrimonial Property Act, Ch. III, Section 14 ***</p> <p>The Recognition of Customary Marriage Act, No. 120 of 1998, Section 7(3)</p>



14	Spousal consent is mandatory for any transaction involving matrimonial property.	3	The Matrimonial Property Act, Ch. III, Sections 14 and 15
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 control.	3	The Deeds Registries Act 47 of 1937 as amended by the Deeds Registries Amendment Act 34 of 2013, Section 17(1) and (2)
<b>Key element 6: Gender equality in inheritance</b>		<b>Stage</b>	<b>Basis</b>
17	The surviving spouse is granted user rights to the matrimonial house for life.	3	The Recognition of Customary Marriages Act, 1998, Section 2



18	Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.	4	The Intestate Succession Act, No. 81 of 1987, Sections 1(c) and 1(d) *** The Recognition of Customary Marriages Act, 1998, Section 2 *** The Maintenance of Surviving Spouses Act, No. 70 of 1990
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.	4	The Intestate Succession Act, No. 81 of 1987 *** The Reform of Customary Law of Succession and Regulation of Related Matters Act, No. 11 of 2009, Section 2



21	Brothers and sisters receive an equal share of inheritance	4	The Intestate Succession Act, No. 81 of 1987, Section 14(f) *** The Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009, Section 3
22	A right to compensation of other siblings giving up their claims on the family property exists.	0	No provision could be located
<b>Key element 7: Gender-equitable implementation, dispute mechanisms and access to justice</b>		<b>Stage</b>	<b>Basis</b>
23	Decentralisation of land administration services is effected through recognised customary land institutions.	4	The Constitution, 1996, Sections 26 and 212 *** The Traditional Leadership and Governance Framework Act, No. 41 of 2003, Section 20(1)(b) *** The Communal Land Rights Act, No. 11 of 2004





24	Decentralisation of land administration services is effected through formal land institutions.	4	The Constitution, 1996, Section 26 *** The Registration of Deeds Act, 1937 *** The Rural Development and Land Reform General Amendment Act, No. 4 of 2011
25	The law guarantees equality before the law.	4	The Constitution, 1996, Section 9(1) *** Judicial Service Commission Act, No. 9 of 1994, Section 7(c)



26	The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	4	<p>The Constitution, 1996, Sections 16 and 34 ***</p> <p>The Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000) Section 4(b)</p> <p><b><i>A Traditional Courts Bill lapsed in parliament. It reasserted that the Bill of Rights in the Constitution must be respected and that women are afforded full and equal participation with men in traditional courts.</i></b></p>
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27	The law makes provision for legal support in civil procedures.	2	<p>The Legal Aid Bill, Section 24(1)(a) This Bill proposes to reform legal aid in South Africa (currently regulated by the Legal Aid Act, 1969) and extend its delivery to civil matters. It has completed all the parliamentary stages and been assented by the President.</p>
28	A human rights commission or gender-specific institution is in place.	4	<p>The Commission on Gender Equality Act, No. 39 of 1996 *** The South African Human Rights Commission, No. 40 of 2013</p>
<b>Key element 8: Women’s participation in national and local institutions enforcing land legislation</b>		<b>Stage</b>	<b>Basis</b>



29	The law sets quotas for the appointment of women in land management and administration committees.	3	The Traditional Leadership and Governance Framework Act, No. 41 of 2003, Section 3(2)(b), 3A(2)(b), 3B(2)(b) and 16(3)(a)
30	The law sets quotas for the appointment of women in land dispute resolution committees.	0	No mention of quotas but Sections 174(2) of the Constitution highlights <i>“The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.”</i>