

Gender and law

Women's rights in agriculture

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FOREWORD

Gender issues cut across virtually all aspects of agriculture. Throughout the world, women constitute a large portion of the economically active population engaged in agriculture, both as farmers and as farm workers, and play a crucial role in ensuring household food security. However, they often face obstacles in access to land and other natural resources, to formal employment, and to credit, training and extension services. These obstacles may stem from directly or indirectly discriminatory norms and/or from entrenched socio-cultural practices, and entail negative consequences not only for women themselves, but also for their family members, especially in the case of female-headed households.

In recent years, greater attention has been devoted to gender at both national and international levels. Gender-specific provisions have been adopted at the international level not only within human rights treaties (particularly the Convention for the Elimination of All Forms of Discrimination Against Women and its Optional Protocol), but also in instruments relating to the environment and to sustainable development, such as the Rio Declaration on Environment and Development, the Johannesburg Declaration on Sustainable Development and the Convention to Combat Desertification. Moreover, the international community solemnly affirmed its commitment to gender equality and women's empowerment at the Fourth World Conference on Women (Beijing Declaration and Platform for Action), at the World Food Summit (objective 1.3 of the Plan of Action), and in other recent international conferences. At the national level, many countries have pursued gender equality through constitutional provisions, national plans of action, law reform and judicial decisions.

FAO's commitment to the advancement and empowerment of rural women is embodied in the Gender and Development Plan of Action, endorsed by the FAO Conference in 2001. The Plan of Action identifies priorities for action to follow up the international commitments undertaken by the FAO member states, particularly with regard to gender equality in agriculture and rural development. Among other things, the Plan of Action called for studies on gender issues in agriculture-related legislation, particularly on women's access to land and other key productive assets (para. 94).

This study responds to that call. It analyses the gender dimension of agriculture-related legislation, examining the legal status of women in three key areas: rights to land and other natural resources; rights of women agricultural

workers; and rights concerning women's agricultural self-employment activities, ranging from women's status in rural cooperatives to their access to credit, training and extension services.

The study briefly reviews the relevant international instruments and focuses on national legal systems, examining the legislation and case law of ten countries reflecting different cultural environments and legal traditions. Particular attention is paid to customary norms, which are applied in the rural areas of many of the covered countries, and more generally to socio-cultural practices affecting the application of statutory legislation. The result is an analysis identifying the main legal and some non-legal factors that affect the existence and exercise of women's agriculture-related rights. A correct understanding of these factors is necessary in order to identify the legislative and other interventions that are required to improve women's rights.

The research underpinning the study was originally carried out in 2001/02. This second revised and updated edition seeks to capture key developments that have taken place since then.

The five chapters of the study are structured as follows: chapter I provides definitions and identifies applicable norms; chapter II deals with women's rights to land and other natural resources; chapter III examines the rights of women agricultural workers; chapter IV deals with the rights of self-employment rural women; and chapter V summarizes the main findings of the study, addresses some major implementation issues, and identifies possible interventions to improve women's rights.

This study is the outcome of research work conducted at the FAO Legal Office by Lorenzo Cotula, FAO Consultant under the direction of Ali Mekouar, Chief of the Development Law Service at that time.

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List of abbreviations

ACHPR	African Charter on Human and People's Rights
ACHR	American Convention on Human Rights
CARL	Comprehensive Agrarian Reform Law (Philippines)
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CGE	Commission for Gender Equality (South Africa)
EC	European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU	European Union
ESTA	Extension of Tenure Security Act (South Africa)
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
INCRA	National Institute for Colonisation and Agrarian Reform (Brazil)
IRDP	Integrated Rural Development Programme (India)
NGO	Non-governmental organisation
NCRFW	National Commission on the Role of Filipino Women (Philippines)
PRONAF	National Programme to Support Family Agriculture (Brazil)
UAIM	Women's Agro-Industrial Units (Mexico)
UDHR	Universal Declaration of Human Rights

I. INTRODUCTION

1.1. Background

Throughout the world, women constitute a large portion of the economically active population engaged in agriculture, both as farmers and as farm workers, and play a crucial role in ensuring household food security. In many countries, the role of women in agricultural production has increased in recent years as a result of men's migration to urban areas and absorption in non-agricultural sectors. However, in many parts of the world, women have little or no access to resources such as land, credit and extension services. Moreover, women tend to remain concentrated in the informal sector of the economy. In plantations, they often provide labour without employment contracts, on a temporary or seasonal basis or as wives or daughters of male farm workers.

In this context, many rural women work hard to improve and secure their access to livelihood assets and activities. All over the world, one can find examples of women negotiating rights to land and associated resources – for instance, by entering sharecropping arrangements or by buying land, either individually or collectively. In many parts of the world, NGOs help women's groups obtain access to land on a collective basis.

In recent years, lawmakers have devoted greater attention to gender at both national and international levels, and considerable efforts have been made to improve women's legal status. Norms on women's land rights have been adopted at the international level not only within human rights treaties (particularly the Convention for the Elimination of All Forms of Discrimination against Women), but also in instruments relating to the environment and to sustainable development, such as the Convention to Combat Desertification. In 1995, the Beijing Fourth World Conference on Women adopted the Beijing Declaration, stating that "women's empowerment and their full participation on the basis of equality in all spheres of society [...] are fundamental for the achievement of equality, development and peace" (para. 13). The Conference also adopted a Platform for Action, which is "an agenda for women's empowerment" (para. 1). Several provisions concerning women are included in Declarations and Plans of Action adopted by other international conferences (Vienna, 1993; Cairo, 1994; Copenhagen, 1995; Rome, 1996; etc.). And, gender equality and women's empowerment are

flagged up within the Millennium Development Goals (MDG3). In 2001, the FAO Conference adopted a Gender and Development Plan of Action (2002–2007), which identifies priorities for action to follow up these and other international commitments.

At the national level, many countries have adopted national plans of action and established institutional machinery to promote women's empowerment. Most constitutions today prohibit gender discrimination and protect women's rights. Legislative reforms have brought about changes in family, succession, natural resource and employment law – toward equality between spouses, full legal capacity of married women, and greater gender equality in inheritance rights, in access to natural resources, on the labour market and in access to credit and other services. Moreover, women's legal status has been improved by judicial decisions declaring discriminatory norms to be unconstitutional.

It is hard to assess the overall effectiveness of these legal reforms in increasing women's participation in reform programmes. In many countries, the implementation of policies and laws protecting women's rights is constrained by entrenched cultural practices, lack of legal awareness, limited access to courts and lack of resources. These implementation problems are generally stronger in rural areas than in urban areas. In these cases, effective interventions to improve women's legal status need to include not only legislative reform but also steps to bridge the gap between law and practice.

Promoting gender equality in legal entitlements relating to agriculture is crucial for two main reasons. Firstly, "the empowerment [...] of women and the improvement of their political, social, economic and health status is a highly important end in itself" (Cairo Programme of Action on Population and Development, para. 4.1). Indeed, women are discriminated against in many parts of the world, and are particularly affected by economic crises and by reductions in social expenditure adopted by many developing countries following structural adjustment programmes (Beijing Platform for Action, paras. 16–20). Women's independent access to livelihood assets and activities such as land, employment and credit is likely to improve their bargaining position within the household and within society as a whole. Doing this is key to promoting fairness and social justice as well as the full realization of fundamental human rights.

Secondly, the legal empowerment of women "is essential for the achievement of sustainable development" (Cairo Programme for Action, para. 4.1). Indeed, women make a great contribution to the welfare of the family, carrying out economic activities and taking care of the children and other dependants. Therefore, improving women's access to entitlements such as land rights will enable women producers to access other assets (e.g. credit), and to undertake economic activities that foster agricultural development; and will increase the likelihood that benefits from these activities are put to the service of the welfare of the family.

1.2. Object, scope and methodology

This study reviews recent developments in the law concerning women's rights in agriculture. It aims to promote a better understanding of what works where, what does not and why in improving women's legal status; and of what practical constraints need to be addressed in order for law reform to result in positive change. The study focuses on three areas of law: rights to land and other natural resources; labour rights of farm workers; and rights concerning agricultural self-employment activities, encompassing women's status in cooperatives and family enterprises on the one hand, and their rights of access to credit, training, agricultural extension and marketing services on the other.

While these issues are dealt with in separate chapters for sake of clarity, they are in reality intertwined. For example, access to credit partly depends on land ownership, as land titles can be used as collateral to secure loans. Moreover, cooperative by-laws may require land ownership as a condition for membership of rural cooperatives. On the other hand, women's limited access to credit and employment constrains their ability to purchase land. Some important aspects of women's rights are not covered in this study, due to their only indirect bearing on agriculture (e.g. reproductive health and sexual violence).

In order to reconcile the need for a comprehensive review of the relevant legislation of different countries with space and time constraints, the study adopts a three-tier approach. First, brief regional overviews highlight the trends prevailing in different regions of the world (the Americas, sub-Saharan Africa, Northern Africa and the Middle East, Asia, the Pacific region and Europe). Second, the legal systems of ten focus countries are analysed in more detail. The countries are chosen from all the regions and,

within each region, from the main sub-regional groupings (e.g. West, East and Southern Africa, both anglophone and francophone; North and South America). The focus countries are: Brazil, Burkina Faso, Fiji, India, Italy, Kenya, Mexico, Philippines, South Africa and Tunisia. These countries have been selected so as to cover different contexts in terms of geographical location, environment, history, culture, language, legal tradition, level of development, and relative importance of the agricultural sector. Third, particularly relevant information on other countries (e.g. landmark legislation and case law) is included in boxes. Through these three levels of analysis, the study aims to offer a picture as indicative as possible of the trends prevailing in most areas of the world.

In analysing women's rights in agriculture, the study takes a socio-legal approach¹. It analyses those linkages both in law and in practice. To do so, it combines an analysis of legal texts with a review of field studies from a range of social science disciplines. And, given the importance of customary rules in shaping women's entitlements in many developing country contexts, it pays attention to the way in which women's position is affected by the interplay between statutory and customary law.

The study also adopts a historical perspective. In many countries, norms governing women's legal status have witnessed major developments over the past two decades – usually towards substantial improvements of women's position. This study aims to review these changes. However, abrogated norms that have been in force for decades or even centuries are likely to reflect entrenched socio-cultural attitudes that cannot be changed simply by passing a law. Therefore, in analysing women's rights of today, the study also briefly refers to the evolution of relevant norms over the past few decades.

1.3. The principle of gender equality

Gender equality is the key principle underlying the protection of women's rights. Some definitions are necessary to clarify its content. First, social science usually makes a distinction between "sex" and "gender". "The term "sex" refers to the congenital and universal biological differences between men and women; 'gender' relates to the socio-cultural and historical characteristics that determine how men and

¹ For a theorization of such an approach, see Hesselting *et al.*, 2005.

women interact and apportion their roles" (FAO, 1994). In the 1990s, social science and development programmes moved away from an approach focusing on women and on ensuring the full participation of women producers in the development process ("Women in Development"); toward an approach looking at "gender", i.e. at the broader issues concerning the socially determined roles of and relations between men and women (what is usually referred to as the "Gender and Development" approach). As for law, most legal instruments, including the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), refer to sex, rather than gender, as prohibited ground of discrimination (e.g. the Constitutions of Fiji, Kenya and Italy). On the other hand, some more recent instruments refer to gender or to both gender and sex, reflecting the changes that have taken place in social science thinking (e.g. the 1996 Constitution of South Africa).

As this study analyses legislation and case law, the differences between sex and gender are not emphasized, and the two terms are mostly used in conjunction (e.g. "sex/gender"). Moreover, from a legal point of view, the gender dimension of agriculture-related legislation is mainly determined by norms concerning the legal status of women and/or discriminating against women. It is therefore on these norms that this study focuses.

The principle of gender equality encompasses the prohibition of discrimination and the adoption of special measures for the "advancement" of women. Sex/gender discrimination is defined in the CEDAW as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (art. 1). However, "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under [human rights law]" (Human Rights Committee, 1989).

Discrimination may take different forms. It is direct when norms or practices explicitly differentiate treatment on the basis of sex/gender; it is indirect when although norms or practices do not make explicit reference to sex/gender, they include requirements that advantage persons of one sex. Discrimination is *de jure* when it is envisaged by law, *de facto* when although

the law is non-discriminatory, discrimination exists in practice². In this study, "gender neutral" refers to legislation that does not discriminate on the basis of sex/gender, whether directly, *de jure* or *de facto*.

Women are not a homogeneous social group, but are differentiated according to class, caste, age, household composition (e.g. whether male- or female- headed), relation to land (e.g. tenants and land owners), applicable personal law (when this varies depending e.g. on religious belonging), marriage order (where polygamy is practised), belonging to an indigenous community, etc. Therefore, the prohibition of sex/gender discrimination must be applied in conjunction with the prohibition of discrimination among women on other grounds, envisaged in national and international law.

Non-discrimination may not be enough to overcome economic and social obstacles hindering the achievement of equality of men and women. Therefore, legal instruments may contain an "affirmative action" clause, i.e. a clause allowing (or requiring) the state to adopt special measures conferring temporary advantages on women, with the long-term aim to achieve *de facto* gender equality. For instance, the CEDAW requires states to adopt measures "to ensure the full development and advancement of women" and "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" (arts. 3 and 5). And, "special measures" aimed at accelerating *de facto* gender equality are not considered discriminatory under the Convention (art. 4).

1.4. The sources of women's legal status

The legal status of rural women is determined, to varying degrees, by several levels of law: international law, national law, customary law and norms of a religious origin. These are not isolated one from the other, but are intertwined in dynamic interaction processes.

² Note that the *de facto* discriminatory practices reported in this study (both in the text and in the tables) are only those documented in the literature reviewed, and are thus by no means intended to be exhaustive.

1.4.1. International law

Women's rights are protected by international human rights treaties, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This states the principles of non-discrimination on the basis of sex (art. 2) and of affirmative action (art. 4), and contains a provision specifically devoted to rural women (art. 14). The principle of non-discrimination is stated in the CEDAW in a very broad way, applying not only to state-enacted laws and regulations, but also to the behaviour of private individuals (arts. 2(e), 5 and 10(c)), and including both discriminatory purposes and effects.

The principle of non-discrimination on the basis of sex is also affirmed in the Universal Declaration of Human Rights (UDHR) (arts. 2 and 7), in the International Covenant on Economic, Social and Cultural Rights (ICESCR) (arts. 2(2) and 3), and in the International Covenant on Civil and Political Right (ICCPR) (arts. 2(1), 3 and 14), as well as in regional human rights treaties such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (art. 14), the American Convention on Human Rights (ACHR) (art. 1), and the African Charter on Human and Peoples' Rights (ACHPR) (art. 2). Within the African regional human rights system, a Protocol on the Rights of Women in Africa was adopted in 2003 and entered into force in November 2005. The Protocol complements the African Charter by reaffirming the principle of non-discrimination (art. 2) and by affirming a range of civil, cultural, economic, political and social rights. An Arab Charter on Human Rights, also affirming the non-discrimination principle, has been adopted but is not yet in force.

Furthermore, relevant norms are found in some international environmental treaties (e.g. Convention to Combat Desertification, arts. 5 and 10) and in ILO Conventions (e.g. the Equal Remuneration Convention 1951 and the Discrimination (Employment and Occupation) Convention 1958).

Under international law, these international treaties are binding upon the states ratifying them; states reserving to some treaty obligations are not bound by them. The CEDAW has been ratified by all the states covered by this study, but a substantial number of reservations have been put forward. Most reservations relate to specific provisions of the CEDAW; Tunisia adopted a general reservation, by which the government pledges

not to adopt "any organizational or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of Chapter I of the Tunisian Constitution" (entitled "General provisions", this encompasses the Bill of Rights, as well as other provisions, such as article 1, which makes Islam the religion of the State). Moreover, several states qualified their obligations under the CEDAW through statements on the interpretation and implementation of its provisions. For instance, the government of India stated that, in implementing articles 5(a) (customary practices) and 16(1) (family relations), it would follow a "policy of non-interference in the personal affairs of any Community without its initiative and consent"; this declaration limits the possibility for the government to reform discriminatory customary law and practices. Detailed information on ratifications, reservations, and interpretative statements and declarations is contained in Table 1.

At the international level, compliance with CEDAW obligations is ensured by a system of periodic reports submitted by states to the Committee on the Elimination of All Forms of Discrimination against Women (Part V of the CEDAW) and by a complaint-based mechanism (established by CEDAW Optional Protocol, entered into force in 2000). Under the latter, individuals and groups can submit to the Committee complaints concerning violations of women's rights by the states ratifying the Protocol (see Table 1); while the outcome of the proceeding is not a binding decision but the communication to the parties of the "views" and recommendations of the Committee, states are to "give due consideration" to these, and to provide a written response (arts. 1, 2 and 7 of the Protocol). Moreover, the Committee may start *motu proprio* a confidential inquiry procedure on "grave or systematic violations" (arts. 8 and 9); states may opt out of this procedure through a declaration (art. 10), but no country covered by this study has done so.

The possibility to bring claims before domestic courts to enforce women's rights under international law varies from state to state. In some states, domestic legislation incorporating the treaty into the domestic legal system is required (e.g. Italy). In other states, self-executing treaty provisions can

be directly relied upon in courts (e.g. Tunisia and South Africa³). Another way international law affects women's legal status is by providing guidance in the interpretation of domestic law. For instance, the Constitution of South Africa states that international law must be considered when interpreting the Constitution, and that interpretations of national legislation consistent with international law must be preferred over alternative interpretations (sects. 39(1)(b) and 233).

In addition to international treaties, documents adopted in international conferences (Declarations, Plans of Action, etc.) contain provisions on women's agriculture-related rights. Although not legally binding, these instruments may reflect existing principles of customary international law (e.g. several provisions of the Rio Declaration), and in any case represent the trends prevailing in the international community (soft law). Particularly relevant to women's rights in agriculture are the 1992 Rio Declaration on Environment and Development (Principle 20), the 1992 Forest Statement (Principles 2(d) and 5(b)), Agenda 21 (Chapter 24), the 1993 Vienna Declaration on Human Rights, the 1994 Cairo Plan of Action on Population and Development, the 1995 Beijing Platform for Action adopted by the Fourth World Conference on Women, and the 1996 World Food Summit Declaration and Plan of Action.

1.4.2. Domestic law

National legal systems, and women's legal status within them, differ greatly from country to country. At the same time, influences and exchanges, both coercive and voluntary, have determined similarities across countries. Colonial powers exported their legal systems to their colonies. Moreover, the French Code Napoleon 1804 (and its patriarchal family law) influenced the civil law of many European countries, including Italy, and of most post-independence Latin American countries.

Most constitutions prohibit sex/gender discrimination (e.g. the Constitution of Brazil, Art. 5(I); the Constitution of Burkina Faso,

³ Section 231(4) of the South African Constitution states: "Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament". Under this provision, ratified international human rights treaties are directly applicable in South Africa.

Art. 1(3); the Constitution of India, Arts. 14 and 15(1); the Constitution of Italy, Art. 3(1); the Constitution of Mexico, Art. 4; the Constitution of the Philippines, Art. II(14)). The Constitution of South Africa prohibits discrimination on the basis of sex, gender, pregnancy and marital status, and includes "non-sexism" among the fundamental values of the state (Provision 1 and Sect. 9). Some constitutions state the principle of equality without specifying any ground of discrimination (e.g. the Constitution of Tunisia, Art. 6).

In some cases, the principle of non-discrimination is qualified. For instance, the Constitution of Fiji exempts from the prohibition of sex discrimination family and succession law ("to the extent that the law is reasonable and justifiable in a free and democratic society") and laws providing for the application of customary land and fishing rights (Sect. 38). Similarly, the Kenyan Constitution, as amended in 1997, prohibits sex discrimination but exempts family law and customary law – areas of law that are crucial in shaping women's rights in agriculture (Sect. 82)⁴.

Besides prohibiting discrimination, some constitutions contain an affirmative action clause (e.g. the Constitution of India, Art. 15(3); the Constitution of Fiji, Sect. 6(k)). In some cases, this clause does not specify the grounds for affirmative action, but is applicable to sex/gender (e.g. the Italian Constitution, Art. 3(2); the Constitution of the Philippines, Arts. XII(1) and XIII(1); the South African Constitution, Art. 9(2)). In the Constitution of Kenya, special measures are envisaged in a double-edged way: not only a "privilege or advantage", but also a "disability or restriction" may be imposed on the basis of sex provided that this is "reasonably justifiable in a democratic society" (Sect. 82(4)(d)).

In addition to constitutional provisions, comprehensive attempts to promote gender equality may be embodied in legislation. In South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) 2000 prohibits unfair discrimination on grounds of gender and sex in both public and private life (family relations, land rights, employment, social benefits, etc.), and envisages affirmative

⁴ In Kenya, a draft Constitution that, among other things, would have strengthened women's rights was rejected in a national referendum in November 2005.

action. Under the Act, the state has a duty to promote equality by developing and implementing action plans, laws, programmes and guidelines and by raising awareness. The duty to eliminate unfair discrimination includes the auditing and amendment of laws, policies and practices.

A fundamental issue concerning women's legal status under national law is women's legal capacity. This includes the capacity to be holders of rights and obligations, and the capacity to exercise them (i.e. to perform acts with legal effects). Under article 15(2) of the CEDAW, "states parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity".

Under national law, the capacity to be holders of rights and obligations is usually acquired with birth, without discrimination, and lost only with death (e.g. the Brazilian Civil Code of 2002, arts. 1 and 2, the Italian Civil Code, art. 1, the Italian Constitution, Art. 22, and the Civil Code of the Philippines, arts. 37 and 40).

The capacity to perform acts with legal effects (capacity to act) usually entails minimum age and other requirements, which vary according to the act performed (matrimonial capacity, capacity to own and administer property, contractual capacity, capacity to bring claims before courts, etc.). The capacity to act is analysed in the relevant chapters of the study; suffice to say here that the relevant norms have evolved substantially during the past century. For instance, in Brazil, the original text of articles 6 and 242 of the Civil Code of 1916 made married women incapable of performing certain acts without the authorization of their husband; Law 4121 of 1962 abrogated the subsection of article 6 on women's incapacity and reduced the number of acts requiring husband's consent; finally, the 1988 Constitution (Art. 226(5)) and the Civil Code of 2002 (arts. 1511 and 1567) affirm the equality of rights and duties of both spouses. In South Africa, the inferior status of women married under customary law envisaged by the Black Administration Act of 1927 was repealed by the Recognition of Customary Marriages Act of 1998.

Other norms, though not related to agriculture, constitute useful "indicators" of women's legal status in national legal systems. These include norms on violence against women, on honour defence (as a ground for absolution for wife murder), on son preference, on marriage age and reproductive health rights (with early marriage and childbirth

negatively affecting women's access to education and employment), on political representation, etc. While these issues are not covered by this study, they may affect women's confidence and ability to exercise their rights in agriculture. In many parts of the world, female circumcision is a notable example. In Burkina Faso, although this practice was outlawed in 1990 and courts have sentenced some authors of female circumcision, the practice is still widespread in rural areas (SIDA, 1999; CEDAW, 2000).

Moreover, most national legal systems include plans of action and/or of institutional machinery to promote gender equality and the advancement of women. In many cases, these instruments were adopted in the aftermath of the Beijing Declaration and Platform for Action. Although not legally binding, plans of action express the government's commitment to gender equality and define policy directions. The functions and powers, and therefore the effectiveness, of institutional machinery vary considerably, ranging from advisory functions, to policy orientation and programme co-ordination, and to investigation of women's rights violations (see Table 3).

In federal states (e.g. India and Mexico), women's rights may differ across Member States. For instance, in India, land reform legislation has been adopted at state level, and women's rights therein vary considerably. In Mexico, each state has its own civil code, and family law varies from state to state. In some cases, decentralization coexists with the delegation of powers at supranational level, thereby increasing the complexity of the sources of women's legal status. In Italy, for instance, while general civil law (family, successions, property, contracts, etc.) is within the domain of the state, agriculture is largely within the responsibilities of the "regions" (Art. 117 of the Constitution, as amended), and of the European Community (EC Treaty, art. 32, formerly 38); regional legislation must remove the obstacles hindering the full equality between men and women in the social, cultural and economic life (the Italian Constitution, Art. 117, as amended), and EU law includes gender equality among its fundamental principles (EC Treaty, arts. 2 and 137) and contains legislation and case law on women workers' rights.

Table 1. Gender equality in the Constitution, in the CEDAW and in norms on legal capacity

	Non-discrimination in the Constitution	Affirmative action in the Constitution	Ratification of the CEDAW	Reservations and Declarations/ Interpretative Statements to the CEDAW	Ratification of the CEDAW Optional Protocol	Incorporation of CEDAW into domestic legislation	Discrimination in legal capacity
Brazil	Y (5)	N	1984	R(29);WR(15,16)	2001		N
Burkina Faso	Y (1)	N	1987	N	2001		N
Fiji	Q (38)	Y (6)	1995	WR (5, 9)	N		N
India	Y (14, 15)	Y (15)	1993	D (5, 16);R(29)	N	N	N
Italy	Y (3)	Y (3)	1985	R (19)	2000	Y	N
Kenya	Q (82)	Y (82)	1984	N	N	N	N
Mexico	Y (1 and 4)	N	1981	D (G)	2002	Y	N
Philippines	Y(2)	Y(12, 13)	1981	N	2003		N
South Africa	Y (9)	Y (9)	1995	N	N	D.A.	N
Tunisia	Y (6)	N	1985	D(15);R(G,9,16,29)	N	D.A.	N

Y = Yes (numbers in brackets indicate the relevant articles).

N = No (depending on the column: absence of affirmative action clauses; absence of reservations; lack of ratification of the Optional Protocol; lack of incorporation of the CEDAW into the domestic legal system; non-discrimination in legal capacity).

Q = Qualified affirmation (presence of exceptions, etc.) (numbers in brackets indicate the relevant articles).

R = Reservation (numbers in brackets indicate the relevant articles).

D = Declaration/Interpretative statement (numbers in brackets indicate the relevant articles).

G = Reservation or declaration not referred to a specific article.

W = Withdrawn (reservation or declaration).

D.A. = Directly applicable

Note: in the case of federal states, this table only refers to national legislation. Legal capacity refers here to the general capacity to be holders of rights and obligations (while the capacity to act is analysed in greater detail in the subsequent chapters).

Table 2. National plans of action and institutional machinery on gender equality

	Plan of Action	Institutional machinery
Brazil	"Strategies for Equality: Platform for Action to Implement the Commitments Made by Brazil at the Fourth Conference on Women", adopted by the National Council for Women's Rights.	National Council for Women's Rights (CNDM), established by Law 7353 of 1985 to promote policies to achieve gender equality in all spheres. Its president and 20 council members are appointed by the Brazilian President. At state and municipal level, a number of Councils for Women's Condition have been established.
Burkina Faso	National Policy on the Advancement of Women (Decree 486 of 2004).	The Ministry for the Advancement of Women was established in 1997 (Decree 270). Focal points have also been designated in all the ministries involved in gender-related policies and programmes.
Fiji	Women's Plan of Action 1998-2008, approved in 1998 by a National Women's Congress organised by the Ministry of Women and Culture.	Ministry of Women, Social Welfare and Poverty Alleviation (established as Ministry of Women and Culture in 1987 and subsequently restructured and renamed). Gender Focal Points in 17 Ministries and Departments (established in 1998). Inter-Ministerial Committee on Women, overseeing and coordinating the implementation of the Plan of Action (established in 1998).
India	National Policy for the Empowerment of Women (2001).	National Commission for Women, established by Act 20 of 1990 (implemented in 1992) to review legislation, recommend legislative reform, advice the government on all policy issues concerning women, and investigate violations of women's rights (both motu proprio and upon complaint). Members are nominated by the government.
Italy	National Plan to Implement the Beijing Platform for Action, adopted by the Council of Ministers in 1997.	The National Commission for the Equality and Equal Opportunities of Men and Women is an advisory body placed under the Office of the Prime Minister (established by Law 164 of 1990). A Minister for Equal Opportunities was appointed for the first time in 1996. The

	Plan of Action	Institutional machinery
		Department for Equal Opportunities, providing the administrative structure for the Minister, was established by the Prime Minister with Decree 405 of 1997. Commissions have also been established at regional and local level.
Kenya	Kenyan National Gender and Development Policy 2000.	A Women's Bureau was established in 1975 as a division within the Ministry of Culture and Social Services to promote women empowerment, promote the interests of women in development projects and conduct research.
Mexico	National Programme for Women 1995–2000 – "Alliance for Equality". Gender equality is also a component of the National Development Plan 2001–2006 (chapt. 5.3.2).	An Executive Coordination Office is established within the Ministry of the Interior to coordinate activities implementing the National Programme for Women. The National Commission on Women, established in 1985, promotes and coordinates women-related projects and activities. Several states have established commissions for the advancement of women.
Philippines	Philippine Plan for Gender-Responsive Development (PPGD), approved for the period 1995–2025 with Executive Order 273 of 1995 in order to follow up the Beijing Platform for Action.	The National Commission on the Role of Filipino Women (NCRFW) has primary responsibility for overall coordination and monitoring of gender related activities. Yearly General Appropriations Acts require all departments, bureaus and agencies to devote a minimum budget share for gender related projects.
South Africa	Promotion of Equality and Prevention of Unfair Discrimination Act 2000.	The Commission for Gender Equality (CGE) was established by the 1996 Constitution and by the Commission on Gender Equality Act 1996 to monitor and evaluate laws, policies, customs and practices and make recommendations. The Commission also monitors South Africa's compliance with relevant international law, and investigates gender related issues (both motu proprio and upon complaint).

	Plan of Action	Institutional machinery
		An Equality Review Committee was also established by the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 to monitor the operation of that Act. The Chairperson of the CGE is a Member of the Committee.
Tunisia	Post-Beijing National Plan of Action 1997–2001, adopted by the Ministry for Women and the Family. The 10th Development Plan (2002–2006) features a chapter on "Women and Family" (chapt. VII).	The Ministry for Women, Family, Childhood and Elderly People, established in 1992 and renamed in 2004, is responsible for policies and programmes for the advancement of women. The National Council on Women and the Family assists the Ministry with advisory functions.

1.4.3. Customary law

In many developing countries, state policies and laws tend to be little implemented in rural areas. Entrenched socio-cultural attitudes, lack of financial resources and of institutional capacity in government agencies, lack of legal awareness and, often, lack of perceived legitimacy of official rules and institutions all contribute to limit the outreach of state regulation in rural areas. On the other hand, local ("customary" but continuously evolving) legal systems are commonly applied in much of Africa, in many parts of Asia and in the Latin American regions inhabited by indigenous communities - even where inconsistent with legislation. This is because they often are more accessible to rural people. The application of customary law may affect women's rights, particularly in the areas of family relations and succession, of access to natural resources, of labour obligations on family fields, and of access to traditional justice.

Customary law is a body of rules founding its legitimacy in "tradition", i.e. in its claim to have been applied for time immemorial. The content of customary law is extremely diverse, possibly changing from village to village. The degree of its internal consistency also varies, ranging from (rare) systematized codes to, more often, "loosely ordered ... repertoire[s] of norms" (Comaroff and Roberts, 1981, writing on the Tswana of Botswana). This diversity is the result of a range of cultural, ecological,

social, economic and political factors. Because of this great diversity, generalizations should be avoided.

Customary rules are not static, but continually evolving as a result of diverse factors like cultural interactions, population pressures, socio-economic change and political processes. In this context, "traditions" are continuously reinvented to back conflicting claims of different social groups (Ranger, 1983; Chanock, 1985). Under colonialism, for instance, colonial authorities manipulated customary law for their own ends, and compilations of customary rules were often filtrated by male elders and thus followed men-biased interpretations of customary law (e.g. on Kenya, Mackenzie, 1998; on India, Agarwal, 1994). As for South Africa, what is referred to as customary law is a mixture of "tradition" and colonial and apartheid legislation (Black Administration Act 1927, Bantu Authorities Act 1951, and subsequent laws and regulations); under this legislation, tribal authorities were salaried government officials, subject to the State President (who could appoint and depose chiefs and modify their powers).

By way of example, it may be useful to briefly refer to the customary systems regulating access to land in much of rural Africa. While these are very diverse, land usually belongs to the group (e.g. the lineage), and land access is usually determined by group membership and social status. Customary tenure systems encompass very different institutional arrangements, ranging from common property (usually for grazing land) to household farming rights on plots allocated by the "customary" chief (mainly for cultivated land). In the latter case, households' rights vary from place to place. They are usually conditional upon the continued use of the plot. And, they are usually inheritable but cannot be sold (especially to outsiders), although certain transactions are generally allowed (gifts, loans, etc.) and some systems do allow land sales. In much of West Africa, customary systems cater for multiple resource uses (e.g. pastoralism, farming, fishing) and users (farmers, residents and non-resident herders, agro-pastoralists; women and men; migrants and autochthones; etc.). Institutional arrangements regulate relations between those who first cleared the land ("autochthones") and newcomers ("migrants").

Customary legal systems may contain rules that disadvantage women. For instance, under most African customary land tenure systems, women have only secondary use rights to land, i.e. they gain access to land only through husbands and male relatives. Moreover, many customary

inheritance systems limit or even exclude women's succession rights. However, given the great diversity of customary law, generalizations should be avoided. First, considerable differences exist between patrilineal and matrilineal systems. Broadly speaking, under patrilineal succession systems property devolves through the male line (from father to son), and wives and daughters usually have no inheritance rights. Under matrilineal systems, property is traced through the mother's line but generally owned and controlled by men (i.e. sons inherit land from their mother's male relatives); however, women tend to have greater rights than under patrilineal systems, for instance enjoying stronger cultivation rights and being able to obtain gifts from their fathers (Lastarria-Cornhiel, 1997). Second, in some cases customary law grants to women rights that are not recognized under statutory law. Third, customary law is usually fluid, open to different interpretations, including on the extent of women's rights. Finally, as customary law evolves, so do its provisions affecting women's rights. Therefore, in the words of an author, "tradition is full of good things for women, and bad things for women. Some of the things that were "good" for women in the past, may not be so "good" for women today. Aspects of tradition may be "good" for some women, but "bad" for other women. Some of the things that are "good" for women are at the same time also "bad" for these same women" (Armstrong, 2000).

In practice, the neat distinction between "customary" and "statutory" land tenure systems is considerably blurred. "Customary" systems have been much changed by a century or more of contact and interference by governments, both colonial and since independence. Equally, statutory systems for land management usually operate with considerable possibilities for negotiation. Resource users gain access to natural resources through a blend of "customary" and "statutory" arrangements.

1.4.4. Norms of a religious origin

The legal status of rural women is also affected by norms founding their legitimacy in religion. These norms are applied in many countries, because they are either recognized in legislation or followed in practice, and may be intertwined with local customary norms. Norms of religious origin govern matters such as family relations and inheritance, and may therefore affect the existence or exercise of women's rights. For the

purposes of this study, norms of religious origin are examined only in so far as incorporated or referred to by statutory law.

1.4.5. "Legal Pluralism" and the interaction between the different sources of law

To sum up, women's rights in agriculture are shaped by a wide range of legal sources, including international, national, customary and religious norms. These diverse legal systems – and hybrids between them – may coexist over the same territory – a phenomenon referred to as "legal pluralism". These different bodies of norms are not isolated, but are intertwined in dynamic interaction processes. Conflicting norms of statutory and customary law may support competing claims of different social groups. Parties to disputes may invoke the norms that best support their claims and choose the institutional channel which they feel is most likely to be favourable to their cause ("forum shopping"). Statutory and customary rules violating constitutional and international human rights norms have been struck down by courts. For instance, courts have relied on national constitutions and on the CEDAW to invalidate customary norms preventing women from selling land (e.g. in the Tanzanian case *Ephrahim v. Pastory and Another*) or subjecting inheritance by daughters to their undertaking to remain unmarried (e.g. the Nigerian case *Moujekwn v. Ejikeme* – on both cases, see below, section II.4.1). Women's legal status is often the outcome of the interplay between these different bodies of norms.

Formally, the relationship between statutory and customary law is determined by the legal status of customary law within the legal system. This varies across countries, ranging between official recognition and abrogation. Customary law is for instance recognized by national law in Kenya and Fiji. In Kenya, the legal status of customary law was at stake in *Otieno v. Ougo and Siranga*, in which Kenyan courts held that customary law is formally part of the Kenyan legal system, and must be applied in case of legislative lacuna (High Court, case 4872, 1986; Court of Appeals, 15 May 1987). In some cases, the recognition of customary law is qualified by respect for the fundamental principles enshrined in the Constitution and in legislation, including gender equality (e.g. South Africa, Art. 211(3) of the Constitution; Philippines, Civil Code and Indigenous Peoples Rights Act of 1997; Mexico, Agrarian Law of 1992,

art. 164)⁵. In Kenya, the Judicature Act requires courts to apply customary law so far as it is "not repugnant to justice and morality or inconsistent with any written law" (chapt. 8, art. 3, quoted in Walsh, 2005). In yet other cases, statutory norms outlaw customary law (e.g. in most of Francophone Africa), although even in these cases customary law remains widely applied in rural areas.

The relationship between norms of a religious origin and statutory law also raises important issues. First, a trade-off between freedom of religion and women's rights may arise. In India, several cases dealt with the relationship between freedom of religion and restrictions on bigamy (State of Bombay *v.* Narasu Appa Mali, AIR [1952] Bombay 1984; Srinivasa *v.* Saraswati Ammal, AIR [1952] Madras 193; more recently, Sarla Mudgal and Others *v.* Union of India and Others, 1995, 3 SCC 635). Second, statutory law may incorporate religious norms into family and succession law. For countries encompassing different ethnic or religious groups, this entails a plurality of personal laws and, therefore, a diversification of women's legal status (e.g. India and Kenya). The incorporation of religious law into statutory law may occur either through codification of religious rules into statutory law (e.g. India, the Hindu Succession Act) or through legislative renvoi to religious norms (e.g. India, the Shariat Act).

⁵ Among the countries not directly covered by this study, the 1995 Constitution of Uganda prohibits "laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status" (Sect. 33(6)).

II. WOMEN'S RIGHTS TO LAND AND OTHER NATURAL RESOURCES

2.1. Introduction

This chapter examines women's rights of access to and management of land and other natural resources. These are mainly determined by two areas of law: general civil law (property, family and succession law) on the one hand, and agrarian and natural resource law on the other. For instance, even where land legislation per se is gender neutral, women's land rights may be curtailed by discriminatory norms of family law (e.g. restricting the legal capacity of married women to administer property) and of succession law (especially where land sales are rare and inheritance is the primary form of land acquisition). Within natural resource legislation, particular attention is devoted here to land law, both because rights to other natural resources may depend upon land rights, and because land legislation usually affects women's rights more directly (while other natural resource legislation rarely contains gender related provisions).

Rights to natural resources are extremely important for rural women. First, women's livelihoods crucially depend upon them, especially in developing countries. Second, the nature and extent of these rights affect women's bargaining power within the household (*vis-à-vis* husbands and male family members), as well as in the community and society at large. Thus, while land reform programmes adopting the household as the beneficiary unit and issuing land titles to the (male) household head may still provide female household members with access to land, they may undermine their bargaining power – and thus their social position.

Before starting the analysis, two preliminary observations need to be made. First, in examining natural resource rights in different countries, it must be remembered that the nature and content of these rights may vary considerably across countries (e.g. individual freehold property, use rights in state-owned land and legally recognized customary rights). The focus here is on whether these rights, whatever their nature and content, are differentiated on the basis of sex/gender. Second, even where formal legislation is gender neutral, women may be prevented from acquiring and enjoying natural resource rights by socio-cultural practices. Therefore data, e.g. on the share of land titles held by women, would provide helpful insights on the rights really enjoyed by women.

However, systematic collections of this kind of data are extremely rare. Where possible, this study does refer to data available in the literature. It also refers to field studies from a range of social science disciplines, which provide insights on the actual enjoyment and exercise of women's natural resource rights.

2.2. Relevant international law

At the international level, provisions concerning women's rights to natural resources are embodied in human rights law, in international environmental law and in soft-law instruments.

Under international human rights law, women have a right to own and administer property without discrimination (UDHR; arts. 2 and 17, CEDAW, art. 15), and to an "equal treatment in land and agrarian reform" (CEDAW, art. 14(2)(g)). Within the family, both spouses have equal rights in the "ownership, acquisition, management, administration, enjoyment and disposition of property" (CEDAW, art. 16). Women's water rights are protected by article 14(2)(h) of the CEDAW (right to adequate living conditions, including in relation to water supply). Natural resource rights are also instrumental to the realization of the right to adequate food, which is recognized, without discrimination, in article 25 of the UDHR and article 11 of the ICESCR.

Soft-law instruments have been adopted by the human rights bodies of the United Nations. For instance, Resolution 15 (1998) of the Sub-Commission on the Promotion and Protection of Human Rights (entitled "Women and the Right to Land, Property and Adequate Housing") stated that discrimination against women with respect to acquiring and securing land constitutes a violation of human rights law, and urged governments to amend and/or repeal discriminatory laws and policies and to encourage the transformation of discriminatory customs and traditions (paras. 1 and 3).

As for international environmental law, the preamble of the Convention on Biological Diversity recognizes women's "vital role" in the conservation and sustainable use of biodiversity, and affirms the "need" for their participation in policies concerning these issues (para. 13). Gender-specific provisions are also embodied in the 1994 Convention to Combat Desertification, which provides for the facilitation of women's participation in efforts to combat desertification at all levels, and

specifically for their effective participation in national action programmes and as an instrument for capacity building (arts. 5, 10 and 19). Women's participation in national action programmes is also required by article 8 of the Regional Implementation Annex for Africa. The annexes for Asia, Latin America and the Northern Mediterranean do not specifically mention gender, although articles 4 and 5 respectively refer to article 10 of the Convention (which envisages women's participation in national action programmes).

Among Rio soft-law instruments, Principle 20 of the Rio Declaration states that "women have a vital role in environmental management and development", and that "their full participation is therefore essential to achieve sustainable development". The Non-Legally Binding Authoritative Statement of Principles on Forests calls for women's participation in the planning, development and implementation of national forest policies and in the management, conservation and sustainable development of forests (Principles 2(d) and 5(b)). Moreover, Chapter 24 of Agenda 21 is specifically devoted to gender.

Women's rights to natural resources have also been addressed in soft law documents adopted by other international conferences. The Beijing Platform for Action envisages legislative and administrative reforms to ensure gender equality in access to natural resources, including inheritance and ownership rights (para. 61(b)). Similarly, the World Food Summit Plan of Action affirms the objective of ensuring gender equality and women empowerment (objective 1.3) and envisages measures to enhance women's access to natural resources (para. 16(b)).

2.3. The Americas

2.3.1. Regional overview

The ACHR states the right of everyone to the use and enjoyment of property, without discrimination on the basis of sex (arts. 1 and 21), and the principle of equality of rights and "adequate balancing of responsibilities" of the spouses within marriage (art. 17(4)). However, in many parts of Latin America, rural women rarely own and administer land, due both to legal and socio-cultural obstacles. Women own 11 percent of the land in Brazil, 22.4 percent in Mexico, 15.5 percent in

Nicaragua, 27 percent in Paraguay and 12.7 percent in Peru (Mason and Carlsson, 2005, drawing on data from Deere and Leon, 2003).

The past few decades have witnessed major improvements in women's legal status – particularly with regard to family law. Most countries have repealed norms identifying the husband as the household head and limiting the capacity of women to administer family property. However, in some cases legal obstacles remain. In some countries, family law still recognizes the husband as household head or representative (e.g. Dominican Republic, art. 213 of the Civil Code; Honduras, art. 167 of the Civil Code; Nicaragua, art. 151 of the Civil Code), and grants him exclusive administration rights over family property (e.g. Dominican Republic, Civil Code; art. 1421, Honduras, Family Code, art. 82) and even over the personal property of the wife (Dominican Republic, Civil Code, art. 1428).

As for agrarian law, various countries of Latin America have a long history of agrarian reform aimed at eliminating the great land concentration and the dualistic *latifundio - minifundio* land tenure structure. While in some cases reform programmes have redistributed substantial land areas (e.g. Cuba), in most cases lack of political commitment has limited the effectiveness of the agrarian reform. In most cases, agrarian reforms have targeted household heads and permanent agricultural workers in formal employment; in practice, both groups consist predominantly of men. Only in a few countries (e.g. Cuba and Nicaragua) have women been direct land reform beneficiaries. This situation has improved over the past few years.

The Nicaraguan Agrarian Reform Act of 1981 does not apply the household head criterion for land allocation, and specifically recognizes women as direct beneficiaries of the land reform regardless of their family status. However, women gained little access to land under the redistribution programme due to cultural factors; in practice, when land was required by a household (which was usually the case), title was issued in one name only, usually the name of the husband/father (Galan, 1998). Land redistribution halted in the 1990s, and a land titling programme was adopted. Law 209 of 1995 states that men and women have equal rights to obtain land titles (art. 32), and allows joint titling for couples. Joint titling for couples (whether married or not) was made compulsory by article 49 of Law 278 (1997), whereby titles issued in the name of the household

head are considered as issued to both spouses/partners. This titling programme has led to a considerable increase of women landowners.

In many countries, agrarian reform legislation has recently evolved toward greater recognition of women's rights. For instance, in Honduras, while under the Agrarian Reform Law of 1974 beneficiaries were men over 16 and women were allocated land only if they were household heads (art. 79), Decrees 129 of 1991 and 31 of 1992 (Agricultural Sector Modernization and Development Act) eliminate discrimination and allow joint titling upon request. In Bolivia, the National Service for Agrarian Reform Act of 1996 states that the Service is to apply, consistently with the Constitution and the CEDAW, "equity criteria" in land distribution, administration, tenure and exploitation for women, regardless of their marital status (art. 3(V)). In Paraguay, the 1992 Constitution includes among the fundamental principles of the agrarian reform women's participation in reform plans on the basis of equality with men, and support for rural women, particularly those heads of households.

While systematic sex-disaggregated data on land reform beneficiaries is scarce, available evidence indicates that only a very small percentage of women benefited from land redistribution programmes (between 4 and 15 percent in Chile, Colombia, Costa Rica, El Salvador, Honduras, Mexico, Nicaragua, and Peru) (Katz, 1999).

On the other hand, in several Latin American countries, women have been actively involved in social movements struggling for access to land. This includes both general agrarian movements (e.g. *Movimento dos Trabalhadores Sem Terra*, in Brazil) and specifically women's movements (e.g. *Federación de Mujeres Campesinas*, Cuba; *Asociación de Mujeres Nicaragüenses*, Nicaragua; *Federación Hondureña de Mujeres Campesinas*, Honduras; *Asociación Nacional de Mujeres Campesinas e Indígenas*, Colombia).

2.3.2. Mexico

In Mexico, civil law varies from state to state. The Federal Civil Code of 1928, as amended, applies to the whole federation for matters within the federal responsibility, and to the Federal District (Mexico City) for matters within state responsibility (art. 1). The Code states that men and women have equal civil rights (art. 2).

Under this Code, property law does not differentiate on sex/gender grounds (arts. 830–853). Within the family, both spouses have equal authority in the management of family affairs, including in the administration of property (art. 168). Family property is held under either community or separation of property, depending on the agreement reached by the spouses (arts. 178 and 179). Under community of property, it is the matrimonial agreement that determines the modalities for the administration (arts. 189(VII) and 194). Each spouse exclusively administers his/her separate property, without need for the authorization of the other spouse (art. 172).

In testamentary succession, the testator has nearly absolute freedom of will. This entails that the testator can disinherit the spouse, except for a duty to provide for the maintenance of the spouse without adequate property and unable to work (provided that the spouse does not marry again and "lives honestly", art. 1368(III)). A similar provision applies, under certain circumstances, to de facto spouses (art. 1368(V)). In case of intestate succession, the spouse inherits in the same amount envisaged for a child (arts. 1624 ss.). Agrarian law includes specific succession norms (see below).

Field studies on inheritance practices reveal that land inheritance by the male eldest son is very common in rural areas, as is inheritance by all male children (while daughters tend to inherit only when they do not receive dowry at marriage) (Quintana *et al.*, 1998, on Sierra Norte de Puebla).

As for agrarian laws, Mexican legislation is characterized by a longstanding agrarian reform, carried out under Article 27 of the 1917 Constitution, as amended. The beneficiaries of the reform are community-based institutional arrangements, *ejidos* and *comunidades*.⁶ These control some 50 percent of Mexican agricultural land (Thompson and Wilson, 1994), and encompass diverse realities, ranging from common property regimes to communities allocating parcelled plots to *ejido* members (1992 Agrarian Law, art. 44). The reform reached its peak in the period 1934–1940 (Agrarian Code of 1934), and slowed down after the 1970s (Heath, 1992; Thompson and Wilson, 1994). A reform adopted in 1992 brought about greater tenure individualization (allocating plots to individuals rather than to households), privatization and market

⁶ While *ejidos* were allocated land through the expropriation and redistribution programme, *comunidades* mainly acquired land through "confirmation" of existing land use and "restitution" of lands unlawfully appropriated by individuals (FAO, 1996b).

liberalization measures (e.g. allowing *ejido* land sales and rentals and land ownership by national and foreign corporations).

Under the 1992 Agrarian Law, both men and women may be *ejidatarios* (art. 12). Therefore, despite the fact that the law adopts a masculine terminology (e.g. "*ejidatario*"), men and women have equal rights to obtain individual land parcels (art. 76), to use common lands (art. 74) and water resources (art. 52), to obtain definitive property title over *ejido* parcels (art. 82), to sign agrarian contracts (*aparveria*, *mediería*, etc.; art. 79), to participate in *ejido* institutions (e.g. the assembly; art. 22), and so on.

However, in practice only a small number of *ejido* members are women (16.3 percent in 283 *ejidos* surveyed by Katz, 1999), and women members usually obtain their status through succession from their husbands rather than through direct land allocation under the land reform (FAO, 1994). Percentages of women in *ejido* leadership positions are even lower; for instance, only 4.9 percent of the members of the *comisariados ejidales* surveyed by Katz (1999) were women. This gender-unequal distribution of land rights is partly due to the historical evolution of the Mexican land reform. The 1920 *ejido* law provided for the allocation of *ejido* rights to household heads (*jefes de familia*); although this expression per se was gender neutral, the husband/father was considered the household head. Moreover, article 97 of the 1927 *Ley de Dotaciones y Restituciones de Tierras* explicitly stated that those eligible to be *ejido* members were men over 18, while women could become *ejidatarias* only if they were household heads. Only with the 1971 Federal Law of Agrarian Reform did women gain equal rights to men for *ejido* membership (art. 200) (Stephen, 1996).

Decisions on the alienation of allocated plots are taken exclusively by (usually male) *ejido* right holders, without need for spousal consent. Family members have a right to pre-emption ("*derecho del tanto*") (art. 84), although women's limited access to credit may in practice constrain the exercise of this right (Katz, 1999).

The recent substantial male out-migration has provided new opportunities for women. In some cases, women (mainly daughters of *ejidatarios*) have acquired the status of *ejidatario* and gained access to plots due to the lack of male applicants (*ejido* San Francisco Tecoac, in Tlaxcala; Katz, 1999). However, in most cases, women's lack of formal *ejido* title (which usually remains vested with migrating male family members) constrains their

agricultural activities, for instance by hindering their access to credit (Katz, 1999).

The *ejido* assembly may allocate land (preferably land of best quality and close to urban areas) to women over the age of 16, in order to allow them to run, through associations called *Unidades Agrícolas Industriales de la Mujer* (UAIMs), crop and livestock farming and rural industry activities, as well as to host installations for women's services and protection (art. 71)⁷. The Agrarian Law Regulation on the Promotion of the Organization and Development of Rural Women, adopted in 1998, governs the functioning of women's associations (e.g. it specifies that association members may be female *ejidatarias* or family members of *ejidatarios*, art. 10); qualifies the land rights of UAIMs (e.g. these cannot perform acts implying ownership of the allocated land, art. 14); and envisages support measures to be adopted by the government and the *ejido* assembly to promote women's productive activities (arts. 4 and 6). Only a limited number of *ejidos* have in practice allocated land to women's groups (12 percent of the *ejidos* surveyed by Katz, 1999).

As for succession in *ejido* rights, the 1992 individualization of *ejido* rights (from households to individuals) eliminated the automatic inheritance by family members, with potential negative effects on female spouses and children. The 1992 Law allows *ejidatarios* to freely choose one heir (*ejido* rights cannot be subdivided) among the spouse (with or without marriage), a child, or "any other person" (art. 17). The *ejidatario* may therefore exclude the spouse from succession in his/her rights. Where there is no will, however, the spouse (whether with or without marriage) is the first one to inherit (art. 18).

In practice, field studies from the Sierra Norte de Puebla reveal that a son is usually chosen as heir, due to widespread socio-cultural stereotypes. For some crops (e.g. milpa, i.e. maize alone or in combination with other crops), women's inheritance is prevented by socio-cultural practices that do not allow women to grow those crops on their own (while for instance land planted with coffee or fruit trees may be inherited by women). Women's age is another factor taken into account (young widows tend not be designated as *ejido* heirs because it is feared that they find another

⁷ This allocation was originally envisaged by the 1971 Federal Law of Agrarian Reform as a mandatory allocation by each *ejido* to the UAIM.

partner and take the parcel outside the patrilineal family) (Quintana *et al.*, 1998). In addition, in Guerrero, Oaxaca and Tlaxcala, the eldest son is usually chosen as *ejido* heir, while wives tend to be preferred in Quintana Roo, Coahuila and Sonora (Katz, 1999).

Forestry legislation (1992 and 1997 Laws) makes no reference to gender/sex. The Federal Law on Water Rights of 1998 is gender neutral (rules on water rights refer to "*personas físicas o morales*" (art. 222)). However, unequal land rights entail unequal water rights for irrigation purposes; moreover, field studies reveal that men can circumvent formal rules and procedures and obtain access to water through informal networks (e.g. bribing and/or maintaining good relationships with water officers), while women are prevented from doing the same by social reputation norms (Zwarteveen, 1997). The Operative Rules on water infrastructure projects (irrigation, sanitation and potable water supply), adopted in 2000, allocate resources to promote the participation of all groups, "particularly women" (para. B.3.(a)).

2.3.3. Brazil

Brazilian civil law has had a profound evolution over the past century, with a considerable improvement in women's legal status⁸. The 1988 Constitution and the 2002 Civil Code have established the principle of greater equality in civil law matters. This is a remarkable improvement compared to previous legislation. In its original formulation, the Civil Code of 1916 adopted a hierarchical model of household: the husband was the household head, exclusively administering both family property and the separate property of the wife (art. 233); the wife was "partially incapable" (art. 6), and needed the authorization of the husband to contract obligations, sell property, and accept inheritance (art. 242). These norms were amended by Law 4121 of 1962 ("Statute of the Married Woman"), which abrogated the provisions on the "partial incapability" of the wife and reduced the number of acts requiring marital authorization. The husband was confirmed as the household head administering family property, although this function was to be performed "in collaboration with the wife". In 1977, legislation on divorce introduced the partial community of property regime, whereby each spouse has equal rights to

⁸ This paragraph has substantially benefitted from the excellent work of Barsted (2002) and of Guivant (2001).

administer common property and administers his/her separate property. The 1988 Constitution states that the rights and duties concerning the conjugal society are equally exercised by the husband and the wife (art. 226(5)), thereby repealing all the remaining discriminatory provisions of the Civil Code. A new Civil Code was adopted in 2002, and entered into force in 2003. The Code provides for the equality of rights and duties of the spouses (arts. 1511 and 1567). The matrimonial regime is determined by prenuptial agreements, and in the absence of which the partial community of property regime applies (arts. 1639–1688).

Succession norms do not discriminate on the basis of gender. The Civil Code of 2002 lists the surviving spouse among the intestate heirs (provided that there is no separation; arts. 1829–1832) and among the necessary heirs (arts. 1845, 1846 and 1789). On the other hand, there are reports that discriminatory succession practices continue to be applied in rural areas, particularly with regard to the exclusion of daughters from inheritance of land (Guivant, 2001).

Brazil has a longstanding agrarian reform programme, although land distribution remains among the most unequal in the world. The programme was set up by Law 4504 of 1964 ("Land Statute"), envisaging a process of land expropriation and distribution by a public body (IBRA, later renamed INCRA). The agrarian reform has subsequently been the object of extremely vast legislation. The Agrarian Law is now contained in Law 8629 of 1993. Laws adopted in the 1990s (e.g. Laws 88 of 1996 and 1577 of 1997) brought amendments to accelerate the reform process. In addition to the federal agrarian reform programme, some states in the Northeast have adopted state agrarian reform programmes based on the "willing-seller willing-buyer" principle.

Women's rights under the reform programme have evolved, with considerable improvement after the 1988 Constitution. The following sections consider women's position in the agrarian reform, particularly with regard to direct land allocation to women. Since the matrimonial regime applicable in absence of ante-prenuptial agreements is partial community of property, land registered to one of the spouses after marriage legally belongs to both spouses.

For many years, redistributed land was registered mainly with men. Article 25 of the Land Statute, listing eligible land reform beneficiaries,

does not explicitly discriminate against women. However, some criteria entail an indirect bias against women. For instance, priority is granted to household heads with many children; under the 1916 Civil Code, in force until 2003, the household head was the husband/father. Moreover, the terminology adopted is masculine (e.g. "*posseiros, assalariados, parceiros ou arrendatários*"), although this entails no discrimination *per se*. In land reform implementation, criteria for beneficiary selection included household labour force size, age and farming experience; while these criteria did not directly discriminate against women, in practice they tended to favour male applicants, as female-headed households are usually smaller and women farmers are not considered as professional full-time farmers because of cultural stereotyping (Barsted, 2002).

Article 189 of the 1988 Constitution explicitly states that both men and women, regardless of their marital status, can be allocated property rights or concessions under the agrarian reform programme, either individually or jointly. Therefore, gender equality within the land reform programme is now guaranteed. Law 8629 of 1993 states that land titles are to be allocated to men and women, either individually or as joint owners (art. 19). Ordinance 33 of 2001, adopted by the Minister for Agrarian Development, institutionalizes an affirmative-action programme to facilitate rural women's access to land.

Nonetheless, in practice, land reform programmes still register land mainly with the husband. Joint registration is rare, *inter alia* because a substantial number of rural women lacks the documents required in order to obtain land titles (identity card, tax registration number – CPF, marriage certificate, etc.) (Guivant, 2001). The 1996 Agrarian Reform Census revealed that only 12.6 percent of land reform beneficiaries were women, although with considerable cross-state variation (Barsted, 2002). This is mainly due to socio-cultural factors concerning the gender division of roles within the family, which in rural areas are widespread and internalized by women themselves (Barsted, 2002). For instance, there is anecdotal evidence that where plot registration is required by a woman, indicating the husband as dependent, land reform officers suspect the existence of legal or other impediments to registration with the husband (Guivant, 2001).

Women have actively participated in agrarian movements struggling for access to land. The *Movimento dos Trabalhadores Sem Terra* (Landless Workers Movement) is the largest movement struggling for land reform in Brazil,

including through land occupations. The Movement has women leaders at regional and national level; for instance, nine out of 21 Members of the National Committee, the highest organ of the Movement, are women⁹. It has also established a National Gender Collective (previously named National Council of Landless Women) to promote a gender approach in its activities. However, women's rights tend to receive little emphasis in the demands of the Movement (Guivant, 2001).

2.4. Sub-Saharan Africa

2.4.1. Regional overview

The ACHPR guarantees without discrimination the right to property (arts. 2 and 14), and mandates states to eliminate every discrimination against women and to protect women's rights (art. 18(3)). On the other hand, differently from other international human rights instruments, the ACHPR does not explicitly state the equality of spouses during and after marriage, and places particular emphasis on the promotion and protection of African "traditional values" recognized by the community (arts. 17(3) and 18(2)). The Protocol on the Rights of Women in Africa provides for the integration of a gender perspective in national legislation (art. 2(1)(c)), for equality of rights of the spouses within marriage, including in relation to property (art. 7), for the right of married women to acquire and freely administer separate property (art. 7), for equality of property-related rights upon divorce or annulment of marriage (art. 8(c)), for equality in inheritance rights (art. 21), and for women's access to land (art. 15(a)). While the Protocol entered into force in November 2005, it has been ratified by a relatively small number of states (fifteen at the time of writing). Of the three African countries covered by this study, only South Africa has ratified the Protocol.

In much of sub-Saharan Africa, few rural women hold land. For instance, women hold 11 percent of agricultural land in Benin, 25 percent in Congo, and 25 percent in Tanzania; in Zimbabwe, women hold 3 percent of agricultural land in the smallholder sector and 10 percent in the large-scale commercial sector (FAO, 1995). Moreover, where women hold land, their plots are generally smaller than those held by men: for

⁹ As of 2001.

instance, the average size of women's landholdings is 0.98 hectares (compared to 1.76 for men) in Benin; 0.53 hectares (compared to 0.73 for men) in Tanzania; and 1.86 hectares (compared to 2.73 for men) in Zimbabwe (FAO, 1995). This limited access to natural resources is caused by both legal and socio-cultural factors. Legal obstacles relate both to family and succession law and to natural resource law.

As for the former, some countries have improved women's rights by adopting family and succession laws abrogating discriminatory customary norms and providing for equal rights for men and women (e.g. Ghana's Intestate Succession Law of 1985; Tanzania's Law of Marriage Act of 1971). In Ethiopia, the revised Family Code of 2000 grants spouses equal rights in the management of the family (art. 50(1)); provides (with some exceptions) for community of property in relation to property acquired after marriage, creating a presumption of common property for goods registered in the name of one spouse and requiring the consent of both spouses for property transfers (arts. 58, 62, 63 and 68); and envisages joint administration of family property (art. 66). The Ethiopian Code also envisages community of property for de facto unions lasting for not less than three years (art. 102). In Malawi, the 1995 Constitution grants women equal legal capacity to enter into contracts and acquire and maintain property rights, regardless of their marital status. In other cases, however, discriminatory norms remain. For instance, in Lesotho family property is administered exclusively by the husband, and in *Shuping v. Motsoahae* the court upheld the alienation of a joint estate decided by the husband without consulting the wife (Ankumah, 1996).

As for natural resource legislation, for long this made no explicit reference to gender. Since the 1990s, however, some African countries have explicitly included gender equity in land legislation, e.g. by explicitly stating the principle of gender equality in land rights, abrogating discriminatory customary norms, improving the position of widows in intestate succession, presuming joint ownership of family land, outlawing land sales without consent of both spouses, strengthening divorcees' rights to family land, and ensuring women's representation in land management bodies.

For instance, the Eritrean Land Proclamation of 1994 explicitly states the principle of non-discrimination in land rights (arts. 4(4), 6(8) and 11(3)), and regulates women's land rights within succession (art. 12), marriage

(art. 15) and divorce (art. 16). Under the Mozambican Land Act of 1997, both men and women may have use rights in state-owned land, and succession cannot discriminate on grounds of sex (arts. 10(1) and 16(1)). Niger's Rural Code of 1993 recognizes the "equal vocation" of citizens to access natural resources without sex discrimination (art. 4). In Mali, legislation regulating access to irrigated plots in the Office du Niger scheme explicitly prohibits discrimination between men and women (Decree 96-188 of 1996, arts. 20 and 32).

Under the Ugandan Land Act of 1998, customary land right certificates are to be issued recording all interests in land not amounting to ownership, including customary use rights (usually enjoyed by women in their husband's land) (sect. 6(1)(e)). Moreover, while decisions on land adjudication are to be made according to customary law, decisions denying women access to ownership, occupation or use are null and void (sect. 28). Specific provisions ensure women's representation in the Uganda Land Commission (at least one member; sect. 48(4)), in Land District Boards (at least one third of the members; sect. 58(3)) and in parish-level Land Committees (at least one member; sect. 66(2)). While selling, leasing or giving away land requires the consent of the spouse (sect. 40), a clause introducing presumption of spousal co-ownership, initially included in the legislation passed by the Parliament, was excluded by the President from the gazetted text.

The Tanzanian Land Act of 1998 includes among its fundamental principles the facilitation of "an equitable distribution of and access to land by all citizens" (sects. 3(1)(c); 3(2)) explicitly affirm – for the first time in Tanzania – the equality of men's and women's land rights. Spousal co-ownership of family land is presumed (sect. 161). Consent of both spouses is required to mortgage the matrimonial home (sect. 112(3)), and in case of borrower default the lender must serve a notice to the borrower's spouse before selling mortgaged land (sect. 131(3)(d)). Moreover, a "fair balance" of men and women is to be ensured in the appointment of the National Land Advisory Council (sect. 17). Similarly, the Village Land Act 1999 prohibits discrimination against women in the application of customary law (sect. 20(2)), and when a village council is deciding on an application for a right of occupancy (sect. 23). It also provides for women membership in dispute settlement and land administration institutions.

As this legislation has been enacted only recently or is still in the process of being enacted, it is still premature to assess its real impact on women's land rights. In some cases, lack of resources severely constrains the implementation of adopted legislation (e.g. Uganda's Land Act). Other recent land legislation does not contain provisions on gender. For instance, Law 98-750 (1998) of Côte d'Ivoire, while stating that "every person" may access land, makes no reference to gender.

Differently from Latin America, land ownership in sub-Saharan Africa is generally not strongly concentrated. Important exceptions nonetheless exist, and land redistribution programmes have been adopted for instance in Zimbabwe, Namibia and South Africa. Women's rights under the South African programme are analysed below (para. 2.4.4). Legislation concerning natural resources other than land usually does not explicitly address gender issues, although some exceptions exist (e.g. South Africa's water legislation).

Judicial decisions have also played an important role in determining women's rights to natural resources. On the positive side, discriminatory norms have been invalidated on constitutional grounds. In Nigeria, following a case law modifying discriminatory customary norms¹⁰, the Enugu Division of the Court of Appeal invalidated customary norms providing for inheritance by male family members only (*Mojekwu v. Mojekwu*, 1997, 7 NWLR 283), while the supreme court invalidated customary norms subjecting inheritance by daughters to their undertaking to remain unmarried (*Moujekwu v. Ejikeme*, 2000, 5 NWLR 402; both cases are quoted in CRLP, 2001). In Tanzania, the High Court invalidated customary norms preventing women from selling land (Pastory case, see below, Box 1). In the Pastory and the Ejikeme cases, the courts explicitly referred to the CEDAW.

¹⁰ *Rasaki Yinusa v. Adesubokun* (1972, SC 27/70), allowing Muslims to freely dispose of their estate by will notwithstanding customary law restrictions; *Abibatu Folarin v. Flora Cole* (1986, 2 NWLR 369), recognizing the right of a daughter to succeed to her father as household head in the absence of male children (cases quoted in Ejidike, 1999). On the other hand, in *Onwuchekwe v. Onwuchekwe* (1991, SNWLR 197), the Court of Appeal refused to reject as repugnant a custom whereby a wife is owned, along with her property, by her husband (case quoted in COHRE, 2004).

On the other hand, the Supreme Court of Zimbabwe has traditionally adopted a rigid and discriminatory interpretation of customary law, applicable in communal areas. In *Jenah v. Nyemba* (SC 4/86), the Supreme Court stated: "for African law and custom property acquired during a marriage becomes the husband's property whether acquired by him or his wife" (quoted in Gopal and Salim, 1998:7). Relying on a constitutional provision exempting succession law and customary law from the principle of non-discrimination, the Court recently upheld a customary norm excluding women from intestate succession, awarding heirship to the second male child instead of the eldest female child on gender grounds (*Magaya v. Magaya*, 1998, SC 210/98, commented in Coldham, 1999).

Customary land tenure remains widespread in Africa even where land ownership is formally nationalised or privatised. Customary rules are extremely diverse. While land traditionally belongs to the lineage and access to it is usually determined by group membership and social status, customary tenure encompasses very different institutional arrangements, ranging from common property (usually for grazing land and forests) to household farming on plots allocated by the group authority (mainly for arable land). Where land is allocated to households, households' rights vary from place to place. They are usually conditional upon the continued use of the plot; and they are usually inheritable but cannot be sold (especially to outsiders), although certain transactions are generally allowed (gifts, loans, etc.) and some systems allow land sales. In Africa, patrilineal systems prevail, whereby women's land rights are limited mainly to avoid losing family land upon women's marriage outside the family. Rights in arable land are usually allocated to the male household head, while women have "secondary" rights, i.e. cultivation rights obtained through the relationship with male family members (husbands and male relatives). Plots cultivated by women (mainly growing food crops) are often less fertile than those cultivated by men (mainly growing cash crops). Moreover, women's inheritance rights are severely limited, not only in patrilineal systems (where property devolves along the male line, to the exclusion of women), but also in matrilineal systems (where although property traces through the mother's line and women have greater rights than under patrilineal systems, land control usually rests with male family members). However, as land ownership is traditionally vested with the lineage, strictly speaking neither men nor women can "inherit" land; both have use rights, although women's rights are weaker than men's as the formers' rights are mediated

through and dependent upon the latter (Gluckman, 1969; Bruce, 1993; Lastarria-Cornhiel, 1997; Kevane and Gray, 1999b).

With population pressures, cultural change (e.g. the spread of Islam) and agricultural intensification and commercialization, many customary systems have evolved towards greater individualization. Family control over land has weakened, and the content of the rights vested in male household heads has broadened, becoming increasingly inheritable and transferable. In this context, women's secondary rights have tended to erode, while the very rationale of women's limited rights (retaining land under family control) has faded. This process of tenure individualization and erosion of women's rights has in some cases been accelerated by land registration and titling programmes (Lastarria-Cornhiel, 1997; Kevane and Gray, 1999b).

On the other hand, women enjoy important natural resource rights under customary law. For instance, women's tree rights often include the right to collect fruit and fuelwood from trees planted in men's fields or in men-controlled commons (e.g. Rocheleau and Edmunds, 1997, on the Luo of Kenya).

The HIV/AIDS epidemic is devastating the African continent, especially Southern African countries. Besides its tragic death toll, the epidemic is having a major economic impact on the worst affected countries. For example, the HIV/AIDS epidemic affects productivity by contracting available labour force and creates higher costs for health care services. HIV/AIDS also has major impacts on women's land rights. Evidence shows cases of land grabbing by male relatives following the death of a husband/father. Indeed, widows rarely inherit land under customary norms, and they are often deprived of access to their husband's land if they have no children. On the other hand, orphans may be too young to inherit. Land is therefore vested in trusteeship with uncles and other male relatives, and inherited by children when they become of age. However, there were reports of uncles cheating orphans out of inheritance, sometimes exploiting the stigma attached to HIV/AIDS (Drimie, 2002). While some recent laws have taken steps to protect the inheritance rights of widows and orphans (e.g. Eritrea's Land Proclamation Act 1994 and Tanzania's Land Act 1999), in most countries existing legislation fails adequately to respond to these new challenges.

2.4.2. Kenya

Kenyan property law does not discriminate on the basis of sex/gender. Moreover, under the Contract Act, women have contractual capacity to acquire and administer property. Family law varies according to religious belonging (Marriage Act; Mohammedan Marriage, Divorce and Succession Act; Hindu Marriage and Divorce Act; African Christian Marriage and Divorce Act; customary marriages are recognized under section 37 of the Marriage Act)¹¹. However, the property provisions are contained in the Married Women's Property Acts of 1870–1884, which are English statutes now having general application (*I. v. I.*, [1974] EA 278). Under these Acts, a married woman has the right to own property, and can sue her husband to protect her rights. Case law under this legislation establishes that, in case of division of family property, women are entitled to half of the family property if they can prove contribution (Walsh, 2005). While this legislation should apply also to customary marriages, in practice it is very rarely followed, as many women are not aware of their rights, and often end up with much less than half of the family property (Walsh, 2005).

Under the Law of Succession Act of 1972 (into operation in 1981), female and male children have the same succession rights, and widows have a life interest (i.e. an usufruct) in the intestate estate (which women, differently to men, lose if they remarry). However, inheritance of agricultural lands, crops and livestock continues to be governed by customary law (sect. 33), according to which wives and daughters usually do not inherit family property (Gopal and Salim, 1998; Mackenzie, 1998). While this norm should only apply to certain "gazetted" districts, misinterpretation of the Act is widespread, and some judges are reported to have applied this exemption to all rural land, not just land in "gazetted" districts (Walsh, 2005). A 1990 amendment exempted Muslims from the application of the Act, and provided for the application of Islamic laws of succession (Walsh, 2005). In rural areas, it is widespread practice for fathers to leave land to their sons, in the expectation that daughters would be cared for by their husbands; this practice was upheld by the courts in the Njeru Kamanga case (Succession Case No. 93 of 1991, unreported, quoted in CRLP, 1997). A

¹¹ Under Section 82 of the Kenyan Constitution, family law is exempted from the principle of non-discrimination.

draft Constitution affirming, among other things, women's equal right to inherit land was recently rejected in a national referendum.

Land tenure in Kenya encompasses individual private property, group private property, state property, and land held in trust by the state. As for private property, land ownership by women is rare. Studies from Kajiado, Kisumu, Mombasa and Muranga found that the majority of women do not own any land (Gopal and Salim, 1998).

A considerable amount of legislation governs trust land, which accounts for some 90 percent of the total land. In these areas, land titles are vested with county councils, which are to give effect to land rights existing under customary law (although they can also allocate land to non-residents and persons without customary title) (Constitution, Sects. 115–120; Trust Land Act of 1963). Moreover, a land tenure reform to convert customary rights into freehold was adopted by the colonial authority and continued by the post-independence government (Swynnerton Plan of 1954; Registered Land Act of 1963; Land Adjudication Act of 1968). Under these norms, land has been registered systematically (i.e. not upon application by landholders) in three phases: adjudication, i.e. ascertainment of existing customary land rights; consolidation, i.e. aggregation of fragmented holdings (with landholders exchanging dispersed for contiguous plots); registration, i.e. recording of titles over consolidated plots and their conversion into freehold. As for grazing land, the Land (Group Representatives) Act of 1968 allows the registration of collective property (ranging from families to "tribes") through the creation of "group ranches"; however, many group ranches have subsequently been divided. Implementation of the Swynnerton Plan is still underway.

These norms do not formally discriminate against women. For instance, the Registered Land Act does not exclude women from possible title holders, and uses gender neutral words like "proprietor". However, the land tenure reform has affected women's land rights. The reform intervened in a context where customary law was evolving towards increasing individualization, with an erosion of women's customary land

rights¹². In this context, the implementation of the land registration programme, carried out in a period in which gender was not in the development agenda, accelerated the individualization process and further curtailed women's land rights. First, land adjudication committees were male-dominated; in Luoland, for instance, all adjudication committee members were male (Shipton, 1988). Moreover, although all land rights, including under customary law, had to be recorded during adjudication (Land Adjudication Act, sect. 23), adjudication committees lacked skills and time to do so. Registration was usually made to male household heads, thereby undermining women's unregistered secondary rights. In Kanyamkago, for instance, only 7 percent of the plots were registered to women as joint or exclusive right-holders, and 4 percent to women as exclusive owners (Shipton, 1988). Widespread non-registration of women's rights is also documented for the Kikuyu (Mackenzie, 1998) and the Maasai (Galaty, 1994).

Although some judgements have protected non-registered right-holders by giving effect to or creating trusts (e.g. *Muguthu v. Muguthu*¹³), the dominant judicial interpretation is that registration extinguishes all non-registered rights (*Obiero v. Opiyo*; *Esiroyo v. Esiroyo*¹⁴). The negative effect of registration for the holders of secondary rights was aggravated by the exemption of the first registration from court rectification on grounds of fraud or mistake (Registered Land Act, sect. 143(1)).

¹² For instance, in the Murang'a District, Kikuyu land tenure (*ng'undhi*) traditionally vested land in the *mbari* (sub-clan), which allocated plots to household heads; women had usufruct rights and were excluded from inheritance. In the early 1900s, an individualization process took place, with the *mbari* progressively losing control over land. As land sales became allowed, wealthier men purchased land as individuals. Moreover, while different interpretations of "custom" were invoked by men and women competing for land, men's interpretation tended to prevail, as male elders were considered the interpreters of "tradition" by the colonial authority. This process resulted in an erosion of women's secondary land rights (Mackenzie, 1998).

¹³ HCCC No. 377/1968. This redress mechanism is allowed by the fact that section 126 of the Registered Land Act states that "particulars of any trust" existing at the moment of registration are not to be entered in the register.

¹⁴ [1972] EA 227 and [1973] EA 388, respectively. Most of these cases concern the effect of registration to the household head on children's secondary land rights (and some cases involve disputes between widows and sons). However, the principles affirmed in them are also relevant for other holders of secondary rights, namely women.

Moreover, section 144(1)(b), granting a right to indemnity to persons damaged by registration mistakes or omissions which cannot be rectified, explicitly excludes mistakes and omissions in the first registration¹⁵.

Furthermore, in some areas consolidation of fragmented landholdings under the land tenure reform curtailed the relatively independent managerial control that women exercised over the dispersed family plots they cultivated (Fleuret, 1988).

On the other hand, some women gained from registration. For instance, widows sometimes registered land in their name, instead of returning it to the dead husband's family under customary law (Shipton, 1988). Moreover, there is evidence that women's customary secondary rights (e.g. access to men's fields to harvest trees and graze livestock) are still de facto recognized (Rocheleau and Edmunds, 1997). In addition, the establishment of a (gender neutral) land market enabled women to purchase land on a (formally) equal position to men, abolishing customary limits to women's land rights. Indeed, there are reports of women who have purchased land, both as individuals and in groups, and registered it in their name (Fleuret, 1988; Mackenzie, 1993 and 1998; Rocheleau and Edmunds, 1997). However, women's constrained access to capital (credit, employment in the formal sector, etc.) limited their ability to gain access to land through purchases (Mackenzie, 1993 and 1998).

The operation of Land Control Boards is also relevant for women's land rights. Under the Land Control Act of 1967, land transactions require the approval of the competent Land Control Board, which decides on the basis of economic and social criteria (e.g. prevention of uneconomic subdivision and of landlessness, respectively). On the one hand, the Constitution states that the principle of non-discrimination by public authorities does not apply to the activity of Land Control Boards (Sect. 82(6)(b)). As for the composition of the Boards, more than one-half of the board members must be "owners or occupiers of agricultural land within the province" (Land Control Act, Schedule, art. 1); given the little share of land owned or occupied by women, this provision may constitute indirect discrimination. In addition, for a long time no women

¹⁵ The rationale of these norms was essentially political, as they aimed at damaging Mau-Mau rebels, who were largely absent when registration started, and at rewarding loyalists (Coldham, 1978b).

representation was specifically required. Recently, the Lands Ministry has reconstituted Land Boards to include one-third representation of women (Walsh, 2005).

On the other hand, Land Control Boards have in many cases protected women's land rights, e.g. by hearing the views of the spouse before approving land transactions and by refusing approval for transactions that ignored unregistered land interests. This mechanism reduced the negative effects of the immunity to challenge for mistake or fraud enjoyed by first registrations under section 143(1) of the Registered Land Act. However, this practice is not followed by many Land Control Boards (Walsh, 2005). There have also been reports of men bribing Board members, bringing imposter "wives" to the Board to consent to land transfers, and threatening their wives with violence or eviction if they withhold consent (Walsh, 2005). And, many transactions are in practice carried out even when Land Control Boards refuse approval (Coldham 1978a; Gopal and Salim, 1998).

The land rights of many rural women in Kenya are limited. The extent of these rights is determined by the interplay of customary and statutory law. Customary rules are invoked by women to challenge registration benefiting exclusively men, and by men to limit the rights acquired by women under statutory succession law (Mackenzie, 1993)¹⁶. Walsh (2005) reports numerous examples of violations of women's rights in access to land, including inheritance practices discriminating against daughters;

¹⁶ An interesting example of women's use of customary law to protect their access to natural resources is the institution of the "female husband", whereby a widow without descendants marries a younger woman, and her wife and the children of the wife become her heirs. This institution was often used by wealthy widows to protect their access to their deceased husbands' land *vis-à-vis* their husbands' family members, both by giving the younger wife part of the land as bride wealth and by providing the "female husband" with heirs. Today, this practice is no longer very common, although some cases exist (Mackenzie, 1993 and 1998). In March 2002, a Kikuyu woman (Ms Grace Wanjiru Ngundu) brought a suit against the male relatives of her late female husband, who had tried to evict her from the land owned by the deceased female husband; Ms Ngundu's case, brought before courts, is to be based on customary law (BBC Web site, 11 March 2002). Similar practices are reported from other parts of Africa (e.g. Kevane and Gray, 1999b, and, on Nigeria, Ejidike, 1999); in Nigeria, a woman-to-women marriage was declared null because contrary to natural justice, equity and good conscience in *Meribe v. Egwu* (1976 1 All NLR 266, quoted in Ejidike, 1999).

constraints in women's access to land after separation or divorce; and customary practices such as "wife inheritance" and "cleansing" (the longer-term union and the one-time sexual encounter, respectively, between a widow and a male relative of the deceased, as a condition for the widow's continued access to land).

Water rights are linked to land tenure. Under section 27(a) of the Registered Land Act, registration vests in the titleholder not only "absolute ownership of the land", but also "rights appurtenant thereto", including water rights. Under the Water Act, water ownership is vested in the state, and individuals can only have usufruct rights obtainable through a permit issued by the competent ministry. However, it is usually landowners that apply for permits for irrigation purposes, and some domestic uses by riparian landowners do not require a permit. Therefore, the gender-biased land distribution entails unequal water rights (Torori *et al.*, 1996).

Under customary law, although women usually cannot plant trees (e.g. among the Luo), they have other well-established tree rights (e.g. the right to harvest fuelwood and fruit from communal and men-owned land). These rights are highly differentiated on the basis of age (with older women usually having stronger tree rights) and, in polygamous households, of marriage order. For instance, among the Luo of Siaya District, while citrus trees are owned by men, the fruits belong to the first wife. However, women's customary rights of access and collection in common property lands are being eroded by agricultural commercialization processes, involving privatization of the commons usually to benefit male household heads (Rocheleau and Edmunds, 1997).

2.4.3. Burkina Faso

Family and succession law is embodied in the Persons and Family Code of 1990. With some important exceptions, this is inspired by the western model of family (and of women's position therein). Thus, article 234 prohibits levirate (i.e. forced remarriage of the widow with the heir of her deceased husband). An important exception to the western model is the permission of polygamy; this was prohibited in the original draft code, but was subsequently allowed following intense popular pressures (Cavin, 1998). The matrimonial regime is community of property in case of monogamy, and separation of property in case of polygamy (art. 309). Sex discrimination within marriage is prohibited by Article 23 of the Constitution.

The surviving spouse is among the intestate heirs, entitled to a share varying according to whether or not there are descendants (Arts. 742–744). In case of polygamy, the same rules apply, and the surviving wives divide the widow's share (Art. 745). Children inherit without discrimination based on sex or origin of filiation (Art. 733). However, daughters often "voluntarily" renounce to their statutory inheritance rights to land and livestock in favour of their brothers, on whose support they frequently depend (Puget, 1999).

As for general property law, Article 15 of the Constitution, guaranteeing the right to property, makes no distinction on the basis of sex/gender. The norms of the Civil Code concerning property (arts. 544 ss.) are gender neutral.

Burkina Faso has had several agrarian reforms in the last two decades (1984, 1991, and 1996). Under Law No. 014/96/ADP of 1996, land ownership is vested with the state (arts. 2–4), but can be transferred to private persons (art. 5). Under the Law, men and women have equal land rights. State-owned land is allocated to physical persons without distinction based on sex or marital status (art. 62). Article 68, concerning land alienation to private persons, does not explicitly state the principle of non-discrimination but is gender neutral. At village level, land is managed by "*commissions villageoises de gestion des terroirs*" elected or nominated "*suivant les réalités historiques, sociales et culturelles*" (art. 46); there are reports that village institutions are in practice dominated by male elites (Engberg-Pederson, 1995; Pander, 2000; Ki-Zerbo, 2004). The 1996 Law also contains gender neutral norms on property rights in general and on water resources.

The Forest Code of 1997 contains no gender-specific provisions. Customary "domestic use" rights in public forests (generally harvesting of fruits and fuelwood by women) are recognized (art. 55 ss.).

Thus, legislation does not formally discriminate against women. In rural areas, however, it is customary law that is in practice mostly applied. Here follows a brief description of the customary rules of the Mossi, the majority ethnic group of Burkina Faso. Under Mossi customary law, land ownership belongs to the ancestors. Land is allocated by the "earth priest" ("*chef de terre*"), who is the intermediary between the ancestors and the alive. Only men can perform this function. Women do not have direct land rights, but access land through husbands and male relatives.

Every man has a duty to marry and allocate his wife a piece of land for her own agricultural activities. Women control the crops they grow (although these must be used to meet the household subsistence needs) and a share of the crops grown through their labour in their husbands' fields. A widow may return to her family of origin, and be allocated land there; marry a younger brother of the deceased husband (levirate); or remain as widow with the in-law family. In the latter two cases, the widow maintains access to her husband's family land. The degree of women's freedom in levirate choices varies, ranging from quasi-compulsory remarriage in some groups to a considerable freedom to choose in others; in urban areas, women increasingly refuse remarriage. Levirate is formally prohibited by statutory law (Persons and Family Code, art. 234). Divorced women are to marry again, so as to gain access to the new husband's land, and can be temporarily allocated plots by their family of origin. Moreover, women may borrow land from persons outside the family, although they have no secure tenure and their use rights are limited (e.g. they cannot plant trees). Women (wives or daughters) usually do not inherit land, although in some regions they enjoy greater inheritance rights. Even Muslim women, who under Shari'a law are generally entitled to half the share of men, tend to waive their rights in favour of their brothers. Population pressures and increasing land scarcity are further weakening women's land rights: for instance, there are reports of husbands not allocating plots to their wives because they do not own enough land (Cavin, 1998; Kevane and Gray, 1999a; Pander, 2000).

Field studies suggest that some public irrigation projects entailed reallocations of land and water rights that disadvantaged women. In Comoé Province, for instance, while men control land on the uplands and grow groundnuts and cotton, women have land rights in the bas-fonds (lowlands) and cultivate rice. While land chiefs are men, land-cum-water authorities in the bas-fonds are often women. In this context, a water infrastructure project ("*Opération Riz*", 1979–1993) was undertaken under Law 29 of 1963, which empowers the government to expropriate existing resource rights and reallocate lifelong tenancy rights over the improved resource. In the first phases of the implementation, the project relied on male chiefs and on a male-biased interpretation of customary law. After the construction of the infrastructure, improved bas-fond plots (and relating water rights) were allocated to (male) household heads, ignoring women's pre-existing rights. In subsequent phases of the project, this gender bias was removed: women participated in the

decision-making process and obtained land-cum-water rights (Van Koppen, 1998; see also Kevane and Gray, 1999a; Pander, 2000)¹⁷.

2.4.4. South Africa

The property-related provisions of South African family law were amended in the 1980s and 1990s to improve women's position. For centuries, Roman-Dutch common law granted the husband a "marital power", whereby he exclusively administered family property and, unless otherwise specified in the antenuptial contract, the separate property of the wife. Marital power was progressively restricted by statutory norms (e.g. the Matrimonial Affairs Act of 1953). Under the Matrimonial Property Act of 1984, the spouses can choose the matrimonial regime they prefer (community of property; separation of property; partial community; or "accrual" system, whereby properties remain separated during marriage, but the spouses share "accruals" upon termination of marriage); in the absence of explicit choice, community of property applies. Under this regime, the spouses equally own and administer common property; marital power is abolished. The General Law Fourth Amendment Act of 1993 repealed the last surviving norms on marital power¹⁸.

Women married under customary law have long been discriminated against. Under section 11(3) of the Black Administration Act of 1927, customary wives were considered minors subject to the guardianship of their husbands. This norm was repealed by the Recognition of Customary Marriages Act of 1998, which grants customary wives "full status and capacity, including the capacity to acquire assets and to dispose of them, to enter into contracts and to litigate" (sect. 6). Customary marriages entered into after the commencement of the Act create a community of property regime, unless the spouses agree differently (while existing marriages remain governed by customary rules) (sect. 7).

Statutory succession law (Maintenance of Surviving Spouse Act of 1990 and Intestate Succession Act of 1987) recognizes women's inheritance rights. However, section 23 of the Black Administration Act provided

¹⁷ A similar process of erosion of women's rights in the context of irrigation projects is documented for The Gambia in Dey (1981) and Kevane and Gray (1999b).

¹⁸ The Matrimonial Property Act of 1984 only applied to marriages celebrated after 1984; the 1993 Amendment Act extended it to all marriages (sect. 29).

for the application of a customary law to the inheritance of property belonging to "a Black". Customary law and regulations enacted on the basis of customary law severely restrict women's succession rights by providing for inheritance by the eldest son (principle of primogeniture). A first constitutionality challenge to these rules was rejected in *Mthembu v. Letsela and Another*¹⁹. However, in the more recent case *Bhe v. Magistrate, Khayelitsha and Others*, the Constitutional Court declared these norms discriminatory and thus unconstitutional. In striking down section 23 of the Black Administration Act and other related customary and statutory norms, the Court provided for the application of the Intestate Succession Act – pending legislative reforms to be adopted by the parliament²⁰. The Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 prohibits norms and practices unfairly discriminating against women in the inheritance of family property, as well as, more generally, any "traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men" (sects. 6 and 8(c) and (d)).

South African land law is characterized by the Roman-Dutch common law tradition, by the legacy of apartheid and by the post-apartheid land reform efforts. Sections 6 and 8(e) of the Promotion of Equality and Prevention of Discrimination Act of 2000 prohibit "any policy or conduct that unfairly limits access of women to land rights". Section 25 of the 1996 Constitution commits the government to a land reform to "enable citizens to gain access to land on an equitable basis". The government has launched a comprehensive land reform programme based on:

- Land restitution, providing for restoration of land confiscated after the Natives' Land Act of 1913 and subsequent legislation, which restricted Africans' access to land to 13 percent of the territory, or for provision of alternative land or payment of compensation;
- Land redistribution, based on the "willing-buyer willing-seller" principle and on state-funded grants;
- Land tenure reform, to increase farmers' tenure security, both for farm workers and labour tenants in white-owned farms and for farmers in the former homelands.

¹⁹ 1997 (2) SA 936 (T); Provincial Division, 1998 (2) SA 675 (T); Supreme Court of Appeal, Case No. 71/98, 30 May 2000.

²⁰ Case CCT 43/03, 15 October 2004.

Gender equity is one of the fundamental principles of South Africa's land reform (White Paper on Land Policy of 1997 and Land Reform Gender Policy of 1997). To promote this principle, the White Paper envisages several instruments, including the removal of legal restrictions on women's access to land, gender-sensitive participatory methodologies, provision of financial assistance for women, registration of redistributed land in the name of women and priority for women applicants for grants (paras. 4.11, 4.22, etc.). Criticism of the gender approach of the White Paper includes the fact that women are treated as a distinct, homogeneous disadvantaged group, rather than as a highly differentiated group cross-cutting different classes, and the lack of gender-specific targets to assess progress in land reform implementation (Hargreaves and Meer, 2000; Jacobs, 1998a; RSA/CGE, 1998).

As for the restitution component of the reform, the Restitution of Land Rights Act of 1994 is non-discriminatory (e.g. under sect. 2(1)(a), a right holder may be a "he" or a "she"). However, restitution is unlikely to substantially benefit women, as it was men who owned and were dispossessed of most land, and who thus have most claims under the Act (RSA/CGE, 1998). A provision directly benefiting women is section 3 of the Restitution of Land Rights Act, which allows land claims by persons who registered land to nominees because they were prevented from registering it in their own name by racially discriminatory laws. In particular, section 11(3)(b) of the Black Administration Act prevented black women married under customary law from holding property. In *Hadebe v. Hadebe and Another* (LCC 138/99, 14 June 2000), a black woman had purchased land but registered it to her son as a nominee because of section 11(3)(b) of the Black Administration Act (and of similar provisions of the Natal Code of Bantu Law). After the enactment of the Restitution of Land Rights Act, she brought a claim before the Land Claims Court to transfer the property into her name. The Court argued that the racially discriminatory statutory provisions were inconsistent with the principle of equality stated in the Constitution, and ordered the property transfer in favour of the woman.

Land claims under the Land Restitution Act may also be filed by communities. These tend to be viewed as homogeneous entities, ignoring differentiated interests along gender lines, and to be dominated by men (Daniels, 2001). In this regard, the Land Claims Court may impose conditions to ensure that all the dispossessed members of the

community, thus including women, have access to the land or the compensation on a non-discriminatory basis (Restitution of Land Rights Act, sect. 35(3)). Moreover, the Land Claims Court may "adjust the nature of the rights previously held by the claimant" (sect. 35(4)); presumably, constitutional principles, including gender equality, are to be taken into account in these adjustments. However, there are some reports of exclusion of women married outside the community (RSA/CGE, 1998).

Under the redistribution component, both women and men can purchase land, using a subsidy paid by the government. Because of their limited access to capital (credit and formal employment), women may face difficulties in purchasing land in the market-assisted land redistribution programme. Communal Property Associations, established under the Communal Property Associations Act of 1996, can provide a useful legal tool for group purchase by women. While anecdotal evidence suggests that women are less informed about the land reform programme than men (Baden *et al.*, 1999), available data shows a substantial participation of women in the redistribution programme. The database of the Department of Land Affairs reports that 47 percent of the beneficiaries of the projects completed or underway under the redistribution programme are women (quoted in Walker, 2000); however, the data does not allow to distinguish between women individual beneficiaries and joint beneficiaries (couples), nor to understand who would in practice control the land regardless of the formal beneficiary (Walker, 2000).

The land tenure reform aims at increasing tenure security *inter alia* by prohibiting eviction of persons occupying land with the consent of the landowner (Extension of Security of Tenure Act of 1997, ESTA) and of holders of "permissions to occupy" issued by the state under apartheid legislation applicable to the homelands (Interim Protection of Informal Land Rights Act of 1996, applicable pending the adoption of the Communal Land Rights Act 2004, see below). The terminology adopted in this legislation is gender neutral (e.g. "occupier" under ESTA) or explicitly non-discriminatory (right holders are referred to as "he or she" e.g. ESTA, sect. 6(1), and the Interim Protection of Informal Rights Act, sect. 2(1)). Under ESTA, criteria for the allocation of subsidies for land acquisition and development include the application by occupiers who are spouses of occupiers aged over 60 (sect. 4(2)(e)). The occupation rights of labour tenants' family members are protected by the Land Reform (Labour Tenants) Act 1996. In addition, the preamble of the

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (1998) states that special recognition should be given to the rights and needs of various groups, including female-headed households. Finally, the Communal Property Associations Act of 1996 creates new forms of collective landholding, enabling communities to own and manage property through associations endowed with legal personality, and requiring such associations to comply with several principles, including non-discrimination on the basis of sex and gender (sect. 9).

The Communal Land Rights Act 2004 deals with land issues in the former homelands. Fifteen million people live on these lands (COHRE, 2004). The Act converts into freehold the "permissions to occupy" (PTO) granted under previous legislation on the basis of customary law – and therefore largely held by male household heads. While it states the principle of gender equality in land rights, it designates the Traditional Councils as the administrators of land rights. Given the heavy gender bias of these institutions, this is likely to entrench patriarchal power relations (COHRE, 2004).

Notwithstanding this non-discriminatory tenure reform legislation, socio-cultural practices often prevent rural women from holding land titles (RSA/CGE, 1998). In the former homelands, customary land tenure is applied. Under these rules, women are rarely allocated plots by chiefs, and usually gain access to land only through their fathers and husbands. Land cultivated by women is often the poorest and most inaccessible one. Widows have no right to remain in their deceased husband's land (Bob, 1996; Levin *et al.*, 1996; RSA/CGE, 1998; Baden *et al.*, 1999). However, there is considerable variation, depending on the region and the political alignment of the chiefs: for instance, in Northwest Province, some ANC-aligned chiefs have allocated land to married women (though not to single women with children) (Jacobs, 1998a); on the other hand, much more conservative practices are reported from KwaZulu-Natal (Baden *et al.*, 1999).

In addition, Pilot Land Reform programmes explicitly require women's participation in project planning. Field studies from Western Cape, North West Province and Mpumalanga suggest however that women's participation is in practice limited, both in the number of members in management committees and in the extent to which female elected members have their voice heard in meetings. Some exceptions nonetheless

exist: in Mpumalanga, four out of 15 members of the Management Committee, including the chairperson, are women (Jacobs, 1998a).

The National Environmental Management Act of 1998 (NEMA), which is South Africa's framework environmental law, includes ensuring equitable access to environmental resources, as well as taking special measures to ensure access by categories of persons disadvantaged by unfair discrimination, among the National Environmental Management Principles (sect. 2(1)). The Act also makes provision for the establishment of the National Environmental Advisory Forum; in appointing its members, the minister must take into account the desirability of appointing certain categories of persons, including women (sect. 4).

With regard to water, the report of the South African Commission for Gender Equality (1998) found *de facto* sex/gender discrimination, and stated: "rights to water are intrinsically linked to land rights. Therefore control, access and quality of water inequitably reside with those enjoying riparian rights and land ownership. This means that rural women, who historically do not own land and whose traditional duty is to ensure that the household is supplied with water, bear the burden of having to travel long distances carrying heavy loads of water". The water regime has significantly changed under the National Water Act of 1998, which has placed all fresh water resources under the trusteeship of the state (sect. 3). While seeking to protect water resources, the Act simultaneously seeks to redress the inequitable access to, and control over, fresh water resources. Indeed, its purposes include promoting "equitable access to water", redressing the results of past gender discrimination, and ensuring "appropriate" gender representation in the competent institutions (sect. 2). The need "to redress the results of past ... gender discrimination" must be taken into account in the issuance of licences (sect. 27(1)(b)), in the allocation of financial assistance (sect. 61(3)(c)), and in the performance of the functions of the catchment management agencies (sect. 79(4)(a)). The members of the governing board of catchment management agencies are appointed by the responsible minister, who may also appoint additional members to achieve "sufficient" gender representation (sect. 81(10)(b)).

As for forests, although the Forest Act of 1998 does not specifically mention gender, some of its provisions are relevant. The guiding principles enshrined in section 3 include the promotion of "fair

distribution of their economic, social, health and environmental benefits", and the advancement of "persons or categories of persons disadvantaged by unfair discrimination". Moreover, community forest agreements between the state and local communities must not discriminate unfairly (sect. 31). In addition, the National Forests Advisory Council, providing advice to the competent minister, includes representation of civil society, particularly "categories of persons disadvantaged by unfair discrimination" (sect. 34).

Finally, in relation to marine living resources, the Marine Living Resources Act of 1998, while not specifically mentioning gender, requires the minister to have regard to new entrants, particularly those from historically disadvantaged groups (which would include women), in the allocation of fishing rights.

Box 1. The Pastory case in Tanzania

A landmark case on women's land rights is the Tanzanian case *Ephrahim v. Pastory and Another* (High Court of Tanzania at Mwanza (PC), Civil Appeal No. 70 of 1989, reported in 1990 LRC (Const) 757 and in Peter, 1997). In this case, a discriminatory customary land tenure rule was invalidated because of inconsistency with the Constitution and with international human rights law. Customary law is formally part of the Tanzanian legal system: in *Maagwi Kimito v. Gibeno Werema* (Court of Appeal of Tanzania, Civil Appeal No. 20 of 1984), the Court stated: "the customary laws of this country have the same status in our courts as any other law, subject to the Constitution and to any statutory law that may provide to the contrary".

The facts of the Pastory case are as follows. A Haya woman who had inherited land from her father under testamentary succession sold it outside the clan. A male clan member brought an action to declare the sale void, as women could not sell land under Haya customary law (as codified in the Declaration of Customary Law of 1963, Laws of Inheritance, sect. 20).

The High Court invalidated the discriminatory norm on the basis of the principle of non-discrimination on the basis of sex, affirmed in article 13(4) of the Bill of Rights (introduced by the Fifth Constitutional Amendment Act of 1984 and by the Constitution (Consequential, Transitional and Temporary Provisions) Act of 1984) and in international human rights treaties ratified by Tanzania (CEDAW, ICCPR, and ACHPR). The Court stated that Haya women could sell land on the same conditions as Haya men, and held the disputed land sale valid.

Interestingly, a similar case brought before the adoption of the Bill of Rights (*Lutabana v. Kashaga*, 1981 TLR 122) had been decided differently. In that case, the Court of Appeal held that women only had a life interest in inherited land, and therefore could not sell or bequeath it.

2.5. Northern Africa and the Middle East

2.5.1. Regional overview

Some countries are not parties to the CEDAW (e.g. United Arab Emirates), while others have ratified it with reservations for the application of Shari'a law, either as general reservations or with regard to specific articles, particularly article 16 on family relations (Egypt, Kuwait, Libyan Arabjamahiniya, Morocco and Saudi Arabia). The Arab Charter on Human Rights recognizes the right of every citizen to own private property without discrimination between men and women (arts. 25 and 2), but it is not in force.

At national level, family and succession laws usually follow Shari'a norms. The status of women under Shari'a law varies considerably according to the country and the prevailing school of jurisprudence. For instance, women enjoy greater rights under the Hanafi school (traditionally based in Kufa, Iraq) than under the Maliki school (traditionally based in Medina). However, generally speaking, Shari'a norms are usually interpreted so as to vest family direction in the husband/father (e.g. verse 34 of Sura an-Nisaa of the Quran). Women's inheritance share is usually half that of men in a similar succession position. For instance, daughters usually get half of what sons get. If there is more than one widow, they must divide the widow's share among them. Restrictions on women's inheritance are usually justified on the ground that male family members have an obligation to provide support to female members, while the latter have no obligation to support others. However, women are often left without adequate enforcement guarantees (Hussain, 1999; Gopal and Salim, 1998). In areas where inheritance is the main form of land acquisition, discrimination in inheritance rights severely affects women's access to land. Moreover, there are reports of rural women renouncing even to their limited inheritance rights in favour of male relatives (Baden, 1992).

Some countries have enacted codes or laws that, while incorporating Shari'a norms, improve the position of women (e.g. Tunisia). In Turkey, where the legal system is explicitly secular, the Civil Code of 2001 has significantly improved the position of married women compared to the previous 1926 Civil Code. Under the new Code, the husband is no longer the household head (art. 186), and men and women have equal status within marriage (art. 188). The Code has also introduced the regime of community of property with equal shares for the spouses, but only with regard to property acquired after 1 January 2003. In Morocco, a revised Family Code, adopted in 2004, improves women's legal status – for instance raising women's minimum age for marriage, adopting the principle of divorce by mutual consent, and invalidating verbal repudiation by the husband.

Very little data is available on the amount of land owned by women. However, reports indicate that land ownership by women is rare throughout the region, although great intra-regional variation exists. Women own 28.6 percent of the land in Jordan, 4.9 percent in the United Arab Emirates, and 0.4 percent in Oman. Even where land is owned by women, women's plots are often smaller than men's, and remain under the control of male family members (FAO, 1995b).

2.5.2. Tunisia

Within this context, Tunisia has a particularly advanced legislation. The Personal Status Code 1956 (as amended in 1981 and 1993) codifies Shari'a law on the one hand and improves women's position on the other²¹. While the husband is the household head (art. 23(4)), both spouses are to "co-operate" in the management of family affairs (art. 23(3)). The matrimonial property regime has long been separation of property; Law 98-91 (1998) allows spouses to opt for the community of property regime, entailing that common goods may be transferred only with the consent of both spouses; lacking this option in the matrimonial contract, separation of property applies. The husband has no control over the separate property of the wife (Code, art. 24).

²¹ For instance, it abolishes polygamy (art. 18) and grants both spouses the right to request divorce, subject to judicial review (art. 31); in several Islamic countries, termination of marriage is carried out by the husband alone through unilateral repudiation.

Conjugal obligations are to be fulfilled according to customs (art. 23(2)), which may reflect stereotyped gender intra-household division of roles.

Succession law is based on Shari'a law (particularly the Malekite tradition), which severely limits women's inheritance rights. Widows and daughters are among the necessary heirs ("*héritiers réservataires*"; art. 91). Generally speaking, women inherit half of the share inherited by equally related men. For example, a widow gets a quarter of the estate if there are no children, and an eighth if there are children, while a widower gets a half or a quarter of the estate, respectively (arts. 93–95). In case of only child, the son is "universal heir" (art. 114), while the daughter is entitled to half the estate (art. 93). Moreover, some family members have inheritance rights only if they are male (e.g. uncle and cousins, art. 90).

The negative effects of the discriminatory succession norms on women's land rights are particularly acute, as inheritance is the primary means of acquiring land rights in Tunisia; for instance, a village-level study in the Sidi Bou-Zid region found that inheritance accounted for over 70 percent of land acquisitions in most covered villages, and in some cases even for 100 percent (e.g. in Mliket). The study also reveals that customary rules excluding women from inheritance are followed in rural areas. Therefore, where women marry outside the clan, they do not claim their statutory inheritance rights over land, as this would be perceived as inappropriate and as an offence to their male family members (Ferchiou, 1985).

Property law ("*Code des Droits Réels*") and contract law ("*Code des Obligations et des Contrats*", particularly art. 3) are gender neutral: men and women can equally acquire and own property.

The major features of Tunisian agrarian legislation include: the abolition of the traditional *habous* land tenure regime (Decrees 31 May 1956 and 18 July 1957, as amended, lastly by Law 2000-24 of 2000); the regulation of private property of agricultural lands and the transfer to the state of vacant lands (Law 64-5 of 1964); the regulation of common-property lands (Law 64-28 of 1964, as amended); the registration of rural land titles (Decree-Law 64-3 of 1964, as amended), and the protection of land occupation by farmers exploiting or developing the land ("*mise en valeur*") (Law 74-53 of 1974, as amended, lastly by Law 2000-10 of 2000); and the realization of an agrarian reform in irrigated lands (e.g. Law 58-63 of 1958, as amended, for the Medjerma Valley). This legislation is gender neutral, and applies

equally to men and women farmers. However, in practice few rural women own land, both because of legal obstacles contained in other areas of law, particularly succession law, and because of cultural factors.

2.6. Asia

2.6.1. Regional overview

The Asian continent includes extremely different environmental, political, social, cultural and economic realities. Natural resource legislation is also extremely diverse, encompassing state ownership (Viet Nam²²), ownership by peasant collectives (post-1978 China), comprehensive agrarian reform programmes involving transition to market economy (Central Asia), private ownership (e.g. Philippines), and systems influenced by Islamic law (e.g. Bangladesh, Pakistan). In South and Southeast Asia, owner cultivation and tenancy (particularly sharecropping) are dominant, although plantations are also present. This diversity is reflected in a great intra-regional variation in women's rights to natural resources.

In socialist countries, legislation granting farmers land use rights on state – or collective – owned land usually does not discriminate against women; however, entrenched customary norms and patriarchal culture constrain women's access to land (e.g. on Viet Nam, Hood, 2000).

In some Central Asian states (e.g. Kyrgyz Republic and Uzbekistan), the holder of land rights is the household, and land titles are issued in the name of the household head (usually the eldest man). Therefore, women have access to land only through their husbands and/or male relatives (Giovarelli and Duncan, 1999).

In some predominantly Muslim countries (Pakistan and Bangladesh), Shari'a norms limiting women's inheritance rights (usually to half of men's share) are incorporated into statutory law (e.g. for Pakistan, the West Punjab Muslim Personal Law (Shariat) Application Act 1948).

²² Although partial privatization reforms have been adopted with Directive 100 of 1981, Resolution 10 of 1988 and the Land Law of 1993, which introduced production contract systems (with farmers leasing land) and the transfer of land use rights to farmers.

As for water resources, in some countries legislation concerning management of irrigation infrastructure by water user associations explicitly refers to gender. For example, the Nepalese Irrigation Regulation of 2000 requires that executive committees of water user associations include at least two women (out of nine members) (art. 3(1)), although field studies reveal that women's participation in water users' associations is in fact very low (Zwarteveen, 1995)²³.

In most countries, the enforcement of statutory legislation is scarce, especially in rural areas, and customary and religious law are mostly applied. Customary law systems are extremely diverse in Asia. In some cases, they are patrilineal and prevent women from gaining direct land rights (e.g. the customary law systems of the Punjab). In other cases, women can own, inherit, acquire and dispose of property in their own right (e.g. in matrilineal and bilateral systems in Thailand and the Philippines).

2.6.2. India

In India, personal law varies according to religious belonging²⁴. While reforms have been brought about, particularly to improve the position of women, statutory law mainly reflects religious norms. Hindus are governed by the Hindu Marriage Act of 1955, as amended, and the Hindu Succession Act of 1956. Muslims are governed by the Muslim Personal Law (Shariat) Application Act of 1937 and the Muslim Women's (Protection of Rights on Divorce) Act of 1986. Christians and Parsis are governed by the relevant family laws (the Christian Marriage Act and the Parsi Marriage and Divorce Act, respectively) and by the Indian Succession Act of 1925 (as amended in 1991). All Indians contracting or registering marriage under the Special Marriage Act of

²³ Membership of water users' associations is generally limited to one member per household, usually the male household head (regardless of men's and women's water use). In the Chhattis Mauja Irrigation System (Nepal), no woman is member of the water users association (even though in some villages there is a high number of de facto female-headed households). The lack of women representation is due to entrenched socio-cultural practices reserving decision-making to men and, in some cases, to a lack of interest on the part of women (Zwarteveen, 1995).

²⁴ This paragraph draws extensively on the excellent work of Agarwal (1994 and 2001).

1954, as amended, are governed by this Act and by the Indian Succession Act²⁵. Article 44 of the Indian Constitution (included among the Directive Principles of State Policy) states that "the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India", thereby ending the regime of differentiated personal laws. In *Sarla Mudgal and Others v. Union of India and Others*, a Supreme Court judge directed the government to adopt a uniform civil code in order to comply with the Constitution and the CEDAW²⁶. However, no such action has been taken yet. Given the importance of religious norms in India's personal laws, it is worth briefly reviewing some key norms affecting women's rights.

Traditional Hindu law (codified in legal treaties – the *shastras* – between 200 BC and 300 AD) was divided in two main legal doctrines, Dayabhaga (mainly applied in Bengal and Assam) and Mitakshara (applied in the rest of the country). Under the Mitakshara system, property was divided in two categories: joint family ("coparcenary") property, belonging to the extended family, and separate property. Only male family members were coparceners in joint family property, while women (wives and unmarried daughters) had a right to maintenance. Separate property entailed full ownership rights, and was held by men (in the absence of male descendants, women could only inherit usufruct rights). The Dayabhaga system did not envisage joint family property. Property belonged to men individually, and, in the absence of male descendants, women could inherit lifelong use rights. Under both systems, women could own property ("*stridhan*", acquired e.g. through purchases), although it is controversial whether land could be held by women as *stridhan*. Women had wider control powers under Dayabhaga

²⁵ Thus, contracting or registering marriage under the Special Marriage Act of 1954, allows Indians to opt out of their personal law (see Hindu Succession Act, sect. 5(i)). This is not possible in other countries, e.g. Pakistan and Bangladesh.

²⁶ 1995 3 SCC 635. The case concerned a Hindu man, married under Hindu rite, who converted to Islam and contracted a second marriage. As bigamy is a criminal offence under the Hindu Marriage Act, the first wife challenged the validity of the second marriage. The man invoked the personal liberty and religious freedom provisions of the Constitution. The court ruled in favour of the first wife, declaring that the conversion had no effects on the first marriage, which remained governed by the Hindu Marriage Act; the second marriage was therefore null and void, and the convert could be prosecuted. In his separate judgement, Kuldeep Singh J. directed the government to adopt a uniform civil code.

(including the right to sell and gift) than under Mitakshara. In practice, the *shastras* were not followed literally, and local customary law was applied instead. While in some areas customary and shastric norms converged, in others they differed and women enjoyed greater rights, especially in matrilineal communities (e.g. among the Garos, land traced through the female line, and while the husband administered the land, he could not alienate it without spousal consent) (Agarwal, 1994).

In the twentieth century, Hindu law was codified into statutory law. In this process, women's position has been considerably improved²⁷. The Hindu Succession Act of 1956 applies to Hindus, Sikhs, Jains and Buddhists of all Indian states except for Jammu and Kashmir (sects. 1(2) and 2(1); here the Jammu and Kashmir Hindu Succession Act of 1956 applies), and covers both the Mitakshara and the Dayabhaga systems. The Act grants in principle equal inheritance rights to men and women. In case of intestate succession, the widow and children (both sons and daughters) have equal rights in the first line of succession (class I heirs, sects. 9 and 10). As for coparcenary property, relevant Mitakshara rules (see above) apply, unless there are class I female heirs (in which case the inheritance norms of the Act apply; sect. 6). In any case, women's inheritance transfers full property rights (not just usufruct rights).

Some gender inequalities remain. First, Mitakshara coparcenary rules limiting women's rights are recognized, although with the important exception concerning female class I heirs (sect. 6). Second, in case of testamentary succession, the Act grants testators absolute freedom of will (i.e. no necessary inheritance share is reserved for family members); this provision is in practice often used to disinherit widows and daughters (Agarwal, 1994). Third, the Act explicitly covers land ownership, but exempts ceiling and anti-fragmentation legislation and land tenancy rights (sect. 4(2)); both before and after the Act, states adopted inheritance norms specifically concerning succession in tenancy rights, several of which discriminate against women (e.g. the Punjab

²⁷ The Hindu Women's Rights to Property Act of 1937 was the first attempt in this direction. Thus, widows (previously excluded from inheritance by the presence of male descendants) became intestate heirs of separate property, in shares equal to those of the sons. However, land ownership was explicitly excluded from the scope of the Act. Note that section 4(1) of the Hindu Succession Act of 1956 explicitly repeals previous texts, rules, practices and interpretations of Hindu law.

Tenancy Act of 1887 and the Himachal Pradesh Tenancy and Land Reform Act 1972; Agarwal, 1994). In *Madhu Kishwar & Ors. v. State of Bihar* (1996 5 SCC125), the constitutionality of sections 7, 8 and 76 of the Chotanagpur Tenancy Act 1908 of Bihar, limiting succession in tenancy relationships to the male line, was challenged before the Supreme Court. The Court held that these provisions violated women's right to livelihood recognized in Article 21 of the Constitution. While not striking down the provisions, the Court declared that female heirs of the tenant have a remedy under the Constitution to continue holding the land so long as they are dependent on it, and called the state of Bihar to amend the law. Dissenting Ramaswamy J. argued that the provisions were invalid, relying *inter alia* on the CEDAW.

On the other hand, some states have adopted legislation complementary to the Hindu Succession Act, further improving the position of women. For instance, the Kerala Joint Hindu Family System (Abolition) Act of 1976 abolished coparcenary property, subdividing the estates, while in Andhra Pradesh and Tamil Nadu unmarried daughters have been given coparcenary rights equal to sons (Agarwal, 1994).

The personal law of persons belonging to religious minorities differs. The Muslim Personal Law (Shariat) Application Act of 1937 states that family and succession disputes between Muslims are to be decided according to Shari'a law, superseding local customary succession norms (sect. 2). Thus, differently from the codification of Hindu law (which codifies religious law and at the same time improves the position of women), the 1937 Act merely refers to Shari'a law by legislative renvoi. Inheritance of agricultural land is explicitly excluded from the scope of the Act (sect. 2), so that statutory and customary land law apply; however, some states have extended the Act to agricultural land (e.g. Andhra Pradesh and Tamil Nadu in 1949 and Kerala in 1963). Generally speaking, under Shari'a law women's inheritance share is half of what a man in the same succession position inherits (e.g. the share of a daughter is half that of a son, and the share of the widow is half that of a widower). The impact of the recognition of Shari'a law on women's position varies across regions. While Islamic law restricts women's inheritance (with negative effects on women's rights in matrilineal communities, e.g. the Mappilas in Kerala), it does entitle women to direct inheritance rights (albeit limited), improving their position in patrilineal communities where women had no inheritance rights at all.

However, this positive effect is neutralized in those states where agricultural land is still governed by customary succession norms (Northwest India), where gender inequalities persist (Agarwal, 1994).

Christians, Jews and Parsis, as well as Indians contracting or registering civil marriage under the Special Marriage Act of 1954, are governed by the Indian Succession Act of 1925, as amended by the Indian Succession (Amendment) Act of 1991. No gender discrimination is contained in the Act. However, there are no restrictions on testators' freedom of will, which allows to disinherit widows and daughters.

In practice, women are often prevented from exercising the inheritance rights recognized by statutory law, and customary law remains widely applied in rural areas. In many cases, women "voluntarily" renounce to their statutory rights in favour of male family members (brothers, etc.), pressured by socio-cultural factors and by their economic and other dependence on their kin. Indeed, factors like early marriage, marriage exogamy (often involving marriages between spouses from very distant areas) and patrilocal residence (i.e. the wife's moving into her husband's family house) make women vulnerable to ill-treatment by their husband, and thus dependent on their family's (especially brothers') support. Socio-cultural factors include the idea that it would be "shameful" for women to claim their rights, and the practice of female seclusion ("*purdah*") (Agarwal, 1994).

As for natural resource legislation, the Indian Constitution grants states exclusive responsibility on land, water (except for inter-state rivers) and fisheries (except for activities outside the territorial waters) (art. 246 and Seventh Schedule, List II, entries 17–21); therefore, natural resource legislation varies widely from state to state. Land reform programmes were adopted by most states to redistribute land (through forfeiture of land exceeding specified ceilings and land distribution to landless workers or smallholders), to abolish land intermediaries, to consolidate fragmented landholdings, and to regulate tenancy (from regulation of the contractual terms to tenancy rights registration). The degree of implementation of the reform varies widely according to the state and to the type of reform. Some features of the land reform programmes are gender-biased.

Land ceiling legislation may contain discriminatory norms on the calculation of family land, on surplus forfeiture and on allocation of

forfeited land. As for calculation, legislation usually fixes a land ceiling for each household of up to five members, allows additional land for larger households, and considers adult children as separate units. However, in many states (e.g. Bihar and Andhra Pradesh) only adult sons (not daughters) can be counted as separate units. Kerala is an exception, in that it allows both unmarried adult sons and daughters to be considered as separate units (Agarwal, 1994). In 1972, the Conference of Chief Ministers on Land Reforms issued federal guidelines (National Guidelines on Ceiling on Agricultural Holding, published in Behuria, 1997) to adopt a uniform definition of family for the purpose of land ceiling legislation; in the definition adopted by the guidelines (guideline II), gender inequalities were removed. However, land ceiling legislation continues to vary across states. Discriminatory norms on family land calculation are exempted from constitutionality challenges under Article 31B and the Ninth Schedule of the Constitution. For instance, in *Ambika Prasad Mishra v. the State of Uttar Pradesh and Others* (1980 3 SCC 719), the Supreme Court rejected on this ground a challenge of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act of 1960 on sex discrimination grounds (for instance, adult daughters were excluded from the definition of family and no additional land over the ceiling was allowed on their account; sect. 5(3) of the Act).

As for surplus forfeiture, land holdings of both spouses are summed together for the purposes of land ceilings, and in case of surplus officers have considerable discretion in deciding the area to be forfeited; in practice, this is usually done in consultation with the husband, and often leads to forfeiture of the wife's land (Agarwal, 1994). In *Kunjalata Purohit v. Tahsildar, Sambalpur and Others* (AIR 1986 Orissa 115), a wife appealed against the decision of a land revenue officer to include her separate property within family land and forfeit it after having consulted the husband alone (under the Orissa Land Reforms Act, 1960); the court accepted her argument that prior notice of the proceeding should have been given to her as the "person interested", and quashed the order of the revenue officer.

As for allocation of forfeited land, although the wording of legislation is usually gender neutral, land redistribution programmes mainly targeted (male) household heads as recipients²⁸. Efforts have been recently made to redress this gender imbalance. The Sixth Five Year Plan (1980–1985)

²⁸ For a review of legislation, see Behuria 1997.

envisaged efforts to give joint titles to spouses, although this policy was not confirmed in the Seventh Five Year Plan (1985–1990). The Eight Plan (1992–1997) called states to allocate 40 percent of forfeited land to women individually, and to allocate remaining land to both spouses (joint titles). The Ninth Plan (1997–2002) devotes an entire section to women's land rights, and directs to distribute land titles mainly to women, both individually and collectively (through women's groups) (Agarwal, 2001). Similarly, the Tenth Plan (2002–2007) devotes an entire chapter to women's rights.

Gender biases exist also in land tenancy reforms. For instance, in the "Operation Barga" in West Bengal (tenancy registration programme implemented in the late 1970s under the West Bengal Land Reforms Act of 1955, as amended in 1971 and 1977), land was mainly registered to men. Although single women households were in theory entitled to have land registered in their names, very few did so. A study from a village in Midnapur district found that only eight out of 18 single women received land, that no joint titles were issued to couples, and that in nine out of ten female-headed households land was registered with the sons (quoted by Agarwal, 2001).

Gendered land distribution has implications for rights over other natural resources. For instance, water rights are usually linked to landholding (whether as owner or not). Common property resources (grazing land, forests, etc.) were traditionally managed by *panchayat* (i.e. village level) institutions and accessed by all community members (including women, who have the primary responsibility for water, fuelwood, fodder and fruit collection). Traditionally, *panchayat* bodies were usually limited to upper caste men. The Constitution has democratized these institutions, providing for direct election and reserving one-third of the seats to women (arts. 243C and 243D). Moreover, new institutions for sustainable natural resource management have been established. The National Forest Policy of 1988 and Circular No. 6-21/89-P.P. (1990) of the Ministry of Environment and Forests govern joint forest management, whereby forests are managed on the basis of agreements between the state forest department, the village community and a "voluntary agency/NGO" acting as catalyst (1990 Circular, sect. 3(i)); the competent village institution may be the *panchayat*, a village cooperative, or a "village forest committee" (1990 Circular, sect. 3(iv)). There are reports that cultural factors (e.g. female seclusion, low consideration of women's ideas, etc.)

often hinder a meaningful participation of women in *panchayats* and other participatory institutions such as village forest committees (Agarwal, 1994 and Ogra, 2000). For instance, a study on joint forest management in Karnataka, Gujrat and Himachal Pradesh found that women committee members often did not attend meetings, and even when they did, they did not speak or merely acted as spokespersons of their husbands (Ogra, 2000).

2.6.3. The Philippines

Philippine property law (embodied in the Civil Code) as well as family and succession law (Family Code) are gender neutral, and men and women have equal property rights²⁹. Assets acquired during cohabitation without marriage are jointly owned, and can be encumbered or disposed of by one partner only with the consent of the partner (Family Code, art. 147). Within marriage, the property regime is determined by the marriage settlement; in its absence, the community of property regime is applied, with both spouses jointly administering family property (Family Code, arts. 75 and 96). However, "in case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision" (art. 96). The wife retains exclusive management rights with regard to her exclusive property, without need for her husband's consent (art. 111). Married women may make wills without the consent of their husband, and thereby dispose of their separate property and share of community property (Civil Code, arts. 802 and 803). In case of legal separation³⁰, the terms of the dissolution of community property are determined by guilt, not by gender (Family Code, art. 63(2)). Succession law is gender neutral, and widows are necessary heirs of the deceased spouse (Civil Code, art. 900).

However, family relations within the Muslim community are governed by the Code of Muslim Personal Laws³¹. Under this Code, wives need the consent of their husband to acquire property during marriage and to use land, and inherit half of the share inherited by men in a similar

²⁹ In analysing women's land rights in the Philippines, the excellent study by Judd and Dulnuan (2001) provided very useful guidance.

³⁰ Divorce is not allowed under Philippine law, except for the Muslim community.

³¹ Summarized in Judd and Dulnuan (2001).

succession position. Moreover, in practice, Muslim women have even lesser rights, as the management of family land is under men's control and women have little or no independent land ownership (Judd and Dulnuan, 2001).

The Philippines has a long history of agrarian reform programmes. The Comprehensive Agrarian Reform Law (CARL) of 1988 is the most recent one. The law provides for a comprehensive land redistribution programme; however, funding constraints have hindered its implementation, and the impact of the land reform has been limited (Deininger *et al.*, 2001). Under the CARL, women rural labourers have equal rights to own land and to participate in advisory and decision-making bodies (sect. 40(5)). Women's right to "equal treatment in agrarian reform and land resettlement programmes" is confirmed by section 5(2) of the Women in Development and Nation Building Act of 1992.

However, women have long been indirectly disadvantaged in the land reform programme. While permanent farm workers (who are mostly men) rank second in the priority order for beneficiaries, immediately after agricultural lessees and share tenants, seasonal farm workers (mostly women) rank third (CARL, sect. 22). For instance, in 1993, the land of the Menzi Agricultural Corporation was distributed under the CARL to the permanent farm workers of the plantation, who had created a cooperative; all the beneficiaries were men, with the exception only of the plantation nurse; women seasonal workers were excluded (Rimban, 1999).

Women's position has been improved by administrative guidelines adopted by the Department of Agrarian Reform to implement the gender equality provisions of the CARL, namely Memorandum Circular 18 of 1996 and Administrative Order 1 of 2001. Under these guidelines, no sex discrimination can be made in beneficiary selection, and land titles are to be issued in the name of both spouses (whether legally married or not) "when both spouses are jointly working and cultivating common tillage". Moreover, the consent of both spouses is required for land sales, mortgages and "all other transactions involving waiver of rights" (documents summarized in Judd and Dulnuan, 2001, and in Rimban, 1999).

The Indigenous Peoples Rights Act of 1997 recognizes indigenous peoples' ancestral rights over land (e.g. by providing for the titling of

"ancestral domains" and for the application of customary land tenure in such areas). At the same time, it guarantees gender equality and the human rights of indigenous women (sects. 2(d), 21 and 26), balancing the recognition of indigenous peoples' autonomy with the protection of universal human rights (including women's rights).

Forests are owned by the state (Art. XII(2) of the Constitution), and are governed by the Revised Forestry Code, as amended. The Department of Environment and Natural Resources, in charge of forest management, adopted Administrative Order 96-29 (1996), providing that contracts concluded with persons occupying forest lands must be signed by both spouses, and Administrative Order 98-55 (1998), subsequently amended, integrating gender into natural resource policies, programmes and activities (Judd and Dulnuan, 2001). Water legislation is gender neutral.

As for fisheries, a gender division of labour usually exists, whereby men are involved in deep waters from boats, while women are mainly involved in shallow water fishing and fish marketing (FAO, 1996). The Fisheries Code of 1998 includes support for women fishers among its policy directions (sect. 2(e)) and among the functions of the Bureau of Fisheries and Aquatic Resources (sect. 65(m)). Representatives of women fishers are included in management councils like the Municipal/City Fisheries and Aquatic Resources Management Councils (sect. 75(g)) and the Integrated Fisheries and Aquatic Resources Management Councils (sect. 78(9)).

The Philippines adopted an advanced legislation concerning genetic resources (Executive Order 247 of 1995), subjecting bio prospecting to specified procedures. The Order is gender neutral (e.g. the bio prospector is a "person, entity or corporation", sect. 3). Bio-prospecting within ancestral domains requires the prior informed consent of indigenous communities, granted in accordance with customary law (Executive Order 247 of 1995, sect. 2(a); Indigenous Peoples Rights Act, sect. 35); while under some customary legal systems women may be discriminated against, gender equality and women's rights in indigenous communities are guaranteed by the Indigenous Peoples Rights Act (sects. 2(d), 21 and 26).

In rural areas, customary law is applied. This varies considerably across regions. Muslim groups, concentrated in the south of the country, are patrilineal, and inheritance follows the male line. However, many ethnic groups from the north and the centre of the country have bilateral

inheritance systems, whereby inheritance follows both the male and the female line. These systems do not discriminate against women. Both men and women can hold land. Both spouses have exclusive management rights over their individual property (e.g. among the Ilocano). Where the husband administers family property, he must require the consent of the wife for land transfers (e.g. among the Pangasinense). Succession norms adopt either the primogeniture system (whereby land is inherited by the eldest male or female child; e.g. among the Ifugao) or the equal sharing system (whereby all male and female heirs inherit equally; e.g. among the Pangasinense). The surviving spouse, male or female, may not inherit, but holds land as a trustee for the children (e.g. the Kalinga) (Judd and Dulnuan, 2001).

Box 2. The Dhungana case in Nepal

In the case *Mira Dhungana v. Law, Justice and Parliamentary Affairs Ministry* [4 S.Ct. Bull. 1], the petitioner challenged section 16 of Nepal's National Civil Code. This provision severely limited daughters' inheritance rights, by entitling them to a inheritance share only after they reached unmarried the age of 35, and by providing for land restitution to the family if they subsequently married. The Supreme Court, while recognizing that the norm discriminated against women, did not invalidate it, but directed the government to amend it in the light of the equality provision enshrined in the Constitution (art. 11).

Following intense lobbying activities by women's organizations, in 1996 the government introduced a Civil Code Amendment Bill *inter alia* recognizing daughters' equal right to inherit parental property. However, the Bill confirms the norm whereby women lose the land they inherit if they subsequently marry. Debates over the Bills were stalled for years. In March 2002, the Bill was finally approved by the Parliament.

2.7. The Pacific region

2.7.1. Regional overview

Land and fishing rights in the Pacific islands are determined by a mixture of statutory and customary law, as statutory law usually recognizes customary rights. These have evolved as a result of state formation and of the spread of Christianity, commerce, monetarization, and education. Statutory law often incorporates a simplified and standardized version of an originally complex and extremely diverse customary law. In this

context, women's position varies considerably across countries. Matrilineal systems (with land rights traced through the female line but exercised mainly by men) prevail in most of Micronesia (Nauru, Palau, etc.) and in parts of Melanesia (parts of Vanuatu and the Solomon Islands). Patrilineal systems prevail in most other Pacific countries (IPS, 1986).

Women have particularly well established land rights in the Cook Islands. Here, colonial authorities established a Land Court to apply and formalize "native custom". The court has adopted a "progressive" interpretation of customary law, e.g. granting women inheritance rights equal to men (James, 1986).

On the other extreme, women's land rights are particularly restricted in Tonga, where the Constitution does not explicitly prohibit sex discrimination: the 1882 Land Act (as amended in 1978 and 1984) recognizes customary land tenure (whereby only men have direct land rights, while women acquire land rights through husbands and male family members) and grants a right to plots only to male Tongans over 16; and the Constitution provides for inheritance by the eldest male child (only if there are no male children does the eldest female child inherit; Section 111). The case law includes both cases restricting women's land rights (e.g. on widow's impossibility to lease inherited allotments, *Tu'inukuafe v. Tu'inukuafe*, Land Court, Case 6/66), and cases where courts have protected widows from eviction by male members of the deceased husband's family (e.g. *Fa'okula v. Kalamintoni*, 1974; *Tu'iha'ateiho* case; all cases quoted in Moengangongo, 1986).

In the Solomon Islands, the Customs Recognition Act of 2000 provides for the recognition and enforcement of customary law with regard to land, fisheries and water, except where this would be inconsistent with the Constitution or with statutory law, would result in an "injustice", or would not be in the "public interest" (Sects. 6 and 8).

2.7.2. Fiji

Fiji's family law was comprehensively revised with the adoption of the Family Law Act 2003, which entered into force in 2005. The Act is the culmination of years of work by the Fiji Law Reform Commission and by NGOs. It significantly improved women's position – for instance recognizing their non-financial contribution as housewives, thereby

enabling them to obtain a share of the matrimonial property in case of divorce. The Act also established new Family Law Courts and counselling facilities to promote amicable settlement of family disputes. However, recent press articles have raised issues as to the accessibility of such courts, due to high court fees.

Widows and widowers have equal rights to intestate succession; sons and daughters, and brothers and sisters also have equal succession rights (Succession, Probate and Administration Act, sect. 6). In case of testamentary succession, the surviving spouse and the children are not necessary heirs, and may thus be disinherited. However, unmarried daughters and disabled daughters incapable of maintaining themselves may obtain a court order to make "reasonable provision for the maintenance" if the testator has not done so; daughters lose their right to maintenance upon marriage or cessation of disability (Inheritance (Family Provision) Act, sect. 3).

As for natural resource legislation, the Constitution limits the scope of the principle of gender equality in order to enable the application of Fijian, Rotuman and Banaban customary land and fishing rights (Sect. 38(8)(i)). Moreover, land legislation, including the Native Lands Act and the Native Land Trust Act, enjoys a particular constitutional protection, requiring bills amending protected Acts to be adopted through a special procedure (Constitution, Sect. 185).

Fijian land tenure legislation reflects inter-ethnic tensions between native Fijians and Indo-Fijians for the control of agricultural land. About 83 percent of the land is communally owned by native Fijians ("native lands"). The colonial Native Lands Act of 1905, still in force, states that native lands are held by native Fijians according to "native custom" (sect. 3) and creates the Native Lands and Fisheries Commission to administer customary rights. The Act is gender neutral. Women, as well as men, are registered at birth with the Commission as members of land owning clans. However, while customary land tenure was complex and extremely diverse, the Commission adopted a simplified version of the customary law followed in Taivenu province, and extended it to the whole country. Under this system, land is owned by clans (*matagali*) headed by male chiefs; only men have direct land rights, while women cultivate the plots of their husbands and/or male family members. Matrilineal systems granting women greater rights, followed in some

areas (e.g. Macuata Province), were suppressed with this standardization of customary law (Bolabola, 1986).

All leases, licences, and timber concessions on native lands are managed by a Native Land Trust Board, established by the Native Land Trust Act of 1940 to manage native lands on behalf of Fijians. The Board collects proceeds (rents, royalties, etc.) and distributes them to the chiefs; these are mainly men, although there are also some female chiefs (one percent of the total) benefitting from Board financial transfers, especially in formerly matrilineal areas like Macuata (Bolabola, 1986). No sex/gender discrimination is made with regard to access to leases and licences (sect. 8). However, leases on native lands are in practice mainly held by men (Bolabola, 1986).

Crown lands (some 7 percent of the land) are administered by the Department of Lands, Mines and Surveys (Crown Lands Act). Very few women have obtained leases on Crown land. Moreover, very few women hold freehold titles (Bolabola, 1986).

Fisheries have a particular importance in the Fijian economy. The Fisheries Act establishes a licence system, and only licence holders can fish in Fijian waters (sect. 5). Section 13 recognizes customary fishing rights, administered by a Native Fisheries Commission (sects. 14 ss.). The Act is gender neutral, although, as for the terminology, reference is usually made to the "fisherman". However, there is in practice a widespread gender division of labour, whereby men fish in deep water from boats and canoes and women harvest the reefs, shores and swamps and clean and market fish caught by them and by men. Non-governmental organizations such as Women in Fisheries Network (WIFN) carry out activities for the empowerment of women fishers (training, support, etc.) (GoF, 1999).

Women's participation in natural resource management remains very low. At policy level, post-Beijing policy instruments envisage assistance for women in traditional fisheries communities, consideration for women's traditional resource use needs within environmental impact assessment, etc. (GoF, 1999).

2.8. Europe

2.8.1. Regional overview

Article 14 of the ECHR prohibits sex discrimination in the enjoyment of the rights and freedoms recognized in the Convention. The right of "every person" to "the peaceful enjoyment of his [sic] possessions" is protected under article 1 of Protocol I to the Convention.

In most European countries, norms on property rights are enshrined in civil codes, as well as in special legislation. These usually do not refer to gender (e.g. French Civil Code, art. 544).

Family law has evolved throughout Europe, passing from women's subordinated position to equality of rights and duties of the spouses. The French Code Napoleon (1804), which provided the model for the civil codes of many European countries, is an interesting example. In its original 1804 text, it adopted a patriarchal model of family³². Subsequent legislation (1938, 1942, 1965, 1970, 1975, etc.) granted equal rights and duties to both spouses³³.

In Central and Eastern Europe, property, family and succession law usually does not discriminate against women (e.g. Romania, Articles. 16, 41(2) and 42 of the Constitution and the Family Code, arts. 1, 2, 25, 26 and 30; Croatia, the Law on Property and Other Rights of 1996, art. 1, and Inheritance Law of 1955, as amended in 1978). As for agrarian relations, a comprehensive process of liberalization took place in the 1990s after the demise of communism, and land reform programmes have been adopted in several countries. Land reforms include land restitution to those dispossessed during the Soviet era, state land

³² For example, the wife had a duty of obedience toward the husband (art. 213); in community of property, the husband exclusively administered family property (art. 1421); the wife could not sell, mortgage, acquire property without husband's consent, even in separation of property (art. 217).

³³ In the new text, article 213 vests the direction of family affairs with both spouses; articles 1421 and 1428 vest the administration of common and separate property with each spouse.

allocation and/or privatization (e.g. Latvia³⁴), combinations of both (e.g. Czech Republic³⁵; Estonia³⁶), and distribution of shares of state or collective farms among state employees and collective members (e.g. Russia, Ukraine). This land legislation usually does not discriminate against women, who can benefit from land reform programmes, receive shares of restructured state and collective farms, and purchase and lease land. However, while data on the percentage of women actually acquiring land rights are rare, there are reports that men are the main beneficiaries of land reform programmes and hold most of the land (FAO, 1996).

2.8.2. Italy

General property and contract law (contained in the Civil Code and in other legislation) is gender neutral: women can acquire, own and administer property on the same conditions as men (although the terminology is either gender neutral or masculine; e.g. "*proprietario*", art. 832).

Women's position within the family has substantially evolved since the Civil Code of 1942 was first adopted. In its original text, the Civil Code vested the direction of family affairs in the husband. Marriage property relations were governed by the separation of property regime; the wife administered her separate property, unless she delegated the husband to do so (art. 212), and the husband exclusively administered dowry (arts. 182 and 184).

The 1948 Constitution states the principle of gender equality within marriage, although "within the limits determined by law to guarantee the

³⁴ For example, Law 21-11-1990 grants the right to file a petition for the allocation of permanent use rights in state land to "citizens and adult residents" of Latvia, without making any distinction on the basis of sex/gender (art. 7).

³⁵ For example, Law 21 May 1991, on the restitution of land dispossessed between 1948 and 1990, explicitly states that the beneficiary may be a "he" or a "she" (art. 4(1)). The actual gender impact of this norm depends on the gender land distribution *before* the dispossessions. Where the expropriated landowner is dead, restitution benefits the testamentary heir, and in absence of will the children and the spouse (art. 4(2)).

³⁶ The Land Reform Act 1997 does not differentiate on the basis of sex/gender for the participation in the land restitution or compensation programme (art. 5) and in the land privatization programme (art. 21).

unity of the family" (Art. 29(2)). Many provisions of the Civil Code were inconsistent with this principle. In more than one occasion, the Constitutional Court intervened on the issue of gender equality in matrimonial relations. For instance, in an obiter dictum of Judgment 187 (1974), the Court called for the legislator to reform the family property rules embodied in the Civil Code; the Court argued that under the regime of separation of property the contribution of women's domestic work to the household economy was not adequately protected, as it was difficult to evaluate in monetary terms.

In 1975, a reform of the Civil Code (Law 151) was adopted to bring family law in line with the constitutional principles. Under the amended Civil Code, marriage establishes a community of property, unless the spouses agree differently (art. 159). The spouses have equal rights in the management of family affairs. Family property is administered by either spouse in the case of ordinary acts and by both spouses for extraordinary acts (e.g. sale) (art. 180). In case of disagreement, distance or other impediment of one spouse, the judge can authorize the other spouse to perform the act (arts. 181 and 182). Upon division of family property, each spouse receives an equal share (art. 194). The norms on property administration and on equality of shares cannot be derogated by matrimonial agreements (art. 210). Where the spouses opt for the regime of separation of property, each spouse exclusively owns and administers his/her separate property (arts. 215 and 217).

Where no will exists, the widow/er is among the intestate heirs (arts. 565 and 581 ss.). No discrimination on the basis of gender is made among the children and between brothers and sisters (arts. 566 and 570). In case of testamentary succession, the widow/er and the children (both sons and daughters) are necessary heirs (i.e. they cannot be disinherited) (art. 536 ss.); for instance, the surviving spouse is entitled to half the property of the deceased spouse in the absence of children, and to a smaller share if there are children (arts. 540 and 542).

As for agrarian law, Article 44 of the Constitution envisages legislation to regulate and fix size limits for private land ownership, to transform the *latifondo*, and to provide assistance to small and medium holders. On the basis of this norm, a vast agrarian legislation has been enacted.

A land redistribution programme was undertaken in the 1950s to redistribute *latifondo* land (mainly in the south) through land expropriation and allocation to farmers by public bodies ("*Enti di riforma*") (Law 230 of 1950, so-called "*Legge Sila*"; Law 851 of 1950, so-called "*Legge Stralcio*"; a separate regional law was passed in 1950 for land redistribution in Sicily). In addition, two decrees were adopted in 1948 (No. 114 and 121) to stimulate land transfers through fiscal and financial incentives. Overall, the reform has resulted in a substantial change in the land ownership structure (Shearer and Barbero, 1996). Under the land redistribution programme, eligible beneficiaries were rural workers who were either landless or owners of land insufficient for the labour force of their household (*Legge Sila*, art. 16). Land allocation was made through sale contracts between the *Ente di riforma* and the beneficiary, who was to pay a price over a 30-year period. In the great majority of cases, these contracts were signed by male household heads. In case of death of the beneficiary before the payment of the whole price, specific succession rules applied: the contract was inherited by the descendants; the spouse inherited only if there were no descendants (*Legge Sila*, art. 19).

Moreover, legislation has been adopted to protect tenants. Particularly important are Laws 756 of 1964 and 203 of 1982. This legislation is gender neutral. Both men and women can sign fix rental contracts³⁷. The heirs of a tenant (both male and female) who contributed to the cultivation of the rented plot have the right to continue the rental contract after the death of the tenant (Law 203 of 1982, art. 49(4)).

No discrimination is made in legislation concerning the administrative procedure for the allocation of non- or under-cultivated land (Law 440 of 1978 and regional legislation, e.g. Molise, Regional Law 11 of 1980, Abruzzo, Regional Law 73 of 1982, art. 6).

³⁷ Sharecropping contracts ("*mezzadria*", "*colonia parziaria*", "*soccida*") are largely prohibited and automatically converted into fixed rentals. In the "*mezzadria*" contract (now no longer allowed), the household head (in practice, usually the husband/father) was the legal representative of the household, and obligations contracted by the representative were guaranteed by the whole household property (but not by separate property of the spouse) (Civil Code, art. 2150); this norm was implicitly abrogated by article 48 of Law 203 of 1982, which states that agrarian contracts refer to the whole cultivating family, and only if the lessor specifically requires so does the lessee family have to appoint a representative.

As for water resources, Law 36 of 1994 nationalised superficial and underground waters; water rights are now granted in the form of concessions; no distinction is made on the basis of sex/gender.

Forests are within the legislative competence of the regions; regional forest laws are gender neutral (e.g. Liguria, Regional Law 4 of 1999; Toscana, Regional Law 39 of 2000; Molise, Regional Law 6 of 2000).

2.9. Conclusion

This chapter has highlighted some of the key issues concerning women's rights to land and other natural resources. Overall, it has documented the considerable efforts made by legislators around the world to improve women's natural resource rights. As a result, the past few decades have witnessed major improvements in women's resource rights, at least on paper. Discriminatory family laws restricting the legal capacity of married women have been repealed (e.g. Brazil and South Africa). The principle of non-discrimination has been explicitly stated in agrarian reform programmes (e.g. Brazil and Mexico). Moreover, some countries have adopted affirmative action to facilitate women's access to land (Brazil). Joint titling for couples (whether married or not) has also been adopted (in the Philippines and recently, in Brazil), and women-specific forms of collective land holding or use have been established (e.g. UAIMs in Mexico). Furthermore, gender-related provisions have been adopted with regard to natural resource management institutions, in terms of both composition and activities (e.g. under the South African National Water Act of 1998).

However, the chapter has also documented areas where further improvement is needed. While the chapter has identified several cases of discrimination entrenched in the law, the problem is more often in the implementation of formally non-discriminatory legislation. The next few paragraphs briefly recall some of the key constraints to gender equality in natural resource rights identified in this chapter.

First, women's rights may be curtailed by *de jure* direct discrimination. This is particularly the case of family law (which may restrict the legal capacity of married women to administer property, including land; e.g. South Africa before the family law reforms) and of succession law (which may restrict women's inheritance rights; e.g. Tunisia and some

personal laws of India and the Philippines). Discriminatory succession norms have a particularly negative effect on women's land rights where inheritance is the primary form of land acquisition (as in the rural areas of many developing countries). *De jure* direct discrimination also exists in agrarian reform legislation entitling only men over a certain age to obtain land, while women qualify only if they are household heads.

Second, women's rights may be limited by indirect discrimination. For instance, the criteria for land distribution under agrarian reform programmes, while not referring to gender explicitly, often refer to male-dominated categories like permanent agricultural workers (while women are concentrated in the seasonal and temporary agricultural labour force) and smallholders (while women rarely own land) (e.g. Philippines, Brazil). Moreover, in the past, many land redistribution and titling programmes issued land titles in the name of the household head, who is usually (*de jure* or *de facto*) the husband/father (e.g. Kenya). As a result, while appropriately designed land registration processes can contribute to improve the land tenure security of women, many land registration programmes ended up eroding women's land rights. This is because women's secondary rights were often not recorded in the register. And, the same registration process may affect men and women differently, due to gender differentiation in language skills, access to information, contacts and resources, time availability and, more generally, to socio-cultural factors.

Third, women's natural resource rights may be determined by the interaction between norms of different nature coexisting in a context of legal pluralism (e.g. customary and statutory law). Gender struggles for access to and control of natural resources may be fought by men and women relying on both statutory and customary norms. In this context, customary norms may be invoked by women to claim rights not recognized under statutory law (e.g. in the case of the Kenyan registration programme), and by men to limit women's inheritance rights under statutory law. Similarly, statutory law may be relied upon by men to limit women's unregistered land rights (e.g. Kenya), and by women to challenge the constitutionality of discriminatory customary norms (e.g. the Pastory case in Tanzania).

Fourth, even where there is no formal discrimination, women's rights may be restricted in practice. For instance, even where land legislation is

gender neutral, most land may be in practice held by men (e.g. Fiji). Moreover, rural women may lack the documents required by laws and regulations to benefit from agrarian reform programmes (as documented for Brazil). In some cases, formally gender neutral norms may allow discrimination in practice; for example, norms granting absolute freedom of will may be used to disinherit widows and daughters (as documented e.g. for India under the Hindu Succession Act). In other cases, socio-cultural factors, such as perceptions on women's role in the family and in society and/or female seclusion practices, constrain the meaningful participation of rural women in natural resource management institutions (e.g. in Indian *panchayats* and village forest committees and in Mexican *ejidos*). Moreover, socio-economic factors (particularly women's dependence on their male family members) may pressurise women to renounce to their statutory land rights in favour of male relatives (as documented for Burkina Faso and India).

Table 3. Women's rights to land and other natural resources

	Property law	Family law	Succession law	Land law	Water law	Forestry law
Brazil	GN	ND; GN	ND	ND; SM; F	GN	
Burkina Faso	GN	GN	ND; J/D;	ND; GN	GN	GN
Fiji	GN		GN; F	GN; F		
India	GN		GN; J/D	GN; J/D; SM; F		GN; F
Italy	GN	ND; GN	GN	GN	GN	GN
Kenya	GN	GN	GN; F	GN; F	GN; F	
Mexico	GN	ND; GN	GN; F	ND; SM; F	GN; SM; F	GN
Philippines	GN	GN; J/D	GN; J/D	ND	GN	GN; SM
South Africa	GN	GN	ND; GN	GN; ND; F	GN; SM; F	ND; GN
Tunisia	GN	GN; J/D	J/D	GN		

- GN Gender neutral / non-discriminatory
 ND Non-discrimination / equal-rights principle explicitly stated
 SM Special measures to advance women
 J/D *De jure* direct discrimination
 J/I *De jure* indirect discrimination
 F De facto discrimination reported in the literature reviewed

Where two or more acronyms are included, they refer to different aspects of relevant legislation and/or to a gap between law and practice.

III THE RIGHTS OF WOMEN AGRICULTURAL WORKERS

3.1. Introduction

In many regions of the world, women make up a considerable portion of the agricultural labour force, as men often migrate from rural areas and/or are employed in non-agricultural occupations (a phenomenon referred to as "feminization of agriculture"). This chapter examines the rights of women agricultural workers, in relation to both access to employment and treatment during employment.

Agricultural labour rights are mainly determined by labour law, and particularly by two broad groups of norms: those concerning all workers, both male and female (minimum wage, safety and hygiene, trade union rights, etc.), and those specifically concerning women (non-discrimination, maternity leave, "protective" legislation, etc.). The focus here is on the latter. While some labour-law issues are relatively uncontroversial (e.g. non-discrimination), others are debated. For instance, "protective" legislation prohibiting women from working in certain occupations or at night, enacted to protect women workers, limits women's freedom to choose their occupation and may hinder their access to employment. On the other hand, where the bargaining power between employer and employee is particularly unbalanced, allowing women to choose may leave them unprotected (e.g. on night work). In reviewing labour legislation, as it applies to agricultural workers, it must be remembered that in many countries (especially developing countries) these rules are not applied to a large sector of the economy, the informal sector³⁸.

Beyond labour law, other norms are also relevant. For instance, in some countries family law allows the husband to interfere in his wife's occupation, e.g. by requiring his consent for her signing employment contracts and by allowing him to terminate her contract if he deems it necessary for the fulfilment of her family obligations.

³⁸ The informal economy is object of considerable debate. While some consider it as a dynamic sector providing small-scale employment opportunities for the rural poor, others see it as a place of exploitation. This study does not take any position in this debate, and merely remarks, from a legal point of view, the lack of application of labour legislation.

The case law on women's labour rights that we examined for this study rarely refers directly to agricultural workers. It more commonly relates to urban occupations (secretaries, civil servants, etc.), especially in developing countries, where access to courts for rural women is usually very limited. However, the principles affirmed in the cases quoted in this chapter (e.g. non-discrimination in the workplace) apply also to agricultural workers.

Discrimination may be difficult to detect where it is indirect, or where women's employment opportunity and treatment are affected by entrenched socio-cultural attitudes and unequal access to education and training, rather than by formal legislation. A hidden form of discrimination is maternity benefit payment by the employer, rather than by social security institutions; this raises the cost of women's labour (due both to the time lost during maternity leave and to maternity benefit payment), fostering discrimination in women's access to employment, particularly where fertility rates are high (as in most developing countries). As for socio-cultural practices, in many areas women's participation in formal employment is hindered by their primary responsibility for domestic work and child care. Where women are employed, their workload is very heavy, as they perform their domestic responsibilities in addition to formal employment.

In examining the labour rights of women agricultural workers in each of the covered countries, the following outline will generally be followed: applicability of labour legislation to the agricultural sector; norms concerning access to employment (both under labour law and under family law); norms concerning treatment (remuneration and other terms and conditions of employment); maternity protection; norms on social security; and sanctions. Where available, information on the actual implementation of the norms referred to is also included.

3.2. Relevant international law

The right to work without discrimination is recognized in the UDHR (arts. 2 and 23), in the ICESCR (arts. 2(2) and 6–8) and in the CEDAW (art. 11). It includes the right to freely choose an occupation, to enjoy a just and favourable remuneration, to work in safe and healthy conditions, and to form and join trade unions. Women have a right to employment opportunities and treatment equal to men, including equal remuneration for

work of equal value (UDHR, art. 23(2), ICESCR, art. 7(a)(i) and CEDAW, art. 11). Women also have the right to enjoy special protection during pregnancy and paid maternity leave, and the right not to be dismissed on grounds of pregnancy or maternity leave (CEDAW, art. 11(2)).

As for women's labour rights under the CEDAW, it is worth recalling that the principle of non-discrimination enshrined in this treaty is not limited to state action, and that article 2(e) explicitly envisages the elimination of discrimination against women "by any person, organization or enterprise".

Every woman, as well as every man, has a right to social security in cases of retirement, unemployment, sickness, invalidity and old age (UDHR, art. 22, ICESCR, art. 9 and CEDAW, arts. 11(1)(e) and 14(2)(c)).

Detailed provisions on women's labour rights are contained in several ILO conventions. The Discrimination (Employment and Occupation) Convention 111 of 1958 prohibits sex discrimination in both opportunity and treatment, and provides for affirmative action. The Equal Remuneration Convention 100 of 1951 states the principle of equal remuneration for men and women for equal work or work of equal value. Reference to "work of equal value", besides "equal work", is important for the practical application of the principle. Indeed, since in many countries women rarely hold the same position as men due to cultural stereotypes and unequal access to education, reference to the economic value of the work allows comparisons across occupational categories and industries. The Termination of Employment Convention 158 of 1982 prohibits dismissal on grounds of sex, marital status and absence during maternity leave.

Under the Night Work (Women) (Revised) Convention 89 of 1948 and its 1990 Protocol, women's work at night (defined as a period of at least 11 consecutive hours, including at least seven hours between 22 p.m. and 7 a.m.) is prohibited for some industrial occupations (not for agricultural work).

The Maternity Protection (Revised) Convention 103 of 1952 entitles pregnant workers to a maternity leave of at least 12 weeks (with no less than six weeks after childbirth); allows additional leave in case of late delivery or pregnancy-related illness; prohibits dismissal while on maternity leave; entitles women to medical and cash benefits, provided through either compulsory social insurance or public funds; and allows work interruptions

for nursing purposes. While this Convention applies to both industrial and non-industrial occupations, states may exempt work in agricultural undertakings other than plantations. The Workers with Family Responsibility Convention 156 of 1981 prohibits discrimination against men and women workers with family responsibilities (e.g. family responsibilities are not a valid reason for termination of employment).

The Plantations Convention 110 of 1958 and its 1982 Protocol protect the labour rights of plantation workers, without discrimination on the basis of sex. The term plantation is defined as "any agricultural undertaking regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned with the cultivation or production for commercial purposes of coffee, tea, sugarcane, rubber, bananas, cocoa, coconuts, groundnuts, cotton, tobacco, fibres (sisal, jute and hemp), citrus, palm oil, cinchona or pineapple; it does not include family or small-scale holdings producing for local consumption and not regularly employing hired workers" (art. 1(1) of the Convention, as amended by the Protocol). State parties may exclude or add categories of agricultural undertakings from the application of the Convention. The Convention contains guarantees as to the recruitment (e.g. the recruitment of the household head does not involve the recruitment of household members), employment contracts, wages (e.g. wages are to be paid directly to the worker), annual paid leave and weekly rest, compensation for injury, trade unions (e.g. workers' freedom of association "without distinction whatsoever"), and maternity protection (maternity leave of at least 12 weeks, at least six of which after childbirth, with additional leave for late delivery or pregnancy-related illness; cash and medical benefits; protection from dismissal during maternity leave; breaks for nursing purposes; prohibition for a pregnant woman to "undertake any type of work harmful to her in the period prior to her maternity leave").

The Migration for Employment (Revised) Convention 97 of 1949 provides guarantees for lawfully migrant workers, without discrimination on the basis of sex.

The principle of non-discrimination is also stated in the 1998 ILO Declaration on the Fundamental Principles and Rights at Work. This declaration reaffirms some fundamental principles and rights to which all ILO Member States must adhere by the very fact of their ILO membership, regardless of their ratification of the relevant conventions.

Table 4. Ratification of some international labour conventions

	C 89	C 97	C 100	C 103	C 110	C 111	C 156	C 158
Brazil	1957	1965	1957	1965	1965, denounced 1970	1965	No	1995, denounced 1996
Burkina Faso	No	1961	1969	No	No	1962	No	No
Fiji	No	No	2002	No	No	2002	No	No
India	1950	No	1958	No	No	1960	No	No
Italy	No	1952 (denounced 2001)	1956	1971 (denounced 2001)	No	1963	No	No
Kenya	1965	1965	2001	No	No	2001	No	No
Mexico	No	No	1952	No	1960	1961	No	No
Philippines	1953	No	1953	No	1968	1960	No	No
South Africa	1950	No	2000	No	No	1997	No	No
Tunisia	1957	No	1968	No	No	1959	No	No

C 89: ILO Night Work (Revised) Convention, No. 89 of 1948.

C 97: ILO Migration for Employment (Revised) Convention, No. 97 of 1949.

C 100: ILO Equal Remuneration Convention, No. 100 of 1951.

C 103: ILO Maternity Protection (Revised) Convention, No. 103 of 1952.

C 110: ILO Plantations Convention, No. 110 of 1958.

C 111: ILO Discrimination (Employment and Occupation) Convention, No. 111 of 1958.

C 156: ILO Convention on Workers with Family Responsibilities, No. 156 of 1981.

C 158: ILO Termination of Employment Convention, No. 158 of 1982.

Source: ILO Web site (www.ilo.org).

3.3. The Americas

3.3.1. Regional overview

In the region, the human right to work and to just, equitable, and satisfactory conditions of work, without discrimination on the basis of sex, is stated in the Additional Protocol to the ACHR (arts. 3, 6 and 7). As for Canada, United States and Mexico, the North American Free Trade Agreement (NAFTA) includes a North American Agreement on Labor Cooperation, which states the principles of non-discrimination on the basis of sex and of equal pay for equal work (principles 7 and 8 of Annex 1 to the Agreement on Labor Cooperation).

In most Latin American countries, women may freely enter in employment contracts and dispose of their wage. However, in practice rural women often ask for their husband's authorization before undertaking a job, and quit it if their husband so requires (FAO, 1994). Moreover, some laws explicitly allow the husband to interfere with the employment of his wife, although there is a trend throughout the region to repeal these norms (for an example from Guatemala, see below, Box 3).

Most countries have constitutional norms and/or legislation prohibiting sex/gender discrimination on the workplace, either in general or with specific regard to agricultural labour. The equal remuneration principle has been adopted within most national legal systems. However, reference is usually made to equal pay for "equal work" (or similar formulas), instead of the internationally recognized standard of "work of equal value". Overall, a considerable gender pay gap remains throughout the region; for instance, in Paraguay, men earn 31 percent more than women for each hour worked (CEACR (100), 2000).

Maternity leave ranges from 60 days (Bolivia) to 14 weeks (Panama), with a considerable number of countries granting 12 weeks (Belize, Colombia, Haiti, Jamaica, Uruguay). In Venezuela, maternity leave is 18 weeks (Comprehensive Labour Act of 1997). Cash benefits range from 60 percent of the wage (Dominica, Nicaragua) to 100 percent (Chile, Colombia, Venezuela); in the United States, maternity leave is unpaid. In most countries cash benefits are funded by social security institutions (Chile, Paraguay, Venezuela), although in some cases they are paid by the employer (Jamaica) or jointly by social security and the employer (Costa

Rica) (United Nations, 2000). However, there have also been reports of lack of benefit payment in plantations; for instance, in Guatemala, maternity benefits for women plantation workers are paid only in some regions (CEACR (110), 1997).

In plantations, there is a widespread practice of recruiting women as temporary workers, without contract and on piece-work. These non-formalized situations entail the non-application of the protection accorded by labour law, and therefore sex/gender discriminatory practices (FAO, 1994 and 1996).

3.3.2. Mexico

Article 123 of the Mexican Constitution recognizes the right to work of "every person". The Federal Labour Code of 1970 (applicable to agricultural labour; art. 1 of the Code and Art. 123 of the Constitution) prohibits sex discrimination (art. 3).

As for access to employment, both women and men over 16 years (and those between 14 and 16 years if they have the authorization of their parents) can freely enter into labour contracts (Federal Labour Code, art. 23). Women have thus full legal capacity to work. Employers cannot refuse job applications on grounds of sex (Federal Labour Code, art. 133(I)). Provisions banning women from certain types of work were repealed in 1974.

Discriminatory provisions on women's employment opportunities are contained in the civil codes of some states. The Civil Code of Oaxaca states that the wife can hold an occupation only if this does not prejudice her primary responsibility as housewife (arts. 167 and 168). The husband may oppose the employment of his wife, provided that he earns sufficiently for the needs of the family; where the wife resists the opposition of the husband, the dispute is to be decided by courts (arts. 169 and 170).

In other states, similar provisions are expressed in gender neutral terms, with each spouse having the right to oppose the employment of the other (e.g. Civil Code of Aguascalientes (art. 165), the Civil Code of Guanajato as amended in 2000 (art. 168), the Civil Code of Sonora (art. 261).

As for treatment, men and women workers have equal rights and obligations (Labour Code, art. 164). Labour conditions cannot be inferior to the minimum legal requirements, without discrimination on the basis of sex (art. 56). The principle of equal remuneration for equal work (though not for work of equal value) is stated in Article 123(VII) of the Constitution and article 86 of the Labour Code.

However, there are reports that sex/gender discrimination is in practice widespread. A considerable number of rural women are employed as temporary workers, without contract and on a piece-work basis, and are thus not protected by labour law³⁹. Wage differentials vary considerably from sector to sector; in agriculture and fishing, women's average hourly earnings are 92 percent of men's (CEACR (100), 1998).

Pregnant women cannot be required to undertake heavy and dangerous work (Labour Code, art. 166). With particular regard to agriculture, the Federal Safety, Hygiene and Working Environment Regulations of 1997 contain specific provisions protecting the health of pregnant women. Under article 154, pregnant women cannot be required to work in the operation, transport or storage of teratogenic or mutagenic substances, while under article 155 they cannot use chemical substances (e.g. fertilizers, etc.).

Pregnant workers have a right to maternity leave of at least six weeks before and six weeks after childbirth (with possible extensions); to the payment of the full wage; and to retain their employment (Constitution, Art. 123(V) and Labour Code, art. 170). Under the Social Security Act of 1995 (as amended), maternity benefits equivalent to 100 percent of the worker's salary are paid for 42 days before and 42 days after childbirth by the Mexican Institute of Social Security under a mandatory scheme, provided that the pregnant worker meets specified requirements; if and to the extent to which this norm is applicable, the employer does not have to pay the full salary (arts. 101–103). The Act also provides for a child day-care system (arts. 201–207).

³⁹ As for non-agricultural occupations, discriminatory practices in export processing zones (*maquiladoras*) (where more women than men are employed) include e.g. compulsory pregnancy testing as condition for employment (CEACR (111), 1999; CEDAW, 1998).

3.3.3. Brazil

Labour law in Brazil was for a long time differentiated for agricultural and non-agricultural workers. The Labour Law Consolidation of 1943 did not apply to agricultural workers. The labour rights of agricultural workers were first protected with the adoption of the Rural Workers Statute of 1963 and the creation of a specific social security institute (FUNRURAL). However, agricultural workers continued to enjoy lesser rights than their non-agricultural counterparts. In 1973, the 1963 Statute was repealed by Law 5889, which governs agricultural labour and states the applicability of the Labour Law Consolidation insofar as not inconsistent with it (Law 5889, art. 1). The dualistic labour protection was completely repealed by the 1988 Constitution, which grants to both urban and rural workers labour rights such as protection against unfair dismissal, minimum wage, maximum working hours, weekly rest and annual paid leave, social security for unemployment and work-related injuries, safe and healthy working conditions, and collective bargaining and trade union rights (arts. 7 and 8).

As for women's access to employment, Article 7(XXX) of the Constitution and article 373A of the Labour Law Consolidation (inserted by Law 9799 of 1999) prohibit discrimination on the basis of sex, pregnancy and marital status in recruitment, and envisage special measures to promote women's employment.

Marital authority provisions limiting women's access to employment have been repealed. The norms of the 1916 Civil Code requiring the authorization of the husband for women's employment (arts. 233(IV) and 242(VII)) were repealed by Law 4121 (1962). Article 446 of the Labour Law Consolidation, entitling the husband to rescind the employment contract of the wife if he deemed it necessary for household needs, was not applied after the 1962 Law and was formally repealed by Law 7855 (1989). However, marital authority remains in practice widely applied in rural areas (FAO, 1994).

A discriminatory practice concerning women's access to employment that has been documented in the past is the requirement by employers of sterilization certificates as a condition for recruitment (CEACR (111), 1993). Law 9029 of 1995 and article 373A(IV) of the Labour Law Consolidation (inserted by Law 9799 of 1999) prohibit employers from

requiring sterilization or pregnancy certifications or examinations as a condition for employment, and bar employers from conducting intimate examinations of employees. The phenomenon seems to have subsided since the mid-nineties.

As for treatment, Article 7(XXX) of the Constitution and article 373A of the Labour Law Consolidation (inserted by Act 9799 of 1999) prohibit discrimination on the basis of sex, pregnancy and marital status in training, promotion and dismissal (except in case of incompatibility with the nature of the employment), as well as in remuneration. Work of the same function, productivity and technical sophistication must be paid with equal remuneration (Labour Law Consolidation, arts. 5 and 461). Training provided to employees by the government, employers and others must be available without sex discrimination (Labour Law Consolidation, art. 390B, inserted by Law 9799 of 1999).

However, in practice, a substantial gender pay gap exists. Barsted (2002) reports that the average rural sector wage is R\$ 257 97 for men and R\$ 144 40 for women. Moreover, working conditions and wages differ considerably among women belonging to different racial groups; within each group, there is a considerable gender pay gap. Women make up most of the informal sector, and are therefore often not protected by formal legislation (Justiça Global, 2000). In this context, there is an overall lack of complaints by rural women. In most cases, the victims of discrimination refuse to be identified for fear of reprisals and for lack of trust in public authorities.

Pregnant workers have a right to a maternity leave of 120 days, without prejudice to employment and salary (Art. 7(XVIII) of the Constitution). In 1996, the High Labour Court declared that maternity leave is a fundamental right which cannot be negotiated or alienated (CEACR (103), 1999). Pregnant workers cannot be dismissed from the date of the communication of the pregnancy to the employer to five months after childbirth; in case of dismissal, pregnant women have the right to be reinstated in their position (art. 10(II)(b) of the transitory constitutional provisions and Labour Law Consolidation, art. 392).

As for maternity benefits, rural occupations have been equated to urban occupations by the 1988 Constitution. This required implementing legislation, which was adopted only in 1994, after mobilizations of women

workers (Guivant, 2001). Workers on maternity leave are now entitled to a benefit equivalent to the minimum wage, paid by the social security institution, provided that they prove to have worked for 12 (not necessarily continuous) months⁴⁰ (Law 8213 (1991), art. 39, as amended by Law 8861 (1994)). Decree 4883 (1998) provided that maternity benefits were to be paid through social insurance only up to a limit, beyond which they were to be paid by employers; however, the Federal Supreme Court held this limit unconstitutional, stating that it was for the state to entirely pay maternity benefits (CRLP, 2000).

Pregnant workers carrying out work prejudicial to health may obtain transfer to another work (Labour Law Consolidation, art. 392, as amended in 1999). Nursing women have the right to two half-an-hour nursing breaks per day for children up to the age of six months. Article 7(XXV) of the Constitution grants rural workers the right to free day-care for children from birth to six years. Article 389(1) of the Labour Law Consolidation requires employers employing 30 or more women over 16 years to provide a *crèche* for children. However, Legislative Decree 229 (1967) allows employers to provide *crèche* reimbursements instead. Agricultural undertakings employing more than 50 families of workers must provide free primary schools for the children of the farm workers (Law 5889 (1973), art. 16).

While social benefits (maternity leave, retirement pension, etc.) apply to all rural workers, their actual enjoyment is conditional upon presentation of documentation (identity card, fiscal registration number (CPF), work card, etc.)⁴¹. Due to monetary and transaction costs, few rural women have these documents. In Rio Grande do Sul, for instance, 30 percent of the women rural workers did not even have the identity card (Guivant, 2001).

As for sanctions, Law 9459 of 1997 amends previous legislation, providing for tougher criminal sanctions for violations of the non-discrimination principle. Relevant provisions have also been adopted at state and municipal level. For instance, the municipality of São Paulo adopted Law 11081 (1991) and Decree 30497 (1991), empowering the municipality to impose sanctions on employers

⁴⁰ This requirement may be difficult to meet for temporary plantation workers without contract.

⁴¹ E.g. for documentation required for maternity benefits, see article 106 of Law 8213 (1991), as amended by article 3 of Law 8861 (1994).

requiring pregnancy tests, gynaecological examinations or sterilization certificates to obtain or maintain jobs.

Box 3. Women's access to employment in Guatemala: the Morales de Sierra case

In Guatemala, the Civil Code allowed married women to undertake an occupation only insofar as consistent with their role as housewives (art. 113), and allowed the husband to oppose the employment of his wife, provided that he had sufficient earnings to provide for the maintenance of the household and he had justified reasons (art. 114).

A first constitutionality challenge of these discriminatory norms was rejected by the Constitutional Court on the basis *inter alia* of the need to ensure legal certainty and to protect the children (Case 84-92 of 1992). A second constitutionality challenge was brought before the Constitutional Court by the Attorney-General of Guatemala in 1996.

In 1995, a woman filed a complaint with the Inter-American Commission on Human Rights, challenging articles 113 and 114 as well as other provision of the Civil Code concerning the administration of family property.

In 1998, deciding on a preliminary controversy concerning *locus standi* (the woman had not suffered from the application of the challenged norms herself) and exhaustion of domestic remedies, the Commission admitted the complaint (Maria Eugenia Morales de Sierra *v.* Guatemala, Inter-American Commission on Human Rights, Case 11625, Report No. 28/98, 6 March 1998).

While the proceeding was pending, most of the challenged norms (including arts. 113 and 114) were repealed by Decrees 80 (1998) and 27 (1999), reforming the Civil Code. In addition, Decree 7 of 1999 (*Ley de Dignificación y Promoción Integral de la Mujer*) was adopted, guaranteeing women's right to freely choose their employment and prohibiting discrimination on the basis of marital status (art. 12).

In 2001, the Inter-American Commission issued a report on the merits. The Commission clarified that differences in treatment do not necessarily amount to discrimination, where they are based on "reasonable and objective criteria". The Commission held however that the challenged provisions could not be justified, and violated articles 11, 17(4) and 24 of the ACHR. The Commission recognized the important progress made with the 1998 and 1999 reforms, and called the state to fully comply with its international human rights obligations (Maria Eugenia Morales de Sierra *v.* Guatemala, Inter-American Commission on Human Rights, Case 11625, Report No. 4/01, 19 January 2001).

3.4. Sub-Saharan Africa

3.4.1. Regional overview

The ACHPR recognizes the right of "every individual" to work under equitable and satisfactory conditions and to receive equal pay for equal work (art. 15). On the other hand, the Charter is silent on some other aspects concerning labour rights, particularly with regard to trade union rights. Non-discrimination in training and equal opportunities to work (including women's freedom to choose their occupation, equality in access to employment, and equal remuneration for jobs of equal value) are affirmed in the Protocol on the Rights of Women in Africa (not yet adopted; arts. 12 and 13).

In several countries sex discrimination in employment is prohibited by constitutional norms (e.g. Art. 17(3)(e) of the 1999 Constitution of Nigeria, stating the equal pay principle among the Fundamental Objectives and Directive Principles of State Policy) and/or by legislation (e.g. Labour Code of Ivory Coast 1995, art. 4, prohibiting sex discrimination in recruitment, promotion, remuneration, vocational training, labour division, social benefits and termination of the labour contract; art. 14(1)(b) of the Ethiopian Labour Proclamation of 1993, as amended in 2003, prohibiting sex discrimination in remuneration). However, labour legislation often excludes the agricultural sector from its scope of application. For instance, Nigeria's National Minimum Wage Act of 1981, as amended, excludes workers in farms employing fewer than 50 persons, part-time workers, workers paid on piece-rate and seasonal agricultural workers.

Maternity leave ranges from 60 days (Mozambique, Guinea Bissau, Eritrea) to 14 weeks (Cameroon, Central African Republic, Chad, Gabon, Madagascar, Togo). Cash benefits range from 25 percent of the wage (Botswana) to 100 percent (Congo, Ghana, Mauritania, Mauritius, Zambia), with a substantial number of countries granting 50 percent of the wage (Chad, Burundi, Nigeria). No benefit is paid in some countries (Lesotho). In some countries cash benefits are funded by social security institutions (Namibia, Senegal), in others they are paid by the employer (Ethiopia, Ghana, Nigeria) (United Nations, 2000). The requirements to qualify for these benefits may be very demanding; for instance, the Zambian Employment Act of 1965 requires at least two years of continuous service with the employer (sects. 15A and B, inserted by Law

18 of 1982⁴²). In some countries, legislation prohibits dismissal during pregnancy (e.g. the Labour Code of Ivory Coast; art. 23(3), and the 1975 Labour Act of Nigeria, sect. 53(4)).

However, laws protecting women's labour rights are often not implemented. Rural women are often unaware of their legal rights. In addition, women make up a considerable portion of the agricultural labour force employed in the informal sector (which accounts for substantial GDP shares throughout sub-Saharan Africa; MacGaffey, 1991), where labour legislation is not applied.

Field studies from plantations (e.g. Mbilinyi, 1995, on a sugar cane plantation in Tanzania; Bob, 1996, on a coffee plantation in South Africa) found evidence of widespread discrimination in access to employment (with women concentrated in low-pay and subordinate manual jobs in the fields and men in higher positions, particularly as supervisors and headmen), wage differentials (with higher wages for typically men's positions, e.g. sugar cane cutters, than for women's positions, e.g. weeders), sexual harassment (most often by headmen), discrimination in access to training and vocational courses, discrimination in benefits allocation (e.g. where housing is provided, unmarried workers are given housing units suitable for men without dependants but extremely small for female-headed households) and discrimination within trade unions (as for participation, leadership positions, etc.). Discriminatory provisions may also be contained in collective agreements concerning plantation workers.

Customary law also affects the labour rights of women agricultural workers. Generally speaking, there is a gender division of labour, whereby men mainly cultivate cash crops, while women cultivate food crops or locally traded crops. However, under many customary legal systems, women must provide their labour for certain tasks in their husbands' fields (e.g. weeding). This work, provided within the household, is unpaid and unprotected (Lastarria-Cornhiel, 1997).

⁴² Information found on the Web site of the ILO (www.ilo.org).

3.4.2. Kenya

Agricultural labour is covered by the Employment Act of 1976 (Cap. 226). This Act fails to address gender issues. No reference is made to the principle of non-discrimination. No provision exists on sexual harassment. Women's night work is prohibited in industrial undertakings (with exceptions; sects. 28 and 29); the Ministry of Labour may prohibit or subject to conditions women's work in "any specified trade or occupation" (sect. 56(1)(j)).

Minimum wage legislation (Regulation of Wages and Conditions of Employment Act, Cap 229) provides for the establishment of sector-specific wages councils by the Ministry for Labour, with the task of recommending wage determination or regulation for specific trades or occupations. Wages councils have been established for several sectors (e.g. textiles, domestic servants, tourism, etc.), including agriculture. Neither the Act nor the Regulation of Wages (Agricultural Industry Wages Council Establishment) Order, as amended, which establishes the wages council for agriculture, explicitly refer to the equal pay principle.

The Regulation of Wages (Agricultural Industry Wages Council Establishment) Order, as amended, also determines maximum working hours (sect. 5). For most occupations, the limit is 46 hours over six days per week, though for some occupations the limit is higher (60 hours over six days for stockmen, herdsmen and watchmen). This legislation applies equally to men and women. Provisions fixing tighter limits for female workers (36 hours over six days per week) have been repealed.

The number of women employed in the formal sector has increased, mainly because of women's improved access to education. However, a gender division of labour (with higher positions being usually reserved to men) remains, due to cultural attitudes rather than to formal legislation. Moreover, women are still mostly concentrated in the informal sector (Gopal and Salim, 1998). Only 29 percent of those engaged in formal wage employment are women, leaving most to work in the informal sector with no social security and little income (Walsh, 2005). Although women's wages relative to men's have increased in the last decades, a

considerable gender pay gap nevertheless remains⁴³. In rural areas, women are largely unaware of their legal rights (Gopal and Salim, 1998).

Maternity protection was originally established with a 1975 Presidential Directive, envisaging a two-month paid maternity leave. The Employment Act of 1976 provides for a two-month fully paid maternity leave at the expense of the employer (sect. 7(2)). The leave period is considerably shorter than that envisaged by international labour conventions. Moreover, women taking the maternity leave lose their one-month annual leave for the relevant year (sect. 7(2))⁴⁴. Furthermore, obliging employers to pay for maternity benefits raises the cost of women's labour and therefore discriminates against them (House-Midamba, 1993). The Act does not explicitly prohibit the dismissal of pregnant women.

Under the pension law, widows (though not widowers) lose their work pension upon re-marriage (CRLP, 1997).

3.4.3. Burkina Faso

The Constitution of Burkina Faso states that everybody has an equal right to work, and prohibits sex discrimination in employment and remuneration (Art. 19).

The Labour Code, as revised in 1992 and 2004, applies to all employment contracts (art. 1(1) and (2)). The Code states the principle of non-discrimination on the basis of sex (sect. 1(3)). However, it does not envisage sanctions for violations of this principle.

The minimum age for work is 14 years, without distinction between men and women. The Labour Code states the principle of equal pay for equal working conditions, professional qualifications and output. No reference is made to work of equal value.

⁴³ Women's wages as percentage of men's were 55.6 percent in 1977, 62.5 percent in 1980 and 75.6 percent in 1986 (House-Midamba, 1993).

⁴⁴ An amendment to the Employment Act to allow women to cumulate maternity and annual leave was discussed in the parliament in 1998 but not adopted (CRLP, 2001).

Maternity leave is of 14 weeks (six of which before and eight after childbirth), with maternity benefits equivalent to 100 percent of the wage paid jointly by social security institutions and employers (art. 142). Nursing mothers have two daily breaks for up to 15 months (art. 143).

Article 82 of the Labour Code prohibits assigning workers to tasks that may endanger their reproductive capacity or, in the case of pregnant workers, the health of the workers or of their child.

Notwithstanding this legislation, women's participation in formal employment is very low compared to men's (just over 12 percent over the period 1986–1992), without major trends towards improvement (CEACR (111), 1995). Sex/gender discrimination in recruitment, allocation of responsibilities, and remuneration has been reported (CEDAW, 2000).

Customary law contains labour obligations for women. In the Comoé Province, young wives have the duty to provide labour for their husbands' fields, in addition to cultivating their own fields. The extent of this duty varies across ethnic groups, with particularly extensive labour obligations among the Turka and the Gouin. Women are liberated from these obligations usually in their mid-forties, when their children are old enough to provide labour (van Koppen, 1998).

3.4.4. South Africa

Until recently, women farm workers had little protection under South African legislation. The Basic Conditions of Employment Act of 1983 was extended to agricultural workers in 1993. The Labour Relations Act of 1995 (amended in 1996, 1998 and 2002), the Basic Conditions of Employment Act of 1997 (amended in 2002) and the Employment Equity Act of 1998 have substantially improved the position of women farm workers.

For a long time, the legal capacity of married women to sign employment contracts was restricted by family law. Under the Black Administration Act of 1927, women married within a customary marriage could not sign contracts without the assistance of their husband (sect. 11(3)). This norm was repealed by the Recognition of Customary Marriages Act of 1998, granting wives full legal capacity to sign contracts (sect. 6).

The Employment Equity Act of 1998 prohibits direct and indirect unfair discrimination on grounds of gender, sex, pregnancy, marital status, and family responsibility in both access (recruitment) and treatment (job classification, remuneration, employment benefits, employment terms and conditions, promotion and dismissal) (sect. 6.1). Where discrimination is alleged, the burden of proof on its fairness is placed on the employer (sect. 11). The principle of non-discrimination on grounds of sex and pregnancy has also been affirmed in the case law, particularly in *McInnes v. Technikon Natal* (Labour Court, D322/98, March 2000) and *Woolworths (Pty) Ltd. v. Whitehead* (Labour Appeal Court, CA06/99, 3 April 2000)⁴⁵.

Besides prohibiting discrimination, the Employment Equity Act also provides for affirmative action with regard to "designated employers" (i.e. those employing 50 or more workers, or less than 50 but with a determined annual turnover) (sect. 1 and Chap. III). Other employers may voluntarily comply with the affirmative action rules (sect. 14). Affirmative action measures must be taken by designated employers in consultation, and possibly agreement, with employees (sect. 16). Employers are obliged to develop "employment equity plans" must state objectives, numerical targets, strategies, measures, timetable and monitoring and evaluating procedures (sect. 20). Affirmative action measures may include preferential treatment and numerical goals (but not quotas) (sect. 15).

Moreover, "designated employers" are subject to special rules on the application of the equal remuneration principle. In particular, they are to report remuneration and benefits to the Employment Conditions Commission; where income differentials are disproportionate, they must adopt measures, including collective bargaining, application of the standards set by the Employment Conditions Commission, and promotion of training (sect. 27).

In practice, the employment of women farm workers is often tied to their husband's employment. Indeed, there are reports that married women farm workers are denied contracts in their own names, and work on the basis of contracts signed by their husbands (Human Rights Watch, 2001).

⁴⁵ Cases quoted in the Web site of the ILO. Neither case directly concerns agricultural labour.

A field study from the Waterval Coffee Plantation in Lebowa found no formal discrimination and yet substantial gender differences as to the nature of the job and the remuneration, with women concentrated in low-pay, seasonal/temporary jobs. Women constituted 22 percent of the permanent workers (2 out of 9), 66 percent of the semi-permanent workers (36 out of 54), and 92 percent of the seasonal and temporary workers (275 out of 300). This gender stratification of labour had an effect on the wage structure. Permanent workers (mainly men) were paid R18.00 per day, while seasonal and temporary workers were paid on piece-rate at R2.80 per crate (with an average of two crates per day). Tenure security was also unequally distributed, as positions dominated by men (permanent jobs) were more secure than those mainly occupied by women (seasonal and temporary workers); temporary and seasonal workers had no security of being hired the following year. Moreover, women bore a very heavy workload, cumulating work in the plantation with domestic responsibilities (Bob, 1996).

Housing benefits granted to plantation workers are usually given to (male) permanent employees, while single women (usually temporary) workers tend to be excluded (Human Rights Watch, 2001). In this regard, case law has been developed under the Extension of Security of Tenure Act (ESTA), which protects from eviction persons occupying land with the consent of the landowner on the date of the Act (including farm workers). In *Landbou Navorsingsraad v. Klaasen* (LCC 83R/01, 29 October 2001), the Land Claims Court held that the wife of an "occupier" protected under the Act (a farm worker) is not entitled to an eviction notice under section 9(2)(d) of ESTA unless the landowner explicitly consented to her residence on the land.

In *Conradie v. Hanekom and Another* (1999 (4) SA 491 LCC), the Land Claims Court set aside an eviction order against two farm workers, husband and wife, employed on the same farm. Having dismissed the husband, the landowner had sought to evict both. The Court held that the wife, as employee, had a right not to be evicted under ESTA, and her eviction order was set aside. Moreover, she had a right to family life under section 6(2)(d) of ESTA; therefore, her husband (who after his dismissal was no longer a protected "occupier") had a right to reside in the land as a family member of an "occupier".

Another interesting case, concerning *inter alia* the protection from eviction for family members of farm workers, is Lombaard NO *v.* Motsumi and Others (LCC 52R/01, 17 May 2001). In this case, the applicant sought to evict farm occupiers and their household members after termination of their employment contracts. While the magistrate court granted an eviction order, the Land Claims Court set it aside on the ground that while employment was terminated, many employees and household members were occupiers under ESTA on other grounds (e.g. many of the household members were born and had lived in the farm for all their life).

As for maternity protection, the Basic Conditions of Employment Act provides that a female employee is entitled to at least four months maternity leave, of which six weeks must be taken following childbirth. Pregnant or nursing women cannot be required to perform work hazardous to her health or to the health of the child; male and female employees have a annual three-day family responsibility paid leave for childbirth or child illness (sects. 25 and 26).

Maternity benefits are paid for up to 17.32 weeks by the Unemployment Insurance Fund under the Unemployment Insurance Act 2001, as amended in 2003.

The Labour Relations Act of 1995, as amended in 1996, 1998 and 2002, prohibits unfair dismissal, which includes both the failure of an employer to allow the return of a woman worker after maternity leave on the one hand, and the renewal of a temporary employment contract on less favourable terms after maternity on the other; dismissal for pregnancy (as well as intended pregnancy and any reason relating to pregnancy) or on directly or indirectly discriminatory grounds is automatically unfair (sects. 186 and 187).

The Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 applies where the Employment Equity Act does not apply (sect. 5(3)). It prohibits unfair discrimination against women by the state and any persons, for instance in women's access to social security (sects. 6 and 8(g)).

As for social security laws, old age pension constitutes a major source of income for the rural poor. Although women constitute the majority of the eligible population (because of women's lower retirement age,

60 instead of 65, and because of their longer life expectancy), fewer women than men benefit from the pension programme. One of the explanations for this is that many rural women may lack identity cards, which are required for pension eligibility (Baden *et al.*, 1999).

3.5. Northern Africa and the Middle East

3.5.1. Regional overview

The Arab Charter on Human Rights (not yet in force) recognizes, without discrimination between men and women (art. 2), the right to work (art. 30), to freely choose an occupation (art. 31), and to enjoy equal work opportunities and equal remuneration for equal work (art. 32).

Throughout the region, women's participation in formal employment is low, due to both legal and cultural factors (e.g. on Jordan, see CEDAW, 2000). A common example of a legal obstacle is marital authority norms conditioning women's employment to the authorization of the husband. In Syria, wives can work outside the house only with the permission of the husband (Personal Status Law of 1975, arts. 73 and 74, quoted in Human Rights Watch, 2001c). In Turkey, a similar norm (1926 Civil Code, art. 159) was set aside by the Constitutional Court (Judgement No. 30/31, 29 November 1990⁴⁶); the Civil Code of 2001 abolishes the spousal authorization requirement, although the welfare of the family is to be taken into account in the choice and pursuit of occupations (art. 192).

As for labour legislation, although most countries have adopted laws or codes prohibiting sex discrimination in employment, discrimination remains widespread in practice, especially in rural areas. Women agricultural labourers earn roughly between half and two-thirds of men's wages, although with considerable cross-country, regional and seasonal variation (e.g. FAO, 1995b). In Saudi Arabia, a gender segregation in the workplace is strictly enforced (Human Rights Watch, 2001b).

Maternity leave tends to be particularly short throughout the region (45 days in Bahrain; 50 days in Libya; 60 days in Yemen; 62 days in Iraq; 70 days in Kuwait and in Syria; 90 days in Egypt). Some countries have a 12-week

⁴⁶ Case quoted in the Web site of the ILO (www.ilo.org).

maternity leaves (Israel), while Algeria, Morocco and Turkey have a 14-week period. Cash benefits range from 50 percent of the wage (Libya) to 100 percent (Bahrain, Syria). While in some countries cash benefits are funded through social security (Turkey), in most cases they are paid by the employer (Bahrain, Libya, Saudi Arabia, Syria, Yemen) or jointly by social security and the employer (Egypt) (United Nations, 2000).

3.5.2. Tunisia

Agricultural labour is governed by the Labour Code of 1966, as amended (arts. 1 and 3). Although the terminology is masculine throughout the Code (e.g. "*travailleur*"), the principle of non-discrimination between men and women is explicitly stated (art. 5bis, inserted by Law 93–66 of 1993).

The Labour Code prohibits women's night work only in non-agricultural sectors (arts. 65–74). However, government decrees may restrict women's employment in certain agricultural occupations entailing "particular risks" (art. 375). Work supervisors must ensure respect of "public decency" ("*bonnes moeurs*" and "*décence publique*") in farms where women are employed (Labour Code, art. 373).

Women's participation in formal employment has increased considerably in the recent decades. However, women tend to remain concentrated in specific occupations, particularly seasonal or daily agricultural workers, and in inferior tasks (e.g. manual work).

As for remuneration, decrees setting the minimum wage for agriculture ("*salaire minimum agricole garanti*" – "SMAG") explicitly state that the rate applies to workers of both sexes (e.g. Decree 1865 of 1994, quoted in CEACR (100), 1996). A gender pay gap has nonetheless been reported for the agricultural sector, mainly due to occupational segregation. Agricultural work involving machinery, which is dominated by men, is considered as specialized work, and entails higher remuneration. By contrast, women are generally paid the minimum agricultural wage (SMAG) (Belarbi *et al.*, 1997).

A (not very recent) study from the Sidi Bou-Zid region found that women farm workers were not paid individually: households were remunerated collectively for the labour they provided, and the global wage was paid to the (male) household head. This system severely limits

the financial autonomy of women workers and excludes them from control over cash income (Ferchiou, 1985).

Women's participation in trade unions varies considerably across sectors, and is particularly low in the agricultural sector (where only 3.5 percent of union members are women, compared e.g. to 55 percent in the textile industry) (Belarbi *et al.*, 1997).

Article 64 of the Labour Code, concerning maternity protection, applies to all enterprises, thus including agricultural ones, with the only exception of family enterprises. It grants pregnant workers a paid maternity leave of 30 days. Maternity leave may be extended for 15-day periods with the supply of a medical certificate. Nursing women have two half-an-hour breaks per day to breastfeed. Establishments employing more than 50 women must provide a room for breast-feeding.

As for social security, the general social security regime, originally not covering agricultural labour, was extended to agricultural workers in 1970, provided that the workers have been employed for more than six months with the same employer (Belarbi *et al.*, 1997). Given their concentration in seasonal and temporary positions, women workers may find it difficult to meet this requirement.

3.6. Asia

3.6.1. Regional overview

The principle of non-discrimination on the basis of sex/gender is affirmed in several countries. For instance, the 1998 Labour Protection Act of Thailand mandates employers to treat male and female employees equally with regard to employment, "except where the nature or conditions of the work does or do not allow the employer to do so" (sect. 15). On the other hand, women's access to agricultural employment is often limited by the extension of night work bans to the agricultural sector (e.g. the 1955 Employment Act of Malaysia, sect. 34(1)) and by provisions requiring the authorization of the husband for women to sign employment contracts (e.g. Civil Code of Indonesia, art. 1601(f)).

Existing studies suggest the existence of rigid gender occupational segregation. In Bangladesh, for instance, women's employment in the agricultural sector increased substantially in recent years, but remains concentrated in seasonal occupations and remunerated with wages lower than those for men. Labour legislation is poorly enforced, and trade unions rarely protect the interests of women workers as such.

Maternity leave ranges from 52 days (Nepal) to 12 weeks (Bangladesh, Pakistan), but is generally short (e.g. 60 days in Malaysia; 90 days in Cambodia, China and Laos). Cash benefits range from 50 percent of the wage (Cambodia) to 100 percent (most countries: e.g. China, Indonesia, Malaysia, Nepal). In most countries maternity benefits are paid by the employer (Bangladesh, Indonesia, Malaysia, Nepal, Sri Lanka), although some exceptions exist (benefits are funded through social security in the Philippines and in Viet Nam) (United Nations, 2000, updated to 1998). Some laws specifically prohibit dismissal on grounds of pregnancy (e.g. Thai Labour Protection Act, sect. 43; Malaysian Employment Act, art. 40(3)).

3.6.2. India

Article 39 of the Indian Constitution directs the state to ensure that "citizens, men and women equally, have the right to adequate means of livelihood"; that "there is equal pay for equal work for both men and women"; and that "the health and strength of workers, men and women, [...] are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength". On the other hand, Article 16 of the Constitution, stating the principle of equality in employment, applies to public employment only.

With regard to access to employment, sex discrimination is prohibited by the Equal Remuneration Act of 1976 (sect. 5, as amended in 1987). In practice, however, in many rural areas women's access to employment is restricted by cultural factors such as female seclusion (*purdah*) and the perception of women's abstention from work as an indicator of the social status and success of the husband. Moreover, a gender division of labour remains widespread, with women concentrated in "feminine" jobs, particularly low-skill, low-pay agricultural work (e.g. weeders) (Jha *et al.*, 1998; GoI, n.d.).

With regard to treatment, the Equal Remuneration Act of 1976, as amended, prohibits discrimination in employment conditions (including

promotion, training and transfer) (sect. 5, as amended in 1987). On the other hand, protective legislation prohibits women's night work in a number of sectors. As for agriculture, the Plantations Labour Act of 1951 prohibits the employment of women between 19 hours and 6 hours (except for midwives and nurses) unless there is a permission from the state government (sect. 25).

The Equal Remuneration Act states the principle of equal remuneration for the "same work or work of a similar nature" (though not for work of equal value; sect. 4). In complying with this requirement, employers cannot reduce wages; therefore, in case of existing sex discrimination, the higher wage is payable to workers of both sexes (sect. 4). The equal remuneration principle has also been stated in the case law (Mackinnon Mackenzie & Co. *v.* Audrey D'Costa, 1987 2 SCC 469).

In practice, substantial gender pay gaps exist: women's wages are lower than men's in all states of the federation (on average, 30 percent lower); there is no institutional machinery for the implementation of minimum wage legislation in the agricultural sector (United Nations, 1997; Menon-Sen and Kumar, 2001). According to the Centre of Indian Trade Unions (CITU), the 1976 Act is mainly applied to public sector industries, while gender pay gaps persist in other industries, including agriculture, where employers avoid the application of the minimum wage legislation by paying workers on a piece-rate basis; in these sectors, female workers are paid considerably lower wages than male workers (CEACR (100), 1998).

Indian law contains no specific provision on sexual harassment in the workplace. However, the Supreme Court developed guidelines in *Vishaka v. State of Rajasthan and Others* (AIR 1997 SC 3011). The guidelines are to be applied in all workplaces, and build on the Indian Constitution, on the CEDAW and on General Recommendation No. 19 of the CEDAW Committee (on violence against women).

Maternity leave is governed by the Maternity Benefit Act of 1961, which applies to plantations and to other establishments with more than ten employees (sect. 2). Pregnant workers have a right to 12-week paid maternity leave (sects. 4 and 6(2)). A six-week leave is granted in case of miscarriage or termination of pregnancy (sect. 9). An additional one month leave is provided in case of illness arising out of pregnancy, delivery, miscarriage or termination of pregnancy

(sect. 10). Maternity benefits are equivalent to the average daily wage of the woman worker (sect. 5). Discharge or dismissal of a woman on maternity leave, as well as the varying of her working conditions at her disadvantage, are prohibited (sect. 12).

Pregnant workers have the right not to perform arduous work, or work which involves long hours of standing or which is likely to interfere with the pregnancy, the normal development of the foetus, adversely affect health or cause a miscarriage (Maternity Benefit Act, sect. 4(3)). No deductions from wages can be made because of the changed nature of the work performed (sect. 13 of the same Act). Nursing women have a right to two nursing breaks per day until the child attains the age of fifteen months, without deductions from the wage (sects. 11 and 13). Under the Plantations Labour Act of 1951, employers with more than 50 women workers (or with women workers having a number of children under six years old of 20 or more) must provide crèche facilities (sect. 12).

The laws on social security (Employees' Provident Fund and Miscellaneous Provisions Act 1952 and the Payment of Gratuity Act 1972) apply equally to men and women.

3.6.3. The Philippines

Agricultural labour is governed by the Labour Code of 1974, as amended (art. 6)⁴⁷. Article 3 of the Code declares that the state is to ensure equal work opportunities regardless of sex. However, sex discrimination with regard to recruitment is not explicitly prohibited.

Article 136 of the Code declares that it is unlawful for an employer "to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage".

⁴⁷ At the moment of writing, the parliament is discussing the adoption of a "Magna Charta for Rural Workers", the insertion of a chapter on plantation workers in the Labour Code, and the amendment of the formulation of the equal pay principle.

As for treatment, sex discrimination with respect to terms and conditions of employment is prohibited. Acts of discrimination include "payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employees as against a male employee, for work of equal value", and "favouring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes". A wilful violation of this provision entails criminal responsibility (Labour Code, art. 135). Discrimination against indigenous women in the areas of employment and training is prohibited under sections 21, 23 and 25 of the Indigenous Peoples Rights Act of 1997.

Women's night work in agricultural undertakings is prohibited unless women are granted a period of rest of at least nine consecutive hours (Labour Code, art. 130(c)). The Secretary of Labour and Employment is to set standards to ensure the safety and health of women employees and to enact regulations requiring employers to provide facilities for women workers (separate toilets, nurseries, etc.) (Labour Code, art. 132). Sexual harassment in the workplace is prohibited by the Anti-Sexual Harassment Act of 1995.

Notwithstanding these provisions, gender labour differentiation remains. Women are concentrated in "feminine" occupations. As for agriculture, while men are considered "farmers" (i.e. farm heads), women are usually referred to as "farm workers" (Roces, 2000). Gender pay gaps also remain. In 1990, women's average wage was about 40 percent that of men. In this regard, agriculture is a particularly difficult sector, as in 1989 women's average income was about 10 percent that of men (United Nations, 1995). A considerable number of female agricultural workers (about 50 percent) are unpaid (Roces, 2000)⁴⁸.

Pregnant workers have the right to a six-week fully paid maternity leave (two weeks before and four weeks after childbirth), extendable without remuneration in case of illness arising out of pregnancy, delivery, abortion or miscarriage. However, maternity benefits are granted only

⁴⁸ In other sectors, however, discrimination is considerably less acute. The Philippines has much higher numbers of women employed in administrative, managerial, professional and technical occupations than other Southeast Asian countries (Indonesia, Malaysia, etc.) (Roces, 2000).

for the first four deliveries (Labour Code, art. 133). Maternity benefits are to be paid by the employer, although under the Maternity Benefits Act of 1992 full maternity benefits are paid by the Social Security System for 60 days for women workers meeting specified requirements. Employers cannot discharge pregnant workers on account of their pregnancy or while on maternity leave, nor discharge or refuse their admission upon returning to their work for fear that they may be pregnant again (Labour Code, art. 137(a)(2) and (3)).

As for social security, the Social Security System covers all employees, without making distinctions on the basis of sex or gender (Labour Code, art. 168, and the Social Security Act of 1997, sect. 9(a)). Housewives may be covered by the Social Security System on a voluntary basis (Social Security Act, sect. 9(b))⁴⁹.

3.7. The Pacific region

3.7.1. Regional overview

Of all the countries of the region, only a few (including Australia, New Zealand and Papua New Guinea have ratified ILO Conventions 100 and 111. In several countries, labour legislation does not explicitly prohibit discrimination on the basis of sex/gender (e.g. Fiji, Samoa, Tonga). Papua New Guinea is an exception, as Article 48 of the Constitution states that "every person" has a right to freedom of choice of employment and section 97 of the Employment Act prohibits discrimination on the basis of sex. The Employment Act of Vanuatu prohibits sex discrimination but only with regard to remuneration (sect. 8).

Maternity leave is six weeks in Papua New Guinea and 12 weeks in the Solomon Islands. Maternity benefits are generally not paid (e.g. Papua New Guinea, Australia and New Zealand) or very low (25 percent of the wage in Solomon Islands); when benefit payment is envisaged, it is usually paid by

⁴⁹ Given the high number of Filipinos working abroad (especially women), the Philippines has legislation specifically protecting migrant workers (Migrant Workers and Overseas Filipinos Act of 1995; e.g. sect. 2(d) states the principle of equality of men and women); as migrant workers are engaged mainly in non-agricultural occupations (primarily domestic work), this legislation is not covered in this study.

the employer (e.g. Solomon Islands) (United Nations, 2000). Protection from dismissal during pregnancy is envisaged in some countries, but the covered period is usually very limited (a few days beyond maternity leave in Fiji; three weeks beyond maternity leave in Vanuatu).

3.7.2. Fiji

For a long time, Fiji had not ratified any of the relevant ILO Conventions. In 2002, the government ratified five ILO Conventions, including Conventions 100 and 111.

Agricultural labour is governed by the Employment Act (Cap 92), which is currently being reviewed by the government (GoF, 1999). However, service contracts for the harvesting of sugar cane, which is Fiji's major cash crop, are excluded from the scope of the Act by the Employment (Application) Order (sect. 3 and Second Schedule).

The Employment Act does not specifically state the principle of non-discrimination on the basis of sex or gender. It contains a ban on women's night work, which does not apply to the agricultural sector (sect. 65). No provision specifically deals with sexual harassment in the workplace.

Maternity protection is very limited. Maternity leave is of 84 days, to be divided in two periods of 42 days each before and after childbirth (sect. 74(1)). Protection from dismissal extends to three months, i.e. just a few days beyond the maternity leave period (sect. 79(1)). Maternity benefits are determined through a flat rate amount, which is very low and in most cases lower than full pay (US\$1.50 per day; sect. 74(1)). Maternity benefits are paid integrally by the employer (sect. 74). Lack of pregnancy notification to the employer within the terms, and defect or inaccuracy of the notification where the defect or inaccuracy causes prejudice to the employer, entail loss of maternity benefits (sect. 77).

Under the Married Women's Property Act of 1892 (Cap 37), a married woman is entitled to hold and dispose of her separate property, including "any wages, earnings, money and property gained or acquired by her in any employment, trade or occupation in which she is engaged or carries on separately from her husband" (sect. 4).

Although there has been an increase in women's participation in formal employment, women remain confined to low-paying jobs, and concentrated in the informal sector (with little or no security), principally in subsistence agriculture. There is little awareness of labour rights among women, including on maternity leave legislation. Discriminatory practices include unequal remuneration, unequal training and career opportunities, and sexual harassment (GoF, 1999).

3.8. Europe

3.8.1. Regional overview

While the ECHR is silent on socio-economic rights, the European Social Charter, as revised, recognizes the right of all workers to equal opportunities and equal treatment in employment and occupation, without discrimination on the ground of sex, and states the principle of equal remuneration for work of equal value. The Charter also guarantees the right to paid maternity leave for at least 12 weeks, funded by social security institutions or by public funds.

For countries, Members of the European Union, EU legislation and case law on non-discrimination in employment applies. Article 2 of the EC Treaty includes gender equality among the objectives of the European Community. Under Article 13 of the EC Treaty, the Council of Ministers may take action to combat sex discrimination. Article 141(1) (formerly 119) of the EC Treaty (as amended) states the principle of equal remuneration for work of equal value. Article 141(4) provides for affirmative action. Equality of treatment for men and women in access to employment and vocational training is stated in Directive 76/207 of 1976, while the principle of equal pay for equal work is implemented by Directive 75/117 of 1975. Under Directive 97/80 of 1997, when persons alleging discrimination violating Directives 117 and 207 establish *prima facie* discrimination (i.e. "facts from which it may be presumed that there has been direct or indirect discrimination"), the burden of proof is on the employer to prove that no violation occurred. A three-month parental leave is granted to both parents to tend children up to eight years old (Directive 96/34 of 1996). A vast case law on gender equality in the workplace exists within EU law.

The principle of non-discrimination on the basis of sex/gender is stated in all Western legal systems. Some countries also provide for special measures to promote women's employment. However, there are reports that in the rural areas of some EU states, women's unemployment rates are higher than men's, due to traditional attitudes on the role of men and women and to the shortage of transport and care facilities (Braithwaite, 1996).

As for Central and Eastern European countries, the principle of equal treatment for men and women is affirmed e.g. in Croatia (Labour Act 1995, amended in 2004) and in Romania (Art. 38(4) of the Constitution and art. 5 of the Labour Code, as amended in 2003). A considerable gender pay gap has however been documented for several countries (UNICEF, 1999).

As for maternity leave, most countries comply with the international standard of 12 weeks. Cash benefits range from 75 percent of the wage (Greece) to 100 percent (most countries: e.g. Germany, Poland, Russia); in some cases, benefits vary during the leave period (e.g. 82 percent of the wage for 30 days and 75 percent thereafter in Belgium). In most European countries maternity benefits are paid through social security (Belarus, France, Germany, Hungary, Romania, United Kingdom) (United Nations, 2000). Pregnant women are usually protected from discrimination or dismissal (e.g. in Croatia, Labour Code 1995, art. 55).

3.8.2. Italy

In Italy, agricultural labour is governed by general labour law, although some issues are governed by specific norms, such as recruitment procedures, work reinstatement following unjust dismissal, employment contract duration and social security⁵⁰. Moreover, the above-mentioned norms of EU law apply; Law 52 of 1996 provided for the implementation of EC Directives relating to equal opportunities (art. 18).

⁵⁰ For instance, Law 83 of 1970 allows direct recruitment (instead of recruitment through labour offices) for agricultural undertakings; Law 196 of 1997 allows the experimental use (on the basis of collective agreements) of temporary labour through intermediaries in the agricultural sector; article 18(1) of Law 300 (1970) applies reinstatement following unjust dismissal to agricultural undertakings employing five or more workers (instead of 15 or more); article 1(2)(a) of Law 230 of 1960 and Decree 1525 of 1963 allow fixed term contracts for seasonal agricultural work.

Direct and indirect discrimination on the basis of sex, marital or family status or pregnancy is prohibited with regard to both access and treatment. Where the person alleging discrimination proves facts establishing *prima facie* discrimination, the burden is on the employer to prove the absence of discrimination. The equal remuneration principle is stated with regard to both equal work and work of equal value (Constitution, Art. 37; Law 903 of 1977, arts. 1–3; Law 125 of 1991, art. 4(6), as amended; Legislative Decree 151 of 2001, art. 3).

Contractual clauses envisaging termination of the employment of women workers in case of marriage, as well as actual dismissal for marriage and worker's resignation within one year from marriage (unless confirmed before the labour office), are null and void, and the worker has the right to be reinstated in her position. Dismissals within one year from marriage are presumed to be motivated on grounds of marriage unless the employer proves otherwise (Law 7 of 1963, art. 1).

Affirmative action measures to promote women's employment and de facto equality of opportunity can be undertaken by employers, with public funding (Law 125 of 1991, as amended by Legislative Decree 196 of 2000). Projects implemented so far concerned mainly access to male-dominated sectors and changes in the work organization and time. The implementation of the law is monitored by the National Committee for Equal Opportunities established within the Ministry for Labour. The major problems encountered in the implementation of the law include limited resources and cumbersome administrative procedures (GoIt, 1999).

Maternity leave is of two months before childbirth (three months for dangerous and heavy jobs) and three months after childbirth, extendable for periods of two months in cases of illness arising out of pregnancy or childbirth. Maternity benefits are equivalent to 80 percent of the remuneration. For women workers in sharecropping undertakings ("*mezzadria*" and "*colonia*"), maternity benefits are 80 percent of the average daily income, as determined by the Ministry of Labour every two years (Law 1204 of 1971 and Legislative Decree 151 of 2001). Benefits are paid by the social security institution (INPS), funded through payroll taxes (increasing the cost of labour, though without distinction on the basis of sex), although there is a trend toward the gradual transfer of the funding for maternity benefits to the general taxation system (GoIt, 1999).

Women workers cannot be dismissed from the beginning of pregnancy until the child reaches the age of one year; in case of dismissal, they have the right to be reinstated. Seasonal workers have the right to priority in seasonal recruitment. Women cannot be required to perform dangerous, tiring or unhealthy jobs during pregnancy and until seven months after childbirth, without wage deductions. Two nursing breaks per day are allowed (Laws 1204 of 1971 and 53 of 2000; Legislative Decree 151 of 2001). The safety and hygiene of working conditions for pregnant and nursing women are protected by Legislative Decree 645 of 1996.

In case of death, grave inability or abandonment of the mother, or in case of child custody to the father, the latter has the right to a paternity leave on the same terms of the maternity leave (Law 903, art. 6bis, and Legislative Decree 151 (2001), arts. 28 and 29). Parental leave of up to 10 months, until the child reaches the age of 8, is granted to both parents (art. 3 of Law 53 of 2000; art. 32 of Legislative Decree 151 of 2001 and Legislative Decree 115 of 2003).

As for social security, family benefits and pension increases for family dependants can be paid to working or retired women. Payment of social security benefits to the surviving spouse of the insured worker applies equally to men and women (Law 903 of 1977, arts. 9–12).

Italy, especially in the south, has a large informal economy compared to other developed countries. In the informal sector, labour legislation, including its provisions on gender equality, is not applied. Although gender-disaggregated data on this sector are scarce, women constitute a substantial portion of the informal labour force, including in the agricultural sector. Legislative efforts to promote the regularization of the informal sector have been made (e.g. Laws 608 of 1996 and 196 of 1997, envisaging incentives for informal sector enterprises to register) (GoIt, 1999). Even in the formal sector of the economy, however, compliance problems may arise. A gender division of occupations and a gender pay gap still exist in several sectors, with substantial cross-sectoral variation (CEACR (100), 1998).

3.9. Conclusion

In the light of the analysis of the legislation of the covered countries, it is possible to highlight some key issues affecting the labour rights of women agricultural workers. First, women's access to employment may be restricted by family law norms requiring the authorization of the husband (e.g. in some Mexican states). In several countries, these norms have been successfully challenged by women at national and international level, and legislative reforms have been adopted to repeal them (e.g. Guatemala). However, even where these norms are repealed, there are reports that marital authority continues to be applied in practice, especially in rural areas (e.g. Brazil).

Second, while labour legislation in most of the covered countries explicitly prohibits sex discrimination, in some cases labour laws are silent on this issue (e.g. Fiji, Kenya). In yet other cases, while the non-discrimination principle is formally stated, no sanction is envisaged for violations (Burkina Faso). In most of the covered countries (with some exceptions, e.g. Italy), sex discrimination in remuneration is prohibited only with reference to "equal work", not with reference to the internationally recognized criterion of "work of equal value". In all these cases, discriminatory practices on the workplace may be *de jure* or *de facto* allowed. Affirmative action measures are envisaged only in some of the covered countries (e.g. Brazil, Italy, South Africa).

Third, women's access to agricultural work may be hindered by "protective" legislation prohibiting women's night work in the agricultural sector, while international conventions prohibit it only with regard to some industrial occupations (e.g. India).

Fourth, only some countries have adopted legislation addressing sexual harassment on the workplace (Philippines). In India, the legislative lacuna was filled by guidelines adopted by the judiciary. In other countries, sexual harassment is left unaddressed (Fiji, Kenya). Field studies document that this is a major problem affecting women working in plantations.

Fifth, women enjoy special protection in case of maternity in all the countries examined. However, requirements for the application of this protection (e.g. in terms of duration of previous employment and of documentation to be produced) may be very demanding, and can *de jure*

or de facto exclude women agricultural workers (who are concentrated in seasonal and temporary labour force). Furthermore, maternity leave is often considerably shorter than internationally recognized standards (Fiji, Kenya). In addition, while in some countries maternity leave is fully paid, in others it is unpaid or it covers only a limited portion of the full wage (Fiji, Italy, South Africa, Tunisia). Finally, where maternity benefits are wholly or in part paid by the employer (Burkina Faso, Fiji, India, Mexico, the Philippines), women's access to employment is hindered by their higher labour costs.

Finally, women's labour rights are severely limited by the lack of implementation of labour legislation. For example, while most countries state the equal pay principle, gender pay gaps are reported for most of the examined countries. Pregnancy testing and even sterilization practices have been documented in some countries (e.g. Brazil, Mexico). In plantations, women often work without contract on a daily and piece-work basis (as documented e.g. for Brazil, Mexico, South Africa). This deprives them of the protection accorded by labour law. In other cases, employment contracts are signed by the household head, and women provide labour as family members of employees; in these cases, wages are paid to the household head with regard to the global labour provided by the household (e.g. as documented for Tunisia, South Africa). More generally, a gender division of labour in agricultural work, whereby women are concentrated in low pay, temporary agricultural work, is widespread in most of the covered countries, although to very different degrees.

Table 5. Sex/gender discrimination in labour rights

	Access	Treatment (general)	Treatment (pay)	Social security
Brazil	ND; SM; F	ND	ND; F	GN
Burkina Faso	ND	ND	ND	GN
Fiji	GN	GN; F	GN; F	GN
India	ND; F	ND	ND; F	GN
Italy	ND; SM	ND	ND	GN; ND
Kenya	GN	GN	GN	J/D
Mexico	ND; J/D	ND; F	ND; F	
Philippines	GN; F	ND	ND; F	GN
South Africa	ND; SM; F	ND; F	ND; F	ND
Tunisia	ND; F	ND	ND; F	GN

GN Gender neutral / non-discriminatory

ND Non-discrimination / equal-rights principle explicitly stated

SM Special measures to advance women

J/D *De jure* direct discrimination

J/I *De jure* indirect discrimination

F De facto discrimination reported in the literature reviewed

Where two or more acronyms are included, they refer to different aspects of relevant legislation and/or to a gap between law and practice.

Table 6. Maternity leave benefits

	Guarantee against dismissal	Duration of maternity leave	Percentage of wage paid during covered period	Provider of coverage
Brazil	Yes	120 days	100	Social Security
Burkina Faso	No	14 weeks	100	Employer / Social Security
Fiji	Yes	84 days	Flat rate	Employer
India	Yes	12 weeks	100	Employer / Social Security
Italy	Yes	5 months	80	Social Security
Kenya	No	2 months	100	Employer
Mexico	Yes	12 weeks	100	Employer / Social Security
Philippines	Yes	6 weeks	100	Employer / Social Security
South Africa	Yes	4 months	45	Unemployment Insurance
Tunisia	No	30 days	67	Social Security

Source: United Nations (2000), with changes and integrations.

IV. THE RIGHTS OF SELF-EMPLOYED RURAL WOMEN

4.1. Introduction

Women farmers play an important role in agricultural production. In many areas, they are mainly responsible for food crops, while men mostly grow cash crops (although women may provide labour to cultivate their husbands' crops). In other areas, women are fully integrated in commercial agriculture. In numerous countries, women's role in agriculture is increasing as a result of men's out-migration and/or employment in non-agricultural sectors ("feminization of agriculture"). As women's activities are often concentrated in the informal economy and perceived as part of women's responsibility for household tasks, they are often non-monetarized and underestimated in official statistics.

This chapter examines the rights of self employed rural women, including both the rights relating to the exercise of agricultural activities as such (the legal status of women agricultural entrepreneurs; women's position in rural cooperatives and producers associations) on the one hand, and the rights of access to services supporting those activities (credit, training, extension and marketing services) on the other.

These issues are intertwined with those examined in the other chapters of this study. Training is crucial for both employment and self employment⁵¹. Membership in farmers' cooperatives is often conditional upon land ownership; this may exclude rural women, who rarely own land. In turn, cooperatives constitute a common institutional form to hold land. Access to credit is affected by land rights, as land may be used as collateral to secure loans; moreover, in the rural areas of many developing countries, credit is obtained informally through "interlinked contracts", whereby two persons are linked by several contractual relations simultaneously (e.g. a landlord or employer lending money to the tenant or farm worker). Therefore, women's access to credit may be affected by the fact that land titles and tenancy or employment contracts are more often held by men.

⁵¹ Access to training is mainly dealt with in this chapter, except for norms explicitly referring to training within the context of employment relations (embodied e.g. in labour laws), which were covered in chapter III.

In many countries, the rural poor face considerable difficulties in establishing small agricultural enterprises, due to their lack of land titles, capital (e.g. access to credit), inputs, infrastructure (e.g. business premises), training and market information. Moreover, the administrative procedures for enterprise registration are often costly and cumbersome⁵². Within this context, women face greater difficulties than men, particularly with regard to participation in rural cooperatives and access to credit, training and agricultural extension. These difficulties rarely flow from explicitly discriminatory norms, as legislation on these issues is in most cases gender neutral. Rather, they mainly arise from cultural practices and stereotypes (e.g. on women's role within the family and on interactions between persons of different sex) and from socio-economic factors (e.g. as for access to credit, women's higher illiteracy rates, lack of information about available credit programmes, lack of land titles to be offered as collateral, more limited access to formal employment, and exclusion from credit cooperatives).

From a purely legal point of view, only some considerations may be made with regard to these social, economic and cultural factors. First, in some cases, gender neutral legislation (without the explicit statement of the non-discrimination principle) is not enough to ensure gender equality. For instance, silence on gender equality in cooperative legislation may allow cooperative by-laws to directly or indirectly discriminate against women (e.g. in admission policies) without violating the law. Second, where socio-economic gender inequality exists, the lack of legal response by the state (e.g. through the adoption of affirmative action measures) may be remarked.

4.2. Relevant international law

Under the CEDAW, states are to eliminate discrimination against women in the "economic and social life", and to ensure equality of men and women e.g. in access to credit (art. 13). Moreover, rural women have equal rights to organise self-help groups and cooperatives, and to have access to training, appropriate technology, extension services, agricultural credit, and marketing facilities (art. 14).

⁵² A classic study on this issue, with particular regard to Peru, is De Soto (1989).

Other human rights law provisions are also relevant for the self-employment activities of rural women. Women's access to training is protected by provisions concerning the right to education (UDHR, art. 26, ICESCR, art. 13, and CEDAW, art. 10) and by ILO Discrimination (Employment and Occupation) Convention 111 of 1958. The right to freedom of association (relevant e.g. for women's participation in producer associations) is recognized without discrimination in articles 20 and 2 of the UDHR and articles 22, (2) and (3) of the ICCPR. The right to freedom of movement (UDHR, arts. 13(1) and (2), and ICCPR, arts. 12, (2) and (3) is also relevant, for instance for women's attendance of vocational courses and cooperative meetings, for their food marketing activities and for their access to banks (which in many countries are mainly located in towns, thus requiring rural people the freedom and ability to travel). This is especially so in cultures where women cannot travel without the company or permission of the husband or of a male relative.

The promotion of women's exercise of economic activities, including through improving their access to productive resources such as credit, is also envisaged in the Beijing Declaration and Platform for Action (e.g. paras. 61(b), 166 and 173), in the Copenhagen Declaration on Social Development, in the Cairo Declaration on Population and Development, and in the World Food Summit Plan of Action (para. 16(b)).

4.3. The Americas

4.3.1. Regional overview

Regional human rights instruments protect rights relevant for the exercise of economic activities. In particular, the ACHR guarantees without discrimination *inter alia* the right to freedom of movement and the right to freedom of association, including for economic and labour purposes (arts. 1, 16 and 22).

The obstacles encountered by women entrepreneurs are usually socio-cultural rather than legal. However, in some cases legislation may restrict the exercise of economic activities by rural women. For instance, the Civil Code of the Dominican Republic prohibits married women from contracting obligations without the authorization of husband

(Galan, 1998). In Chile, women married under certain marital property rights regimes must obtain the authorization of their husband to sign contracts establishing companies (Commercial Code, art. 349). More generally, where family law grants exclusive administration rights over family property to the husband (e.g. Dominican Republic, Honduras), women's ability e.g. to obtain credit by mortgaging land is severely limited.

Socio-economic constraints mainly relate to women's limited access to cooperatives, training and credit, and are mainly determined by cultural attitudes and stereotypes. The legislation of some countries contains provisions addressing these constraints. For instance, Nicaragua's Law on Agricultural and Agro-industrial Cooperatives (Law 84 of 1990) explicitly prohibits cooperatives from discriminating on the basis of sex and provides for the full integration of women in cooperatives on the basis of equality of rights and obligations (arts. 5(3) and 6). In Peru, Law 26772 (1997) explicitly prohibits sex discrimination in access to vocational training, and in Guatemala, Decree 7 of 1999 guarantees equal access to vocational training (art. 10).

As for women's access to credit, this is limited throughout the region, even where there is no *de jure* discrimination. Requiring the authorization of the husband for women's application for credit and mortgage is a widespread practice adopted by financial institutions. In Jamaica, only 5 percent of the loans of the Bank of Agricultural Credit goes to women. In some cases, women's limited access to credit is due to women's little demand for it (due to cultural factors internalized by women). In a study from the Andean region, only 29 percent of interviewed women had applied for a loan (compared to 43.2 percent of men); 91 percent of women applicants had been granted the loan (compared to 85 percent for men) (FAO, 1994 and 1996). To redress this situation, legislation and public credit programmes may grant priority access to women, as in the case of Nicaragua's Law 209 of 1995 (Galan, 1998).

4.3.2. Mexico

The exercise of economic activities by women is constrained both by legal obstacles and by cultural factors, including "deeply rooted traditions of men's superiority" (CEDAW, 1998). In some states of the federation, women's exercise of economic activities is constrained by family law norms on marital authority requiring the authorization of the husband

for women to take up an occupation (e.g. the Civil Code of Oaxaca, arts. 167–170; see above, section 3.3.2).

The General Law on Cooperatives 1994 states the principle of gender equality (art. 11(III)), although women's participation in rural organizations remains limited. The Law on Agricultural Associations, concerning associations of agricultural producers, is gender neutral. Within *ejidos*, women over the age of 16 (either *ejidatarias* or spouses or relatives of *ejidatarios*) may exercise crop, livestock and rural industry activities by setting up groups (*Unidad Agrícola Industrial de la Mujer*, UAIM). Both the federal government and the *ejido* assembly are to promote these productive activities, including through resource mobilization, technical assistance and marketing support (1998 Agrarian Law Regulation on the Promotion of Rural Women's Organization and Development, as amended, arts. 4 and 6).

Credit legislation is generally gender neutral. The Organic Law on the Banrural System of 1986, as amended, makes no reference to women or gender. On the other hand, the Rural Credit General Act of 1976, as amended, explicitly recognizes UAIM members as potential credit beneficiaries (art. 54), and grants them priority in credit allocation (art. 59; quoted in FAO, 1994). However, women's access to credit remains limited due to their limited organization, to shortage of funds and to the lack of legal personality for the UAIMs.

The Agricultural Extension Act does not make explicit reference to women. Extension services must be targeted to the "rural household" as a "social unit" (art. 6(III)). The Sustainable Rural Development Act of 2001, envisaging government programmes to promote sustainable development in rural areas, includes gender equity and women-targeted programmes (arts. 15(X), 154 and 162), and grants priority for women's productive units and work groups within activities concerning rural associations (art. 144(IX)).

Under the Social Security Act of 1995, as amended, a voluntary scheme of maternity benefits is envisaged for self employed workers, labourers in family undertakings and *ejidatarias*. Benefits are paid by the Mexican Institute of Social Security.

4.3.3. Brazil

Marital authority provisions limiting the contractual capacity of married women, contained in the Civil Code of 1916, were repealed by Law 4121 (1962) and by the Civil Code of 2002 (see above, para. 3.3.3)⁵³.

Law 5764 of 1971, governing cooperatives, does not explicitly mention women. However, it states among the fundamental characteristics of cooperatives the absence of "social" discrimination (art. 4(IX)); it affirms the equality of rights of cooperative members (art. 39); and it provides for the freedom to join cooperatives for everybody wishing to do so (art. 29).

Since the 1960s, subsidized credit programmes have played an important role in Brazil's agricultural development, mainly targeting extensive, mechanized commercial farms. Credit laws (e.g. Laws 4829 of 1965, 8427 of 1992, and 9138 of 1995, establishing and regulating the subsidized rural credit system) do not discriminate against women, but do not specifically consider them either. As a result, women's access to credit remains limited, both because of demand factors (as rural women rarely apply for loans due to cultural factors internalized by them) and because of supply factors (as women can rarely offer land as collateral). Rural women's access to credit programmes is also curtailed by their lack of the necessary documents (identity cards, etc.; on this issue, see above, paras. 2.3.3 and 3.3.3). Few women have directly benefited from credit, training and extension services provided under agrarian reform programmes such as Casulo Project, Lumiar Project and PROCERA (Barsted, 2002; Guivant, 2001).

In order to support family farms, Law 10186 of 2001 established the PRONAF (National Programme to Support Family Agriculture), providing for credit, training and extension services. However, in 2001, only 7 percent of PRONAF beneficiaries were women (Barsted, 2002). In the same year, the Minister for Agrarian Development adopted Ordinance 121 (2001), reserving "preferentially" to women 30 percent of PRONAF credit, training and extension services. Moreover, the Ordinance calls for the revision of PRONAF norms in order to facilitate access to its services by women farmers.

⁵³ The work by Barsted (2002) provided useful guidance in the writing of this paragraph.

A particular form of credit is credit for land purchases and basic agricultural infrastructure. The Land Bank (*Banco da Terra*) was established by Law 93 of 1998 and is regulated by Decree 3475 of 2000. Beneficiaries are listed in article 1 of the 1998 Law and article 5 of the 2000 Decree, and include landless labourers and smallholders. While the terminology used is masculine ("*trabalhadores rurais não-proprietários, preferencialmente assalariados, parceiros e arrendatários*"; "*agricultores proprietários*"), no sex/gender discrimination is made. Landless labourers include not only agricultural employees, but also self employed and family farm labourers, who are more likely to be women. Article 8 of the 2000 Decree excludes from the programme those who have already benefited within other agrarian reform programmes and their spouses; since it is men that usually benefit directly from agrarian programmes, their wives are excluded from credit by the Land Bank (Barsted, 2002). Ordinance 121 of 2001 reserves "preferentially" to women 30 percent of the resources for credit provided by the Land Bank, and calls for a revision of its norms to facilitate access by rural women.

4.4. Sub-Saharan Africa

4.4.1. Regional overview

The ACHPR recognizes without discrimination on the basis of sex *inter alia* the freedom of movement and the freedom of association (arts. 2, 10 and 12). On the other hand, a gender division of agricultural activities exists throughout sub-Saharan Africa. This is mainly determined by socio-cultural practices, rather than by legal norms. Thus, while men mainly cultivate cash crops, women usually grow food crops or crops traded in the local market. Some tasks (e.g. weeding, harvesting, storage) are dominated by women even for crops cultivated by men. Sharecropping contracts are mostly signed between men. Women are rarely sharecroppers, and tend rather to provide labour in the fields rented by their husbands or male relatives (FAO, 1995; Lastarria-Cornhiel and Melmed-Sanjak, 1999). As for livestock activities, women are generally responsible for small animals, and men for large ones; cattle milking as well as the processing and marketing of dairy products are performed by women. As for fishing, women's involvement varies from confinement to fish marketing to full involvement in all stages of fishing (FAO, 1995).

Laws on rural cooperatives are usually gender neutral. Thus, Niger's 1996 Ordinance on rural cooperatives is worded in gender neutral terms and makes no reference to gender. In some cases, however, legislation explicitly prohibits discrimination on the basis of sex. For instance, the 1991 Co-operative Societies Act of Tanzania, as amended by the Co-operative Societies (Amendment) Act of 1997, prohibits gender discrimination in access to membership, states that both men and women can be elected as cooperative representatives, and affirms the principle of equality of all members in the activities of cooperatives (sect. 22). In Ethiopia, Co-operative Societies Proclamation 147 of 1998 includes among the "Guiding Principles of Co-operative Societies" the prohibition of gender discrimination (sect. 5(1)). Namibia's Co-operatives Act of 1996 contains a similar provision (sect. 9(b)(i)), and provides for women's representation in managing boards of cooperatives that have a minimum number of women members (sect. 29(2)(b)). On the other hand, laws may envisage requirements for cooperative membership which indirectly hinder women's access to cooperatives (e.g. land ownership).

In practice, women's participation in cooperatives and farmers unions is very limited, mainly due to socio-economic factors (e.g. women's limited land ownership) and to cultural stereotypes. The percentage of women members of cooperatives ranges from 6 percent in Burkina Faso to 11 percent in Benin and 15 percent in Sudan. Women's membership in farmers unions ranges from 2 percent in Sudan to 75 percent in Zimbabwe (Zimbabwe Farmers Union); even where women's participation as members is high, the number of women officers remains extremely low (e.g. 5 percent in the Zimbabwe Farmers Unions). A substantial growth of women's involvement in rural organizations has taken place in the last two decades; for instance, in Mauritania women's cooperatives increased from 15 in 1982 to more than 500 in 1993 (FAO, 1995).

Credit laws usually do not refer to gender (e.g. Burkina Faso, Kenya, Senegal), and women have rights equal to men. However, in practice a very small percentage of rural credit directly benefits women, ranging from 5 percent (Burkina Faso's National Fund for Agricultural Credit) to 32 percent (Zimbabwe's Agricultural Finance Corporation) (FAO, 1995). This limited access to credit is mainly caused by high illiteracy rates, lack of collateral, limited access to formal employment, fear of indebtedness, lack of information, cumbersome procedures, exclusion from cooperatives through which credit is provided, and transport costs

(FAO, 1995 and 1996). In several countries, progress has been made through the provision of women-targeted credit, particularly through donor-supported credit and microcredit programmes. Microcredit schemes based on group loans overcome one of the major obstacles that women encounter in obtaining access to credit, i.e. their lack of land titles to be used as collateral (FAO, 1995; Gopal and Salim, 1998).

Laws and regulations on agricultural extension are usually silent on gender. In practice, agricultural extension services are dominated by men, both as extension officers (due to men's greater access to secondary agricultural education) and as beneficiaries (due to socio-cultural perceptions) (FAO, 1995). In recent years, there have been improvements, with an increase in female officers and beneficiaries. For example, in Tanzania, one village extension officer out of three is a woman (Due *et al.*, 1997). These improvements are partly the result of administrative reforms in the structure of the ministries responsible for agriculture. In Malawi, a Women's Programme Section was established in 1981 within the Department of Agricultural Extension and Training of the Ministry for Agriculture. The Women's Programme Section targets women, particularly female household heads, providing training and extension through women's farmer groups; as a result, women's participation in agricultural extension has increased substantially, especially with regard to female household heads (Sigman, 1995).

As for marketing, a gender division of labour exists throughout sub-Saharan Africa. Women's market niches are defined by traded commodity (staple food), size of the undertaking (small-scale, individual enterprise), point in the food market chain (retailing) and territoriality (local market) (Harriss-White, 1998). Like the other aspects of self employment agricultural activities, the causes for this gender division of roles are socio-cultural rather than legal. Agricultural market liberalization also had gendered effects. State marketing boards (established in most African countries) targeted mainly male farmers. Since the mid-1980s, many countries have adopted liberalization reforms as part of structural adjustment programmes, restructuring and privatizing public marketing boards, reforming price regimes, etc. Evidence suggests that this has resulted in an increase in women's participation in agricultural trading activities (e.g. Ghana, Tanzania), although the benefits of liberalization have mainly accrued to (male-dominated) medium- and large-scale traders (Baden, 1998).

4.4.2. Kenya

In Kenya, the constraints met by rural women entrepreneurs are mainly non-legal. Under the Contract Act (Cap 23), women as well as men have full contractual capacity. The Registration of Business Names Ordinance (Cap. 499), requiring the registration of all business names, both for companies and for individuals carrying out economic activities under a name different from their surname (or for individuals that have changed their name), is gender neutral; the only provision specifically concerning women is section 4(c), exempting from the registration requirement women's change of name after marriage.

The Co-operative Societies Act of 1997 makes no reference to gender. As for qualifications for membership, section 14 requires majority age and residence within the area of operation of the cooperative. This provision is gender neutral, although the terminology used is masculine ("he"). There are reports that membership rules embodied in by-laws often require land ownership, which in practice excludes women (as few own land) (Gopal and Salim, 1998). Moreover, women's participation in cooperatives is hindered by socio-cultural factors.

As for access to credit, while legislation is gender neutral (e.g. the Banking Act, Cap. 488, as amended), discriminatory practices exist. For instance, there are reports of banks requiring the consent of the husband before lending to women. More generally, women's limited access to land titles and formal employment curtails their creditworthiness. The priority given by financial institutions to cash crops (mainly grown by men) *vis-à-vis* food crops (mainly grown by women), and the location of credit institutions in urban areas (where men often migrate) rather than in rural areas (where women mainly reside) also foster gender inequalities (House-Midamba, 1993; World Bank, 1994; Gopal and Salim, 1998). As a result of these factors, very few women borrowed from the Agricultural Finance Corporation, a major supplier of agricultural credit (House-Midamba, 1993). Credit programmes targeting women small-scale entrepreneurs have recently been set up by commercial banks and NGOs, using the group lending model of the Grameen Bank in Bangladesh (House-Midamba, 1993; Kiiru and Pederson, 1996; Gopal and Salim, 1998).

Under the National Extension Project, village women groups have been used to spread technical assistance and agricultural extension. This has

greatly improved women's access to extension services (Saito and Spurling, 1992; FAO, 1996).

4.4.3. Burkina Faso

Besides working on the fields controlled by their husbands (see above, para. 3.4.3), women carry out their own income-generating activities, including cultivating their personal fields and locally trading processed food. These activities are determined by a rigid gender division of labour (for instance, beer is brewed and traded by women only). Long-distance trade is dominated by men; women long-distance traders may lose their reputation and suffer verbal and even physical abuse (Kevane and Wydick, 1999).

Law 14/99 of 1999, governing cooperatives and other organizations ("*groupements*"), prohibits discrimination on the basis of sex (arts. 9 and 72). Women constitute 6 percent of cooperative members and 20 percent of "*groupement*" members (FAO, 1995).

Credit laws make no explicit reference to women. In rural areas, women's access to credit is very limited. Only 5 percent of the loans of the National Fund for Agricultural Credit goes to women (FAO, 1995), mainly because of women's high illiteracy rate and lack of collateral (CRLP, 2000). Some women-targeted microfinance programmes have recently been established. For example, the *Fédération des Caisses Populaires du Burkina Faso* established in 1993 a "Credit with Education" programme, based on microcredit, group lending and credit supply directly in rural areas (with bank officers travelling to rural areas instead of women travelling to towns). The programme benefits 30 000 rural women (Kevane and MkNelly, 2001).

Although most women work in agriculture (with a substantial number of de facto female-headed households due to men's migration), only a very limited portion of agricultural extension services benefits women. In 1985, the *Opération test de renforcement de la vulgarisation agricole*, based on training visits, was launched. Moreover, a Bureau for the Promotion of Women's Activities was established within the Directorate of Agricultural Extension. As a result of these reforms, the number of women extension service beneficiaries increased substantially in the late 1980s, although extension services are still concentrated on male farmers (FAO, 1995). Decree 97-428 of 1997 establishes the Ministry for Animal Resources and, within it, a

directorate on extension services and technology transfer which is responsible for promoting awareness among "new actors", including women, to invest in pastoral activities (art. 34).

Decree 486 of 2004, containing the National Policy on Women Empowerment, provides a range of measures to support women's organizations, to promote the development and best use of women's expertise, to support women entrepreneurs, and to improve women's access to markets and to means of production (including through targeted micro-credit programmes).

4.4.4. South Africa

In South Africa, a considerable number of women are self employed, while men are more often absorbed in formal employment (CEDAW, 1998). For a long period, legal obstacles hindered women's exercise of self employment activities. For instance, under the Black Administration Act of 1927, women married under customary law were considered as minors under the guardianship of their husband, and could not sign contracts (sect. 11); this norm was repealed by the Recognition of Customary Marriages Act of 1998, which recognizes the full legal capacity of the wife to enter into contracts (sect. 6). Legislation relating to agricultural self employed activities is mostly gender neutral. Moreover, a number of laws have recently been passed to improve the situation of self employed women.

The Co-operatives Act of 1981 (in operation in 1991, extended to the homelands by the Agricultural Laws Extension Act of 1996) is gender neutral. The norms on membership requirements for agricultural cooperatives and "special farmers' co-operatives" refer to natural or juristic persons "carrying out farming operations on their own account" (sect. 57).

Agricultural credit is governed by the Agricultural Credit Act of 1966, as amended (lastly by the Agricultural Credit Amendment Act of 1995), which establishes an Agricultural Credit Board to supply agricultural credit; and by the Agricultural Debt Management Act of 2001, which replaced the 1966 Act as it came into effect. No reference is made to gender. Women's access to credit is in practice limited due to their lack of land titles; moreover, there is anecdotal evidence of banks requiring the consent of the husband before lending to women married in regime of separation of property (RSA/CGE, 1998). The Promotion of Equality

and Prevention of Unfair Discrimination Act of 2000 prohibits unfair discrimination against women by the state and all persons, including in women's access to credit (sects. 6 and 8(e)).

As for training, the National Education Policy Act of 1996 provides that the national education policy, to be formulated by the Minister for Education must realise the right of every person to non-discrimination and equal access to education and must be directed toward "achieving equitable education opportunities and the redress of past inequality in education provision, including the promotion of gender equality and the advancement of the status of women" (sect. 4(a) and (c)).

The Further Education and Training Act of 1998, regulating programmes leading to qualifications above general education but below higher education (sect. 1), aims to ensure access to education and training for persons who suffered discrimination in the past, including women (fourth paragraph of the preamble). Each public further education and training institution must establish a council which must be "broadly representative of the community served by the institution" in respect of gender, and must develop a strategic plan addressing gender issues (sects. 8, 9(2)(a)(ii) and 9(8)(e)). The council is also to adopt codes of conduct and disciplinary measures and procedures dealing with sexual violence and sexual harassment (sect. 16). Moreover, each public education and training institution must establish an academic board, which is responsible for "the promotion of the participation of women [...] in the learning programmes" (sect. 11(1)(a)). Admission policies of public institutions cannot unfairly discriminate and must provide appropriate measures for the redress of past inequalities (sect. 17(3)). As for private institutions, non-discrimination on the basis of gender is among the conditions for the registration of the institution (sect. 26(1)(c)).

The Skills Development Act of 1998 aims to improve the employment prospects of persons that suffered unfair discrimination in the past (sect. 2(1)(e)). The National Skills Authority established by the Act must include a woman (sect. 6(2)(c)(i)).

As for marketing services, although the Marketing of Agricultural Products Act of 1996 does not make specific reference to gender, its objectives include "the increasing of market access for all market participants" (sect. 2(2)(a)).

**Box 4. Gender struggles for market stalls:
a case study from Uganda**

A case study on a local market in Uganda provides some insights on the legal dynamics of gender struggles in a particular aspect of women's self employment activities, namely marketing. The Kiyembe Women's Co-operative Savings and Credit Society was established as a cooperative for Kiyembe women in 1983. Members of the cooperative were women traders who had been denied trading licences due to their lack of appropriate facilities (shops). In 1984, the cooperative obtained from the Town Clerk a lease on a plot of land to build a market. The plot had been confiscated from an Asian expelled under Idi Amin's Asian Expulsion Order of 1972. Cooperative members often had more than one market stall, and made use of hired labour to tend some of the stalls in order to reconcile this activity with their family responsibilities.

In 1987, the Kampala City Council enacted regulations allowing only one stall per vendor in local markets; surplus stalls were transferred to those tending them (e.g. hired labour). As a result of this enactment, many cooperative members lost their stalls to their (usually male) employees.

Having gained partial control of the market, men established their own market organization (Kiyembe Vendors Association). A period of tensions between the two market organizations followed, with violence and harassment against women.

In 1991, at the expiry of the lease on the plot, the Custodian Board (the institution managing property confiscated from expelled Asians) put the plot on auction. While the Kiyembe Vendors Association was notified of the auction and made its bid, the women cooperative was not notified, and made its bid only after finding out about the auction by chance. The auction was won by a parastatal organization, the National Enterprise Corporation, which tried to evict both men's and women's organizations. The Kampala City Council, approached by the men-dominated association, intervened to defend the market vendors, and the National Enterprise Corporation was eventually ousted as it did not pay the price offered for the plot.

In 1992, the government allowed the return of expelled Asians to Uganda and the restitution of the confiscated property. The original Asian owner returned to Uganda and reclaimed his property; the Custodian Board returned the plot to him.

This case study shows how men managed to progressively reduce the rights originally obtained by women under the lease agreement. In so doing, they primarily relied on their closer connections with political and administrative institutions. First, men benefitted from the expropriating regulations adopted by the City Council. Second, men (not women) were notified of the 1991 auction. Third, men were able to approach the City Council to protect their rights after the auction was won by a third party.

Similar gender struggles for the control of local market places have been documented for several other African countries (for instance, a classic study on this issue in West Africa is Amadiume, 1995).

Source: Tripp (2000), with integrations.

4.5. Northern Africa and the Middle East

4.5.1. Regional overview

The Arab Charter on Human Rights (not yet in force) protects, without discrimination between men and women, *inter alia* the right to freedom of movement of every individual ("within the limits of the law") and the right to freedom of association (arts. 2, 20 and 28).

At national and local level, women entrepreneurs face obstacles of both a legal and a socio-cultural nature. Family law norms on marital authority limiting women's capacity to contract occupation-related obligations are in place in some countries (e.g. Syria) and have recently been repealed or declared unconstitutional in others (e.g. Tunisia, Turkey) (see para. 3.5.1 above).

In some countries, women's freedom of movement is severely restricted, and women must always be accompanied by their husband or a male relative when outside the house (e.g. Saudi Arabia). This limits the possibility for rural women to undertake self employment activities (due to the constraints that it implies e.g. for women's participation in meetings of cooperatives, access to banks, ability to undertake local food trading activities, etc.).

Women's access to credit is limited throughout the region due to their limited land ownership and formal employment, their concentration in

subsistence agriculture, high female illiteracy rates, and cultural stereotypes. Women obtained only 2.8 percent of the loans of the Agricultural Bank in Turkey, 6 percent of the loans of the Agricultural Credit Corporation in Jordan, and 15 percent of loans of the Agricultural Bank in Iran. Special credit programmes for women are also rare (FAO, 1996).

Extension officers are predominantly men. Extension beneficiaries are also mainly men due to cultural factors restricting interactions between persons of different sex and women's attendance of meetings outside the house (FAO, 1995b).

In some countries (e.g. Yemen, Egypt), a substantial male emigration to some oil-rich Gulf states has increased the autonomy and decision-making power of women living in nuclear families (though not of those living within extended families) (Baden, 1992).

4.5.2. Tunisia

Under article 3 of the Code of Obligations and Contracts every person is capable of contracting obligations unless declared unsound of mind. Article 831 of the Code, requiring the authorization of the husband for married women to sign service contracts and allowing the husband to rescind contracts signed without his approval, was repealed by Law 17 of 2000.

As for training, article 339 of the Labour Code explicitly states that norms on vocational training apply to both men and women. As for education, Law 65 of 1991 explicitly prohibits sex discrimination and segregation (Belarbi *et al.*, 1997). In practice, attendance of vocational courses provided by the Ministry for Vocational Training and Labour (under Law 67-11 of 1967, as amended) is gender-segregated, with women concentrated in "feminine" courses. Only 1.2 percent of women trainees attend courses at the Ministry for Agriculture, accounting for only 6.7 percent of the trainees in agriculture (compared e.g. to 68.6 percent of the trainees at the Ministry for Health) (Belarbi *et al.*, 1997; data from 1989/90).

Legislation supporting small-scale farmers and fishers (Decree 95-793 of 1995, as amended in 1999) is gender neutral. Public programmes for the promotion of small and medium enterprises have rarely benefited women directly. For instance, out of the 968 FOPRODI projects undertaken by the Investment Promotion Agency in the 1980s, only 46 benefited women entrepreneurs.

Similarly, only 14.5 percent of the beneficiaries of the FONOPRA (promoting income-generating activities) were women (Belarbi *et al.*, 1997).

At the institutional level, regional commissions for the advancement of rural women have been established by Decree 2902 of 2001. Decree 420 of 2001, on the organization of the Ministry for Agriculture, establishes within the Ministry a bureau for the support of rural women, responsible among other things for promoting women's training and integration in agricultural production activities (art. 14).

In practice, a gender division of roles prevails in agricultural work. A substantial number of women (especially those with little educational qualification) work within the family farm, concentrated in horticulture, livestock breeding and subsistence agriculture. While husbands are mostly registered as the farm head ("*chef d'exploitation*"), women are usually registered as family labourers ("*aides familiales*"). Only 3 percent of the farm heads are women. 65–70 percent of women occupied in the agricultural sector are registered as family labourers (Belarbi *et al.*, 1997). A substantial male out-migration (to Libya and to Europe) has generated a process of feminization of agriculture, with women gaining increasing responsibility for agricultural activities. However, when living within extended families, women remain under the control and supervision of the patriarch.

4.6. Asia

4.6.1. Regional overview

Throughout the region, women play a crucial role in agricultural production. In Southeast Asia, for instance, women cultivate, plant, weed, irrigate and harvest in the rice fields. Moreover, women participate in fishing activities, in both the subsistence and the commercial sectors, mainly in shallow waters, canals, and coastal lagoons (FAO, 1996).

Provisions requiring the authorization of the husband for the wife to take up an occupation are in force in some countries (e.g. the Indonesian Civil Code, art. 1601(f)).

While legislation on cooperatives usually does not explicitly discriminate against women, women's participation in cooperatives remains low. For instance, in Indonesia, while the 1987 law on cooperatives does not discriminate between men and women, only 5.6 percent of all cooperative members are women (Berninghausen, 1992).

Women's access to credit is hindered by cumbersome procedures and collateral requirements, as well as by socio-cultural factors (social taboos, etc., FAO, 1996). On the positive side, women-targeted microcredit programmes developed in Bangladesh (by the Grameen Bank and BRAC) constitute a model for devising contractual arrangements to overcome the obstacles hindering women's access to credit (e.g. group lending to overcome the lack of collateral; see below, Box 5).

Only a limited number of extension officers reaches rural women. The reasons are diverse and mostly of a non-legal nature; for instance, in Bangladesh, reasons mainly relate to the lack of training of extension officers in agricultural activities mainly undertaken by women, such as horticulture and poultry (FAO, 1996).

4.6.2. India

Women's economic activities are mainly hindered by cultural (rather than legal) obstacles, such as female seclusion (*purdah*, mainly observed in the Northwest) (Jha *et al.*, 1998). Under the Indian Contract Act of 1872, women and men alike have full contractual capacity at the age of majority, provided that they are sound of mind and that they are not disqualified from contracting by law (sect. 11).

Cooperatives are regulated by both federal and state legislation. The federal Multi-State Co-operative Societies Act of 1984, as amended, applies to cooperatives with activities in more than one state. The only condition required for membership by individuals is contractual capacity under the Contract Act, which is non-discriminatory. As for state-level cooperative laws, reference is made here to the legislation of Kerala, Karnataka and Andhra Pradesh.

The Kerala Co-operative Societies Act of 1969 requires majority age, soundness of mind and residence within the area of operation of the co-operative as (gender neutral) conditions for membership; the Act specifically

prohibits discrimination against persons belonging to Scheduled Castes or Tribes, but not against women (sect. 16). The Co-operative Societies (Amendment) Act of 1985 introduced gender specific provisions, e.g. the reservation for women of one seat of the managing committee of every cooperative (1969 Act, sect. 28A). The constitutionality of this norm was challenged before the Kerala High Court on grounds of sex discrimination, but the Court dismissed the complaint (*K.R. Gopinathan Nair v. The Senior Inspector-cum Spl. Sales Officer of Co-operative Societies and Others*, AIR [1989] Kerala 167).

The Karnataka Co-operative Societies Act of 1959 requires contractual capacity under the Contract Act as condition for membership, and prohibits refusals of admission "without sufficient cause" of "any person duly qualified" (according to the Act or to the cooperative by-law) (sect. 16). In Andhra Pradesh, the Co-operative Societies Act of 1964 was amended in 1991 to empower the Registrar to nominate two women to the managing committee (sect. 31(1)(a), as amended). This provision was challenged before the Supreme Court in *Toguru Sudhakar Reddy and Another v. The Government of Andhra Pradesh and Others*, but the challenge was dismissed by the Court (AIR [1994] SC 544). The Andhra Pradesh Mutually Aided Co-operative Societies Act of 1995, applicable to specified types of cooperatives, prohibits social, political, racial and religious discrimination with regard to membership, but is silent on sex/gender (sect. 3(a)).

Legislation concerning credit (e.g. the Banking Regulation Act of 1949) is gender neutral. As for rural credit in particular, the Regional Rural Banks Act of 1976, establishing rural banks to provide credit and other facilities to small farmers and agricultural labourers (both individually and in cooperatives), makes no reference to gender. However, women's access to credit remains lower than men's, due to socio-cultural practices and women's lack of collateral. As for the latter, there is evidence that land registration programmes resulted in a considerable increase in access to credit (e.g. in a study from West Bengal, the share of respondents with access to formal credit increased from 13.7 percent to 82.5 percent after Operation Barga; Saha and Saha, 2001). As these programmes mostly benefitted men (see above, para. 2.6.2), this improved access to credit is likely to have also mainly benefited men.

Some banks specifically target women. For example, the Self-Employed Women's Association (SEWA) Co-operative Bank, established by SEWA in 1974, provides deposit and credit facilities for self employed women, both urban and rural. Interesting features of its banking practices include the use of an identification card with name, account number and photograph of the account holder; the use of photographs (instead of signatures) removes a major obstacle for illiterate women (Fong and Perrett, 1991).

Extension services are mainly concentrated on male farmers and dominated by male officers. Social norms restrict the ability of male extension officers to talk to women farmers without the presence of their husband or of a male relative. These social norms also restrict women's participation in vocational training (Agarwal, 1994; Jha *et al.*, 1998).

At policy and programme level, the Sixth Five Year Plan (1980–1985) was the first development plan to devote a specific chapter to women and development. Within the Integrated Rural Development Programme (IRDP, initiated in 1978), 40 percent of beneficiaries and credit made available is reserved for self employed women. Within the IRDP, the Development of Women and Children in Rural Areas (DWCRA programme, set up in 1982) targets women belonging to families below the poverty line. The Training of Rural Youth in Self-Employment (TRYSEM programme) also envisages a 40 percent reservation for women. At state level, Women's Development Corporations have been established since 1987 to provide women entrepreneurs with technical assistance and training, improved access to credit, support for marketing and for women cooperatives (GoI, n.d.).

4.6.3. The Philippines

Philippine legislation promotes gender equality in the exercise of agricultural self employment activities, by explicitly stating the principle of non-discrimination in relevant legislation and by providing for special measures in favour of women. The Women in Development and Nation Building Act of 1992 aims at promoting the integration of women as full and equal partners with men in development and nation building. Women have full legal capacity to act and to enter into contracts, regardless of their marital status (sect. 5). The Act also devotes a substantial share of official development assistance to fund programmes targeting women (through

the National Economic and Development Authority) (sects. 2(1) and 9). This part of the law is still to be fully implemented.

The "full integration of women [...] in the mainstream of development" is also envisaged by the "declaration of policy" of the Magna Charta of Small Farmers of 1992 (sect. 2). Under the Agriculture and Fisheries Modernization Act of 1997, women are among the "special concerns" of the Department of Agriculture (sect. 17(o)).

The Cooperative Code of 1990 includes among the fundamental principles governing cooperatives voluntary membership open to all, regardless of "social, political, racial or religious background or beliefs" (sect. 4(1)); sex/gender is not explicitly included. Qualifications for admission are to be specified in by-laws adopted by the cooperatives (sect. 15(2)(a)), which cannot be inconsistent with the Code. The Women in Development and Nation-Building Act grants women equal access to membership in social, civic and other organizations (sect. 6). Moreover, under Administrative Order No. 1 of 2001 adopted by the Department of Agrarian Reform, both spouses have the right to join cooperatives or organizations (quoted in Judd and Dulnuan, 2001).

Women's legal capacity to borrow and obtain loans is explicitly recognized in the Women in Development Act (sect. 5(1)). The Act also states that women have "equal access to all government and private sector programmes granting agricultural credit, loans and non-materials resources" (sect. 5(2)). The Agriculture and Fisheries Modernization Act of 1997 includes a "declaration of policy" on credit, under which the state is to promote access to credit for farmers and fishers, "particularly the women involved in the production, processing and trading of agriculture and fisheries products" (sect. 20).

Special training programmes for women planned and implemented by the Department of Agriculture are provided for by section 107 of the Agriculture and Fisheries Modernization Act of 1997. While women's participation in vocational courses is substantial (53.4 percent in 1990), courses in agriculture-related disciplines remain dominated by men (United Nations, 1995).

As for marketing support services, the relevant "declaration of policy" of the Agriculture and Fisheries Modernization Act of 1997 mandates the state to

provide farmers and fishers, "particularly women", with "timely, accurate and responsive business information and efficient trading services" (sect. 38).

Under the Social Security Act of 1997, self employed persons, including farmers and fishers, are covered by the mandatory scheme of the Social Security System (sect. 9(A)).

Finally, under the Social Reform and Poverty Alleviation Act of 1997, the state must institutionalize a Social Reform Agenda (SRA) *inter alia* pursuing a gender responsive approach to poverty alleviation (sects. 2(3) and 2(4)(f)). Sector-specific programmes must address the needs of disadvantaged groups, including women, through a Comprehensive Integrated Delivery of Social Services (sect. 4(2)(6)). The Act establishes a National Anti-Poverty Commission under the Office of the President, as a co-ordinating and advisory body for the implementation of the SRA; members of the Commission include a representative of women (sects. 5 and 6(3)(g)). The Act also provides for government financial institutions to set up "special credit windows" targeting the rural poor; these are, "as far as practicable", to allocate credit to specified groups, including "women in the countryside" (sect. 16).

Box 5. Women's access to credit in Bangladesh

In Bangladesh, women's access to formal credit is traditionally very low due to women's lack of collateral (because of their limited land ownership), to a poor banking system network and to cultural stereotypes.

Some NGOs (Grameen Bank and BRAC) have pioneered microcredit programmes targeting women. The government has also adopted microcredit programmes benefiting *inter alia* women (Rural Poor Programme, in turn divided into foreign-funded components, e.g. Rural Development 12, RD-12; Integrated Development of Rural Women and Children through Co-operatives; etc.). These programmes have been extremely successful in reaching rural women otherwise excluded from formal credit. This was made possible by the devising of institutional and contractual arrangements that have overcome rural women's major constraints in access to credit. Here are some major features of the credit arrangements of the Grameen Bank:

- Loans of small amounts, given without collateral requirements and to be repaid with interests (16 percent) in weekly instalments over one year. Repayment is condition for eligibility for further credit.

- Group loans. This is an institutional arrangement aimed at overcoming the problem of lack of collateral. While loans are granted to individuals, borrowers are gathered in groups of (typically) five members. In case of default of one member, no group member is eligible for further credit; in practice, each member guarantees repayment of loans contracted by other members. In other words, social collateral (peer pressure) substitutes for physical collateral.
- Self-selection. Borrowers themselves constitute their group, choosing the other members. Given the collective responsibility for repayment, borrowers have an incentive to choose credit-worthy members. This arrangement solves the information asymmetry problem constraining access to credit in rural areas (with banks having little information on borrowers' creditworthiness), by making use of the (usually more complete) information of other community members.
- Sequential lending. Loans are initially granted to two members only, and only after they start repayment do other members become eligible for loans. This avoids creating incentives for default (e.g. if all members were to borrow simultaneously, where one member defaults, all other members may deliberately decide to default as they would lose their credit eligibility anyway).
- Bringing banking to the village. Each bank branch covers 15 to 22 villages, and field workers of the Grameen Bank regularly visit the covered villages.
- Targeting women. Priority in credit allocation is granted to women. As a result, women constitute 2 268 264 out of the 2 390 810 borrowers (i.e. about 95 percent of the borrowers).
- Loans are granted under a variety of programmes, each having a different purpose. As for agriculture, programmes include credit to buy agricultural inputs for seasonal cultivation. Moreover, common loan uses include the purchase of livestock (milk cows, goats, etc.).

There is wide consensus on the positive impact of these programmes on the income-generating activities of rural women. However, some criticism has also been raised, including: appropriation of the loans by the husbands of the debtors; elite capture of resources; lack of marketing support; lack of legal assistance to inform women of their rights; etc.

Sources: Baden *et al.*, 1994; Khandker *et al.*, 1995; Goetz, 1996; Ray, 1998; Web site of the Grameen Bank, www.grameen-info.org.

4.7. The Pacific region

4.7.1. Regional overview

In most Pacific countries, women's agricultural work is concentrated in subsistence agriculture, small livestock rearing and reef crop fishing. Moreover, women dominate the marketing of agricultural produce in local markets (FAO, 1996). The obstacles encountered by women entrepreneurs include difficulties in obtaining credit, limited access to training, lack of child care facilities, and cultural attitudes on women's responsibilities (considering women as "support labour" rather than "managers").

Credit legislation is usually gender neutral. For example, qualifications for membership under the 1999 Credit Unions Act of Vanuatu are gender neutral (majority age and qualifications required by the by-laws; sect. 26); under the same Act, registration is subject to the ascertainment of conditions, which include that "the membership of the proposed credit union is restricted to people who have particular qualifications and a common bond exists between those members"; the non-exhaustive list of possible qualifications (living or working in a particular area, undertaking a particular occupation, etc.) is gender neutral (sect. 9). The terminology adopted in the Act is non-discriminatory; for instance, pronouns referring to a member are in both genders ("his or her"; sect. 32). In some Pacific states, women's participation in credit unions is substantial. In the Solomon Islands, for instance, women make up 40 percent of credit union membership (Fong and Perrett, 1991).

As for training, the Vanuatu National Training Council Act of 1999 provides for women's representation in several training-related institutions. The Council must include a representative of the Minister responsible for women's affairs and a representative of the Vanuatu National Council of Women, and at least two members of the Council must be women (sect. 6(2) and (3)). A representative of the Minister responsible for women's affairs and a representative of the Vanuatu

National Council of Women must also be included in the membership of the Consultative Council advising the Council (sect. 13(4)).

4.7.2. Fiji

In Fiji, women farmers dominate the cultivation of some crops (e.g. vanilla). Women farmers also cultivate sugar cane (the major export crop), but face greater difficulties than men due to their additional domestic responsibilities and to their lack of access to credit (FAO, 1996). The constraints met by Fijian women self employed farmers are mainly of a non-legal nature.

The Co-operative Societies Act of 1947 is gender neutral. However, only 4 percent of the registered cooperatives are operated by women (GoF, 1999).

No *de jure* discrimination exists with regard to access to credit. The Money Lenders Act, the Banking Act of 1995 and the Fiji Development Bank Act of 1996 are gender neutral, and men and women alike may obtain credit from the Fiji Development Bank and from commercial financial institutions. However, major obstacles hinder women's access to credit. Socio-cultural stereotypes prevent women from exercising entrepreneurial activities, and women's lack of collateral damages their creditworthiness. Banks often require husbands to act as loan guarantors before granting loans to women. Moreover, rural women lack information on available credit programmes. As a result, women obtained only 11.4 percent (as exclusive borrowers) and 14 percent (as joint borrowers) of the loans granted in 1993 (United Nations, 1997; GoF, 1999).

As for training and education, the right of every person to equal access to educational institutions is recognized in the Constitution (sect. 39). However, technical and vocational courses are in practice dominated by men; some training institutions are not open to women (GoF, 1999). On the other hand, the situation is slowly changing: in 1985, no woman was enrolled in the vocational course in agriculture; in 1995, women constituted 20 percent of the students enrolled in the Diploma in Tropical Agriculture (United Nations, 1997).

Under the Married Women's Property Act of 1892 (Cap 37), a married woman is entitled to hold and dispose of her separate property, including "any wages, earnings, money and property gained or acquired by her in

any employment, trade or occupation in which she is engaged or carries on separately from her husband" (sect. 4).

At policy and programme level, the Ministry for Women and Culture established in 1993 a Women's Social and Economic Development Programme (WOSED) to promote and support women's income-generating activities, including through subsidised credit. About 70 percent of the loans requested under this programme are for agriculture-related activities. Scarce resources and lack of information on the programme (especially among the poorest rural communities) are the main constraints on the operation of the WOSED. A Micro-Finance Coordinating Unit was also established in 1999 within the Ministry for Finance (GoF, 1999).

4.8. Europe

4.8.1. Regional overview

The ECHR protects rights relevant for self employment activities, such as freedom of association (art. 11). The European Social Charter, as revised, recognizes the right of everyone to "appropriate facilities for vocational training".

As for EU law, Directive 86/613 of 1986 prohibits non-discrimination on the basis of sex in the exercise of self employment activities (art. 1). The Directive explicitly includes farmers (art. 2(a)), as well as their spouses participating in their self employment activities (art. 2(b)). The non-discrimination principle applies to the establishment, equipment or extension of any form of self employment activity (art. 4). Moreover, Member States must "examine whether, and under what conditions, female self employed workers and the wives of self employed workers may, during interruptions in their occupational activity owing to pregnancy or motherhood, have access to services supplying temporary replacements or existing national social services, or be entitled to cash benefits under a social security scheme or under any other public social protection system" (art. 8).

4.8.2. Italy

The Italian Constitution guarantees the freedom of private economic activities (art. 41), and states that the law is to assist small and medium sized farms (art. 44). While no explicit reference to gender is made in these articles, the non-discrimination principle stated in article 3 applies. The principle of gender equality with specific regard to the exercise of self employment agricultural activities is stated in EU Directive 86/613 of 1986 (see above).

Italy has a vast legislation concerning agricultural self employment activities which are mainly based on family labour, entitling family farms ("*coltivatori diretti*") to a special legal protection (e.g. under Law 203 of 1982). This legislation is gender neutral (although the terminology used is masculine: e.g. "*coltivatore diretto*"). To qualify as "*coltivatore diretto*", the labour of the farmer and that of his/her family members must amount to at least a third of the total labour employed; for the purposes of this calculation, the principle of equality of men's and women's work is explicitly affirmed, thus rejecting the idea that the value of the work carried out is differentiated according to sex due to biological differences (Law 203 of 1982, art. 6). With regard to "*mezzadria*" (i.e. sharecropping) contracts, the Constitutional Court recognized the equal value of men's and women's work in its judgement 149 of 1973.

Family agricultural undertakings used to be regulated by local customs, which were referred to by article 2140 of the Civil Code. Under these customs, family undertakings were hierarchical and male-dominated structures. Article 2140 has been repealed, and family undertakings are now governed by article 230bis of the Civil Code (inserted by Law 151 of 1975) and by article 48 of Law 203 (1982). Under article 230bis, the spouse working in the family undertaking has the right to participate in profits (rather than receiving a wage) and in decision-making (according to democratic majority rules), and the right to a payment ("*liquidazione*") upon cessation of his/her activity. Women's work is explicitly recognized as having the same value as the work of men. Under article 48 of Law 203 (1982), agrarian contracts are concluded by the family undertaking, and all family members respond for the legal obligations contracted on the basis of a democratic decision-making process. This norm implicitly abrogates article 2150 of the Civil Code, which granted the "*mezzadro*" the right to represent and contract obligations for the whole family.

The norms on companies (Civil Code, arts. 2247–2510) and on cooperatives (Civil Code; Decree 1577 of 1947, as amended; and Law 59 of 1992) are gender neutral. Cooperative membership rules are to be determined by the statute of the cooperative (Civil Code, art. 2518(7)). Self employed women working in the family undertaking have the right to represent the undertaking in the cooperatives or other associations of which it is member (Law 903 of 1977, art. 14).

Italian legislation places particular emphasis on the promotion of women's self employment activities. Law 215 of 1992 envisages affirmative action in favour of women entrepreneurs. It promotes the start-up and development of individual enterprises managed by women, of cooperatives and unlimited responsibility companies in which 60 percent of the partners are women, and of limited responsibility companies where two-thirds of the capital quotas are held by women and two-thirds of the managers are women (arts. 1 and 2). The law covers several sectors, including the agricultural sector (art. 2). It establishes a National Fund for the Development of Women's Entrepreneurship and provides for tax credits and subsidised credit. The regulations for the implementation of this law, particularly with regard to the provision of funding and the determination of the criteria for access to funds, were adopted in 1996 (Regulation 706 of 1996 and Ministerial Decree of 20 December 1996); the implementing norms are currently contained in Regulation 314 of 2000 and Ministerial Decree of 2 February 2001. Funding under other laws not specifically targeting women has also been used for affirmative action programmes, particularly under Laws 662 of 1996 and 266 of 1997, concerning credit incentives for small and medium enterprises. However, funding remains limited and procedures complex and costly; only 17 percent of the applications under Law 215 (1992) obtain access to funds. Campaigns to disseminate information on this legislation were undertaken (through the broadcasting of TV advertisements, the establishment of a toll free telephone line, etc.) (GoIt, 1999). Ministerial Decree 31 February 2002 approved the funding of projects under Law 215 (1992); several projects concern the agricultural sector (e.g. Abruzzo, Friuli-Venezia-Giulia, Valle d'Aosta regions and in the Trento and Bolzano autonomous provinces).

As for credit legislation, rural credit is governed by general credit laws, which are gender neutral⁵⁴. As for education and training, the choice of school curricula reflects a gender division of roles. Within secondary professional education, agrarian institutes are mainly attended by men (while women dominate e.g. schools on tourism and social services). Action has been taken at administrative/ institutional level, e.g. through the establishment, in 1989, of a National Equal Opportunity Commission within the Ministry for Education (GoIt, 1999). Women-targeted training projects in the (economically depressed) South have been implemented by the government, with funding provided through EU funds (GoIt, 1999).

Maternity protection for women agricultural entrepreneurs, women-headed family farms ("*coltivatrici dirette*") and women sharecroppers ("*mezzadri*" and "*coloni*") is envisaged by Law 546 of 1987 and by articles 66 to 69 of Legislative Decree 151 (2001). Under these norms, maternity benefits are paid for five months (two before and two after childbirth) by the social security institution (INPS). Their amount is equivalent to 80 percent of the minimum wage for permanent agricultural workers.

As for institutional mechanisms, Decree of 19 February 1997 established within the Ministry for Equal Opportunities a Commission for the promotion and development of women's entrepreneurial activities, and an Observatory on Women's Entrepreneurship to monitor existing legislation, to foster networks and to create a "laboratory of good practices". Decree of 13 October 1997, adopted by the Minister for Agriculture (now Ministry for Agricultural and Forest Policies), established a National Observatory on Women's Entrepreneurship and Work in Agriculture to monitor women's economic activities, collect data and formulate policies and strategies (GoIt, 1999).

4.9. Conclusion

This chapter has identified the main factors constraining the exercise of self employment agricultural activities by rural women. Some of these factors relate to directly or indirectly discriminatory norms. As for direct discrimination, family law norms may require the consent of the husband

⁵⁴ Rural credit used to be governed by a specific law (Law 1760 of 1928), but this was repealed by Legislative Decree 385 of 1993 (art. 161).

for women's taking up of an occupation (e.g. in some Mexican states), and may limit women's ability to carry out self employed activities by vesting exclusive family property administration with the husband (e.g. in some Latin American states). Norms limiting the legal capacity of married women may be embodied also in other branches of law (e.g. the Commercial Code in Chile; before the 2000 reform, the Code of Obligations and Contracts in Tunisia). As for indirect discrimination, legislation on cooperatives may include requirements for cooperative membership that, while not mentioning women directly, create disadvantages for them indirectly (especially with regard to land ownership).

However, to a greater extent than natural resource and labour rights, the rights of women agricultural entrepreneurs are mainly affected by socio-economic and cultural factors, rather than by formal legislation. Thus, legislation on training, credit, agricultural extension and marketing services rarely discriminates against women or even mentions them explicitly. Yet women's access to these services is in many countries hindered by socio-economic factors (e.g. women's lack of collateral for credit due to their little access to land titles and formal employment) and by cultural factors (e.g. perceptions on women's role in the family and in society; female seclusion and other practices restricting interactions between persons of different sex). Discriminatory cultural attitudes are often internalized by women themselves, who may for instance refrain from applying for credit (as documented e.g. for Brazil and Fiji). As a result, public programmes supporting agriculture through the provision of credit, agricultural extension and marketing services have tended to benefit mainly men (e.g. Brazil, Tunisia). Under these circumstances, gender neutral legislation does not seem to adequately address gender issues. Indeed, explicit prohibitions of sex/gender discrimination and special measures to advance women are necessary to achieve de facto gender equality.

In several countries, action has been taken to support and promote women agricultural entrepreneurs. Such action has been taken at different levels. First, at legislative level, explicit prohibitions of discrimination and/or statements of gender equality in relation to the exercise of self employed activities are for instance embodied in EU legislation, in South Africa (e.g. with regard to credit), and in the Philippines (with regard to contractual capacity, credit, etc.). Affirmative action laws have also been adopted, providing for fiscal and other incentives for women entrepreneurs

(e.g. Italy). Second, at policy level, development and gender related plans have envisaged activities to promote women entrepreneurs e.g. by improving their access to training and credit (Tunisia, India). Third, at programme level, public programmes targeting women or reserving resources for women with regard to training, credit and extension services have been adopted (Brazil, India and the Philippines); moreover, programmes providing services through institutional devices designed to overcome the obstacles faced by women have been set up (e.g. microcredit schemes in Bangladesh). Fourth, at institutional level, gender related measures have been enacted with regard to the composition and activities of sectoral institutions (e.g. training institutions in South Africa); moreover, gender-specific institutions have been set up within ministries for agriculture and/or within its departments, particularly those responsible for training and agricultural extension (e.g. Burkina Faso, Italy and Tunisia).

Table 7. The rights of self employed rural women

	Relevant civil law (family, contract, etc.)	Cooperatives and associations	Training	Credit	Extension	Marketing	Social security (including maternity protection)	Other legislation on rural development
Brazil	GN	GN/ND	GN; SM; F	GN; SM; F	GN; SM; F		GN	
Burkina Faso	GN; ND; SM	ND	ND; SM	ND; SM	GN; SM		GN; F	
Fiji	GN	GN	ND; F	GN; SM; F			GN	
India	GN	GN; SM		GN; SM; F	F			
Italy	GN	GN; SM	GN; SM	GN; SM			GN/SM	
Kenya	GN	GN; F		GN; F			GN	
Mexico	GN; J/D	ND; SM	GN	GN; SM	GN		GN/SM	SM
Philippines	ND	ND; GN	SM	ND; SM		SM	GN	SM
South Africa	GN; ND	GN	ND; SM	ND; GN		GN	GN	
Tunisia	GN		ND; SM				GN	GN; SM

- GN = Gender neutral / non-discriminatory
 ND = Non-discrimination / equal-rights principle explicitly stated
 SM = Special measures to advance women
 J/D = *De jure* direct discrimination
 J/I = *De jure* indirect discrimination
 F = De facto discrimination reported in the literature reviewed

Where two or more acronyms are included, they refer to different aspects of relevant legislation and/or to a gap between law and practice

V. TOWARD THE REALIZATION OF WOMEN'S RIGHTS: LEGAL REFORM AND IMPLEMENTATION

5.1. Summary of the main findings

This study has analysed the agriculture-related rights of rural women, focusing on three key issues: rights to land and other natural resources, including property, family and succession law on the one hand and agrarian law on the other; rights of women agricultural workers, mainly regulated by labour law; and rights concerning agricultural self employment activities, with regard both to the status of women entrepreneurs and to their access to services. The analysis has focused on the legal systems of ten countries, while providing relevant information on other countries (through both regional overviews and separate boxes).

The study has identified the main legal and some extra-legal factors affecting the existence and exercise of women's agriculture-related rights. These factors have been found to have common characteristics across countries and regions. On the other hand, substantial cross-country and cross-sectoral variation in the existence and exercise of women's rights has been documented. Women's rights also vary considerably within countries, both geographically and depending on the applicable law (where this varies e.g. according to religious or other belonging). The main findings of the study are summarized in Table 8.

In some cases, discrimination is directly or indirectly entrenched in statutory norms. This is particularly the case in the area of family and succession law. For instance, *de jure* direct discrimination in inheritance rights has been documented for Tunisia and for some personal laws of India and the Philippines. Moreover, family law may subject women's taking up of an employment or occupation to the authorization of the husband (e.g. in some Mexican states). As for agrarian law, many land redistribution programmes have mainly benefited men, by including requirements discriminating against women either directly (e.g. Mexico until 1971) or indirectly (e.g. Brazil until recently), and by issuing land titles in the name of the household head only. As for labour law, directly or indirectly discriminatory provisions include bans on women's night work extending to the agricultural sector (e.g. India's Plantations Labour Act of 1951), and maternity benefit payment (wholly or in part) by the employer (Burkina Faso, Fiji, India, Mexico and the Philippines).

In other cases, it is the absence of gender-specific provisions that does not adequately protect women's rights. For instance, sex/gender discrimination is not prohibited by labour law in Kenya and Fiji; dismissal during pregnancy is not prohibited in Burkina Faso, Kenya and Tunisia; most cooperative laws do not explicitly prohibit sex/gender discrimination. In yet other cases, existing guarantees are inadequate; for instance, maternity leave in Kenya and Tunisia is well below international standards.

In some countries, women's rights are curtailed by the interaction between norms of different nature coexisting in a context of legal pluralism (e.g. customary and statutory law). For instance, the Kenyan land registration programme strengthened the land rights of (male) household heads and weakened women's customary land rights. In Burkina Faso, while statutory land law is explicitly non-discriminatory, it is customary law (whereby women's land rights are severely limited) that is mainly applied in rural areas. On the other hand, in some countries discriminatory customary norms have been successfully challenged on the basis of statutory law guaranteeing women's rights (e.g. the Pastory case in Tanzania).

A phenomenon documented for all areas of law for all covered countries (albeit to different degrees) is *de facto* discrimination – and lack of implementation of gender equality legislation. Even where the law prohibits discrimination and embodies special measures to advance women, discrimination against women remains widespread in practice. *De facto* discrimination encompasses for instance banking practices requiring the husband to sign their wives' contracts; lack of implementation of land law norms mandating joint titling for couples; violations of labour equal-opportunity legislation; exclusion of women from rural cooperatives; and channelling of agricultural extension services through the male household head. These *de facto* discriminatory practices are those documented in the literature reviewed by the study, and are by no means exhaustive. Discriminatory cultural attitudes, illiteracy, lack of legal awareness, lack of resources to enforce rights and economic, geographic and linguistic inaccessibility of courts and other state institutions are among the major factors accounting for *de facto* discrimination.

Another phenomenon, close to but distinct from *de facto* discrimination, is the *de facto* limitation of women's rights due (not to the conduct of

another person but) to the behaviour of women themselves, who internalise discriminatory cultural attitudes e.g. on women's role in the family and in society. In many cases, it is women themselves who give up their statutory land rights (e.g. as documented for India and Burkina Faso), who refrain from seeking formal employment, and from applying for loans (e.g. as documented for Brazil) and for membership in rural co-operatives. In these cases, where legislation does not explicitly prohibit discrimination and does not envisage special measures for the advancement of women, it endorses discrimination existing in the social, economic and cultural sphere.

Most of the countries covered by the study have made substantial efforts to attain gender equality, both by explicitly prohibiting discrimination on grounds of sex/gender and by adopting special measures for the advancement of women. Examples include: the evolution of family law norms on marital authority in Brazil and South Africa; the civil law reforms in Tunisia; the progressive codification of Hindu law in India; the evolution of some Latin American land reform programmes, including in Mexico and Brazil; the adoption of joint titling in the Philippines; the prohibition of sex discrimination and the protection of maternity in the labour legislation of several covered countries; the prohibition of sex discrimination in cooperatives e.g. in Burkina Faso; the adoption of special measures to facilitate women's access to credit and training in Brazil, India and the Philippines; and the protection and promotion of women entrepreneurs in Italy. In addition, in many countries the legal status of women has been improved or defended through cases brought before courts (e.g. the Pastory case in Tanzania; the Hanekom case in South Africa; the Mojekwu and Ejikeme cases in Nigeria; the vast case law in India; etc.) and before international human rights institutions (e.g. the Morales de Sierra case in Guatemala).

Where *de jure* and/or *de facto* discrimination exists, while women constitute a large portion of the economically active population engaged in agriculture (both as farmers and as farm workers), they have no or little access to productive resources such as land, credit and extension services, and enjoy little protection on the workplace. This negatively affects not only women themselves, but also their family members, especially in the case of female-headed households. As for women themselves, lack of independent access to livelihood assets and activities such as land, employment and credit negatively affects their bargaining

position within the household and within society at large; and hinders the promotion of fairness and social justice as well as the realization of women's fundamental human rights. As for the family as a whole, it is widely recognized that, in most parts of the world, women make a crucial contribution to the welfare of the family, carrying out economic activities and taking care of the children and other dependants. Therefore, limits on women's access to entitlements such as land rights constrain the ability of women producers to access other assets (e.g. credit); to undertake economic activities that foster agricultural development; and to put benefits from these activities to the service of the welfare of the family.

Table 8 – Main findings of the study

	Constitution	Civil law (family, succession, contract, property)	Agrarian law	Labour law	Norms on self-employed activities
Brazil	ND	ND; GN	ND; GN; SM; F	ND; SM; F	GN; SM; F
Burkina Faso	ND	GN; ND; J/D	ND; GN	ND	ND; GN; SM
Fiji	(ND); SM	GN; F	GN; F	GN; F	ND; SM; GN; F
India	ND; SM	GN; J/D	ND; J/D; SM; F	ND; F	GN; SM; F
Italy	ND; SM	ND; GN	GN	ND; SM	GN; SM
Kenya	(ND); SM	GN; F	GN; F	GN	GN; F
Mexico	ND	ND; GN; J/D; F	ND; SM; GN; F	ND; F	ND; SM; GN
Philippines	ND; SM	ND; GN; J/D	ND; GN; SM	ND; GN; F	ND; SM; GN
South Africa	ND; SM	GN; J/D	ND; SM; GN; F	ND; SM; F	ND; SM; GN
Tunisia	ND	GN; J/D	GN	ND; F	ND; SM; GN

GN Gender-neutral / non-discriminatory

ND Non-discrimination/equal-rights principle explicitly stated (brackets indicate the presence of exceptions to the principle)

SM Special measures to advance women

J/D *De jure* direct discrimination

J/I *De jure* indirect discrimination

F De facto discrimination reported in the literature reviewed by this study (note that de facto discrimination may exist in other covered countries and areas of law, yet it is not reported in the table because it is not documented in the reviewed literature)

Where two or more acronyms are included, they refer to different aspects of relevant legislation and/or to a gap between law and practice.

Note: Given the scope and complexity of the issues involved, this table only provides indicative information and does not substitute for the tables reported in each chapter and for the reading of the text.

5.2. Factors affecting the implementation of women's rights

A key finding of this study is the gap between statute books and practice. In most cases, legislation states the principle of gender equality and protects women's rights in agriculture. However, the reality on the ground is often very different, particularly in rural areas. While in many cases law reform is needed to promote gender equality, in most cases the key problem is lack of implementation of existing gender equality legislation. This lack of implementation is caused by many factors, and primarily by the existence of socio-cultural attitudes conflicting with formal legislation. Other factors affecting implementation (negatively or positively) are more directly related to the legal system, and are examined in this section.

5.2.1. Courts

Access to courts is necessary to enforce the rights enshrined in the constitution, in legislation and/or in the case law. Article 2(c) of the CEDAW mandates states "to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination". The equality of all persons before courts and tribunals is stated in article 14 of the ICCPR. The right to a legal remedy for human rights violations is protected by article 14 of the ICCPR, articles 6 and 13 of the ECHR, articles 8 and 25 of the ACHR, article 7 of the ACHPR, and article 9 of the Arab Charter on Human Rights (not yet in force). The Protocol on the Rights of Women in Africa commits states to take measures to ensure "effective access by women to judicial and legal services, including legal aid" (art. 8). Similar rights are stated in national constitutions and legislation. For example, the Code of Civil Procedure (1999) of Burkina Faso affirms that "every person has the right to access national courts competent for violations of the fundamental human rights recognized and guaranteed by the Constitution, by international treaties, and by laws and regulations in force" (art. 1).

However, access to courts for rural women is in many countries severely limited – in law and, even more so, in practice. First, women's access to courts may be hindered by family law norms, although there is a general trend to repeal these norms. For instance, in South Africa, women married under customary law were minors under the guardianship of their

husband, and could not bring legal proceedings (Black Administration Act of 1927, sect. 11); this norm was repealed by section 6 of the Recognition of Customary Marriages Act of 1998, which recognizes the full legal capacity of both spouses with regard to litigation. In some countries, the law explicitly recognizes the capacity of either spouse to bring claims relating to family property (e.g. art. 180 of the Italian Civil Code) and/or to agrarian reform (e.g. in the Philippines, Administrative Order 1 of 2001; Judd and Dulnuan, 2001).

More commonly, women's access to court is limited by obstacles of a socio-cultural nature. In the rural areas of many developing countries, court fees, long and cumbersome processes, geographical distance (as courts are often located in towns and transport costs may be high), language barriers (as many rural women may not speak the official language used in courts) and other factors limit women's access to courts. While many of these factors concern both women and men, they may affect women disproportionately, due to gender differentiation in language skills, in access to information, resources and contacts, and in time availability. In many countries, women are under represented in the judiciary. In South Africa, for instance, few senior judges are women (RSA/CGE, 1998; CEDAW, 1998). In India, there was no woman judge in the Supreme Court as of 1997, and only 3.7 percent of High Court judges were women in 1992 (United Nations, 1997). In some cases, women's participation in the judiciary is stronger; in Mexico, women represent 19 percent of the high-level judicial positions (CEDAW, 1998). Moreover, prejudices about the credibility of women witnesses are widespread in many countries (e.g. for South Africa, as documented by RSA/CGE, 1998). Furthermore, cultural factors may interact with redress mechanisms envisaged by legislation. For example, in some rural areas of India, it would be shameful for a woman to claim before courts her rights *vis-à-vis* her male family members; moreover, practices like female seclusion severely hinder the actual possibility for women to claim their rights (Agarwal, 1994).

On the other hand, the case law quoted in this study shows that although women's access to justice may be constrained, courts constitute a fundamental instrument for the enforcement of women's rights. In these cases, courts have proven to be a crucial actor of legal change, by invalidating discriminatory norms on constitutional grounds (e.g. Pastory case in Tanzania), by "amending" the application of norms in the light of

constitutional principles (e.g. *Kishwar v. Bihar* in India) and by directing governments to amend discriminatory legislation (e.g. *Dhungana* case in Nepal). Provision of adequate legal aid in non-criminal matters may improve women's access to courts (see below), while flexible rules on standing⁵⁵ may enable NGOs to act on their behalf. Enabling NGOs and gender-equality institutions to intervene in legal proceedings as "*amicus curiae*" may also improve the enforcement of women's rights. In the above-mentioned South African case *Bhe v. Magistrate*, for instance, the Commission on Gender Equality intervened as *amicus curiae*. The case led to the invalidation of discriminatory succession norms.

5.2.2. Human rights commissions and other independent authorities

Another way to redress violations of women's rights is provided by independent authorities competent to investigate violations, both upon complaint and *motu proprio* (human rights commissions, ombudsmen and/or gender-specific institutions). Since the 1990s, there has been a considerable spread of these institutions around the world, as a result of a renewed interest of the international community in human rights and good governance. Compared to courts, these institutions provide more accessible and speedy mechanisms of redress, and are less costly and cumbersome. Another advantage is that where violations may be investigated *motu proprio*, they may be redressed even where the victims have no access to justice.

Human rights commissions usually do not issue binding decisions, but rather recommendations (an exception is the Human Rights Commission of Uganda, whose decisions are as binding and enforceable as court judgements). When their recommendations are not complied with, human rights commissions may report to Parliament or, in a few cases, bring an action before courts (as in the case of Ghana's Commission on Human Rights and Administrative Justice, see below). In federal states, human rights commissions may be established at both federal and state level (e.g. India, Mexico). As for the covered countries, human rights commissions have been established in Mexico (Art. 102B of the Constitution and National Commission for Human Rights Act of 1992), South Africa (Sect. 184 of the Constitution and Human Rights

⁵⁵ Ability to demonstrate sufficient connection to a matter to bring legal action.

Commission Act of 1994; see also sect. 24 of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000), India (Protection of Human Rights Act of 1993), and Fiji (Human Rights Commission Act of 1999).

In Ghana, the Commission for Human Rights and Administrative Justice (CHRAJ), originally established to tackle human rights violations and citizen state disputes, has been effective in protecting women's land rights within family disputes, for instance in the western region. This is due to the greater economic and geographic accessibility of the CHRAJ compared to the court system, as well as to its more flexible procedures. However, the CHRAJ has no power to issue binding judgements, rather it essentially facilitates amicable settlement between the parties. In order to enforce its decisions, the CHRAJ would need to seek enforcement through the High Court (Ghana Commercial Bank Ltd *v.* The Commissioner⁵⁶). In these cases, courts have sometimes reopened the matter for a fresh hearing (Yamoa, 2004). In addition, the CHRAJ is seriously constrained by lack of resources and understanding (Yamoa, 2004).

Gender-specific institutions may also be established to investigate violations of women's rights. In South Africa, the Commission on Gender Equality may investigate violations both upon complaint and *motu proprio*, may resolve disputes by negotiation, mediation or conciliation, and may refer matters to the Human Rights Commission (Commission on Gender Equality Act of 1996, sect. 11). In India, the National Commission for Women (established under the National Commission for Women Act of 1990) can investigate violations both *motu proprio* and upon complaint.

Human rights and gender commissions can contribute in important ways to the implementation of women's rights. However, their effectiveness may be limited by resource constraints (see para. 5.2.5 below) and by factors similar to those relating to courts, such as geographical inaccessibility and socio-cultural factors preventing women from claiming their rights.

⁵⁶ Civil Appeal No. 11/2002, 29 January 2003.

5.2.3. Customary dispute settlement authorities

"Customary" dispute resolution systems have received a renewed interest in the 1990s, and have been the object of considerable debate. To mention just an example, Niger's 1993 Rural Code provides for a mandatory conciliation procedure before customary authorities as a condition for initiating judicial proceedings. In some cases, statutory recognition of customary institutions is qualified by respect for fundamental principles, which include gender equality. For instance, the Constitution of South Africa recognizes the "institution, status and role" of traditional leadership and its application of customary law, subject to the Constitution and statutory law (sect. 211).

For women, customary institutions have advantages and disadvantages. On the one hand, compared to courts, customary institutions may provide more easily accessible (both geographically and economically) and speedier forums for rural women, and may enjoy greater social legitimacy in local communities. On the other hand, while their nature varies considerably from place to place, customary institutions are often gender biased in composition and orientation. In most places, they are constituted by male elders, and apply a male-biased interpretation of customary law.

In South Africa, for instance, women's participation before "traditional courts", which are formally recognized under the Black Administration Act of 1927, is limited. Women are generally barred from authority positions in the courts. When they do act as councillors in the traditional courts, women face difficulties in being accepted by community members (including by other women). Moreover, in most communities, women are discriminated against in the proceedings: before taking a dispute to the traditional court, they must approach the male elders of the family, who will represent them before the traditional institution; women may speak before the traditional court only if requested to do so, and may be required to leave the court after speaking (RSA/CGE, 1998; RSA/CGE, n.d.).

In India, *panchayats* (traditional institutions usually based on caste) traditionally excluded women. The 1949 Constitution recognized these institutions on the one hand and democratized them on the other. The Constitution provides for direct election of *panchayat* members and reserves

to women one-third of the seats (sects. 243C and D). However, there are reports that in many areas *panchayats* continue to be dominated by male elites, and to favour a gender biased interpretation of the law; for instance, *panchayat* decisions in the Northwest tend to favour the interpretation whereby property is inherited by sons only, to the exclusion of daughters (Agarwal, 1994).

The challenge is retaining the advantages (especially in terms of accessibility and social legitimacy) and reforming the disadvantages (e.g. guaranteeing gender equality in all aspects of the proceedings) of customary dispute resolution systems. However, this is a complex task. In recent years, many development projects have worked to address gender issues in local, "informal" and/or "customary" dispute settlement institutions. Experience with improving women's representation in local natural resource dispute settlement institutions ("peace committees") in the district of Niore, Mali, prompts a word of caution on the timeframes needed to bring about this sort of change. In that case, the integration of two women representatives in previously men-only institutions, while an improvement, did little to change their real participation in decision making. At "peace committee" meetings in 2002 and 2003, women members were invited only at the last minute, and did not say a word during the entire meeting.

5.2.4. Legal awareness, resources and documentation

A major obstacle to the implementation of women's rights in agriculture is the lack of legal awareness and of resources of many rural women. Indeed, rural women are often unaware of their legal rights. Even where they do know about their rights, they often lack the resources necessary to bring claims (which involve paying lawyers and court fees). And, in many parts of the world rural women are excluded from the legal system, their unformalized marriages leave them exposed to dispossession following the death of their spouse, and their lack of IDs and other documentation limits their access to agrarian reform programmes, maternity benefits and social services (e.g. Brazil; Guivant, 2001).

The issue of information is linked to illiteracy. In rural areas, female illiteracy rates are very high, although with considerable cross-country variation. This raises concerns about the means for the dissemination of legal information. Publication of legislation in official bulletins alone in

unlikely to reach rural women, and many development projects have used supplementary, more easily accessible means of information (e.g. rural radios). However, dissemination efforts are often left to development projects alone and undertaken on a largely piece-meal basis. Only rarely do legislators carefully plan the dissemination of newly adopted legislation among illiterate groups in rural areas.

As for rural women's lack of resources, the Beijing Platform for Action called governments to "ensure access to free or low-cost legal services, including legal literacy, especially designed to reach women living in poverty" (para. 61(a)). The facilitation of women's access to legal aid is provided for by the Protocol on the Rights of Women in Africa (art. 9). Provisions on legal aid are also contained in some national constitutions (e.g. the Constitution of India, Sect. 39A).

Legal aid is provided in most of the covered countries, although to very different degrees. In many cases, however, legal aid focuses on criminal matters, neglecting other areas where women's rights issues are likely to arise, such as family, succession and land law. And, many countries have not paid attention to gender in the design of their legal aid schemes. In South Africa, the budget of the Legal Aid Board (established under the Legal Aid Act of 1969) provides for little funds for family law disputes (where women are mostly involved) and focuses instead on criminal law cases (where men form the majority of the accused) (RSA/CGE, 1998). On the other hand, particular attention is paid to women by India's Legal Services Authorities Act of 1987, as amended in 1994, which explicitly lists women among possible legal aid beneficiaries (sect. 12(c)). In Ghana, the Legal Aid Scheme Act 1997 covers not only criminal matters but also civil matters concerning, among other things, inheritance rights, as well as other civil matters prescribed by Parliament or decided by the Legal Aid Board.

In addition to government institutions, legal assistance is provided to women by a large number of NGOs throughout the world. For instance, the Hanekom case, a South African landmark case on the land tenure security of women farm workers (see para. 3.4.4 above), was taken up by the "Security of Farm Workers Project" of a legal NGO, Lawyers for Human Rights (Walker, 2000). A vibrant movement of legal and para-legal NGOs is key to improving access to the legal system through

training and awareness raising; counselling and legal assistance; individual and public interest litigation; and representation and advocacy.

Notwithstanding the activities of both governmental and non-governmental institutions, legal aid remains extremely limited, and in many countries most women living in rural areas have no access to it.

5.2.5. Lack of resources for gender related laws, programmes and institutions

Another problem constraining implementation of gender related legislation is the lack of the necessary resources. This problem cuts across the different issues examined in this study, as lack of resources constrains the implementation of land reform programmes (see e.g. the inadequate resources of the Department of Land Affairs in South Africa and of the CARL reform programme in the Philippines), of labour legislation (as inadequate resources limit the effectiveness of labour inspection systems), and of laws and programmes promoting women entrepreneurs (e.g. the inadequacy of resources for subsidized credit programmes in Fiji's WOSED, and for the implementation of Italy's Law 215 of 1992 on the promotion of women entrepreneurs; GoF, 1999, and GoIt, 1999, respectively). Resource inadequacy also constrains the effectiveness of the institutional machinery for the advancement of women. For instance, resource constraints have been reported for the South African Commission for Gender Equality (CEDAW, 1998; INSTRAW, 2000), for India's National Commission for Women (CEDAW, 2000), and for Burkina Faso's Ministry for the Advancement of Women (as acknowledged in the text of Decree 486 of 2004).

5.2.6. The lack of "voice" of rural women

In many cases, implementation of constitutional provisions and of statutory norms is also hindered by lack of political will to do so. In this regard, it is worth noting that women are greatly under represented in decision-making institutions all over the world. While this issue is in itself very broad and outside the scope of this study, it does deserve a brief mention.

First, few women hold decision-making positions within agriculture-related ministries, such as ministries responsible for agriculture, for

agrarian reform, for fisheries, etc. An exception in this regard is South Africa, where the current Minister for Agriculture and Land Affairs is a woman, and the former Secretary-General of the Women's National Coalition (Walker, 2000).

Second, women's participation in elected political bodies is also very low. Information concerning the recognition of women's active and passive right to vote, as well as the share of parliamentary seats currently held by women, is reported in Table 9. The table shows how women's representation in parliaments is inadequate across all regions of the world, including in industrialized countries. In this regard, it is worth noting that Italian women gained the right to vote later than Brazilian and Filipino women, and that the share of women MPs in Italy is among the lowest in the sample.

Table 9. Women in parliament

	Year of women's suffrage	Women MPs (as % of total) *
Brazil	1934	9.1%
Burkina Faso	1958	11.7%
Fiji	1963	9.7%
India	1950	9.3%
Italy	1946	10.4%
Kenya	1963	7.1%
Mexico	1947 (to vote) 1953 (to stand for elections)	23.7%
Philippines	1937	15.4%
South Africa	1930 (Whites) 1984 (Coloureds and Indians) 1994 (Blacks)	32.4%
Tunisia	1959	22.8%

* **Source:** UNDP Web site

In some countries, seats in decision-making institutions have been reserved for women. In India, the 73rd and 74th Constitutional Amendment Acts of 1993 reserved to women one-third of the seats in local government institutions, while proposals for a similar reservation for federal parliamentary seats is being debated at the moment of writing. In Kenya, a proposal to reserve to women one-third of the parliamentary seats was rejected in 1997 (SIDA, 1999). In other countries, women quotas are established not by legislation but by the statutes or policies of political parties. In South Africa, the ANC adopted women's quota both in the 1994 and in the 1999 elections (INSTRAW, 2000). With regard to several countries, special measures for the advancement of women (e.g. quota systems) have been called for by the CEDAW Committee as a response to the low level of women's representation (e.g. for Burkina Faso, CEDAW, 2000).

At the time of writing, among the covered countries only the Philippines had a woman as head of state or government.

5.3. Legal reform and implementation

In the light of the findings of this study, the full realization of the agriculture-related rights of rural women requires action at two levels: first, legal reform; second, implementation of existing norms and of adopted reforms.

Legal reform is necessary in all cases where *de jure* discrimination exists, in order to repeal discriminatory norms. Moreover, where discrimination exists in the socio-economic life and gender neutral legislation is not enough to ensure gender equality, the principle of non-discrimination on the basis of sex must be explicitly stated in the Constitution (repealing existing exceptions) and in legislation (family, land and labour law; laws on cooperatives, training, and agriculture-related services). Special measures to advance women may be necessary to redress past and existing discrimination. This may include granting priority to women in land distribution or in access to public agricultural credit programmes. Other sector-specific measures may also be needed, such as joint titling for couples within land redistribution or registration programmes. As women's rights are determined by a complex system of rules, legal reform needs to be comprehensive. For instance, where family and succession laws restrict women's legal capacity and/or inheritance rights, a reform of land legislation to redress gender inequality in land rights can

only be effective if accompanied by a reform of discriminatory family and succession laws.

Legal reform does not occur easily, particularly in matters concerning women's rights. Entrenched cultural attitudes may hinder it. Moreover, in many rural societies, reforming the terms and conditions of access to and control of natural resources would touch the very heart of the social structure, and is therefore resisted. Legal reforms are ultimately the result of political processes: political struggle and mobilization are often necessary to obtain them, and their adoption partly depends on the strength of national women's movements.

The second level of action concerns implementation of existing laws and of reforms adopted. This requires addressing the factors examined in the previous section: access to courts and other dispute resolution mechanisms; dissemination of legal information and provision of legal aid; provision of adequate resources for laws, programmes and institutions; increasing women's representation in decision-making institutions. Strong political will to implement legislation and women's access to enforcement institutions are key elements. Political will is a function of the degree of local 'ownership' of adopted reforms, particularly in developing countries where these are passed under pressure from and/or with the support of international development agencies. Access to enforcement institutions raises issues such as economic, geographical and linguistic access to courts and other institutions; availability of judicial review for adverse government decisions; availability of legal aid in non-criminal cases; and the possibility for NGOs to file lawsuits on behalf of disadvantaged women's groups, and to intervene in legal proceedings as *amicus curiae*. In defining rules and establishing institutions, legislators must ensure that adequate resources are devoted to implementation. More generally, getting rules and institutions to work in practice calls not only for good laws but also for informed citizens who are able to seize the opportunities offered by the legal system.

The issue of implementation raises the broader issue of the complex relationship between legal change and social change. On the one hand, legal change follows and reflects social change in the economy and society. Socio-economic change may create new needs in society, which the law addresses through the emergence of new rules or the adaptation of existing ones. To mention just an example, norms on the limited

responsibility of companies developed in Western Europe with the growth of a capitalist economy, when entrepreneurs needed to limit the risk associated with their economic activity. On the other hand, legal change can itself influence the nature and direction of social and economic change, through norms deemed as 'desirable' on the basis of political choices, economic analysis, ethical values or other considerations. Human rights law, and particularly the branch concerning women's rights, aims to reform the existing social structure (although the very concept of human right in turn developed within a context of social change in 17–19th century Europe). In these cases, implementation is inevitably much more difficult, as the process of social and cultural change is very slow. Indeed, "while the formal rules can be changed overnight, the informal norms [i.e. "norms of behaviour, conventions and codes of conduct"] change only gradually" (North, 1995). The fact that in the area of women's rights legal change does not follow/reflect social change but rather promotes it explains why gender-equality legislation is so difficult to implement. This is especially so where prevailing socio-cultural attitudes, often internalized by women themselves, severely limit women's rights.

This entails that the two levels of action (legal reform and implementation) are in reality intertwined. Implementation of a legal reform partly depends on the normative content of the reform, and particularly on the extent to which the existing social structure is taken into account by the legislator. For a reform to be implemented at local level and to be sustainable in the long term, the reform process cannot just "import" legislation adopted by other countries and impose it from above on local communities. Such an attempt would create an unbridgeable gap between law and society, and would inevitably face considerable implementation problems.

Rather, legislation should provide an enabling legal framework, by prohibiting sex/gender discrimination and by providing for special measures, within which local communities could develop their own solutions to their own problems. Thus, rather than replacing existing local-level rules and institutions with new ones (which may generate two parallel systems, the formal legal system recognizing women's rights without being applied in practice, and the pre-existing informal, discriminatory system actually applied), legal reform may promote the evolution of existing rules and institutions towards gender equality. For

instance, where customary land tenure is widely applied, it may be less costly and more effective to reform its discriminatory aspects (where they exist), rather than to replace it entirely with a new land tenure system. Customary tenure may be reformed through legislation (e.g. prohibiting gender discrimination within customary land tenure; see for instance the Philippines, Indigenous Peoples' Rights Act of 1997, sects. 2(d), 21 and 26) and/or through case law (e.g. the Pastory case in Tanzania, where a customary rule was successfully challenged relying on a non-discriminatory legal framework). By the same token, customary dispute resolution mechanisms may be used to provide women with access to dispute resolution mechanisms, by reforming them to ensure gender equality while retaining their comparative advantage in terms of accessibility and social legitimacy.

The stark contrast between the high aspirations enshrined in many treaties and laws and their operation in practice, especially in rural areas, has led some to be sceptical about the usefulness of legal reform. This partly originates from the frustration of excessive expectations – the illusion that merely adopting a treaty or a law can change society with a pen stroke. Indeed, social change is inevitably a complex and slow process. Within it, law is only one of the many tools that can and must be used to improve women's status, together with other policies, programmes and activities promoting social and economic development. But even where a constitution, a law or other legal instruments are not fully implemented, their adoption is not in vain. The very fact that a constitution or a law is discussed and passed by a constituent assembly or a parliament, and that certain principles and values are enshrined in the 'social contract' governing society may contribute to the long-term process of social and cultural change.

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Women's rights legislation on the Internet

1. General resources

FAO - FAOLEX database (<http://faolex.fao.org/faolex>)

ILO - Legal Framework and Procedures for Equal Employment Opportunities (www.ilo.org)

United Nations - UNIFEM (www.undp.org) and WomenWatch network (www.un.org)

2. Country-specific resources

Brazil - Federal Senate (www.senado.gov.br); New York University School of Law (www.law.nyu.edu)

Burkina Faso - Banque de données juridique du Burkina (www.legiburkina.bf); Government: (www.primature.gov.bf)

Fiji Government (www.itc.gov.fj); University of South Pacific (www.vanuatu.usp.ac.fj)

India - Incodis (<http://indiacode.nic.in>); IndLaw.com (subscription required - <http://indlaw.com>); New York University School of Law (www.law.nyu.edu)

Italy - Parliament (www.camera.it); CGIL (Trade union) (www.lomb.cgil.it); Equal Opportunity Commission (www.palazzochigi.it); Ministry for Labour (www.minlavoro.it); New York University School of Law (www.law.nyu.edu); for EU law: EUR-LEX (www.europa.eu.int)

Kenya - LawAfrica (subscription required - www.lawafrica.com)

Mexico - House of Representatives (www.cddhcu.gob.mx); New York University School of Law (www.law.nyu.edu); Web sites of the state governments, e.g. for Guanajuato (www.guanajuato.gob.mx)

Philippines - Chan Robles Law Firm (www.chanrobles.com); Supreme Court (www.supremecourt.gov.ph)

South Africa - Acts Online (www.acts.co.za); Department of Land Affairs (<http://land.pwv.gov.za>); Government database of legislation (www.info.gov.za); Land Claims Court (www.law.wits.ac.za/lcc); New York University School of Law (www.law.nyu.edu)

Tunisia - Jurisite Tunisie (www.jurisitetunisie.com)

Women constitute a large portion of the economically active population engaged in agriculture. International instruments on human rights, the environment and sustainable development reaffirm the principle of non-discrimination on the basis of sex or gender. Yet women often face gendered obstacles in realizing their rights and feeding their families. The right to an adequate standard of living, including adequate food, may thus not be fulfilled. These obstacles may stem from directly or indirectly discriminatory norms or from entrenched socio-cultural practices, or both.

This study analyses the gender dimension of agriculture-related legislation in a selection of different countries around the world, examining the legal status of women in three key areas: rights to land and other natural resources; rights of women agricultural workers; and rights concerning women's agricultural self-employment activities, ranging from women's status in rural cooperatives to their access to credit, training and extension services.