



Legislating for impact – Scaling up the use of temporary special measures for de facto gender equality in agrifood systems



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At a time of accelerating change and increasing pressures on rural livelihoods, achieving substantive equality between women and men has never been so imperative. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has on several occasions reminded States Parties to the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) of their obligation to improve the position of women to one of “de facto” or “substantive” equality with men (CEDAW Committee, 2004, 2016, 2018). Indeed, there is a critical difference between equality of rights under the law, and equality of opportunity to enjoy and exercise these rights in practice. This difference has often been overlooked on the assumption that the absence of direct discrimination in the law leads to equality in practice.

This Legal Brief builds on a Legal Paper entitled *Achieving de facto gender equality in land, forest and fisheries tenure – Scaling up the adoption of temporary special measures in national legal frameworks* (Kenney, 2022). Specifically, it identifies ways that government authorities, policymakers, parliamentarians, lawyers and development actors can make use of temporary special measures (TSMs) to accelerate the achievement of substantive gender equality in agrifood systems.



What are temporary special measures?

While the text of the Convention does not provide a working definition of TSMs, the CEDAW Committee has sought to clarify the meaning and scope of these measures in *General Recommendation 25, 2004*. In the view of the Committee, TSMs are part of a necessary strategy by States Parties directed towards “the achievement of de facto or substantive equality of women with men in the enjoyment of their human rights and fundamental freedoms” (Para 18). TSMs present a number of characteristics that make them unique as a legal tool for achieving national goals on gender equality. These are listed below:

Purpose – to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour that discriminate against or are disadvantageous for women.

Legal nature – TSMs are a legal tool used to accelerate the achievement of a concrete goal for women of de facto or substantive equality. It reinforces and provides legal force to general national mechanisms such as social policies adopted to improve the situation of women and girls.

Scope of application – TSMs should be implemented in all areas, including in the political, economic, social, cultural, civil or any other field, where discriminatory practices or behaviours affect women’s opportunity to enjoy and exercise their rights equally with men. This includes for example in relation to credit and loans, sports, culture and recreation, and legal awareness.

States Parties to CEDAW are legally obligated to achieve substantive equality between women and men in all aspects of political, economic, social, cultural and civil fields.

CEDAW Article 4.1

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Conceptual clarifications –

“*Temporary*” means that the duration of a TSM should be determined by its functional result in response to a concrete problem and not by a predetermined amount of time. It must be discontinued when it has achieved its intended objective over a sustained period of time.

“*Special*” means that the measures are designed to serve a specific goal.

“*Measures*” means the legal mechanisms used in national law to achieve substantive equality. They include legislative, executive, administrative and other regulatory instruments adopted for the purpose of introducing preferential treatment in relation to *inter alia*, the allocation and/

or reallocation of resources, recruitment, hiring and promotion, setting up numerical goals connected with time frames, and quota systems.

Are temporary special measures discriminatory?

No – Gender-related socioeconomic and cultural factors influence the way in which policy and parliamentary processes operate, how legal and regulatory instruments are implemented and enforced, and the availability and accessibility of judicial remedies. The CEDAW Committee considers that States Parties that adopt and implement TSMs that target women under the Convention to address gender imbalances do not discriminate against men (General Recommendation 25, 2004, Para 18).

In addition, it is important to note that the achievement of substantive gender equality does not mean that biological differences between men and women will be erased, but that individuals' rights, responsibilities and opportunities will no longer depend on their sex.

CEDAW Committee General Recommendations

General Recommendation 25 on temporary special measures (2004)

18. The Committee views the application of these measures not as an exception to the norm of non-discrimination, but rather as an emphasis that temporary special measures are part of a necessary strategy by States Parties directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their human rights and fundamental freedoms. [...] The Committee considers that States Parties that adopt and implement such measures under the Convention do not discriminate against men.

General Recommendation 34 on the rights of rural women (2016)

17. States Parties should promote inclusive and sustainable economic development that enables rural women to enjoy their rights and:

(b) Promote their empowerment and ensure their economic and social independence, in particular by creating enabling environments in line with general recommendation No. 25 (2004) on temporary special measures, including through programmes and policies targeted at improving the economic conditions of rural women.

General Recommendation 37 on gender-related dimensions of disaster risk reduction in the context of climate change (2018)

30. Specific measures, including temporary special measures, legislation that prohibits intersecting forms of discrimination and resource allocation, are necessary to ensure that all women and girls are able to participate in the development, implementation and monitoring of policies and plans relating to climate change and disasters.

Why adopt temporary special measures in food and agriculture?

Women contribute to food systems as *inter alia*, farmers and farm workers, horticulturists, market sellers, processors, traders, businesswomen, entrepreneurs, community leaders and care givers. In the food and agriculture sector, cultural practices, and stereotypical attitudes and behaviour continue to put these women at a disadvantage despite the progress made globally towards the elimination of gender-based discrimination in the law. In 2021, the food security gap between men and women reached 4.3 percentage points with 31.9 percent of women being moderately or severely food insecure compared to 27.6 percent of men globally (FAO *et al.*, 2022). This is also a sector that is inherently linked to the management of natural resources and the allocation of tenure rights which determine how women and men access, use and control important commodities derived from land, fisheries and forests.

Decision-makers can accelerate gender equality in food systems by adopting TSMs that will strengthen women's access to natural resources, inputs and markets, and strengthen their participation and decision-making within producer organizations, and reduce gender-based violence. Such measures will not only help to achieve Sustainable Development Goal (SDG) 5 on gender equality and women's empowerment, they will also contribute to the achievement of other SDGs such as: Goal 1 on ending poverty; Goal 2 on ending hunger and achieving sustainable agriculture; Goal 8 on decent work; Goal 12 on sustainable consumption and production; Goal 13 on tackling climate change; Goals 14 and 15 on the sustainable use of ocean and biological resources; and Goal 16 on building inclusive societies.

These linkages should be reflected in national legal frameworks, where the objective of achieving substantive gender equality should cut across all sectors of government intervention. Under CEDAW, States Parties are required to "take all appropriate measures" to achieve substantive equality between women and men in all aspects of the Convention, including in relation to political and public life (Article 7), representation (Article 8), nationality (Article 9), education (Article 10), employment (Article 11), health (Article 12), economic and social benefits (Article 13), law (Article 15), and marriage and family life (Article 16).

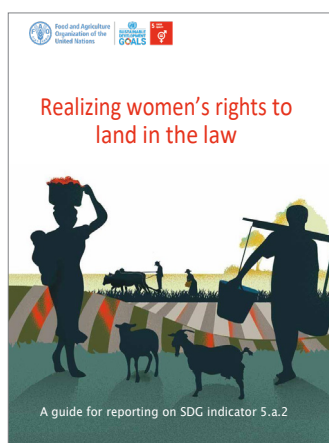
Rural women benefit from special protections under the Convention due to the particular constraints that they face and their significant contribution to the wellbeing of their families (Article 14), through unpaid tasks such as family farming and care giving. States parties must take all appropriate measures, including TSMs to ensure their rights to *inter alia*:

- participate in the elaboration and implementation of development planning at all levels;
- benefit directly from social security and social protection programmes;
- obtain training and education and benefit from community and extension services;

TSMs shouldn't be limited to a specific sector but should cut across all aspects of government intervention.

- organize self-help groups and legally established cooperatives in order to obtain equal access to economic opportunities through employment or self-employment;
- participate in all community activities and in decision-making at all levels;
- have access to agricultural credit and loans, and other support measures such as subsidies, marketing facilities, appropriate technology, and equal treatment in land and agrarian reform as well as in land resettlement schemes; and
- enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

FAOs legal advisory support to countries on temporary special measures



FAO provides technical legal support to countries upon their request, in all fields of food and agriculture, including the adoption of TSMs.

FAO also supports countries with their reporting efforts on SDG Indicator 5.a.2 which sits under SDG Target 5.a on women's access to ownership and control over land. The Indicator measures the "percentage of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control" by applying six proxies, two of which track the use of TSMs in national legislation (FAO, 2018). They are Proxies D and F, highlighted in the box below:

TSMs in the proxies used to measure SDG Indicator 5.a.2:

- Proxy A: Is the joint registration of land compulsory or encouraged through economic incentives?
- Proxy B: Does the legal and policy framework require spousal consent for land transactions?
- Proxy C: Does the legal and policy framework support women's and girls' equal inheritance rights?
- **Proxy D: Does the legal and policy framework provide for the allocation of financial resources to increase women's ownership and control over land? (TSM)**
- Proxy E: In legal systems that recognize customary land tenure, does the law explicitly protect the land rights of women?
- **Proxy F: Does the legal and policy framework mandate women's participation in land management and administration institutions? (TSM)**

Legislative approaches to achieve substantive gender equality

TSMs are by nature a flexible tool that countries have already integrated into their national legal systems in a variety of ways.

1. Generic or “stepping stone” provisions

The adoption of generic or “stepping stone” provisions provides legal recognition to TSMs which gives them increased legitimacy as a tool to be deployed in government action. They are commonly found in a country’s constitution to enable the adoption of specific TSMs in national legislation.

The inclusion of provisions on TSMs in a general, stand-alone piece of legislation, for example, on equality generally or gender equality specifically, is another option that cuts through the lengthy and complex process of amending the constitution.

Nepal. The *Constitution of Nepal, 2015* legitimises the adoption of special provisions for the protection, empowerment or advancement of the women who are left behind socially and culturally (Article 18(3)). This allows for specific concerns to be tackled at a more granular level.

Mongolia. The *Law of Mongolia on Enforcement of the Law on Promotion of Gender Equality, 2011* provides for the adoption of TSMs for the purpose of establishing equality of men and women in social or family relations (Article 7.1), including to eliminate gender imbalances in certain sectors (Article 7.2.3).

Whatever the approach, generic provisions lend authority to relevant ministries to make use of TSMs to address gender inequalities in aspects that fall within their mandates.

2. Specific TSMs in the constitution or stand-alone legislation on equality

Such provisions can help generalize and harmonize the use of TSMs across certain sectors. For example, the introduction of numerical quotas for the representation of women in the civil service can have knock-on effects on their representation in natural resource management bodies, and in some countries, in the judiciary.

Rwanda. The *Constitution of the Republic of Rwanda, 2015* requires that women occupy at least 30 percent of positions in decision-making organs (Article 10.4).

Tajikistan. The *Presidential Decree No. 647 validating the Regulation on the procedure of the competition for vacant administrative civil service positions, 2016* defines that women competing for the first appointment to the civil service are awarded three extra points (Section 37). This is to encourage an influx of women to the civil service at the central and local levels.

3. Legislation that in itself constitutes a TSM

The adoption of legislation that in itself constitutes a TSM can give women preferential treatment to address a specific problem, or help mobilize resources for the achievement of specific goals. Resources may be allocated for the training and development of skills – including entrepreneurial skills – facilitate access to loans and credit and provide preferential treatment in the allocation of land and other resources.

Cabo Verde. In 2020, the country adopted *Resolution No. 139/2020 creating the Micro Entrepreneurship Promotion Programme*. The objective of the programme is to encourage micro entrepreneurship and contribute to the economic inclusion of women through self-employment and entrepreneurship. It gives priority access to credits for women who meet certain criteria (Article 16.2).

Uzbekistan. The *Decree of the President of the Republic of Uzbekistan No. PF-87 on measures to further accelerate the work on systemic support for families and women of 2022* determines that in the period from 1 September 2022 to 1 January 2025, small businesses that provide employment for low-income women in rural areas are entitled to a 50 percent reduction of their property and land tax, and the payment of social tax is calculated at a rate of 1 percent (Section 9).

4. The adoption of TSMs in sectoral legislation

TSMs are best crafted at a sectoral level, where they can address the legal, social, economic, religious and administrative barriers that prevent women and men from enjoying and exercising their rights equally. The inclusion of specific TSMs in sectoral legislation can help provide a more tailored response to the challenges faced by women and girls within a given sector.

These TSMs can be monitored and adjusted to meet the desired result. In Nepal, the adoption of TSMs that support the registration of land for women have helped increase the percentage of land owned by women by 8 percent (Chapagai, 2014).

Spain. The *Law No. 5/2019 on agrarian structures of the Valencian Community* gives preferential treatment in access to land to women and young people who engage in an agricultural activity (Article 3.d).

Guatemala. *Resolution No. JD.04.28.2015* gives priority to individual female holders in the certification of projects carried out as part of a Forestry Management Plan (Article 8). In addition, the Resolution creates a Community Forestry Fund for the development of community forestry practices. The Fund provides resources for a number of activities, including the implementation of training and extension programmes for projects which prioritize the participation of women's groups for the conservation and sustainable management of their forests (Article 44(b)).

Republic of Korea. Under the *Support of Female Farmers and Fishermen Act of 2001*, the state and each local government have the responsibility to provide *inter alia* technical education on agriculture and fisheries, education on the management of agriculture and fisheries and the establishment of the education system thereof, to foster female farmers specialized in agriculture and fisheries and to support female farmers who intend to engage in fishing independently (Article 9).

Going forward

Since the adoption of CEDAW in 1979, countries have generally acknowledged the role of TSMs as a tool to increase the representation of women in public and political life. Whilst these efforts have laid the foundations for a more diverse and inclusive decision-making process, countries urgently need to consider other areas where discriminatory practices continue to affect women's and girls' ability to enjoy and exercise their rights.

A review of national legislation shows that even in sectoral legislation, the use of TSMs is still largely focused on increasing representation through quotas. But there are many more types of TSMs that can provide targeted solutions to specific problems. For example, legal provisions can provide economic or tax benefits to female entrepreneurs, or provide preferential treatment in the allocation of credit such as government backed loan guarantees, unrigid collateral requirements, lower interest rates, or longer tenor. Legal provisions may also give preferential treatment in the allocation of land, or set up special programmes targeted at women to increase the number of women agri-entrepreneurs. These are less commonly used but are likely to generate positive results for gender equality in practice.

For TSMs to be successfully implemented, they need to be supported by adequate financial resources. Gender-responsive budgeting can ensure that resources are allocated as part of the regular national or sub-national budgeting process.

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The global reporting on SDG indicator 5.a.2 provides a useful avenue for countries to initiate discussions nationally about the role of TSMs in supporting the achievement of gender equality goals. FAO stands ready to provide legal advisory support to countries wishing to explore ways in which TSMs can be applied to better tailor their legislative action and meet their gender equality obligations.

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Key messages

- States have a human right obligation to achieve substantive gender equality or de facto gender equality.
- TSMs are a valuable tool to help achieve gender equality in practice. They should be used to counteract the negative effects of discriminatory cultural and traditional practices on women's ability to enjoy and exercise their rights.
- Preferential treatment until such time as de facto equality has been achieved does not constitute discrimination.
- Countries are already using TSMs but need to step up their efforts and apply them more systematically.
- TSMs are widely used to strengthen women's representation in the political sphere. However, discriminatory cultural and traditional practices continue to impact women's ability to enjoy and exercise their economic, social and cultural rights equally with men.
- To close the gender gap in agriculture, countries should identify the barriers to the realization of gender equality across all sectors and apply TSMs to address them.

