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Summary

GRASS CEILING is committed to understanding policy and legal frameworks that foster or inhibit gender equality for women on farms and in rural areas. There is considerable work that focuses on the normative and cultural processes that socialise women out of farming. While access to land is seen as a barrier for women to enter farming, little attention has been paid to the legal frameworks that govern the transfer of land to children and whether they have gendered norms embedded in them. This report undertakes an analysis of European legal frameworks. There are three key legal frameworks that operate in Europe; Common law, which allows for one heir and the disinheritance of other children; the Napoleonic code of law, which instructs for assets to be divided between children; and the Allodial law, which protects primogeniture, or inheritance by the eldest son. We use three case study countries, all of which participate in GRASS CEILING, and which use one of the legal frameworks. Ireland operates Common law, Italy uses the Napoleonic code of law, and Norway is governed by Allodial law. Allodial law protects primogeniture. Norway however amended this law in 1974 to make the eldest child the legal heir to the farm.

The key findings are that despite the differences in the rules used by the legal frameworks, the outcomes for women's inheritance are similar. Even in Norway, the changed legal framework has had no material difference. The legal language of each legal framework is gender biased, although no legal framework prevents women from inheriting land, and the Norwegian legal framework actually tries to provision for increased inheritance by women. Cultural and social norms are more powerful than legal frameworks. In the main, men continue to be seen as the natural farmers and inherit land.

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1. Context

The UN has long recognised that gender parity cannot be achieved without access to land (Feci, 2021). In the developing world context attention has been paid to land titles as a means of overcoming the inequalities for women embedded in customary law where land is traditionally passed to women. The EU's Strategic Dialogue in Agriculture (2024) calls for a future EU study on the legal status of women in agriculture. This report then is timely in beginning to examine the three key legal frameworks that govern land transfer in Europe; Common law, Napoleonic code of law, and Allodial law. Discrimination on the grounds of gender is unlawful. However, the findings also show that social and cultural norms are much more powerful in shaping patterns of inheritance than legal frameworks, and these social and cultural norms discriminate against women.

2. Introduction

Unequal access to land has long been seen as one element of continuing inequality for women in agriculture. At a meeting of the Commission on the Status of Women in 2005, the then Secretary of the UN saw guaranteeing women's access to land and inheritance rights as a key priority to achieve gender parity. Ten years later in 2015, the need for equality between men and women's access to land ownership was repeated (Feci, 2021). Women's unequal access to land in the Global South has gained more attention than in the North. In the traditional patriarchal societies of the South, it is often customary or informal law that governs land transfer and favours men. There is a drive for better land titling and legal frameworks in these contexts. In the Global North, this question has received less attention. The focus in European research has been on the socialisation processes that make men legitimate heirs and move women out of the industry. The lack of access to land is recognised as an issue, but scrutiny of the three different legal frameworks is limited, and a comparison has never been undertaken. That is the purpose of this report.

European legal frameworks on civil law and land law come from three main different traditions: Common law, Napoleonic law, and Allodial law. The Common law system derives from previous court and tribunals' decisions. This legal system can be found in Ireland and in the United Kingdom. This legal framework allows for one child to inherit and others to be disinherited. Napoleonic law has influenced most of the modern civil codes across the world, and mainland Europe. Starting from the Napoleonic civil code in 1804, its principles are at the core of modern civil law systems. In Europe, Napoleonic law tradition has influenced different countries like Belgium, Croatia, Italy, the Netherlands, and Spain. While similar in principle, there are National variations in the interpretation (Shortall, 2015). Under this legal framework, the general principle is that inheritance must be divided amongst children. Allodial law is a Medieval title that protects the independent ownership of a property (building or land). This legal tradition has influenced modern civil codes in Lithuania, Norway, and Sweden. Primogeniture is underpinned by this legal tradition, and the eldest son is the legitimate heir, except in our case study, Norway, where this was changed in 1974, making the eldest child regardless of gender, the legal heir. This change in the legal framework makes it a particularly interesting case study.

This task was somewhat constrained by the limited research that has looked at legal frameworks across Europe. There is some for each of the case studies and that is referenced in this report. At the overarching EU level, there is limited data at a comparative level although there are some exceptions; Shortall & Marangudakis, (2022, 755) note that men are still the main owners and heirs of lands and farms across Europe, despite differences in legal frameworks and socio-economic conditions. This shows how powerful cultural and social norms are compared to legal frameworks. Other research identifies the differences in EU legal frameworks and their limited impact on women's inheritance of land (Shortall, 2015). A more detailed and comprehensive analysis is outstanding. This report was undertaken in the following way. First a benchmarking framework was developed to ensure a consistent analysis of the legal frameworks and to assist future scholars who want to undertake such an exercise (see Annex 1 for the benchmarking template). The template was based on the Gender Equality Strategy and the principles on property rights and equality of the

EU Charter of Fundamental Rights, asking whether women are present in national legal frameworks, and if they are treated as a special category by the laws on land succession. The template was developed to understand how the single pieces of legislation sit within the wider national and European context, and its implications for women.

The main laws of inheritance in the three case studies were identified. This allowed an analysis of whether gender norms are implemented in the laws on land inheritance and land transfer. Next an analysis of the legislation on land ownership and land transfer was undertaken, to understand how the specific/special laws on land inheritance interact with the wider legal framework. This allows comparison and benchmarking of the laws of land transfer not only against the main principles of the Gender Equality Strategy and the principles on property rights and equality of the EU Charter of Fundamental Rights, but also against the legal frameworks in which they operate. The documents consulted were in English. When not available, unofficial translations were used. This was then cross checked with the literature on women's land ownership for each case study.

This report is structured as follows. The first section of this report analyses the Irish common law framework on land transfer and succession, looking at its impact on gender in land ownership. The second section assess Italian laws on succession and special laws of land transfer. This section then deals with the implications of Napoleonic law for gender equality in farm leadership. The third section analyses the Allodial system in Norway, addressing the implications on gender in land ownership, paying particular attention to the positive change in the law for women that occurred in 1974. Finally, the report ends with a summary of the key findings.

3. Common Law tradition: Irish framework of land transfer

The Irish legal tradition is based on Common Law. The Irish common law system is derivative of English Common Law. Common law allows for property to be left to one child and other children to be effectively disinherited.

From a social perspective, a common law system captures legal and social interpretations. Court decisions are important because they capture how the society interprets a specific piece of legislation at a given moment in time. Through the importance given to past court rulings, common law systems protect previous interpretations of the law, which are often engrained with cultural norms and traditions. In this sense, societal change or, better, change in the interpretation of the law might appear more difficult. So, for example, following the Irish Famine in the mid-1800s, the system of partible inheritance moved to impartible inheritance; from the division of land amongst children to a single sole heir. Prior to the famine, children having small tenancies meant they could sustain themselves by relying on potatoes. After the potato failure, there was a realisation this system was untenable (Kennedy, 1991). Ireland was a British colony during the period of the famine. When national independence from Britain became linked with the Land League, which wanted land ownership for Irish tenants, ownership of land became socially important to tenants Britain was very opposed to the independence of its closest colony fearing it would be the start of the loss of their Empire. In order to try to stem the call for independence, tenants were allowed to buy out their tenancies in the early 1900s. Following this, keeping the male patrilineal name on the holding became an ideological objective. This has fed into the social and cultural norm that land is passed from father to son.

Post Irish independence in 1921 until 1965, when the head of the family died on farms, the farm passed to the next closest male relative, whether a son, brother or other male relative, and if there was a spouse, she did not inherit from her husband. If there was a will, the farmer was free to leave his property as he wished and could legally disinherit his children and spouse. The usual pattern however was primogeniture, and while other children could be disinherited, provisions were made for dowries for women, and education or costs of emigration for brothers, although these were such that they would not threaten the economic viability of the agricultural holding (Kennedy, 1991). Irish farms are very small, with the average in 2024 being 34 hectares. How intertwined cultural and legal norms are, is evident in the 1965 reform of land succession in Ireland.

The Irish farm transfer and succession law was modified by the introduction of the Succession Act in 1965. The Succession Act of 1965 regulates inheritance when there is no will left by the landowner (*intestate*). In particular, the Act sets a specific order of the people surviving the deceased, ensuring spouses and children are not disinherited. In 1965, there was a political debate about the Principal of Freedom on Testation, or in other words, the right of a farmer to leave his farm to whoever he wished and disinherit his family. Irish politicians and commentators called it a peculiar feature of the English system of law that Ireland had adapted post-independence. Instead, the Minister at the time referred to an old Irish law, the Custom of Ireland, which had been abolished in the 17th

Century. This gave spouses and children portions of the estate on the death of the spouse/ father. The Minister noted that Freedom of Testation was contrary to the position the Irish Constitution gave the family as a moral institution. Consequently, the Succession Act, giving rights to the spouse and children, was introduced in 1965 (Dennehy, 2011, 22-23).

4.1. Gender implications under Irish Law

The Succession Act modified the existing legal framework in Ireland, promising more protection and equality for different members of the family. In 2020 almost 90% of Irish farm holders were male (Central Statistics Office, 2020). These figures have remained almost intact for the past thirty years. While the Succession Act protected women and children, the pattern of farm ownership has not changed, and this was not the intention of the Succession Act. Cultural norms that see the man as 'head of the farm family and the family farm' are deeply embedded in Irish society, affecting the way law is interpreted and practised (Shortall, 2015, 2018). There is nothing in the legal framework that says men should be the heir, yet they continue to be so. This shows the power of social and cultural norms. There is an informal commitment within the family to the continuity of the farm as an economic and social unit, it is clearly understood as a 'family farm'. Research has shown how non-inheriting heirs do not feel resentment about their status. They have a strong identity with the farm and want to see their sibling, usually a brother, continue the farm (Cassidy and McGrath, 2014).

While the Succession Act is not gender biased, the language is so. The language used throughout the Succession Act only refers to the masculine pronoun *he* in its articles. The language used by the legislator reflects a predominance of men in succession matters. While it is true that legal documents often use masculine pronouns to indicate the plurality of genders, it is worth highlighting how the Succession Act never specifically refers to *men* or *women.* However, when indicating more gender-neutral terms like *spouse*, the Succession Act often refers to the masculine *he*. Other examples include: *'at the time of **his** death'; 'shall not be deemed to be an estate or interest ceasing on **his** death'; 'next-of-kin surviving **him**'* (Succession Act, 1965).

4. Italian Law: land and farm succession in the Napoleonic Law tradition

The Italian legal tradition is based on Napoleonic Law. The Napoleonic code was introduced in Italy in 1865. The legal principles and the structure of the Italian Napoleonic code was mostly centred around the French civil code. The Napoleonic code remained in place until 1942, when the Italian Civil Code was introduced. Although the new Civil Code deeply modified most of the institutes in civil and commercial law, the footprint of the Napoleonic code is still present.

Inheritance rules are contained in the Second Book of the Italian Civil Code from art. 456 to 564 (Codice Civile, 1942). The Civil Code regulates how properties and assets are transferred after the death of the interested subject. According to the Italian Civil Code there are different rules whether the deceased redacted a will or not. What is specific about Italian succession law is the 'necessary' share of the succession (successione necessaria). Even when there is a will, the assets need to be distributed according to specific shares indicated by the law. This means that the heirs indicated by the law will always have the right to a specific share of the inheritance, whether or not they have been included in the will.

The principle that regulates land succession is different from the general norms that apply to regular succession. Italian laws on succession usually guarantee the continuity of the ownership of the assets. For land and agrarian succession Italian laws protect the continuity and integrity of the farm as a business. This difference is fundamental to understand how the Italian legal system makes an exception to general rules on succession, choosing to preserve the unity of the farm as a productive business (Casadei, 2011; Prete, 2022; Valenza, 2009). According to the art. 49 of the law 203/1982, if a farm owner dies and one of the legal heirs is a farmer, but other legal heirs are not involved in the farming business, a new farm tenancy is automatically established (*ex lege*) between the farmer heir and the other non-farmer heirs (Norme Sui Contratti Agrari, 1982). A tenancy of maximum 15 years is established, after which time the inheriting farmer heir can buy out the non-farm heirs. The legal provision allows the heir to compulsorily acquire ownership and there is nothing non-farming heirs can do to prevent this acquisition (Prete, 2022;147).

When it comes to the transfer of family farms, dividing the assets could threaten the viability of the farm. Intra-family succession is the preferred method of land transfer in Italy (Corsi, 2004; Cavicchioli et al, 2018) and it is notable how the legal framework reflects this cultural preference. The transfer of agricultural land is primarily carried out through the so-called Family Pact (art. 768-bis of the Civil code) before the death of the farmer (Prete, 2022[1]). The Family Pact is described by the Civil code as "the contract by which the entrepreneur transfers, in whole or in part, the company, and the holder of company shares transfers, in whole or in part, his shares, to one or more

[1] There is very little written in English about the transfer of Italian law. ChatGPT was used to translate Italian documents, but Prete's (2022) article is a better account, and more importantly provides an excellent socio-legal analysis. For this reason, there is heavy reliance on the article.

descendants." (Prete, 2022; 143). The Family Pact is an exception to succession agreements. It means that future heirs waive their rights in relation to a succession which has not yet taken place. The Family Pact is also meant to obviate complaints in the future about inheritance. When the transfer of the agricultural holding is carried out through a Family Pact, which allows transfer of the holding to one (or more than one) of the descendants free of charge, with the consent of all future legitimate heirs (so called 'legittimari,' i.e., normally the spouse and other children), it means future complaints on their part are prevented. It is basically a sort of donation which cannot be contested, as all future heirs will have given their prior consent to it (Prete, 2022; 143). In effect, non-farming heirs disinherit themselves to maintain the viability of the farm.

5.1 Implications for women under the Napoleonic law tradition in Italy

The Napoleonic code in 1865, and the Italian civil code in 1942, do not discriminate by gender. The regulation of land transfer and succession in the Italian legal framework seems to value the unity of the farm and the land to pass onto the next generation.

This principle is in line with the Napoleonic code that was introduced in 1865, following the unification of Italy in 1861. The Napoleonic code was the first to abolish the principle of primogeniture, establishing a succession system based on equality among children, regardless of gender (Colli et al., 2003). Indeed, article 745 of the Napoleonic code clearly states that all children are legitimate heirs to their parents' assets, regardless of primogeniture and 'without distinction based on sex'. Although the Napoleonic Code provided a system of partible inheritance, meaning that assets were to be equally divided among the children, the practice was different. The common practice was that first born sons would acquire the business or the land (Colli et al., 2003). Indeed, the expectation was that the son would inherit most or all of the family's assets. Feci (2021) has argued that there is a long Italian tradition of women being socialised to forfeit their share to the farm. The cultural and normative expectations are that men will become the farm operator (Corsi, 2004; Cavicchioli et al, 2018).

The Italian legal framework promotes both the principles of equal distribution among heirs and the principle of unity of the farm and farm business These two principles compete when a farm business is part of a succession. This means that when a farm business is part of the assets of a succession, the principle of unity and continuity of the farm is stronger than the principle of equitable distribution among heirs. Although it is against Italian law to discriminate because of gender, the law in practice is different. Farm businesses are still predominantly led by men (ISTAT, 2022). Only 30% of workers in the agricultural sector are women, including both family (32.1% of workers are female) and non-family farms (27.3% of workers are female) (ISTAT, 2022). These figures are higher than for Ireland (11%) and for Norway (16.8%). However it cannot be explained by the legal framework. The majority of farms (52) in Italy have an annual return of less than eight thousand euro and women's holding are particularly small (Eurostat, 2024). This needs further analysis to understand the gender dimension. In the Netherlands and Germany, both of which also have Napoleonic code of law, the figures for women farmers are 5.6% and 10.8%. Gender biased cultural norms are still impacting the way women work and inherit land and farms in Italy.

While the law is gender neutral, the language illustrates that the expectation is that it is and will be men who farm. For example, reference is made to the farmer who transfers **his** shares (art. 768); fifty percent of **his** working time; **his** working time, **his** total income (art. 1) (Prete, 2022). While this does not implicate any legal bias in terms of gender, the language used by the Italian legislator is reflective of wider societal expectations around gender and inheritance of farmland.

5. Norwegian Law and Allodial Law tradition

In Norway the civil law tradition has roots in Allodial Law. Allodial means owning land completely without any obligations to anyone else. Allodial Law (or *Odelsrett*) is a Medieval title that protects the independent ownership of a property (building or land) giving succession rights over the land to male primogeniture (Osterud, 2014; Wiig et al., 2007). This principle of civil law has resisted centuries of legal transformation, being present in the current legal system in the Allodial Act. The Act (n. 58 of 28.06.1974) grants specific rights over agricultural land and properties to certain heirs.

To qualify as allodial title, the owner needs to satisfy specific requirements, like occupancy, and destination/use of the property. More specifically, the land needs to be occupied by the owner, and it needs to be used by the owner as a farm (Abram, 2014).

In keeping with the other legal frameworks, Allodial law focuses on maintaining the integrity of the farm. In Norway, the subdivision of farms has been illegal since the late 1600s (Osterud, 2014).

The Law on allodium was the area where legal gender discrimination was last eliminated in 1974. In Norway the firstborn child has the strongest right to inherit agricultural land and property. Originally this right was reserved for only male heirs. This was changed in the revised Law on allodium (Odelsloven) of 1974, where the law state that the first born has the right to inherit the farm and its land, regardless of gender. This right was however limited to children born after 1965. This was probably done to allow time to prepare the first-born girl child to take possession of the farm in due time; and not upset the expectation by first born male children that they would inherit the farm (Wiig et al, 2007: 5).

6.1 Implications for women under the Allodial title in Norway

Scholars have argued that while primogeniture clearly favoured male heirs, Norwegian women have always been understood as active contributors to the farm and this is evident in early legal measures to protect women's position in agriculture. In 1821, a law was passed which protected the Allodial rights of only daughters against claims by her father's brothers or other male kin to the farm (Sandvik, 2001). If married women inherited land it remained part of their estate and did not pass to their husband. Women's unpaid work in the family was seen as productive work and in the late 1940s its value was estimated and included in Norway's GDP. Historical analysis of documents in the 20th Century finds an understanding of both men and women as productive contributors to farm work (Almas, 1984). In the 1970s in Norway the women's movement was very strong and advocated for gender equality to be promoted through public policy (Osterud, 2014). As a result, and reflecting changed cultural norms, the reform of the Allodial Act in 1974 was intended to correct the gender imbalance that was embedded in the Allodial law tradition. According to the reformed Act, the eldest child is entitled to be the legitimate heir of the land, regardless of gender (Heggem, 2014; Wiig et al., 2007). The Allodial title provides that older siblings have more rights than younger

siblings. The reformed Allodial Act also specifically refers to age as a preferential status, clearly stating that this applies 'regardless of gender' (see Section 12, par. 1).

The change in the Allodial law in 1974 created debate and critical reflection about what it meant to be a farmer, if farm work was too heavy for women, and losing the family farm name if a daughter married. There was strong opposition to the amendment from women and men in agriculture (Haugen, 1998).

Nonetheless, the law made the eldest child the legal heir, and it would be expected to result in a greater percentage of women farm owners. However, male landowners are still the majority in Norway (Shortall, 2015). After almost fifty years of the reform of the Allodial Act, only 16.8% of Norwegian farms were led by women in 2020 (EUROSTAT, 2024). These figures suggest the continuity of a system of cultural norms that prevented the expected societal change sought by the reform of the Allodial Act. Cultural expectations that farmers are male persist. Often, women reneged their Allodial rights to avoid causing tensions within the family (Haugen, 1994). Heggem (2014) provides a detailed analysis of how fathers and mothers socialise daughters out of claiming their Allodial rights, even when women themselves inherited as only daughters. There is a considerable gap between law and custom. As a result, farming in Norway is still predominantly male (McKee et al., 2020).

Similar to the two other cases, unconscious bias is evident in the use of pronouns in Norwegian Allodial law. For example, Section 14, par. 4, the provision states that 'The right of inheritance can nevertheless be made valid according to the usual rules, if the right holder offers the younger siblings to take over the first property for a price determined at discretion. **He has the right to withdraw from the offer after the price for both properties has been finally determined**.'

6. Conclusion: Key findings and the way forward

European legal frameworks on land transfer and succession are deeply affected by cultural norms. This report has shown how cultural norms and biases against women in agriculture affect land and farm succession across different legal traditions. Indeed, despite their differences, under Common law, Napoleonic law, and Allodial law traditions there is little to no difference in the way land and farms pass onto the next generation. Women-led farmers are still the exception in Europe.

The main legal frameworks on land transfer and succession were analysed. Three case studies were used to examine general laws on succession and special laws on land and farm succession in Ireland, Italy, and Norway. The way the law on land succession evolved was examined for Common law, Napoleonic law, and Allodial law. These case studies allowed an analysis of the legal frameworks prevalent in Europe. Then the literature on women's land ownership was reviewed for each case study.

Although all three legal frameworks are gender neutral, men are still the majority of landowners. Even in the case of Norway, where explicit provision is made for the eldest child to be the heir, patrilineal succession remains the norm. It is clear that cultural and social norms are much more powerful than legal traditions. It is also the case that in Europe the narrative is very much one of the 'family farm'. It is a family enterprise where family members provide unpaid labour, and the farm is passed on to the next generation of the family. While this privileges men it makes it difficult to discuss individual rights.

In all three case studies the main principle behind land succession is the protection of the unity of the assets. In the Irish case, disinherited children do not protest because the focus is the integrity of the farm. In the Italian context, the usual practice is for family heirs to enter a Family Pact, waiving their rights to the farm and in effect disinheriting themselves. In Norway, it is illegal to subdivide farms. In short, keeping the farm intact trumps gender when it comes to farm succession (Sheridan et al, 2021).

The language used in all three legal frameworks analysed is still gender biased, with no reference to women in the laws on succession and land transfer. Male pronouns are persistently used which provides further evidence of the cultural normative expectations of the different legal systems that men are and will be the farm heirs.

The Strategic Dialogue on Agriculture (2024) states the European Commission's commitment to undertake research to understand the impact of legal frameworks and their ability to increase fairer access to land by women. Further research is needed, as is this a little understood question. We do not understand the variations between different expressions of Napoleonic law in European countries, or Allodial law. This report finds that legal frameworks have limited impact. Social and cultural norms govern land transfer. It would also be interesting to see future research on how family farming as a narrative and gender ideology intersect. Women's scope to discuss individual

ownership rights are hampered by the family farm ideology and this is a question that needs more attention. In this respect European traditions are similar to the Global South, where customary law prevails, and the introduction of legal frameworks have had limited impact (Shortall and Adesugba, 2021). More strategic policies will be needed to provide women with access to land through ring fenced tenancies for women, and a policy focus on encouraging farm owners to consider the talents of all their children when choosing an heir.

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Annex 1. Template: Benchmarking of national law documents

Section A: Identification of national law for analysis

Official title of national law (reference)	
Country and legislative body that promulgated this law	
Link to English language version of policy analysed	

Section B: Analysis

1.

Question	**What is the overall purpose of this law?**
Notes to consider	• What are the key aims/objectives of this law? • Is it primary or secondary law?
Response	

2.

Question	**What are the basic principles of this law around inheritance?**
Notes to consider	• What are the main rules on inheritance? • Does the law privilege specific groups?
Response	

3.

Question	What are the basic principles of this law around agricultural inheritance?
Notes to consider	• Does this law have specific/special rules on land inheritance? • Are there special/specific requirements connected to land ownership for agricultural businesses?
Response	

4.

Question	Does this law reflect societal norms around land ownership and inheritance?
Notes to consider	• Are the measures mainstreaming women or treating them as a special category? • How is this law positioned within the wider national legal system? Does this law refer to other national, European, or international laws?
Response	

5.

Question	How does this law recognise gender issues?
Notes to consider	• Is there any gender bias in this law? • Does this law treat men and women differently in land ownership/inheritance? • Does this law refer to women? How? • Does this law support/promote women's leadership and participation in agriculture?
Response	

6.

Question	Does this law differ from other pieces of legislation of the same country?

Notes to consider	• Is it a specific/special law or is it part of a wider corpus (e.g. civil code, agricultural code)?
Response	

7.

Question	**Further relevant information or comments**
Notes to consider	
Response	