



The Global Initiative
for Economic, Social and Cultural Rights

**SHADOW REPORT TO THE UNITED NATIONS COMMITTEE
ON THE ELIMINATION OF DISCRIMINATION AGAINST
WOMEN**

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Submitted by:
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I. Introduction

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. The vision of the Global Initiative for Economic, Social and Cultural Rights is of a world where economic, social and cultural rights are fully respected, protected and fulfilled and on equal footing with civil and political rights, so that all people are able to live in dignity.

2. The mission of the Global Initiative for Economic, Social and Cultural Rights is to strengthen the international human rights framework through creative standard setting, so that all people, and in particular marginalized individuals and groups, are able to fully enjoy their economic, social and cultural rights, and are able to do so without discrimination and on the basis of equality; provide innovative tools to policy makers, development actors and others on the practical implementation and realization of economic, social and cultural rights; enforce economic, social and cultural rights through international, regional and national mechanisms and seek remedies for violations of these rights, with a focus on creating beneficial jurisprudence aimed at transformative change; engage networks of human rights, women's rights, environmental and development organizations and agencies to advance the sustainable enjoyment of economic, social and cultural rights at both national and international levels; and work with advocates, social movements and grassroots communities at national and local levels to more effectively claim and enforce economic, social and cultural rights, including by engaging international mechanisms for local impact.

II. The Importance of Promoting and Protecting Women's Rights to Land and Other Resources, and the Need for More Clarity

3. In her 2012 report to the Human Rights Council, the UN Special Rapporteur on the right to adequate housing recognized the importance of that right to women, and importantly that "adequate housing for women goes far beyond addressing basic material needs" and that "because of the close connection that exists between the right to adequate housing and the right to equality, adequate housing for women goes to the heart of social inequality and discrimination."¹

4. The Special Rapporteur also drew attention to the fact that "ensuring that women have access to and control over vital resources such as housing and land is essential to challenging and changing gender power structures and patterns of gender inequality which continue to oppress, exclude and relegate women to the margins."²

5. CEDAW has increasingly recognized the importance of the right to adequate housing and rights related to land. For instance, in its Concluding Observations on Israel in 2011, CEDAW used language from the International Covenant on Economic, Social and

¹ Report of the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, UN Doc. A/HRC/19/53 (26 December 2011) at para. 3.

² *Id.*

Cultural Rights in explicitly addressing forced eviction and the right to adequate housing³ and recognized the importance of women's access to land.⁴

6. While the Committee on Economic, Social and Cultural Rights has provided general guidance on procedural and substantive content the right to adequate housing and the related prohibition on forced eviction, particularly in its General Comment No. 4 on the right to adequate housing and General Comment No. 7 on the prohibition on forced eviction, these General Comments do not provide clear guidance on the gender dimensions of the right to adequate housing, including what the substantive content of that right entails from women's perspectives.

7. The UN Special Rapporteur on the right to adequate housing, fortunately, has begun to examine this issue and has provided guidance and a gender analysis to the right to adequate housing. In her 2012 Annual Report, the Special Rapporteur examined the seven elements of the right to adequate housing from women's perspective, including the issue of access to and control over land and other resources.⁵

8. As for the issue of access to and control over land, the UN Commission on Human Rights has adopted several resolutions dealing not only with women and housing rights, but their right to equal ownership, access to and control over land.⁶ This issue of access to and control over land, in particular, is beginning to garner the attention it deserves. Access to and control over land provides access to and control over vital resources necessary to ensure women's right to an adequate standard of living and right to a livelihood, and thus highly relevant to, *inter alia*, the enjoyment of Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women.

9. Additionally, the UN Special Rapporteur on the right to adequate housing has, in several reports, stressed that land, as a housing resource, is a critical element of the human right to housing,⁷ that land constitutes the main asset from which the rural poor are able to derive a livelihood,⁸ and that access to land is also critical for building socio-economic security.⁹ With respect to women, the Special Rapporteur has found that "in many countries, the control and ownership of land, especially in rural areas, by women is critical to their livelihoods, food security, economic independence and physical security, including of their children."¹⁰

³ Committee on the Elimination of All Forms of Discrimination against Women, Concluding Observations: Israel, UN Doc. CEDAW/C/ISR/CO/5, (5 April 2011) at para. 29.

⁴ *Id.* at para. 44.

⁵ *See*, Report of the Special Rapporteur on the right to adequate housing, UN Doc. A/HRC/19/53 (26 December 2011).

⁶ *See, e.g.*, UN Commission on Human Rights resolutions 2005/25, 2003/22, 2001/34 and 2000/13.

⁷ *See, e.g.*, Reports of the Special Rapporteur on the right to adequate housing, UN Docs.

E/CN.4/2001/51, E/CN.4/2002/59, E/CN.4/2005/48, E/CN.4/2005/43 and E/CN.4/2006/118.

⁸ Report of the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Kothari, UN Doc. A/HRC/7/16 (13 February 2008) at para. 67.

⁹ *Id.* at para. 69

¹⁰ *Id.* at para. 71.

10. As such, the Global Initiative for Economic, Social and Cultural Rights believes that CEDAW should increasingly provide clarity on both the gender dimensions of the right to adequate housing and on women's access to and control over land and other resources.

III. ARTICLES 1, 2, 3, 5, 14 and 16 -- Women's Land and Property Rights in Togo

11. This shadow report addresses the current situation of women in Togo with respect to the status of their land and property rights.

12. In its 2006 Concluding Observations on Togo, the Committee urged the Government of Togo to "take appropriate measures to eliminate all forms of discrimination against women with respect to the ownership and inheritance of land" (UN Doc. CEDAW/C/TGO/CO/5 of 3 February 2006). Since that time, little progress has been made in terms of the advancement of women's *de facto* enjoyment of these rights.

13. For the current review, the Committee has asked the State party to indicate the time frame for the adoption of the revised Personal and Family Code and whether the reform is bringing all the provisions of the Personal and Family Code into line with the Convention, as well as to indicate the actions taken or planned to withdraw the following discriminatory provisions from the Personal and Family Code:

- the husband as the head of the family (art. 101),
- the choice of the residence of the family by the husband in absence of mutual agreement (art. 104),
- obstacles faced by widows to administrate children's property (art. 242), and
- the lack of automatic implementation of the inheritance legislation (art. 391).

14. In this respect, it deserves to be mentioned that last year, in 2011, the UN Human Rights Committee noted with concern that "... the legislative reforms guaranteeing equal rights for men and women, in particular the adoption of a new Criminal Code and Personal and Family Code, have still not been completed, although the State party has been announcing for years that they would be" (UN Doc. CCPR/C/TGO/CO/4 of 28 March 2011). Delays in the adoption of this revised legislation continue to jeopardize women's *de facto* enjoyment of their rights, and continue to violate their substantive rights to equality and to equality before the law.

15. While not specifically mentioned in the List of Issues, the application of customary law is also an issue of significant concern, with specific ramifications with respect to women's access to land and property. Both formal and customary law have discriminatory implications for women. For example, like in many countries, women's access to land and property depends on the system under which they were married. While Togo applies a 'community of property' regime to civil law marriages, husbands are the legal administrators of the couple's property. Similarly, although national law provides for equal access to inheritance, as noted above current law provides that it applies only to those who have waived customary rules in matters of succession.¹¹

¹¹ Africa for Women's Rights, Factsheet on Togo.

16. Under civil law, while women can inherit land and other property, customary law continues to be very unfavourable to women in the matter of inheritance. According to the Social Institutions and Gender Index (SIGI) of the Organisation for Economic Co-operation and Development (OECD), while formally under Togolese law there are no restrictions on women in regard to owning property, under virtually all customary legal regimes, women do not have the right to own land. “Women are not entitled to inherit from their husbands or fathers, but can hold property in usufruct. Widows can inherit property only if their husbands explicitly renounced customary law while still alive: in practice, this is an extremely difficult thing to do. In some regions, a wife is considered to be her husband’s property, and so is inherited along with the rest of his possessions by his family. Widowhood rituals such as the obligation to remain barefoot are still practiced in Togo: refusal to follow them can result in ostracism and denial of access to matrimonial property.”¹²

17. Even if the discriminatory provisions of formal law are repealed or revised, it is critical that the State party take steps to ensure that the application of customary law does not violate women’s rights. In addition, again according to the SIGI, “Women are only able to access land on a usufruct basis, with permission from their husband or natal family. In the event of repudiation or divorce, women may be left in a precarious situation without any means of cultivating food crops.” Legislative measures, while vital, must be supplemented with effective measures to address negative customary and traditional practices, especially in rural areas, which affect full enjoyment of land and property rights by women, i.e. through awareness raising and dialogue with traditional leaders and local communities. Without this kind of approach, it is likely that prejudices and customary practices will hinder the implementation of any improved legislation.

IV. Recommendations

18. The Committee should urge the State party to:

1) Withdraw as a matter of urgency all discriminatory provisions from the Personal and Family Code: including:

- the husband as the head of the family (art. 101),
- the choice of the residence of the family by the husband in absence of mutual agreement (art. 104),
- obstacles faced by widows to administrate children’s property (art. 242), and
- the lack of automatic implementation of the inheritance legislation (art. 391).

2) Eliminate all forms of gender discrimination with respect to access, use, control, ownership and inheritance of land and property. In this regard the State Party should take effective measures -- including through review and amendment of legislation, awareness-raising and adequate enforcement of the law, provision of legal

¹² See: <http://genderindex.org/country/togo>. In addition, again according to the SIGI, “Women are only able to access land on a usufruct basis, with permission from their husband or natal family. In the event of repudiation or divorce, women may be left in a precarious situation without any means of cultivating food crops.”

aid -- to eliminate all forms of discrimination against women in all matters related to land and property.

3) Introduce measures to address negative customs and traditional practices, especially in rural areas, which affect full enjoyment of women's land and property rights.

4) Abandon in administrative practice the notion that men are the head of the household.