



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 Equatorial Guinea

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

12. In its previous Concluding Observations (2004) on Equatorial Guinea, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) urged the State party to "take appropriate measures to eliminate all forms of discrimination against women with respect to ownership and inheritance of land" (UN Doc. A/59/38 (SUPP) paras. 180-218.).

13. Furthermore, the CEDAW Committee expressed concern about "the existence of the dual legal system of civil law and customary law, which results in continuing discrimination against women, particularly in the field of marriage and family relations." The CEDAW Committee also expressed its concern about the "lack of legislation regulating customary marriages and other aspects of family law that discriminate against women, including in respect of polygamy, inheritance and child custody, and that efforts to adopt legislation regulating customary marriages have so far not been successful."

14. The CEDAW Committee further expressed concern that most women in Equatorial Guinea lack the necessary information and resources to gain access to the civil courts and are still subject to the jurisdiction of traditional courts that apply customary law (UN Doc. A/59/38 (SUPP) paras. 180-218.).

15. In its current List of Issues (UN Doc. CEDAW/C/GNQ/Q/6), the CEDAW Committee has asked the State party to "provide detailed information on specific measures taken to prohibit and discourage polygamy in practice and to ensure women's equal rights with men on issues related to inheritance and child custody, as recommended by the Committee in its previous concluding observations (A/59/38, part two, para. 192)."

16. As noted in the previous review, while formal law protects women's right of equality, in practice customary law and practice discriminate against women, including in matters related to land and property. The current State Party report (UN Doc. CEDAW/C/GNQ/6) notes that there is now a draft personal and family code, which has now "reached the final consultation phase in a process that spanned several years of adjustments and negotiations" as well as a draft customary marriage bill "which has involved a similar process because of cultural diversity issues that make it difficult for ethnic groups to reach agreement." However, these bills -- while they intend to tackle cultural patterns that discriminate against women within the family and society regarding, *inter alia*, inheritance, decision-making power within the family, and status of head of the household -- are subject to popular referendum and have yet to be enacted.

17. According to the Social Institutions and Gender Index (SIGI) of the Organisation for Economic Co-operation and Development (OECD), while in civil marriages spouses theoretically have the same rights and responsibilities, customary marriages are more common and grant husbands virtually all rights.”¹¹ The FAO Gender and Land Rights Database reports that under customary practices, women in Equatorial Guinea become members of the husband’s family upon marriage and thus commonly have no right to inheritance.¹²

Recommendations

18. The CEDAW Committee is urged to issue the following Concluding Observations:

1) Reiterate its previous call for the State party to accelerate the process of law reform to remove inconsistencies between civil law and customary law, including by enacting legislation and ensuring that any conflict of law with regard to women’s rights to equality and non-discrimination is resolved in full compliance with the provisions of the Convention and general recommendation 21, on equality in marriage and family relations. The State party should also be asked what is the timetable for the adoption of the draft personal and family code and the draft customary marriage bill.

2) Reiterate its previous call for the State party to put in effect measures to discourage polygamy and to ensure women’s equal rights in inheritance and child custody.

3) Reiterate its previous call for the State party to put in place effective measures to ensure women’s access to the civil courts, including raising awareness on available legal remedies and the provision of legal aid.

¹¹ See: <http://genderindex.org/country/equatorial-guinea>.

¹² Food and Agriculture Organization of the United Nations (FAO), Gender and Land Rights Database, Full Country Report for Equatorial Guinea.