



**The Global Initiative**  
*for* Economic, Social and Cultural Rights

**SHADOW REPORT TO THE UNITED NATIONS COMMITTEE ON ECONOMIC,  
SOCIAL AND CULTURAL RIGHTS**

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**Submitted by:**  
**The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)**

**Address:**

**The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)**

8 North 2nd Ave. East, #208

Duluth, MN 55802, USA

Phone/Fax: +1 218 733 1370

*Email:* [Mayra@globalinitiative-escr.org](mailto:Mayra@globalinitiative-escr.org), *Website:* [www.globalinitiative-escr.org](http://www.globalinitiative-escr.org)

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.

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.

## I. ARTICLES 3, 11 & 12 -- Women's Land and Property Rights in Togo

1. This shadow report addresses the current situation of women in Togo with respect to the status of their land and property rights.
2. In its previous (2001) Concluding Observations on Togo, the Committee on Economic, Social and Cultural Rights noted its concern “about the position of women in Togolese society. Despite a constitutional declaration of equality under the law, women continue to experience widespread discrimination, especially in relation to the rights to education, social security (in particular pension benefits), family protection (particularly family law regulation of inheritance), and in relation to traditional law practices” (UN Doc. E/C.12/1/Add.61).
3. The application of customary law continues to be an issue of significant concern, with specific ramifications with respect to women's access to land and property. For example, 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.
4. In particular, according to the SIGI: “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.”<sup>1</sup>
5. Both formal and customary law however 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.<sup>2</sup>
6. 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.”<sup>3</sup>
7. 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

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<sup>1</sup> 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.”

<sup>2</sup> Africa for Women's Rights, Factsheet on Togo.

<sup>3</sup> Supra note 1.

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.

8. In its 2006 Concluding Observations on Togo, the CEDAW 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.

9. 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.

10. During the recent 2012 review, the CEDAW Committee 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).

11. In its 2012 Concluding Observations on Togo, the CEDAW Committee instructed the Government to “revise the draft Personal and Family Code along with the Bill on Customary Marriages with the view to eliminate possible inconsistencies and overlapping between them and ensuring that they... guarantee equal inheritance and succession rights to women.”

## **II. Recommendations**

12. The Global Initiative for Economic, Social and Cultural Rights respectfully suggests that the Committee on Economic, Social and Cultural Rights should urge the State party to:

1) Withdraw as a matter of urgency all discriminatory provisions from the current 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) Ensure that the draft Personal and Family Code and the Bill on Customary Marriages conform to Togo’s Obligations under the Covenant to ensure women’s equal rights to land and property.

- 3) 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 aid -- to eliminate all forms of discrimination against women in all matters related to land and property.
- 4) Introduce measures to address negative customs and traditional practices, especially in rural areas, which affect full enjoyment of women's land and property rights.
- 5) Abandon in administrative practice the notion that men are the head of the household.