

## Togo

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Under the state's Personal and Family Code, both women and men can equally enter marriage with the spouse of their choosing provided there is free and full consent (Art 43, rev. 2012). Civil unions can choose to be monogamous or polygamous, of which the latter is widely practiced and recognized by formal and traditional law (Personal and Family Code, Art 42; US Department of State, 2017). A key component of civil marriage is the payment or dowry made to the bride's parents, where the dowry is a symbol of nature, and can be paid in cash or in kind or both (Personal and Family Code, Art 56). This practice is also honoured in customary marriages (OFPRA, 2016).

By the state's definition of marriage, same-sex marriage does not carry legal status. Customary and religious marriages are not legally recognized if a civil officer is not present. Informal unions, however, are not recognized leaving women without claim to the legal protections and rights afforded in civil marriages as well as in their dissolution (CEDAW, 2012).

#### b) Child marriage

In 2012, the state's Personal and Family Code amended the legal age for both women and men to 18 years old aligning it with the Children's Code which also sets the minimum age for marriage at 18 years old (Art 267, 2007). Previously, the minimum age for marriage was 20 years old for men and 17 years old for women (Personal and Family Code, 1980). The Children's Code, alongside the Law on Reproductive Health 2007, prohibits child marriage, and further assigns criminal liability to parents or guardians who give consent to this practice (Art. 268-273, 2007). The Personal and Family Code does allow for an exception to this age requirement, in which a judge may grant age waivers for the marriage of children who are 16 years and older based on "substantial grounds" (Art 43, 2012).

While the practice of child marriage has declined in recent years, child marriage is still prevalent, varying on the regions in the country. In large part, culture and strong traditions allow the practice to persist (CEDAW, 2012). Other underlying factors that contribute to its prevalence in the country include the economic motivation of low income families who may benefit from a dowry, the intention to strengthen bonds between families or communities of those to be married, or the aim to control the sexuality of girls and preserve their virginity, which is reportedly more pronounced in Muslim communities (OFPRA, 2016). In response, the government and local NGOs have made efforts to raise awareness among community and religious leader on the harms of child marriage, promoting the education of young girls and campaigning against child marriage and teenage pregnancy at the national level (US Department of State, 2017).

Under civil law, there are specific protections for women against widowhood or mourning rites such as forced marriage. These include the Law on Reproductive Health 2007 that prohibits forced marriage (Art. 11, 2007) and the Personal and Family Code that prohibits degrading mourning rites. Such

traditional rites include: 'levirate' (a practice where the widow is obliged to marry her deceased husband's brother); 'sororate' (a practice in which a husband engages in marriage or sexual relations with the sister of his wife, usually after the death of his wife or if his wife has proven infertile); confinement (a practice where the woman is isolated in a dark room and stripped of all food); and other acts of inhumane and degrading treatment (Art. 411). Such harmful practices against widows are widespread in the country, particularly in rural areas (HRC; 2016; CEDAW, 2012). Under traditional law, widows face not only physical degradation, but are also stripped of their financial possessions, in particular the marital property, and often custody of her children (OFPPA, 2016; CEDAW, 2012).

### **c) Household responsibilities**

In 2014, a provision was made to the Personal and Family Code that now provides women equal status as men in the household (Human Rights Council, 2016; Freedom House, 2016; World Bank, 2017). Despite these amendments, the law perpetuated discrimination against women by denoting the husband as the head of the family (Personal and Family Code, Art 99). The amended Personal and Family Code further indicates that each spouse is jointly responsible for the family, the rights of each spouse are promoted and protected, and each spouse should contribute to the household and family in proportion to their respective abilities (Art. 100). With regard to children, each spouse has equal rights and responsibilities to their care and maintenance (Art. 108, rev 2012). Traditionally, Togolese society is characterized by an uneven social structure that tends to favor men and these attitudes continue to persist in the roles and responsibilities of women and men in the family (National Policy for Gender Equality, 2011; CEDAW, 2012). Particularly, under customary law, fathers hold sole parental authority (Emery, 2013).

### **d) Divorce**

Under the Personal and Family Code, a divorce can be initiated by either spouse on the grounds of adultery, domestic violence, serious illness or drunkenness, or by mutual consent (Art. 117). However, the stipulations after the divorce differ for women and men. Specifically, the Personal and Family Code requires that a woman wait a period of 300 days after the divorce before she can legally remarry; there are no such requirements made on men (Art. 145). With regard to children, the law provides both women and men equal responsibilities of care for the children upon dissolution of the marriage; however children under the age of 7 years old are automatically entrusted to the care of the mother (Art. 145, 151).

In customary law, the dissolution of customary marriages is rare; however, if taken to the authority of the traditional chief, cultural practice tends to take precedence over formal laws (OFPPA, 2016). Conciliation usually is the first course of action, and if unsuccessful, then repudiation may be pursued where in most cases the woman is denied custody of her children and maintenance, stripped of her possessions, and has to return to her family of origin destitute and marginalized (Emery, 2013; OFPPA, 2016; Department of State, 2017).

### **e) Inheritance**

The country's inheritance laws are guided both by civil code and traditional practice, providing little clarity which often results in inheritances that are frequently challenged (US Department of State, 2016). While statutory law provides both women and men equal rights to inheritance (Personal and Family Code), it also stipulates that these rights may be waived if the spouses opt for customary rules in matters of succession (Art. 404). Under customary law women are not entitled to inherit from their husbands or fathers, and in some regions, a wife is considered to be her husband's property (GI-ESCR, 2012). Women in informal unions are also subjected to customary law, leaving them without claim to the legal protections and rights afforded in civil marriages as well as in their dissolution (CEDAW, 2012). Consequently, many widows are denied rights to marital inheritance because they do not have the legal status of a civil marriage (OFPRA, 2016).

## **2. Restricted Physical integrity**

### **a) Violence against women**

In 2005, Togo ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). At the national level, a draft law on violence against women is currently under review (HRC, 2016). Moreover, the state has other laws and policies in place that address different forms of violence against women and girls. These include the Law Prohibiting Female Genital Mutilation (1998), the Labour Code (2006), the Law on Reproductive Health (2007), the Children's Code (2007), and the National Strategy to Fight Against all Forms of Violence Against women, and the National Policy for Gender Equality (2011).

### **b) Domestic violence**

At present, there is no law prohibiting domestic violence. Under the Penal Code, domestic abuse is not specifically addressed, but may be considered a crime under the broader law prohibiting violence against another person (Art. 46, rev. 2000). Spousal abuse is reported to be widespread in the country, where there is limited intervention by law enforcement in abuse cases and a lack of awareness among women on the legal protections available to them (Freedom house, 2016; US Department of State, 2017).

### **c) Rape**

There are several laws that prohibit rape including the Law on Reproductive Health 2007 and the Penal Code (rev. 2000). Under the Penal Code, rape is a criminal act punishable by imprisonment of five to ten years as well as varying fines. Based on the severity of the crime, these penalties can be increased. Marital rape however is not included in the legal definition of rape.

It is reported that rape is a widespread problem, however there is limited data on its incidence or on the number of arrests of reported rapes (US Department of State, 2017). Due to the cultural taboos of bringing cases to formal court (CEDAW, 2012), the social stigma associated with being raped, and the fear of reprisal, many women do not report their incidents (US Department of State, 2017).

#### **d) Sexual harassment**

There are several existing protections against sexual harassment in the state's current legislation, including the Labour Law 2006, the Law on Reproductive Health 2007, and the Children's Law 2007. While the latter two address its prohibition more broadly, the Labour Law contains more detailed provisions to ensure that sexual harassment is addressed and prevented in the workplace. Specifically, it states that any employee committing the act is liable to disciplinary sanctions as well as compensatory damages to which criminal penalties may be added (Labour Law, Art. 40-42, 2006).

In practice, however, authorities did not enforce these laws nor prescribed specific punishments to these crimes (US Department of State, 2017). It is reported that sexual harassment continues to be a problem in the country at school, in the workplace and the public sphere (CEDAW, 2012; US Department of State, 2017).

#### **e) Female genital mutilation**

In 1998, the government adopted the Law prohibiting Female Genital Mutilation (FGM) in Togo. The law stipulates that any person who practices, promotes or participated in the genital mutilation of girls or young women is culpable of imprisonment and fines. These punishments may be increased based on the severity of the crime, particularly in the event of a death due to a FGM procedure (Art. 3, 1998). The act is also considered a harmful practice and prohibited in the Law on Reproductive Health 2007 and the Child Code 2007. Alongside these frameworks, the government, civil society, and international community continue efforts to raise awareness on FGM and educate women on their rights (US Department of State, 2017).

Even so, FGM is still practiced throughout the country and the law is rarely enforced (CEDAW, 2012; US Department of State, 2017). In many of the areas that FGM is being practiced, traditional customs take precedence over the civil law, and moreover, there is a lack of awareness of such laws in these communities (US Department of State, 2017).

#### **f) Abortion**

By law, abortion is illegal except in cases of rape or incest, if the fetus is impaired, or to save the pregnant woman's life (Center for Reproductive Rights, 2016; UN DESA, 2014). In these instances, the authority of the physician is required as well as the permission of the family of the pregnant woman to conduct the procedure. Illegal abortion is practiced in Togo, although it is not widespread given the customary, traditional, moral and religious practices that strongly condemn abortion (UN DESA, 2014).

### **3. Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

In principle, the law affords women and men equal rights to own property (Constitution of Togo, Art 27. rev. 2007). Once married, however, the laws relating to land ownership may vary depending on the type of marriage. In civil marriage, there are two systems that may be applied the 'separate property regime' (Du Regime De La Separation De Biens) or the 'community property regime' (Du Regime De Communauté De Biens). The separate property regime is the default marital property

system, and is generally applied to polygamous marriages (Personal and Family Code, art 362, rev. 2007). Under this regime, each spouse can own and administer personal property individually (Personal and Family Code, art362-366, rev. 2007). Under the community property regime, common property is jointly administered by the spouses, where one cannot sell or dispose of the property without the consent of the other (Art 372).

While the law allows equal rights and access to land among women and men, customary regimes relating to land and inheritance often exclude women or limit their access to land (GI-ESCR, 2012). Traditional practices relating to land ownership varies across ethnic groups; where in some localities, women can only purchase land through a man, while in other areas women are excluded from ownership altogether (Khan, 2016).

#### **b) Secure access to formal financial resources**

Under civil law, women and men are equal before the law and are afforded equal access and participation in all spheres of life, including economic life (Constitution of Togo, rev. 2007). This right allows women and men to open individual bank accounts as well as access formal financial services such as a line of credit or financial loan, regardless of their marital status (World Bank, 2015). In practice, there have been no restrictions on women signing contracts, opening bank accounts, or owning property (US Department of State, 2017).

#### **c) Workplace rights**

Under civil code, women and men have the equal right to work with the provisions of equal opportunity and equal remuneration, and the prohibition of discrimination (Constitution, Article 37, rev. 2007). In 2006, Togo adopted the Labour law which assures the equality of all employees regardless of origin, race, gender, social status or religion (Art. 3, 2006). The law also provides additional protections for women, including up to 20 weeks of fully paid maternity leave (At. 147-149), job security when a woman is on maternity leave, and equal remuneration for work of equal value (Art 37).

Still women continue to experience discrimination in education, pay, pension benefits, and employment. In some cases, the government did not effectively enforce the law with regard to gender-based discrimination in employment. Further, under customary law, a husband is allowed to restrict his wife's freedom to work and control her earnings (US Department of State, 2017). Such discriminatory attitudes and practices have resulted in a gender pay gap, a growing exploitation in domestic work, and limited options for women outside of the informal economy which offers no social protections (CEDAW, 2012).

### **4. Restricted Civil liberties**

#### **a) Citizenship rights**

With regard to citizenship rights, there are some incongruities in the existing legislation. While the state's constitution commits to gender equality and provides women and men the same rights in acquiring and retaining Togolese nationality (Art 32, rev. 2007), the Nationality Code includes several discriminatory provisions that contradict these rights. Specifically, the Code does not allow Togolese

women to confer nationality to their foreign spouse, while allowing this right to Togolese men (Art. 5 & 10-12, 1978). The Code also prevents women from retaining Togolese nationality in case of divorce (Art. 23, 1978), which contradicts a provision that affords women and men rights to retain their nationality in the case of a divorce (Code of Persons and Family, Art. 149).

With regard to children, the Nationality Code does not allow mothers to confer nationality to her children, only in the event if the father is stateless or his nationality is unknown (Art 3, 1978). Women and men can equally register the birth of their children. However, many do not register their children at birth, due to the lack of awareness on the importance of a birth certificate, the cost, or the limited access to registration offices for families living in remote areas (US Department of State, 2017; Plan Togo, 2014).

The Constitution provides both women and men the freedom of movement, including the authority to obtain passports and other travel documents for themselves and their children (Art. 22, rev. 2007). It should be noted however that for married women the marriage certificate indicating their husband's name is required for the passport application.

### **b) Voting**

In the state's Constitution, universal suffrage is afforded to each citizen who is 18 years of age or over (Art. 5, rev. 2007). This however is not applied to all women and men; both the Constitution and Electoral Law 2000 (rev. 2007) exclude persons with disabilities from the right to vote (International Disability Alliance 2012). In practice, while equal rights are provided to women and men, cultural and traditional practices may prevent women from voting or participating in political life on the same basis as men (US Department of State, 2017).

### **c) Political voice**

In Togo, the Constitution provides the fundamental right of each citizen, woman or man, to hold office, if they are of 18 years or older (Art. 5, rev. 2007). This however is not applied to all women and men; both the Constitution (art. 5) and the 2012 Electoral Code (Art. 40 and 42) exclude persons with disabilities from the right to be elected on an equal basis with others. The government has established other legislative measures to promote women's participation in the political sphere. Specifically, an amendment was made to the Electoral Code in 2013 which now requires the equal representation of women on party lists (Art. 220, rev. 2007). In addition, an amendment was made to the Law on Political Party and Electoral Campaign Funding, which now requires a portion of the public funding allocated to political parties to be distributed in proportion to the number of women elected in previous elections, both at the national and local levels (Freedom House, 2016).

Still there continues to be low participation of women in all areas of the political and public life, including at high levels of decision-making (CEDAW, 2012; Bertelsmann Stiftung, 2016). Some attribute this to the deeply ingrained cultural and traditional practices that prevent women from participating in political life, including voting, running for office, serving as electoral monitors (US Department of State, 2017).

#### **d) Access to justice**

Under the state's Constitution, each citizen is afforded specific provisions to access justice, including the right to a fair and speedy trial, the right to counsel and the presumption of innocence (Art. 16-19, rev. 2007). Additionally, there are other laws and policies that protect women in civil matters, including the Law Prohibiting Female Genital Mutilation (1998), the Law on Reproductive Health (2007), the Children's Code (2007), and the National Policy for Gender Equality (2011). To further support the implementation of these laws, the government adopted the Legal Aid Act (2013), that guarantees that the state provides legal aid to Togolese citizens either in partial or full.

Still, multiple factors continue to prevent women to effectively access justice, including poverty, the limited knowledge among women of the law, the insufficient number of courts and tribunals, the limited training of judges, lawyers and prosecutors on gender discrimination, and the stigmatization of women who bring their cases to courts (CEDAW, 2012). Given the challenges women face in accessing formal justice, women seek legal remedy through traditional law, which places women's legal rights secondary to that of men and favours settlement agreements in an effort to preserve the unity of family units and communities (OFPRA, 2016).

## Sources

Bertelsmann Stiftung, BTI 2016 — Togo Country Report. Gütersloh: Bertelsmann Stiftung, 2016.

Center for Reproductive Rights (2014) *The World's Abortion Laws 2014*.

Committee on the Elimination of Discrimination against Women (CEDAW) (2012) Concluding observations on the sixth and seventh periodic reports of Togo, adopted by the Committee at its fifty-third session .

Emery, Robert E. (2013) *Cultural Sociology of Divorce: An Encyclopaedia*, Sage Publications.

France Office français de protection des réfugiés et apatrides (OFPRA) (2016) *Togo: Les mariages forces*.

Freedom House (2016) *Freedom in the World Report 2017* (Available at <https://freedomhouse.org/report/freedom-world/2016/togo> - accessed 2017).

Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) (2012) *Shadow Report To The United Nations Committee On The Elimination Of Discrimination Against Women Togo, 53rd session*.

Government of Togo, *Law no. 98-016 prohibits Female Genital Mutilation in Togo*, 1998.

Government of Togo, *Loi n° 2006-010 portant Code du travail*, 2006.

Government of Togo, *Code pénal du Togo*, 1980 (rev. 2000).

Government of Togo, *Loi n° 2007-017 portant code de l'enfant*, 2007.

Government of Togo, *Loi no 2012-002 portant Code Électoral*, 2012.

Government of Togo, *Loi no 2013-004 portant modification de la loi no 2012-002 portant Code Électoral*, 2013.

Government of Togo, *Loi organique fixant le nombre de députés à l'Assemblée Nationale, les conditions d'éligibilité, le régime des incompatibilités et les conditions dans lesquelles il est pourvu aux sièges vacants* (2012).

Government of Togo, *Ministere De La Promotion De La Femme* (2011) *Politique Nationale Pour L'équité Et L'Égalité De Genre Du Togo*.

Government of Togo, *Portant Modification De L'ordonnance N°80-16 Portant Code Des Personnes Et De La Famille*, 2012.

Government of Togo, *State Constitution* , 1992 (rev. 2007)

Government of Togo. 7 September 1978. *Ordonance No. 78-34 of 7 September 1978 on the Togolese Nationality Code*.



Human Rights Council (2016) *Working Group on the Universal Periodic Review Twenty-sixth session 31 October-11 November 2016 National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21\* Togo*, Geneva.

International Disability Alliance (IDA) (2012) *Suggestions for disability-relevant recommendations to be included in the Concluding Observations of CEDAW Committee 53rd session*.

International IDEA, Inter-Parliamentary Union (IPU), Stockholm University, Atlas of Electoral Gender Quotas <http://www.ipu.org/pdf/publications/atlas-en.pdf>

Khan, Frida (2016) *Islamic inheritance laws and their impact on rural women in Muslim societies: synthesis of studies from Asia and West Africa and emerging recommendations*, International Land Coalition. ILC.

Plan Togo (2014), *Birth Registration Update* (Available at: <https://www.planusa.org/docs/hearchildren/togodec.pdf> Accessed 2017).

United Nations Human Rights Council (2016) *Report of the Working Group on the Universal Periodic Review: Togo*.

United Nations, Department of Economic and Social Affairs, Population Division (2014) *Abortion Policies and Reproductive Health around the World*.

United States Department of State (2017) *2016 Country Reports on Human Rights Practices*

US Department of State (2016) *Investment Climate Statements Report*.

World Bank Group (2015) *Women, Business and the Law 2016: Getting to Equal*, Washington, DC.