

## TOGO

A General Directorate for the Advancement of Women has existed since 1977, a Ministry for the Promotion of women was established in 2010, and a National Policy on Gender Equality and Equity was adopted in 2011.<sup>1</sup>

Article 2 of the 1992 Constitution provides for equal rights for women and men. Togo ratified the Convention on the Elimination of All forms of Discrimination against Women in 1983, but has not yet ratified the Optional Protocol on violence against women, although the procedure has begun.<sup>2</sup> The country also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in 2005.<sup>3</sup>

### 1. Discriminatory family code

Togo's Children's Code of 2007 (Art. 267) sets the **minimum age of marriage** at 18 years, although the president of a court may, on serious grounds, grant exceptions to an individual age 16 or older of either sex.<sup>4</sup> The same code also prohibits parents and guardians from promising children in marriage and requires consent of both spouses.<sup>5</sup> The new Persons and Family Code, enacted in 2012, also establishes the principle of free consent in civil marriages and a minimum age of 18. In addition, the Persons and Family Code prohibits the practices of levirate, sororate and widowhood practices, although they remain relatively widespread.<sup>6</sup> The law allows for the payment of bride-wealth, but sets a maximum amount that cannot be exceeded (10,000 CFA Francs). In practice, however, both the Children's Code and the Persons and Family Code face challenges in their implementation, as laws are often ignored in rural areas and early and customary marriages remain relatively common. Most couples do not go to a civil registrar to have their unions legalized.<sup>7</sup>

Regarding **early marriage**, The 2010 Multiple Cluster Indicator Survey (MICS4) reports that 7% of women age 15-49 were married before the age of 15, while 29.1% were married before the age of 18; 11.5% of 15-19 year olds are married or in a union.<sup>8</sup> The adolescent fertility rate in 2010 was 88 per 1,000 women age 15-19.<sup>9</sup>

Although Togo's 2012 Persons and Family Code provides that parents share **parental authority** and have equal rights and obligations in relation to raising their children, the Code remains discriminatory.<sup>10</sup> The new Code

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<sup>1</sup> CEDAW (2012b) p.2

<sup>2</sup> United Nations Treaty Collection (2014); CEDAW (2012) p.22

<sup>3</sup> African Union (2010)

<sup>4</sup> CEDAW (2011) p.20

<sup>5</sup> Idem, p.65

<sup>6</sup> CEDAW (2012b) p.5

<sup>7</sup> CEDAW (2012a) p.22

<sup>8</sup> MICS4 (2010) p.164

<sup>9</sup> MICS4 (2010) p.98

<sup>10</sup> CEDAW (2011) p.26

upholds the husband's position as head of the household (Art.99), while the wife is to assume joint moral and material responsibility for the family together with her husband (Art. 100).<sup>11</sup> Under customary law, fathers hold sole parental authority.<sup>12</sup>

Data on decision making over earnings and household purchases is not available, although the on-going 2013 Demographic and Health Survey is in the process of collecting information on this topic.

The new Persons and Family code provides equal **inheritance** rights to sons and daughters (Art. 414) and to surviving female and male spouses (Arts. 427-430).<sup>13</sup> However, the same Code also allows the application of custom in cases of inheritance, when the spouses explicitly choose this option (Art. 404); if no choice is explicitly made, inheritance rulings fall under civil law.<sup>14</sup> Under customary law women are typically not entitled to inherit from their husbands or fathers, but can hold property only in usufruct.<sup>15</sup> 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 parts of Togo: refusal to follow them can result in ostracism and denial of access to matrimonial property.<sup>16</sup>

### ***More***

Togolese women can **file for divorce** under the same conditions as men and the new Personal and Family Code introduces and establishes divorce by mutual consent (Art. 110).<sup>17</sup> In urban areas, legal marriages are often terminated in court.<sup>18</sup> In these cases, divorced mothers usually retain temporary custody of their children up to the age of seven, at which time the courts may award final custody to either parent, according to the children's best interests.<sup>19</sup> In rural areas where customary marriages dominate, repudiation (whereby a husband unilaterally divorces his wife without warning, and demands that she leaves the family home) is the most common form of divorce, and women have no rights to maintenance or child support.<sup>20</sup> Repudiated women lose custody of their children and are forced to return to their parents' home, leaving all their possessions behind.<sup>21</sup>

The 2012 Persons and Family Code recognizes **polygamy** (Art.42)<sup>22</sup>, however, monogamy is the form of marriage under common law (Art. 40).<sup>23</sup> In theory, all wives within a polygamous marriage should be treated equally, although in practice, household resources may not be distributed equally among wives, and there are often conflicts over inheritance. The MICS4 reports that in 2010, 33.8% of women age 15-49 were in a polygamous union.<sup>24</sup> The practice is more common in rural areas than in towns, and may be linked to low levels of

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<sup>11</sup> CEDAW (2012) p.22; World Bank (2013)

<sup>12</sup> Emery (2013) p. 1206

<sup>13</sup> World Bank (2013); CEDAW (2011) p.20

<sup>14</sup> CEDAW (2012b) p.11

<sup>15</sup> Emery (2013) p.1206

<sup>16</sup> Lutheran World Federation (2006) p.2

<sup>17</sup> CEDAW (2011) p.66

<sup>18</sup> Idem

<sup>19</sup> Idem; Emery (2013) p.1206

<sup>20</sup> Emery (2013) p.1206

<sup>21</sup> Idem

<sup>22</sup> CEDAW (2012b) p.11

<sup>23</sup> CEDAW (2012a) p.22

<sup>24</sup> MICS4 (2010) p.164

education: 44.3% of women in polygamous marriages had no education, compared to 19.1% who had secondary education or higher.<sup>25</sup>

## 2. Restricted physical integrity

A preliminary draft (validated in 2012 by yet to be adopted) of the revised Criminal Code also provides for sexual harassment, domestic violence, and rape, to be classed as separate offences and proposes respective sanctions.<sup>26</sup>

Aside from the draft Criminal Code mentioned above, the law does not specifically criminalise **domestic violence**, although the latter is reportedly widespread (although again, data on prevalence is not available). In the past, women were reluctant to report abuse and were unaware of any legal mechanisms available to protect them. In addition, the police rarely intervene in domestic matters, and when approached often simply send the woman back home. On one hand, attitudinal data indicate that domestic violence is widely acceptable; the 2010 MICS4 reports that 43.4% of women agreed a husband was justified in beating his wife for at least one of the proposed reasons.<sup>27</sup> On the other hand, women's rights NGOs are, however, active in raising awareness of the issue, and informing women of their rights.<sup>28</sup> Recent information suggests that there has been an overall attitudinal change in the sense that violence against women has gained substantial visibility and that women are better informed about their rights.<sup>29</sup> However, the 2010 MICS4 reports that 22.6% of women felt that her husband was justified in beating her if she goes out without telling him.<sup>30</sup>

**Rape** is punishable by five to ten years in prison, and the recent Persons and Family Code specifies that sexual relations between spouses are free and consensual, reproducing the provisions of the previous code, which punishes marital rape.<sup>31</sup> Togolese society attaches a strong stigma to rape victims, accordingly, victims seldom press charges.<sup>32</sup> Although when they do, authorities are diligent in investigating and pursuing charges.<sup>33</sup> However, alleged cases of rape and other sexual abuses were reportedly perpetrated by police officers on female opposition activists during the pre-election period in late 2012.<sup>34</sup> Neither prevalence data nor data on rape conviction rates is available, but rape is reportedly a widespread problem throughout the country.<sup>35</sup>

Several laws address **sexual harassment** in Togo. The 2006 Labour Code provides for the protection of women against sexual harassment in the workplace (Art. 40), although very few cases of sexual harassment in the workplace are actually brought to the attention of courts (e.g. only two cases were recorded in the Lomé Labour Tribunal in 2008).<sup>36</sup> The 2007 law on Reproductive Health, while not addressing sexual harassment specifically, does provide that "no woman may be subjected, for reasons connected with sexual relations or reproduction, to

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<sup>25</sup> Idem

<sup>26</sup> CEDAW (2012a) p.7

<sup>27</sup> MICS4 (2010) p.175

<sup>28</sup> Idem

<sup>29</sup> CEDAW / C/SR.1075

<sup>30</sup> MICS4 (2010) p.175

<sup>31</sup> CEDAW (2012) p.7

<sup>32</sup> US Department of State (2012)

<sup>33</sup> Idem

<sup>34</sup> CEDAW (2012b) p.6

<sup>35</sup> US Department of State (2012)

<sup>36</sup> CEDAW (2011) pp.20, 26

torture or constraint and/or to acts of violence such as: rape, female genital mutilation, forced and/or early marriage, early pregnancy, unwanted and/or closely spaced pregnancies, sexual exploitation, sexual abuse, harassment or any other form of violence” (Art. 11).<sup>37</sup> Sexual harassment, under the draft bill validated in 2012, is punishable by fines and a prison sentence of one to five years.<sup>38</sup> While reportedly widespread, data on the prevalence of sexual harassment is not available.<sup>39</sup>

In 1998, the government passed a law banning **female genital mutilation** (FGM), and the practice is relatively rare in Togo, although it still occurs among some Muslim communities and in nomadic Peuhl families.<sup>40</sup> Penalties for FGM include fines and prison sentences of up to five years.<sup>41</sup> Studies indicate that over time, FGM has declined, from 12% of women age 15-49 who had undergone FGM in 1996, to 3.9% in 2010, and then to approximately 2% in 2012.<sup>42</sup> NGOs and the government continue to work together to challenge the practice, using education campaigns and providing alternative income activities for FGM practitioners, as well as enforcing legal provisions.<sup>43</sup>

### **More**

Women in Togo have the right to use **contraception** and access information about contraceptive methods.<sup>44</sup> The 2010 MICS4 reports that 13.1% of women age 15-49 (married or in a union) were using a modern form of contraception<sup>45</sup>, while 37.2% of this same group declared having an unmet need for family planning.<sup>46</sup> In rural areas in particular, access to reproductive health services is relatively poor and male partners can be hostile towards their wife’s use of contraception. **Abortion** is legal in cases of rape or incest, if the foetus is impaired, or to save the pregnant woman’s life.<sup>47</sup>

Another reportedly harmful practice in Togo is “breast-ironing” by which young girls breasts are “flattened” by applying heat with rocks, a pestle, or other in an attempt to stem breast growth, deter unwanted male attention and delay premarital sex. Data on prevalence is not, however, available.<sup>48</sup>

## **3. Son bias**

The male/female **sex ratio** for the total population in 2013 is 0.98 while the sex ratio at birth is 1.03.<sup>49</sup>

There is no evidence to suggest that Togo is a country of concern in relation to **missing women**.

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<sup>37</sup> Idem, p.21

<sup>38</sup> CEDAW (2011) p.26

<sup>39</sup> US Department of State (2012)

<sup>40</sup> CEDAW (2012a) p.8; US Department of State (2012)

<sup>41</sup> US Department of State (2012)

<sup>42</sup> CEDAW (2012a) p.8

<sup>43</sup> Idem

<sup>44</sup> US Department of State

<sup>45</sup> MICS4 (2010) p.101

<sup>46</sup> Idem, p.104

<sup>47</sup> UNDP (2010)

<sup>48</sup> Juenesse Horizon (2007) p.4; Stop Violence against Women (2010)

<sup>49</sup> Central Intelligence Agency (2013)

## **More**

Estimates from 2010 indicate that infant mortality rates are slightly higher for boys than girls, as are percentages of children who suffer from malnutrition or stunting.<sup>50</sup> Vaccination rates are approximately the same for both sexes.<sup>51</sup>

However, while less than half of females age 15 or older are literate, almost 75% of their male counterparts are literate. Many women reportedly drop out of school because they become pregnant, and there is a prioritizing of boys' education over girls.<sup>52</sup>

Son bias does not seem to be an issue as far as early childhood care is concerned, but emerges more clearly in regard to access to education.

## **4. Restricted resources and assets**

Legally, there are no restrictions on women in regard to **owning property** (Constitution of Togo, Art.2; 2012 Persons and Family Code, Art.363)<sup>53</sup> and the new Persons and Family Code provides equal inheritance rights to surviving female and male spouses (Arts. 427-430). Although as mentioned above, the Code also allows for the application of custom in cases of inheritance, were a spouse explicitly choose this option (Art. 404).<sup>54</sup> Under customary legal regimes, women do not have the right to own land.<sup>55</sup> Rather, 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>56</sup>

Women's **access to property other** than land depends on the system under which they were married. The default marital property regime under civil law provides for the separation of property (2012 Persons and Family Code Arts. 348 and 362, and women can own and manage their possessions independently during marriage (Persons and Family Code, Art. 363).<sup>57</sup> Under the community of property regime, husbands are the legal administrators of the couple's property, although they cannot sell possessions without their wives' consent.<sup>58</sup>

In principle, women and men have the same **access to bank loans**, but women typically earn lower wages and are often unable to provide the guarantees requested by banks.<sup>59</sup> Moreover, women married under the community of property regime are prohibited from providing such guarantees without their husbands' consent. In rural areas in particular, women are able to access credit through tontine systems (local credit and savings circles found across the region), credit unions, and microfinance programmes.

Businesswomen's networks have also emerged, and these have also acted as means for women entrepreneurs to access credit.<sup>60</sup> In addition, several national microfinance strategies (2004-2008 and 2008-2012) have been

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<sup>50</sup> MICS4 (2010) pp.23, 28

<sup>51</sup> MICS4 (2010) p. 54

<sup>52</sup> Emery (2013) p.1206; CEDAW (2011) p.38

<sup>53</sup> World Bank (2013)

<sup>54</sup> CEDAW (2012b) p.11

<sup>55</sup> ILO (2013) p.8

<sup>56</sup> Emery (2013) p.1206

<sup>57</sup> World Bank (2013)

<sup>58</sup> Idem

<sup>59</sup> CEDAW (2011) p.9; World Bank (2013)

<sup>60</sup> CEDAW (2006) p.17

adopted which focus specifically on women's most frequent economic activities, although disaggregated data on the number of loans made solely to women is not available and the high interest rates charged by microfinance institutions is of concern.<sup>61</sup>

## 5. Restricted civil liberties

The law provides for freedom of movement and the new 2012 Persons and Family code provides for equal decision-making power between spouses in choosing where to live.<sup>62</sup> Women may also apply for a passport in the same way as a man.<sup>63</sup> In addition, **freedom of movement** for the entire population is restricted in some areas, where security checkpoints are in place.<sup>64</sup> Togolese women married to foreign spouses may not pass on their citizenship to the latter.<sup>65</sup> While the Togolese nationality law discriminates against Togolese mothers passing their nationality to their children, the Constitution and Children's Act both provide for equal rights.<sup>66</sup>

The constitution and law provide for both freedom of assembly and association and both are generally respected. Citizens also have the right to organize associations and political parties and this is generally been respected, although parliamentary elections planned for late 2012 were delayed over disputes concerning a new electoral law and security forces violently dispersed several opposition-led protests.<sup>67</sup>

Women have equal rights with men to vote and to **participate in political life**, but in practice, there are few women in positions of leadership, either in formal politics or civil society. Eight of the country's 81 MPs are women, as are seven members of the 32-member cabinet;<sup>68</sup> in 2013, 15.4% of the seats in the national parliament were held by women.<sup>69</sup> In 2009 Victoire Dogbe Tomegah became the first woman to serve as presidential chief of staff,<sup>70</sup> while in 2010, for the first time, a women represented a political party in the presidential elections.<sup>71</sup> At the community level, women are underrepresented on the grassroots development committees that operate in most villages.<sup>72</sup> However, Togo recently amended the national electoral law in 2013, which now requires that candidate lists include equal numbers of men and women, to be applied from the next (2018) legislative election onwards. In addition, a 2013 law on Political Party and Electoral Campaign Funding provides that 20% of public funding allocated to political parties be distributed in proportion to the number of women elected in previous legislative elections, and that 10% of public funding be distributed in proportion to the number of women elected from each political party in previous local elections.<sup>73</sup>

### **More**

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<sup>61</sup> CEDAW (2011) pp.9-10

<sup>62</sup> CEDAW (2011) p.20; World Bank (2013)

<sup>63</sup> World Bank (2013)

<sup>64</sup> US Department of State (2012)

<sup>65</sup> World Bank (2013)

<sup>66</sup> Equality Now (2013) p.6

<sup>67</sup> Freedom House (2013)

<sup>68</sup> US Department of State (2012)

<sup>69</sup> OECD (2014), *Gender, Institutions and Development Database*, <http://stats.oecd.org>

<sup>70</sup> Freedom House (2010)

<sup>71</sup> CEDAW (2012) p.9

<sup>72</sup> CEDAW (2011) p.33

<sup>73</sup> Quota Project (2014)

Freedom of expression is guaranteed by law, but in practice, is restricted in Togo. Amnesty International reports that in 2009, media outlets were pressured into not voicing criticism of the government, following an attempted coup in April of that year.<sup>74</sup> Impunity for crimes against journalists and frequent defamation suits also encourage self-censorship.<sup>75</sup> **Media** outlets have been suspended from broadcasting overly political programs and private print and broadcast outlets have low capacity.<sup>76</sup> Recent data on women's representation in the media is not available, although a 2004 report to the CEDAW Committee noted that women are underrepresented in the media at all levels.<sup>77</sup>

In Togo, pregnant women are entitled to 14 weeks paid **maternity leave** (to be paid half by the employer and half by the government), and gender discrimination in regard to hiring and pay is illegal under the 2006 Labour Code (Arts. 3, 39, 118).<sup>78</sup> The World Bank considers 81% of Togolese women to be economically active, but most women work in the informal sector, meaning they are not protected by employment legislation.<sup>79</sup> According to the new 2012 Persons and Family Code (Art. 107), a married woman can get a job or pursue a trade or profession in the same way as a man (whereas previously, a husband had the legal right to bar his wife from working).<sup>80</sup>

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<sup>74</sup> Amnesty International (2010) p.324

<sup>75</sup> Freedom House (2013)

<sup>76</sup> Idem

<sup>77</sup> CEDAW (2004) p.47

<sup>78</sup> World Bank (2013); CEDAW (2011) p.20

<sup>79</sup> World Bank (n.d.) data: labour force participation rate

<sup>80</sup> World Bank (2013)

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