



The Global Initiative
for Economic, Social and Cultural Rights

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

DEMOCRATIC REPUBLIC OF THE CONGO, 55th session (8 - 26 July 2013)

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, *Website:* www.globalinitiative-escr.org

I. Concerns Relating to Women’s Land and Property Rights in DRC (addressing paragraph 19 of the “List of Issues”¹ on ‘Disadvantaged groups of women’)

1. Women in the DRC face both *de jure* and *de facto* discrimination in the area of land and property rights. Article 14 of the 2006 Constitution of the DRC upholds the principle of equality between men and women. However, many provisions of the Congolese Family, Labor, and Penal Codes still discriminate against women, particularly in the areas of civil liberties and ownership rights.² Such discriminatory provisions contravene State Obligations under Articles 2, 15 and 16 of CEDAW.

2. According to the Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, the link between violations and illegal exploitation and trade of natural resources, and unresolved land conflicts is increasingly recognized.³ Furthermore, the lack of transparent and effective Government control over the mining sector deprives the State of funds it could dedicate to financing its responsibilities with respect to social and economic rights.⁴ The report also highlighted that “Legislation to reform the Family Code and implement the gender equality provision contained in the Constitution is still much needed.”⁵

3. When it comes to the specific issue of land, researchers highlight that the State “appears reluctant to engage with is women’s access to land” and that “whether in terms of officially recognised customary law or formal law, women are near invisible in discussions about land tenure in DRC and current (and future) steps towards land reform risk continuing to ignore women.”⁶ Despite the nationalization of all land and the introduction of formal legislation governing land use rights, as a practical matter a significant percentage of the land in the DRC (some estimate as much as 97%) remains subject to customary law.⁷ This presents a major challenge to women’s ability to enjoy their land rights in practice, as customary systems in DRC routinely discriminate against women in the allocation of land, restricting women’s control, access and use of this vital resource in contravention of Article 5(a) and 14 of CEDAW.

4. As in many African countries, Congolese women play a critical role in farming and in making agricultural land productive. According to the State Party Report, “More than 70 per

¹ List of issues and questions with regard to the consideration of periodic reports: Democratic Republic of the Congo, UN Doc. CEDAW/C/COD/Q/6-7, 2 November 2012.

² See: SIGI, ‘Congo, Dem. Rep.: Background,’ <http://genderindex.org/country/congo-dem-rep> [last accessed 11 June 2013].

³ Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, UN Doc. A/HRC/13/63, 8 March 2010.

⁴ Ibid.

⁵ Ibid.

⁶ Cath Long, ‘Land rights in the Democratic Republic of Congo – A new model of rights for forest-dependent communities?’, Chapter 9 in Kirk Helliker & Tendai Murisa, eds, *Land Struggles and Civil Society in Southern Africa*, Africa World Press. Other chapters feature South Africa, Zimbabwe, Namibia, Mozambique, Botswana and Zambia, December 2011.

⁷ USAID Country Profile, *Property Rights and Resource Governance: Democratic Republic of Congo*, 2011.

cent of the women, especially in rural areas, work in the agricultural sector.”⁸ The State Party report also notes that Congolese women produce 75 per cent of food in rural areas.⁹ Yet, despite women’s close relationship to the land and to farming, persistent patterns of gender discrimination exist. The State party report itself acknowledges that “The best land is appropriated by men.”¹⁰ Indeed, the State party report goes on to explicitly concede that while “Men and women without distinction may exercise the right to land concessions within the boundaries of the law. In practice, however, *few women enjoy this right ...*”¹¹

5. Finally, the State Party report also highlights that “As a result of legal constraints enshrining her legal incapacity, a married woman is required to obtain her husband’s prior authorization in order to acquire a right of concession on a plot of land.”¹² Such a requirement constitutes a clear violation of women’s right to equality before the law and must be repealed (Articles 13, 15 and 16 of CEDAW).

6. The Social Institutions and Gender Index (SIGI) of the OECD Development Centre also confirms that women have very limited access to land in DRC. “By law, the right to land concessions can be given to men and women without distinction but traditional attitudes and customs that discriminate against women remain strong in this area.”¹³ Furthermore, women in DR Congo do not have access to property other than land, since everything must be administered by their husbands, and they must seek a court order to prevent mismanagement of property.¹⁴

7. Furthermore, in relation to inheritance rights, the Family Code gives preferential treatment to the children of the deceased and does not discriminate between women and men within the second category of heirs. However, following the death of a husband, wives must share the running of the household with a male relative of the deceased.¹⁵ In practice, research indicates that less than a quarter of widows inherit the majority of assets after their spouse’s death.¹⁶

II. Recommendations

8. In light of the above information, the Global Initiative respectfully suggests that the CEDAW Committee urge the State party to take the following measures:

⁸ Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined sixth and seventh periodic report of States parties, Democratic Republic of the Congo, UN Doc. CEDAW/C/COD/6-7, 21 December 2011, p. 4.

⁹ Ibid, p. 18.

¹⁰ Ibid, p.19.

¹¹ Ibid. p.8 (emphasis added). See also: Act No. 73-021 of 20 July 1973.

¹² Ibid.

¹³ SIGI, ‘Congo, Dem. Rep.: Discriminatory Family Code,’ <http://genderindex.org/country/congo-dem-rep> [last accessed 11 June 2013]. See also: Annie Matundu Mbambi (WILPF DRC) and Marie-Claire Faray-Kele (UK WILPF), ‘GENDER INEQUALITY AND SOCIAL INSTITUTIONS IN THE D.R.CONGO,’ April-December 2010.

¹⁴ Ibid.

¹⁵ See: SIGI, ‘Congo, Dem. Rep.: Discriminatory Family Code,’ <http://genderindex.org/country/congo-dem-rep> [last accessed 11 June 2013].

¹⁶ Ibid

- 1) Take immediate steps to address and remedy negative customs and traditional practices, especially in rural areas, which affect full enjoyment of women's land and property rights.
- 2) Repeal all discriminatory provisions of the Congolese Family Code, including provisions restrict women's right to equality before the law, and specifically in the administration of land and property.
- 3) Ensure that local traditional authorities are trained to protect women's land rights at the community level and are held accountable when they fail to do so.
- 4) Take positive steps to ensure that women have access to productive land, agricultural credits, seeds, tools and other necessary resources to make their farming practices sustainable and productive.