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Reforming Discriminatory Laws to Empower Women in Togo

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This Brief examines two reforms, enacted between 2012 and 2014, that lifted previous restrictions to women's rights in Togo. Specifically, these limitations prevented women from choosing where to live, from getting a job without their husband's permission, and from being named head of household in the same manner as men. The reforms to the Persons and Family Code were driven by women's civil society organizations engaging a wide variety of stakeholders, including the government and the international community. Together, these actors identified strategic agencies and stakeholders sympathetic to the overarching goal of gender equality in order to make greater gender equality a reality. This Brief explores this process, while also indicating the remaining barriers to women's full equality in Togo.

The notion of equality for all Togolese nationals is embedded in the country's 1992 Constitution, which states: "All human beings are equal in dignity and in right. The man and the woman are equal before the law. No one may be favored or disadvantaged for reason of their familial, ethnic, or regional origin, of their economic or social situation, of their political, religious, philosophical or other convictions" (Art. 2). Despite this clear constitutional guarantee to equality dating from the early 1990s, for more than a decade after the adoption of the constitution, Togo was slow to push forward women's empowerment on the political agenda. However, in the early 2000s, once political will coalesced, in tandem with advocacy from local groups and the international community, Togo made tremendous improvements with respect to gender equality. Lately, women's representation has also improved remarkably through the appointment of female leaders at strategic government positions. Notably, in January 2019, Mrs. Yawa Djigbodi Tségan was appointed president of the National Assembly and in September 2020, Mrs. Victoire Sidémého Tomegah Dogbé was appointed prime minister.

Progress toward gender equality for Togo has advanced but has been only partial. Since 1970—the first year covered by the *Women, Business, and the Law* (WBL) index, capturing the state of women's legal rights and access to economic opportunities in countries around the world—Togo has enacted reforms under all eight indicators in the index. As of 1970, Togo scored only 25.6 out of 100, where 100 represents the absence of legal barriers for women in areas covered by the eight indicators. According to the index, Togo did not register substantial reforms until the enactment of the 2006 Labor Code. With this new Labor Code, Togo prohibited the dismissal of pregnant workers, mandated equal remuneration for work of equal value, and prohibited gender discrimination in employment. The country also enacted legislation protecting women from sexual harassment in employment by providing civil remedies.

However, women's rights were not a strong priority on the political agenda before the 2010s. Notably, until 2012, the Persons

and Family Code restricted women's bargaining power and rights in the household by not granting a woman an equal right to choose where to live, to get a job without the permission of her husband, and to be named head of household. Two reforms were then passed in 2012 and 2014 abolishing these restrictions in the Persons and Family Code. These reforms have led to other advances, and as of 2022, Togo scores 81.9 on the WBL index. The improvement in score symbolizes the progress these reforms have made in guaranteeing women's legal rights and their positive impact on women's access to formal employment and entrepreneurship in Togo.

Togo is cited as one of the five most-improved countries in the World Economic Forum's 2021 *Global Gender Gap Report* in its overall index, having narrowed the gender gap by 6.8 percentage points since 2020. This means that in one year, Togo has made progress toward closing gender-based gaps in economic participation and opportunity, educational attainment, health and survival, and political empowerment (World Economic Forum 2021). However, more work is needed in Togo to achieve full gender equality. Togo still ranks 91st out of 146 countries in the Global Gender Gap 2022 Report (World Economic Forum 2022). Further, the *Women, Business and the Law* 2022 report recorded a negative reform for Togo in 2021 with the enactment of a new Labor Code that no longer broadly prohibits the dismissal of pregnant workers (World Bank Group 2022). This step backward demonstrates that progress remains tenuous, and that setbacks are possible.

This Brief focuses on two important family law reforms enacted in 2012 and 2014. The Brief focuses on family law for three reasons. First, most jobs (90.1 percent) in Togo are informal, which means that labor law reforms affect a smaller share of the population compared to family law reforms, which apply to all women across the country. Second, interviews with women's rights experts in Togo revealed that family law reforms were better known by activists and presented a more interesting case of cooperation to strengthen advocacy efforts. Third, according to the *Women, Business and the*

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Law database, one-third of economies in the Sub-Saharan Africa region still restrict a woman's right to be named head of household in the same way as men. Dissecting how these reforms came about in Togo can thus provide an interesting example for other economies to follow. The two reforms discussed in this Brief are the 2012 amendment to the Persons and Family Code—which allowed women to choose where to live in the same way as a man and to get a job without the authorization of their husband—and the 2014 amendment to the same law—which allowed women to become head of household in the same way as a man.

Analyzing the political and legal processes behind the passage of these gender equality reforms and the challenges that remain in implementing the newly acquired rights reveals four key lessons. First, the early involvement of local civil society organizations (CSOs), raising the alarm on the persistence of discriminatory provisions in the laws of the country, proved crucial in advocating for changes. Local CSOs were able to make their demands heard within a wide coalition of stakeholders. Second, the involvement of the international community further directed the government's attention to the discriminatory aspects of the Code and strengthened the government's will to promote gender equality. Third, dissemination and implementation of such reforms is crucial; this has proved challenging in Togo, and thus the impact of the new laws remains limited. Lastly, building on legislative momentum, more positive reforms are needed to guarantee women equal rights and opportunities.

The initial impetus for reform: the call for equal inheritance rights by women's rights groups

The 1980 version of the Persons and Family Code of Togo contained discriminatory provisions and restrictions that kept women from enjoying the same rights as men (Table 1). One Togolese activist recalls: "These laws contained provisions that discriminated against women and did not ensure their protection, development, and equality with men." The observation of this injustice acted as a starting point for women's rights groups in Togo to initiate what would become a successful, but lengthy, advocacy process. Around 1987 and 1988, local CSOs raised their voices for the first time to denounce the inequalities contained in the Persons and Family Code. Their call for reform first focused on the issue of inheritance rights. Before the recent reforms to the Persons and Family Code in Togo, women did not enjoy the same protections of their rights to inheritance as men. Article 391 mandated then that customary law applied by default: a spouse thus needed to have

renounced custom for common law to be applied. Under customary law in Togo, women do not have the right to own land. The inequalities that resulted triggered women's rights groups to argue for reforms because inheritance matters handled under customary law too often left widows and orphans without property upon the death of the husband or father.

The advocacy efforts led by local CSOs such as Women in Law and Development in Africa (WiLDAF) Togo, the Groupe de réflexion et d'action Femme, Démocratie et Développement (GF2D), and other members of the WiLDAF Pan-African network of organizations on women's rights continued over the years. They studied the Persons and Family Code to pinpoint all instances where it enshrined unequal rights for women and men. A call for reform, which started with a focus on inheritance rights, thus grew to become a wider denunciation of several other discriminatory provisions of the Persons and Family Code, including those regarding women's unequal rights within marriage. However, several subsequent reform attempts were unsuccessful because CSOs lacked broad governmental support as well as external support from international partners. To strengthen their call for reform, local CSOs, in collaboration with the Ministry of Social Action, Women, and Literacy, collected data through a sociological study to demonstrate that the Persons and Family Code was obsolete: its discriminatory provisions no longer reflected the reality of the Togolese society.

In the years leading to the reforms of the Persons and Family Code, the advocacy efforts led by women's rights groups proceeded through meetings and workshops with a variety of stakeholders. Other organizations such as the National Bar Association of Togo lobbied alongside women CSOs for the abolition of the discriminatory provisions in the Persons and Family Code. Local CSOs organized specific work sessions with the Caucus of Parliamentary Women, which became another pivotal ally. A women's rights advocate from WiLDAF Togo recalls, "The Women's Parliamentary Caucus was always willing to listen to us, to advise us, and to accompany us." Some CSO representatives were even invited to take part in the Committee meetings where the amendments were discussed and subsequently drafted. In sum, magistrates, lawyers, and civil society organizations were heard in the process, along with women victims of discrimination. Indeed, a government-named committee was given the task of surveying women who suffered from discrimination to bring their testimonials back to Parliamentarians and include that testimony in a report of the Parliamentary Commission.

Table 1Reforming discriminatory provisions in the laws of Togo

WBL index questions	Before reforms	After reforms
Can a woman choose where to live in the same way as a man?	Art. 104 of the 1980 Persons and Family Code mandated that the decision on where the family lives should be made by both spouses, and in case of disagreement the husband would have the last word, and the wife should follow him.	Art. 102 of the amended Persons and Family Code mandates that the residence of the family is a place that the spouses choose by mutual agreement. In the event of disagreement, a judge will decide in the interest of the family.
Can a woman get a job in the same way as a man?	Art. 109 of the 1980 Persons and Family Code mandated that the wife could pursue a separate profession from her husband's unless he was opposed to it.	Art. 107 of the amended Persons and Family Code mandates that each spouse may freely pursue a profession of his or her choice unless the other spouse objects by court order in the interest of the family.
Can a woman be "head of household" or "head of family" in the same way as a man?	Art. 100 of the 1980 Persons and Family Code designated the husband as the head of household.	Art. 107 of the amended Persons and Family Code mandates that both spouses are responsible for the management of the family and assume moral and financial responsibility in the best interest of the children and the household.

Source: Women, Business and the Law (WBL) database.

A government willing to reform and abide to international commitments

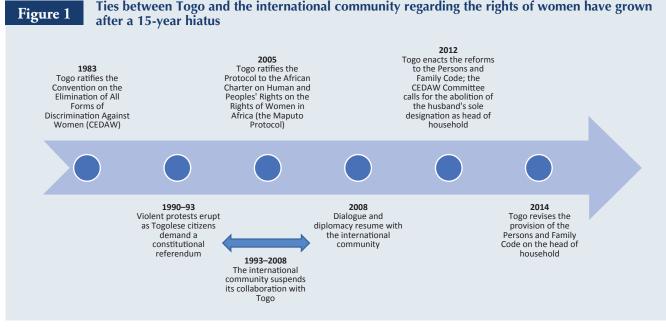
In addition to CSOs, two other key groups contributed to reforming the family laws of Togo. First, political will from the highest levels of government to promote gender equality allowed the advocacy campaign to gain steam. Togo was cut off from international aid between 1993 and 2008, following violent incidents in response to protests from 1990 to 1993 advocating democracy and political pluralism. After his accession to power in 2005, President Faure Gnassingbé, hoping to restore multilateralism and secure better development outcomes for the country, promised gender parity, significant funding to promote women's entrepreneurship, and improvements in the status of women in general. This clear political intent to advance gender equality helped establish the institutional framework necessary for reforms and enabled the grievances of women's rights groups to be heard. Further, the Ministry of Social Action, Women and Literacy played a crucial role in the passing of the family law reforms, notably as it formulated recommendations for the ensuing reforms and worked on disseminating the new provisions.

Second, the international community played an important role in drawing the government's attention to the issues local CSOs had been denouncing for years. The ties between Togo and the international community were cut for 15 years, between 1993 and 2008. In 2008, dialogue and diplomacy slowly resumed (Figure 1). The government then faced pressure to reform its discriminatory laws and take actions for women's empowerment so that international funding could be reinstituted. The international community—particularly the Agence Française de Développement, the European Union, the African Development Bank, and the World Bank Group—helped CSOs direct the attention of the government to the issue of gender inequalities in the country's Persons and Family Code. As a Togolese researcher puts it: "The international community and civil society spoke with one voice to pass these reforms."

Further, international and regional treaties on gender equality played a role. Togo ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1983 and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) in 2005. As a result, lawmakers sought to align national laws with international standards and the country's constitutional protection on gender equality. The 2012 reform of the Persons and Family Code took into consideration some but not all issues raised by the CEDAW Indeed, in 2012, the CEDAW Committee Committee. recommended "that the State party: (a) Withdraw the discriminatory provisions of the 2012 Code of Persons and Family that [...] place the responsibilities of the households mainly on the husband (article 100)" (CEDAW Committee 2012b). Two years after the initial 2012 reform process to the family law-and despite pushback-the CEDAW Committee's recommendation contributed to making the 2014 reform a reality for Togolese women (Box 1). Men in Togo are no longer named by default to be the head of household: they now must share these responsibilities with their spouse.

The impact of the family law reforms and their limitations

The main consequence of these legal reforms has been the securing of new rights for women in Togo. After the 2012 and 2014



Source: Women, Business, and the Law (WBL) database. Note: Timeline is not to scale.

Box 1

Controversies concerning inheritance rights and the head of household

During the debates on the reforms of the Persons and Family Code, controversies arose. The proposed changes to inheritance rules, previously governed by customary law excluding women and orphans from receiving any property, led to heated debates.

The proposal of co-management of the household by both spouses also sparked additional discussions and a second round of reform was necessary to pass the amendment. This disposition was heavily debated and remains difficult to implement. As a CSO representative commented: "It is not yet integrated in the daily life of Togolese women. Legally speaking, when you go to the civil status office to get married, these provisions will be read and explained to you, but in the daily life of women it is not a reality." reforms, according to the law, women could no longer be prevented from getting a job and could share responsibilities to make financial decisions for the household. Consequently, according to CSO representatives, women were advancing toward emancipation from marital constraints. This improved their access to contraceptives, which they could obtain from then on without authorization from a husband or guardian, and their access to credit to start or strengthen their income-generating activities. As the country moved toward greater gender equality in its laws, other policies, and initiatives-in part inspired by this favorable legislative context-have emerged (Box 2). Government efforts to make the public aware of the reforms also improved the climate for further advances. Public civil servants in prefectures received training about the new provisions of the laws to inform women of their rights. As a result of dissemination efforts, CSO leaders recall a shift in women's awareness regarding their socioeconomic rights. For example, women demanded more information concerning their right to inheritance and land property, in contrast with their previous focus mainly on child custody issues. Furthermore, as noted by a representative from the Association of Women Lawyers of Togo, women's willingness to engage in entrepreneurial activities increased as they were informed that their husband's authorization was no longer essential.

However, women's rights advocates in the country characterize these dissemination efforts as insufficient. As one stated: "Laws are voted, passed, and then shelved. They can be found on the government's website but not all Togolese have access to the Internet to stay informed of reforms." For these advocates, government's involvement and initiative has not been strong enough to ensure that the entire population is made aware of their rights. Additionally, while CSOs worked to disseminate information about the reforms, a lack of financial resources rendered their efforts insufficient to reach every single rights holder. A proper dissemination strategy designed to reach all women, regardless of their geographic location, spoken language, and literacy level is still needed. For example, most women who reside in remote parts of Togo do not speak French. Thus, it is important for the amendments to be translated into all languages spoken in the various regions of the country. Additionally, dissemination through local media, and in particular, through rural radio can help spread awareness. However, even when fully aware of the new legal provisions, women still face barriers to accessing their

Box 2 Gender equality reforms sparked other changes

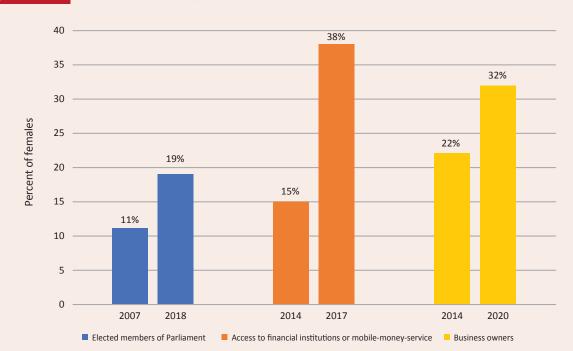
As a result of the government's willingness to promote women's rights in Togo and more gender-equal legislation, other initiatives have focused on women in the economic and political spheres and have resulted in positive outcomes for women.

At the national level, the Support Fund for Youth Economic Initiatives (FAIEJ), created in 2006 and made fully operational in 2013, and the National Fund for Inclusive Finance (FNFI), initiated by the Ministry of Grassroots Development, Crafts, Youth and Youth Employment in 2014, support women entrepreneurs in their economic activity. Between 2014 and 2020, the share of women business owners grew from 22 percent to 32 percent (World Bank, Entrepreneurship Database). Further, women's access to financial institutions or mobile-money services increased significantly, from 15.1 percent to 37.6 percent, between 2014 and 2017, although the gender gap persists (World Bank, Global Financial Inclusion Database, Findex).

National policies now strive to integrate a gender lens and increase women's representation, notably in politics. A growing number of women have occupied high-level government positions, including in the Prime Minister's Office, the National Assembly, and the Ministry of Defense. The number of seats held by women in the National Assembly has nearly doubled since the 2007 elections, from 9 women (representing 11.1 percent of elected members) to 17 women (representing 18.7 percent of total members) after the 2018 elections (IPU—Parline Global Data on National Parliaments).

Figure B2.1.





Source: IPU-Parline Global Data on National Parliaments, Togo, 2021; Global Financial Inclusion (Findex) Database, 2021, World Bank; Entrepreneurship Database, 2020, World Bank.

rights. Notably, a strong stigma persists against women who try to enforce their rights by going to court. Familial matters are still largely believed to be best handled within the family or the community.

Despite their limited resources, local CSOs continue efforts to disseminate gender equality reforms. For example, the GF2D has distributed booklets and flyers, worked with communities and leaders to spread awareness, and has trained civil registrars who are at the frontline of informing couples of their rights within marriage. However, dissemination efforts have been slow and difficult. A campaign initiated by the Association of Women Lawyers of Togo, which consisted of distributing hard copies of the Persons and Family Code quickly proved to be unsuccessful, given that almost half of adult women in Togo cannot read. The female literacy rate is only 55 percent for adult women, according to data for the Sustainable Development Goals collected by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

Togo's traditions and customs continue to enforce patriarchal beliefs designating men as the "incarnation of authority" and women's role as limited to "being a wife and mother responsible for all domestic chores" (United Nations Department of Public Information 2006). As of 2014, after the reforms, only 29.4 percent of women participated in three major decisions in the household: namely, their own health care, major household purchases, and visiting family (World Development Indicators). The division of caretaking work, which would leave women more time to pursue formal economic activities, is still uneven. As of 2016, women entrepreneurs in Togo spent 19.3 hours per week on care work compared to 8.8 for male entrepreneurs (World Bank 2016). The 2012 and 2014 reforms therefore directly challenge the status quo and societal norms in Togo (Millennium Challenge Corporation 2017). More work needs to be done to change the hearts and minds of people about women's roles and to eradicate gender-based discrimination (Box 3).

Remaining gaps in the legislation

Despite tremendous improvements for women's rights in Togo in the past decade, some inequalities persist. Four main areas for reform toward gender equality are evident from the analysis of the *Women, Business and the Law* data and interviews with local experts. First, there is a need for additional legal protections against gender-based violence, and domestic violence in particular. In 2012, women were given the right to work without their spouse's authorization, but in reality "a woman who works against her husband's wishes can be a source of violence in the home," explains a women's rights advocate. Intimate partner violence and gender-based violence in general remain a pressing issue not adequately addressed in Togo. Recognizing this fact, the Togolese government adopted the Politique Nationale de l'Equité et de l'Egalité de Genre du Togo in 2011, a policy to establish an institutional, sociocultural, legal, and economic environment favorable to the achievement of gender equity and equality in Togo; and to address forms of violence against women (Government of Togo 2011).

Nonetheless, sensitization programs to educate boys, girls, men, and women on the consequences of domestic violence on women and society in general are lacking (Moore 2008). A government study showed that more than 20 percent of the population believes that it is acceptable for a man to beat his wife, with reasons ranging from her drinking alcohol, to talking back to their husbands, to having an unknown visitor, to being negligent toward the children, to going out without permission (Government of Togo 2014). The *Women, Business and the Law* index finds that Togo is one of thirty economies around the globe without a legal framework specifically addressing domestic violence and one of sixteen in Sub-Saharan Africa.

Legal frameworks to protect women from domestic violence and provide survivors with appropriate resources are crucial for women's safety and access to economic opportunities. Such laws have positive consequences most notably in the way they mandate for reparations. Specific legislation on domestic violence can empower women to seek justice for the violence they suffered. For example, in the past few years, several Sub-Saharan African countries, including Gabon, Liberia, and Madagascar, have promulgated legislation addressing domestic violence. In 2021, Gabon adopted a comprehensive law on the elimination of violence against women, protecting women from domestic violence as well as criminalizing the offence. The law includes a procedure for survivors to obtain protection orders from abusers and provides access to support services mandated by the state to facilitate women's recovery (World Bank Group 2022). Such reforms are particularly important in contexts, such as Togo, where domestic violence is rampant and might be justified by patriarchal beliefs.

Box 3

Advocacy to challenge gender roles

Awareness raising in the public is an efficient way to challenge entrenched gender roles. The Groupe de réflexion et d'action Femme, Démocratie et Développement (GF2D), for instance, is a civil society organization working to improve gender equality and strengthen the rights of women and girls throughout Togo. Its work focuses on dismantling rigid gender norms that perpetuate gender inequalities, notably through awareness-raising campaigns. The advocacy poster shown here represents a woman undertaking "a thousand activities," symbolizing women's burden of unpaid care work. The inequality of distribution of household chores denounced by the GF2D has been found to prevent girls from accessing education and adult women from participating in the economy in the same way as boys and men (Efroymson, FitzGerald, and Jones 2010). In addition to advocacy campaigns, a study conducted in the Democratic Republic of Congo presents evidence that holding gender norms discussion groups with couples can increase the share of domestic tasks and childcare that men take on (Vaillant et al. 2020).



Source: : Groupe de réflexion et d'action Femme, Démocratie et Développement (GF2D), http://www.gf2dcriff.net/.

Second, women in Togo currently do not have equal right to men to remarry. The Persons and Family Code, as last reformed in 2014, imposes a waiting period of nearly one year (300 days) before women can remarry; men do not have to wait. Such gender differences, which are found in family laws around the world, were first intended to avoid a potential conflict of paternity between a woman's previous husband and future husband based on the assumption that the father of a child is the man a woman is married to when she gives birth. However, due to scientific advancements, a legally prescribed waiting period is no longer necessary to establish the paternity of a child. It is a form of discriminatory legislation that can harm women, for example, when they hope to enter a new marriage to improve their financial security. In addition to enabling women to establish income stability, it has also been shown that the opportunity to remarry allows women to escape unequal or oppressive relationships and enter into more egalitarian marriages with a more favorable division of labor and decision-making powers (Yefet 2019).

Third, in addition to eliminating discriminatory provisions from its laws, women's rights advocates in Togo suggest that the country should consider introducing positive obligations for greater inclusion of women in the country's economic life. Such positive obligations could, for example, be related to women's limited access to ownership rights over land and their lower wages, which hinder their access to formal financial products (CEDAW Committee 2012a). An explicit prohibition of discrimination on the basis of gender in access to credit-similar to the one in the Code of Conduct for Credit and Financial Institutions of Mozambique-could boost women's financial inclusion. Indeed, studies have found that such an explicit prohibition has been positively associated with female business ownership (Islam, Muzi, and Amin 2017) and with female ownership of accounts at financial institutions and debit cards (World Bank Group 2018).

Fourth, provisions related to protection of pregnant women and women with young children are still insufficient to ensure women's full participation in the labor force. In 2021, Togo enacted a new Labor Code that no longer broadly prohibits the dismissal of pregnant workers. While the country grants 14 weeks of paid leave for mothers, in line with the standard set out by the International Labor

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Organization Maternity Protection Convention 183, maternity benefits are only partially covered by the National Social Security Fund. This means that employers must cover a portion of the maternity leave benefits, which puts women of childbearing age at a disadvantage when accessing the job market. Such a burden on employers may discourage them from hiring women because of their perceived higher cost in comparison to men. A female lawyer from the Association des Femmes Juristes du Togo cited a case she worked on that illustrates the issue posed by the current legislation. An employer fired a female employee after her third pregnancy in five years because he did not want to incur the costs of the maternity benefits. Removing provisions that potentially discriminate against women-or leave women more vulnerable in the labor market—could improve women's access to formal employment. One such example is the 2016 reform of the Social Security Law in the Democratic Republic of Congo, which established at Art. 43 that maternity benefits should be fully administered and disbursed by the government. Since this law was passed, employers have no longer been responsible for paying for a portion of the maternity benefits of their employees.

To conclude, the two family law reforms from 2012 and 2014 assessed in this study illustrate the successful gender equality reform process undertaken in Togo and highlight the remaining gaps in the legislation and its implementation. The early involvement of local CSOs proved instrumental in pointing out the discriminatory provisions and proving that such provisions were not adequate for Togolese society. Indeed, women in Togo have long been entrepreneurial and have contributed immensely to the informal economy. These reforms formally granted rights for women to continue to prosper and grow their businesses in Togo. Further, the international community's involvement helped draw the government's attention to the matter. Without the political commitment to improving gender equality in the country, these reforms for women's economic empowerment would not have passed. The current impact of such reforms is limited due to insufficient dissemination and implementation of the law, and some of the remaining gaps in the laws of the country. More efforts are needed to fully disseminate the current laws and pass future reforms to implement a stronger legal apparatus protecting and empowering women in Togo.

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