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Neil Palmer/Original/A farmer at work in Kenya's Mount Kenya region/Flickr/Lizenz CC BY-NC 2.0

Between customs and legislation: land rights in West Africa

Approaches for the implementation of women's land rights in Burkina Faso, Benin and Togo

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The majority of the population in Burkina Faso, Benin and Togo lives from agriculture and livestock. The legal framework for land management is characterised by a dualism between state laws and traditional customary rights. Local customary laws still mainly govern the ownership, use and transfer of land. Only a few small farmers are officially registered as landowners at state level. In this context, women have de facto no secure access to land – despite legal equality and their key role in agriculture. In order to strengthen the process of implementation of modern land laws and thus the economic role of women and food security, an in-depth dialogue and close cooperation between the women directly concerned, civil society organisations, customary and religious authorities, public authorities and other policymakers is necessary.

Legal dualism

Land rights issues in West Africa are located at the interface between customary rights on the one hand and codified rights on the other hand. This overlap occurred at the beginning of the 20th century and is still present today. While land ownership, use and transfer were largely shaped by traditional norms, codified laws and regulations were introduced during the colonial period. In French-speaking West Africa, for example, the principle of *terres vacantes et sans maître*, prevailed according to which land that was uninhabited automatically belonged to the state. Regardless of the respective modernisation strategy, the principles of customary law, which were administered by traditional authorities and institutions, were de facto not abolished. Instead, an additional layer of national laws was added. This dualism between registered individual property on the one hand and common ownership and use rights on the other hand represents a permanent basis for conflict and a challenge in West African land policy that still exists today.

Women's access to land

Under traditional law, women, in particular, rarely have a direct right of access to land ownership. Their access to land use is granted to them indirectly by the men in the family, reinforcing the already existing relationship of dependency in which most women in West Africa find themselves. For various reasons, this situation is problematic. Thus, women often lose the right to use their families' land when a divorce is pronounced, when the father or husband dies, or when male relatives move to distant cities. In addition, they often have access to only small plots of land with low yields and may not be allowed to grow perennial crops (e.g. coffee, cocoa, mangoes, oranges) or cash crops (e.g. cotton, pineapple). As a result, it is hardly possible for women smallholders without official ownership titles to obtain loans. This makes it difficult for women to invest sustainably in agriculture and generate profits. However, as a study in Rwanda shows, the probability of obtaining loans for investments increases by 12% if women have formal property titles.¹ In addition, women could increase their agricultural yields by 20 to 30% and thus improve food security if they had the same access to production factors – including formal land certificates – as men.² Formal land ownership enables women to be seen as legitimate societal stakeholders and to influence and make economic decisions. This contributes significantly to the social and economic security of entire families. In this context, effective implementation of existing land laws in West Africa is of social, economic and political importance.

Equality before the law - in theory

In Burkina Faso, Benin and Togo, a number of land laws have been enacted in recent years that stipulate equal rights for men and women in land and inheritance law. Additionally, in Benin, a financial law was passed at the end of 2017 to reduce the costs of land registration applications – which benefits women, for whom it is often particularly difficult to bear the related costs. The national strategy for the promotion of women's entrepreneurship in Burkina Faso also emphasises that women have equal access to the means of production, including land. Direct support measures are also being used: in Benin, the land management committees responsible for implementing land laws are subject to relatively unambitious but fixed quotas for women – one in eleven seats in municipal committees and two in twelve seats in village committees are reserved

¹ Land Links. Fact Sheet: Land Tenure and Women's Empowerment, 2016. <https://www.land-links.org/issue-brief/factsheet-land-tenure-womens-empowerment/> [30.01.2020]

² Food and Agriculture Organization of the United Nations. Role of women in agriculture: Bridging the gap between men and women to sustain development, 2020. <http://www.fao.org/publications/sofa/201011/fr/> [31.01.2020]

for female representatives. And in Togo, the penal code stipulates a fine or imprisonment if a woman is denied access to land or other factors of production because of her gender. So much for the legal situation.

And in practice?

Although updated statistics are often lacking, it is clear that registered property rights have so far been the exception rather than the rule. 77% of the population of Burkina Faso have no official document attesting their right to their land. At the same time, there is a significant gender disparity. In the case of Benin, 85% of land owners are men and only 15% are women.³ And only 2% of Beninese women receive land ownership through inheritance – for men, the figure is 80%. There are several reasons for this. There is often a lack of knowledge about formal rights to land and inheritance, and this is particularly true for women. Land registration is often non-transparent, cumbersome and – despite efforts to alleviate the financial burden – costly due to unclear responsibilities and a high level of bureaucracy.⁴ Most land-use laws do not provide effective solutions for seasonal land use by nomadic populations and for access to land by foreign farmers, both of which are cases where the same plot of land is claimed by several actors.⁵ In Côte d'Ivoire, the negative consequences of imprecise regulations have been observed. A law introduced in 1998 to formalise land rights on the basis of customary rights was politically exploited and led to an open conflict, especially in the west of the country, between Ivorians and immigrants, mainly from Burkina Faso, and was therefore one of the factors that triggered a political crisis that lasted several years.⁶ The issue of land rights is closely linked to other key factors. Who has the right to own and use what resources? Who really counts as a citizen? These often unresolved questions hold a potential for conflict that should not be underestimated. Another major problem for the effective implementation of land rights is the lack of data, statistics and GPS mapping of land ownership. Especially outside urban areas, information is still managed manually, is poorly accessible and often incomplete. In rural areas of Burkina Faso, it is estimated that only 10 – 50% of land plots are mapped and formally titled.⁷ In addition to the advantages of decentralised administrative structures in implementing land laws, it can also lead to unclear local responsibilities, inconsistency and clientelism. In Togo, for example, land laws are implemented by the Ministry of Urban Planning, the Ministry of Economy and Finance, the Ministry of Decentralisation, the Ministry of Justice and the Ministry of Security, among others. The ministries also lack financial and human resources. In Burkina Faso, only 20% of municipalities have functioning land administrations.

Civil society plays a key role

In order to promote compliance with land laws, civil society and international actors, such as the Konrad-Adenauer-Stiftung (KAS), are pursuing several approaches. In Burkina Faso, Benin and

3 Benin Cooperation - European Union. Benin Gender Profile, 2014. S. 23, 32.

<https://decentralisation.gouv.bj/wpcontent/uploads/2018/12/8.1-Profil-genre-B%C3%A9nin-2014.pdf> [16.02.2020]

4 African Union Commission, United Nations Economic Commission for Africa and African Development Bank. Land Policy in Africa: West Africa Regional Assessment, 2011. S. 29.

https://www.uneca.org/sites/default/files/PublicationFiles/regionalassessment_westafrica.pdf [16.02.2020]

5 Ministry of Foreign Affairs and International Development (Maedi), Agence Française de Développement (AFD). Land Tenure and Development Technical Committee. Formalizing Land rights in developing countries: moving from past controversies to future strategies, 2015. S. 42 f. <https://www.diplomatie.gouv.fr/IMG/pdf/Formalising-land-rights.pdf> [31.01.2020]

6 Office Français de Protection des Réfugiés et Apatrides. Côte d'Ivoire: les conflits fonciers en zone rurale, 2017. S. 3, 10ff.

https://www.ofpra.gouv.fr/sites/default/files/atoms/files/21_civ_conflits_fonciers.pdf [12.02.2020]

7 Burkina Faso. Analysis Framework of Land Governance of Burkina Faso, 2014. S. 55.

http://siteresources.worldbank.org/INTLGA/Resources/Burkina_Faso_Final_Report.pdf [02.02.2020]

Togo, the KAS has been implementing the special initiative "One World – No Hunger" of the German Federal Ministry for Economic Cooperation and Development (BMZ) since 2016. This special initiative contributes significantly to the strengthening of women's land rights and food security. As an actor in political education, KAS follows a comprehensive concept. Through regular activities, awareness of land laws and land management systems is being promoted at various levels – including civil society, traditional and religious actors, the media and political decision-makers such as parliamentarians – and a major advocacy effort is being conducted. This dialogue work strengthens local and national networks involved in the implementation of land rights. In dialogue forums, for example, local decision-makers develop strategy plans to inform the population of their rights and opportunities for legal action. Theatre plays are an important means of raising awareness, especially for women. In 2019, for example, regular theatre performances organised by KAS in different communities in Burkina Faso provided an audience of about 50.000 with information about the codified law. Radio moderators and journalists receive regular training in seminars on the issue of land rights in order to continuously spread the knowledge. The importance of radio broadcasts for legal information and political education is particularly evident in rural areas. For example, KAS has raised awareness of women's land rights in Togo through a series of radio broadcasts to an estimated 20.000 listeners. In addition, religious and traditional authorities are critical for the implementation of legislation. They play a key role in the settlement of land rights issues that should not be underestimated – also because they still largely apply traditional customary law in cases of dispute. Through public dialogue forums, KAS carries out important advocacy work: civil society representatives, community leaders and land rights experts analyse the state of implementation of land rights and highlight important reasons for granting land titles to women. In this way, KAS has already been able to convince many local and religious authorities to become active advocates for the enforcement of women's land rights, a lasting change of mentality is gradually taking place. At the national level, KAS is particularly committed to ensuring that women's perspectives are taken into account in new legal decisions and regulations and that the quota of female representatives in land administration committees, which applies to some regions, is respected. Another important area of activity is the creation of publications to further raise awareness among decision-makers in ministries. In Burkina Faso, KAS compiled an annotated overview of existing land laws and regulations and distributed it to members of the National Assembly, ministries, research institutes and municipalities. In the context of West African countries, the preparation of such studies is important to address the often prevailing lack of information and transparency. In addition, during KAS conferences, recommendations are made to parliamentarians and the government to strengthen women's agricultural entrepreneurship, which is closely linked to land rights. Improving the quality of agricultural products and the corresponding marketing as well as the agricultural adaptation to climate change are also topics that are particularly relevant for female leaders and are being dealt with during KAS trainings. These capacity-building seminars help women use their land sustainably and generate surpluses in the long-term. In this way, the dialogue and awareness-raising work of KAS contributes to strengthening the process of implementing the codified law.

Regional approaches

In addition, there are approaches to developing transnational solutions to shared challenges. The issue of land rights and related concerns such as the question which areas nomadic peoples of the Sahel region are entitled to claim for themselves and how the use of cross-border resources – such as forests, rivers and lakes – should be managed were already discussed in 1994 at the Praia conference organised by the Permanent Interstate Committee for Drought Control in the Sahel

(CILSS) and the Club du Sahel. The Praia process, launched in the 1990s, aimed, for example, to raise awareness at the regional level and support member states in drafting land laws.⁸ At the Praia+9 follow-up conference in 2003 – organised in cooperation, amongst others, with the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU) – the drafting of a regional land tenure charter for the Sahel and West Africa was announced and CILSS was entrusted with its preparation. Such a land tenure charter, planned for 2020, should aim to define guiding principles for land tenure issues and lead to regional standardisation. WAEMU has also decided to initiate the establishment of a regional land tenure observatory in West Africa. This body will analyse current land policy developments in West Africa and develop joint solutions. Although some national land tenure observatories do exist, for example in Burkina Faso and Benin, the Regional Land Tenure Charter and the Regional Land Observatory have not yet been effectively implemented. However, the trend is heading in the right direction – and the regional approach is generally to be recommended for factors that exert considerable pressure on land resources. For example, the consequences of climate change, such as soil erosion, and the security situation in the Sahel region have a direct impact on agriculture, food security and the economic position of women.⁹ Against this background, regional initiatives in West Africa, if pursued, would have great potential. They could pool expertise and human resources, develop joint proposals for solutions, but also increase public pressure on governments. The further strengthening of these initiatives will show to what extent West African governments have recognised the importance of land rights issues and are willing to cooperate with each other in a pan-African spirit.

Strengthening land rights for women's economic and political participation

The implementation of women's land rights is of great economic and political importance. Formalisation of land ownership is an important stepping stone to improve women's economic participation, especially in rural areas where subsistence farming is the main area of activity. Through land titles, women legitimise their right to participate in societal decision-making processes. According to the principle: whoever owns land will be listened to. In this way, women's experiences and perspectives will be taken into account in decision-making processes, thereby improving regional food security. Economic and political participation are closely intertwined and reinforce each other. With greater decision-making power in their own families and communities, it is likely that more women would see themselves as politically legitimate actors with the right to exercise influence and be more willing to become involved in village and community decision-making processes. Land rights provide an important access to improve women's economic role and political participation – two prerequisites for sustainable societal development. In addition, effective implementation of land laws would increase awareness of governmental legislation, as opposed to traditional customary law. By granting land titles, the state could also increase its acceptance level among the population. This is particularly important in rural West Africa, where the perspectives and decisions of the state are often still perceived as being very distant.

8 OECD. Land Reform Processes in West Africa: A Review, 2006. S. 13. <https://www.oecd.org/swac/publications/39496075.pdf> [03.03.2020]

9 OCDE. Conflicts linked to resources and terrorism: Two facets of insecurity, 2013. S. 3. https://read.oecdilibrary.org/development/conflicts-lies-aux-ressources-et-terrorismes_9789264190306-fr# [16.02.2020]

The EU-Africa Pact – an opportunity?

In many countries, such as Burkina Faso, Benin and Togo, legal bases for women's land rights do already exist. The aim must be to ensure that they are effectively implemented. This requires more serious efforts by governments to ensure transparency, the rule of law and gender equality. Civil society organisations and international actors, such as the Konrad-Adenauer-Stiftung, also make a significant contribution towards this aim. They raise public awareness, establish cooperation between governmental and non-governmental structures and promote dialogue with parliamentarians. In this way, civil society assumes its role as a fifth power and plays an important role in the West African context. In the future cooperation between the European Union and Germany with Africa, the implementation process of land rights should be emphasised. The BMZ's special initiative "One World – No Hunger" (EWOH) has already achieved considerable results: EWOH has, for example, enabled more than 135.000 people worldwide to receive land titles.¹⁰ In Burkina Faso, Benin and Togo, KAS helps to create structures that will support the implementation of legislation in the long term. For example, the establishment of networks of key local actors is encouraged through dialogue events, the awareness of parliamentarians for the social and economic consequences of land rights issues is increased, and regular training of media representatives ensures that awareness-raising efforts continue. In order to achieve sustainable results with the established partner networks, the special initiative should be continued and extended to the European level. Basically, it is nothing less than a comprehensive societal change of mentality which takes time. This is where the EU-Africa pact with the African Union that aims at strengthening partnerships with the civil society, as announced by the German Development Minister Gerd Müller, can prove useful. Since without a serious political will to ensure the implementation of women's land rights, a sustainable "pact against hunger and poverty" can hardly be achieved.

¹⁰ Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ). Sonderinitiative EINEWELT ohne Hunger, 2019. https://www.bmz.de/de/zentrales_downloadarchiv/themen_und_schwerpunkte/hunger/191122_FS_SEW_oH_web.pdf [05.02.2020]

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