

BURKINA FASO

Discriminatory practices towards women in Burkinabe society remain high, despite government commitment and efforts to develop a policy and legal framework, as significant gaps remain between these laws and daily reality.¹ In many situations, both the Family Code and the Penal Code are disregarded by society and by the authorities in favour of customary law that upholds practices that discriminate against women, particularly in rural areas.²

Article 1 of the 1991 Constitution (revised in 2002) states that all citizens of Burkina Faso are equal, and outlaws discrimination based on gender. The country has also ratified the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), including the Optional Protocol, and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (in 2006).³ Since 1997 there has been a dedicated Minister for Women. Despite legislative initiatives, significant obstacles remain to ensure women's access to justice, equality, and positions of political power.

1. Discriminatory family code

The 1989 Family Code sets the minimum **legal age for marriage** at 17 years for women and 20 for men, although civil courts can authorise exceptions for women from the age of 15 and for men from the age of 18 (art. 238). In practice, there is a high incidence of **early marriage**: according to 2010 data from the UN, 32.4% of girls aged 15 to 19 were married, divorced or widowed.⁴ The average age at first marriage is 17.8 years. Under Burkinabe criminal and civil law, forced marriage is illegal.⁵ Despite this, many families continue to force their daughters into marriage.⁶ Poverty and the prospect of dowry motivate families to arrange marriages for their daughters as soon as they reach puberty.

Under articles 235, 236 and 304, Burkina Faso's Family Code states that spouses are equal partners, gives mothers and fathers equal share in **parental authority**, and stipulates the same obligations and responsibilities in relation to their children.⁷ The law also provides that in the event of a spouse's death, custody will be granted to the surviving spouse (art. 519). In the event of divorce, child custody is awarded to the parent who can

¹ UNECA (2009b), p. 74

² CEDAW (2009), p. 11

³ African Commission on Human and People's Rights (n.d.)

⁴ OECD (2014), *Gender, Institutions and Development Database*, <http://stats.oecd.org>

⁵ FAO (n.d.)

⁶ CEDAW (2009), p. 59

⁷ FAO (n.d.)

provide the best care.⁸ In practice, custody of children under the age of seven is most often granted to the mother.⁹

In the matter of **inheritance**, widows and female children have an equal legal right to inherit property under articles 742-744 of the Family Code; however this is widely disregarded in favour of customary law, which grants no right of inheritance to widows or minor children.¹⁰ According to custom, the family of the deceased often claims rights to the couple's possessions, leaving the widow in an extremely precarious situation.¹¹ Girls are expected to cede land that they have inherited to their brothers.¹²

Women may, by law, initiate **divorce**. Divorced women or widows may now remarry before the end of a period of 300 days. This may be reduced to 30 days if she is able to provide proof that she is not pregnant (art. 246). The 2009 report to the CEDAW Committee contains the observation that (in the context of domestic violence), 'the preferred strategy of the judicial authorities and legal advisory services (social services, Ministry for the Advancement of Women, NGOs and associations) is mediation, because the separations that follow domestic violence are mostly disadvantageous for the woman',^{13[21]} indicating that women's rights – and wellbeing – in the event of divorce are compromised.

More

Although monogamy is recognised as the common law form of marriage (art. 232), the Family Code authorises **polygamy**; as of 2010, 42% of married women lived in a polygamous union.¹⁴ **Levirate marriage** is, however, forbidden by law, although it is still practiced.¹⁵ Under this custom, widows are obliged to marry a brother of their deceased husband in order to retain custody of their male children; otherwise, custody of sons automatically transfers to the family of the deceased.¹⁶

According to the 2010 DHS, the age-specific **fertility rate** of women age 15-19 was 130 births per 1000 women,¹⁷ and according to the World Bank for 2011, the rate was 118 per 1000.¹⁸

Data on **decision-making** show that men primarily make decisions concerning women's health and important household purchases (75% and 79% of the cases surveyed, respectively). In only 8% of the cases, is it the woman who primarily makes decisions regarding her health care and in only 4% of the cases with regard to important household purchases.¹⁹ Women have slightly more autonomy when it comes to decisions regarding visits to family; in 35% it is primarily the woman who decides, although in 47% of the cases, the husband makes the decision.

⁸ CEDAW (2004), p. 46

⁹ CEDAW (2004), p. 46

¹⁰ UNECA (2009a), p. 42

¹¹ FAO (n.d.)

¹² FAO (n.d.)

¹³ CEDAW (2009), p. 18

¹⁴ INSD (2012), p. 8

¹⁵ FAO (n.d.), quoting from Cotula (2007)

¹⁶ FAO (n.d.)

¹⁷ INSD (2012), p. 55

¹⁸ World Bank, 2014, <http://data.worldbank.org/indicator/SP.ADO.TFRT>

¹⁹ INSD (2012), p. 279

2. Restricted physical integrity

There are no specific laws in place in Burkina Faso pertaining to **domestic violence**.²⁰ The penal code does provide specific protection to girls from violence in schools.²¹ Few cases of violence against women make it to the courts, partly as a result of women fearing the consequences of court action, and partly because of a lack of legal aid.²² The state offers limited support to victims of domestic violence, through reception, advisory and guidance services for women whose rights have been violated; otherwise, such support is offered from NGOs with limited resources.²³

Attitudes towards domestic violence were reported in the most recent Demographic and Health Survey (DHS 2010). Almost half of women (44%) believe that, for at least one of the reasons cited (burning the food, arguing with her husband, going out without telling him and refusing to have sex with her husband), a husband is justified in beating his wife.²⁴ The proportion of women who agree that wife beating is justified is highest with regard to situations in which a wife argues with her husband (31%) and when she goes out without telling him (30%).²⁵ In 2010, 15% of women reported experiencing sexual and/or physical violence by an intimate partner in their life time.²⁶

There is no specific legal framework in place to deal with **sexual harassment**, although the 2008 Labour Code (*Code du Travail*, articles 37 and 422) explicitly prohibits sexual harassment in the workplace. The law prescribes fines of 50 to 600 thousand CFA francs and prison terms of up to five years for those convicted of sexual harassment in the workplace. Sexual harassment is defined as obtaining sexual favours by command, word, intimidation, act, gesture, threat or coercion.

Legislation in relation to **rape** is in place; article 417 of the Penal Code punishes rape with 5 to 10 years imprisonment, and up to 20 years if the victim is under the age of 15. The law does not, however, recognise spousal rape and is generally poorly implemented.²⁷ A number of organisations counsel rape victims and once rape is reported, the police investigate the accusation and bring the case to court if the evidence warrants. However, no official statistics are available with regard to the prevalence of rape.²⁸

Female genital mutilation (FGM) was criminalised in Burkina Faso in 1996, and the 2005 law on Reproductive Health similarly outlaws such practices. In addition, a national action plan for 2009-2013 was put into place, calling for 'Zero Tolerance for Female Genital Mutilation'.²⁹ Although FGM remains relatively diffused in Burkina Faso (76% of women reported having had the procedure done)³⁰, evidence suggests a steady decline in the practice, accompanied by the majority of women and men reporting they believe FGM should end.³¹ The

²⁰ CEDAW (2009), p. 18

²¹ UNECA (2009a), p. 42

²² CEDAW (2010b), p. 9

²³ CEDAW (2009), p. 19; CEDAW (2010), p. 7

²⁴ INSD (2012), p. 271

²⁵ INSD (2012), p. 283

²⁶ OECD (2014), Gender, Institutions and Development Database, <http://stats.oecd.org>

²⁷ UNECA (2009b), pp. 68-69

²⁸ US Department of State, 2011

²⁹ CEDAW (2010), p. 10

³⁰ INSD (2012), p. 291

³¹ INSD (2012), pp. 289, 300

country is one of the few in the region to have prosecuted perpetrators under legislation banning FGM.³² The 2010 DHS also reports a significant difference in the percentage of women who have experience FGM related to age: 89% among those 45-49 years of age compared to 58% among those aged 15-19.³³ Drawing on data from the National Committee to Combat the Practice of Excision, the 2009 report to the CEDAW Committee states that while FGM is now a declining trend, the age at which girls are subjected to the procedure is falling, with the procedure often being performed on very young babies.³⁴

Legislation is in place granting the right to reproductive health; in addition, a national strategic plan is in place to secure the supply of **contraceptives** for the period 2005-2015.³⁵ While showing signs of improvement, modern contraceptive prevalence remains low, rising from 9% in 2003 to 15% in 2010 among women in a union. Overall, 14% of all women reported using a modern method of contraception.³⁶ Despite the existence of a national family planning policy (adopted in 2004),³⁷ which guarantees access to contraception to all women, doctors often only provide contraceptives to women who have written permission from their husbands.³⁸ The need to travel considerable distances to access health services is another factor limiting access to reproductive and other health services for rural women.³⁹

Abortion is only legal in Burkina Faso to save a woman's life, to protect her physical and mental health, and in the case of rape, incest or foetal malformation.⁴⁰

3. Son bias

The male-to-female **sex ratio** at birth in 2013 is 1.03 and for the working age population (15-64 years old) is 1.0.⁴¹

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

More

Child **malnutrition** rates are high for both boys and girls in Burkina Faso, and 2010 DHS data would indicate that in this regard boys and girls face relatively the same conditions. If anything, girls fair slightly better in terms of percentage of the population stunted or underweight.⁴²

In terms of **education**, the primary-secondary gross enrolment ratio (2006-2012) was 48.6 females for every 54.4 males, indicating a slight bias in favour of men. This is accentuated at the third level, where women make up 32.6% of the total.

³² UNFPA-UNICEF (n.d.)

³³ INSD (2012), p. 291

³⁴ CEDAW (2009), p. 21

³⁵ CEDAW (2009), p. 40

³⁶ INSD (2012), p. 67

³⁷ UNECA (2009a), p. 19

³⁸ UNECA (2009b), p. 121

³⁹ CEDAW (2009), p. 56

⁴⁰ UN, Department of Economic and Social Affairs, Population Division (2013)

⁴¹ CIA. <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (accessed 28/03/2014)

⁴² INSD (2012), p. 186

4. Restricted resources and assets

Women in Burkina Faso face numerous restrictions in relation to ownership rights, despite the existence of state policies aimed at ensuring fair **access to land** for the entire rural population⁴³ and the fact that the law grants men and women equal rights to ownership.⁴⁴ In part, this is due to the fact that inheritance is the primary means of accessing land, and as outlined above, women's right to inherit is often violated.

Data on access to both land and **non-land assets** suggests discriminatory practices. The 2010 Demographic and Health Survey (2010) reports that 54% of men are the sole owners of a home, compared to 5% of women. In addition, 51% of men declared owning land, compared to 32% of women. In the majority of cases, men were the sole owners of the land (37%).⁴⁵

Women are at a disadvantage in regard to **access to bank loans** in that formal financial institutions consider women "high-risk" applicants, as they often do not have financial or material security.⁴⁶ There do not appear to be any legal restrictions on women's access to bank loans, however the government reports that social and cultural barriers mean that some entrepreneurial activities are closed to rural women.⁴⁷ Government schemes are in place to increase women's access to credit, including micro-credit and loans in the form of farm materials, equipment and input.⁴⁸

5. Restricted civil liberties

There are no legal restrictions on Burkinabe women's **access to public space**, nor on accessing passports or driving. However, the 2010 Demographic and Health Survey (DHS) reports that 46.6% women declare that it is primarily their husbands who decide whether they can visit parents and relatives (compared to 35.2% who declare that they principally make this decision).⁴⁹ The right to freedom of assembly is generally respected, although in the past, some demonstrations have been violently suppressed.⁵⁰ Freedom of speech is protected by law in Burkina Faso but not respected, and journalists face intimidation.⁵¹

In 2009, a law on **quotas** for legislative and local elections in Burkina Faso was officially adopted. The law requires parties to have a minimum of 30% women candidates on their party lists; parties failing to are subject to a 50% cut in their electoral campaign funding. The law has come under some critique for having introduced superficial rather than substantive change.⁵²

Representation of women at national and local levels of government has steadily increased. The proportion of women winning seats at local government level rose from 8.9% in 1995 to 35.8% in 2006.⁵³ In 2014, there are 20 women, out of 127 seats, in Parliament, which represents 15.7%.⁵⁴ In 2012, the government created the

⁴³ CEDAW (2009), p. 58

⁴⁴ FAO (n.d.)

⁴⁵ INSD (2012), p. 271

⁴⁶ CEDAW (2009), p. 56

⁴⁷ CEDAW (2009), p. 56

⁴⁸ CEDAW (2009), p. 55

⁴⁹ INSD (2012), p. 276

⁵⁰ US Department of State (2011)

⁵¹ US Department of State (2011)

⁵² The Quota project (2010); UNECA (2009a), p. 30

⁵³ CEDAW (2009), p. 26

⁵⁴ IPU, 2014, <http://www.ipu.org/wmn-f/classif.htm>

National Council for the Promotion of Gender, charged with advising and giving public voice to advocates for greater gender quality. The council encompassed all government ministries, representatives from other sectors of government and civil society. Critics have pointed to its large size as an obstacle for effective change. National campaigns have also been run to inform women about their civic and political rights, to encourage more women to assume positions of leadership, and to counter discriminatory attitudes towards women as leaders.⁵⁵ For example, the National Democratic Institute organised a week-long Young Women Political Party Activist Leadership Academy in July 2011. Fifty young Burkinabe women from the main political parties followed sessions on communications, advocacy, conflict resolution and coalition building. They also learnt strategies to manage their multiple roles as mothers, employees and politicians. The training prepared them to run for office, move their priority issues onto party platforms with more confidence and take immediate action in their parties.⁵⁶

More

Under the Labour Code, pregnant women have the right to 14 weeks paid **maternity leave**.⁵⁷ Within the formal economy, women's participation in the **labour force** is almost equal to that of men's (women make up 46.9%), but this figure may not present the whole picture, given that so many women (and men) in Burkina Faso work in the informal sector.⁵⁸ In addition, women employees are concentrated in the state rather than the private sector, as private sector employers are more reluctant to employ women because of their childrearing and domestic responsibilities.⁵⁹

⁵⁵ UNECA (2009a), pp. 29-31

⁵⁶ NDI (2011), <https://www.ndi.org/burkina-faso>

⁵⁷ ILO (2011)

⁵⁸ UNECA (2009b), p. 130-131; CEDAW (2010a), p. 15

⁵⁹ UNECA (2009b), p. 134; CEDAW (2010b), p. 5

Sources

African Commission on Human and People's Rights (n.d.) <http://www.achpr.org/instruments/women-protocol/ratification/> (accessed 16 October 2013).

CEDAW (2009) 'Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth periodic report of States parties: Burkina Faso', CEDAW/C/BFA/6, CEDAW, New York, <http://www2.ohchr.org/english/bodies/cedaw/cedaws47.htm> (accessed 15 October 2013).

CEDAW (2010a) Implementation Monitoring Coalition of Burkina Faso. Shadow Report on the 6th report of the Government of Burkina Faso on the Enforcement of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Drafted with support from the National Democratic Institute (NDI - Burkina Faso) and the Swedish International Development Cooperation Agency (Sida).

CEDAW (2010b) 'Responses to the list of issues and questions with regard to the consideration of the sixth periodic report', CEDAW/C/BFA/Q/6/Add.1, CEDAW, New York, <http://www2.ohchr.org/english/bodies/cedaw/cedaws47.htm> (accessed 15 October 2013).

Central Intelligence Agency (CIA) (2010) The World Factbook: Burkina Faso, Washington, DC: CIA, online edition, <https://www.cia.gov/library/publications/the-world-factbook/geos/uv.html> (accessed 16 October 2013).

Central Intelligence Agency (2012) The World Factbook: Sex Ratio, <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (accessed 24 October 2013).

Cotula, Lorenzo (2007) 'Droit et genre. Les droits des femmes dans le secteur de l'agriculture', Étude législative 76, Rev. 1, Rome: FAO.

Décret N° 2008-331/PRES promulguant la loi n° 028-2008/AN du 13 mai 2008 portant Code du travail au Burkina Faso.

Food and Agricultural Organisation (FAO) (n.d.) 'Gender and Land Rights Database: Burkina Faso'. <http://www.fao.org/gender/landrights/report/> (accessed 15 October 2013).

INSD, Ministère de l'Économie et des Finances and ICF International (2012) Enquête Démographique et de Santé (EDSBF-MICS IV) – Burkina Faso 2010. Institut National de la Statistique et de la Démographie (INSD), Ministère de l'Économie et des Finances and ICF International. Calverton, Maryland, USA, <http://www.measuredhs.com/what-we-do/survey/survey-display-329.cfm> (accessed 15 October 2013).

International Labour Organization (ILO) (2011) Database of Conditions of Work and Employment Laws, <http://www.ilo.org/dyn/travail/travmain.home> (accessed 16 October 2013).

Law on Quotas for Legislative and Local Elections in Burkina Faso (Loi n° 010-2009/AN du 16 avril 2009 portant fixation de quotas aux élections législatives et aux élections municipales au Burkina Faso).

The Quota Project (2010) Global database of quotas for women, <http://www.quotaproject.org/uid/countryview.cfm?CountryCode=BF> (accessed 16 October 2013).

UN Economic Commission for Africa (UNECA) (2009a) 'Questionnaire à l'intention des pays en prevision de l'examen et de l'évaluation de la mise en oeuvre du programme d'action de Beijing quinze ans après son adoption (Beijing + 15) – BURKINA FASO' ('Country questionnaire for the Fifteenth-year Review of the implementation of the Beijing Platform of Action (BPFA + 15)').

UN Economic Commission for Africa (UNECA) (2009b) African Women's Report 2009: Measuring Gender Inequality in Africa: Experiences and Lessons from the African Gender and Development Index, Addis Ababa: UNECA.

UNFPA-UNICEF Joint Programme on FGM/C: Accelerating Change (n.d.) Burkina Faso: Laws are not enough, <http://www.unfpa.org/topics/genderissues/fgm> (accessed 15 October 2013).

UNdata. United Nations Statistics Division (2013) World Statistics Pocketbook, 2013 Edition. Department of Economic and Social Affairs, <http://unstats.un.org/unsd/pocketbook/> (accessed 16 October 2013).

UN, Department of Economic and Social Affairs, Population Division (2013) World Abortion Policies, 2013, http://www.un.org/en/development/desa/population/publications/pdf/policy/WorldAbortionPolicies2013/WorldAbortionPolicies2013_WallChart.pdf.

US State department, Bureau of Democracy, Human Rights, and Labor (2011). Country Reports on Human Rights and Practices – Burkina Faso. <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154333.htm> (accessed 15 October 2013).

World Bank (n.d.) Data: Burkina Faso. <http://data.worldbank.org/country/burkina-faso> (accessed 16 October 2013).