

Negotiating Women's Rights in Togo –
With Tight Belts and Long Arms

Legal Agency between Everyday Life, Civil Society and the State

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**Negotiating Women's Rights in Togo –
*With Tight Belts and Long Arms***

Legal Agency between Everyday Life, Civil Society and the State



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The photo on the title page was taken in the Fiokpo valley in south-west Togo in May 2003 during a ceremony to abolish the customary exclusion of daughters from inheritance and the submission of widows to degrading widowhood ceremonies. It shows the president of a “queen mothers” association holding a speech. She is trained as paralegal on women’s rights and active member of the NGO that initiated the sensitization campaign on women’s civil and family rights. She is accompanied by two of her advisors, who are wearing T-shirts with a cartoon showing a woman who proudly presents her identity card as a symbol of her civil rights. Seated behind them are NGO members from Lomé. In the background people from the valley communities witness the event. (Further pictures from this ceremony in annex A7, Photos 5 - 8).

Contents

- 1. Introduction: Theoretical and methodological outline 1**
 - 1.1 How the research question evolved 1
 - 1.2 A short review of the literature 4
 - 1.3 Conceptual debates 7
 - 1.4 Empirical Research Process 17
 - 1.5 Structure of the Dissertation 33

- 2. Arenas for negotiating women's rights in Togo as a dynamic field of legal pluralism 37**
 - 2.1 Customary and religious norms and legal forums 37
 - 2.1.1 Customary legality as socio-religious paradigms 38
 - 2.1.2 Constructing customary norms as fixed rules 39
 - 2.1.3 Women as customary legal authorities 42
 - 2.1.4 The religious embeddedness of customary legal institutions 43
 - 2.1.5 The introduction and localization of Muslim norms and institutions 45
 - 2.1.6 The mutual integration of Christian and customary norms 47
 - 2.2 State struggles with legal pluralism in historical and contemporary perspective 50
 - 2.2.1 Setting up a dual legal system under German colonial rule 51
 - 2.2.2 French colonial efforts to exclude chiefs from jurisdiction and motivate the population to "renounce custom" 53
 - 2.2.3 The non-codification of customary rights and its meaning for women's rights 55
 - 2.2.4 Colonial decrees to free women from "inhumane" and "uncivilized" custom 56
 - 2.2.5 State law after independence: Attempts to uniform legal structures 58
 - 2.2.6 The new Family Code of 1980: Emancipating counterforce to custom or discriminatory legal hotchpotch? 61
 - 2.3 International human rights instruments and national women's rights NGOs enriching the legal field 64
 - 2.3.1 Women's political and civil society participation under the one-party regime – Between suppression, instrumentalisation and taking advantage 65
 - 2.3.2 A temporary breakthrough for democracy, human rights and the separation of powers: 1990-1993 68
 - 2.3.3 International women's rights standards anchored in the new Constitution 70
 - 2.3.4 Women's political and civil society participation after the "democratic transition" 74
 - 2.3.5 Non-governmental women's rights organisations in Togo 76
 - 2.3.6 National and international networks of women's rights NGOs 81

- 3. *C'est pour mon père et je dois réclamer ça !* Negotiating daughters' inheritance rights 83**
 - 3.1 The legal field of women's land and inheritance rights 83
 - 3.1.1 Customary land rights and their evolution 83

- 3.1.2 Contemporary land practices in Togo 87
- 3.1.3 Gendered inheritance of family land and houses in customary norms 90
- 3.1.4 Inefficient protection of women's inheritance rights by state law 93
- 3.2 Everyday practices of inheritance as the dynamic negotiation of manifold options 95
 - 3.2.1 The selective use of the state inheritance model 95
 - 3.2.2 *Les administrateurs des biens – la plupart du temps ce sont des voleurs!* Abusive inheritance administrators 96
 - 3.2.3 The transition from lineage to descent entitlements 97
 - 3.2.4 Contesting seniority among descendants 99
 - 3.2.5 Contesting male privileges among descendants 99
 - 3.2.6 The jurisdiction *Aboflan*. Reversing pro-woman innovations of custom and institutionalising male privileges 101
 - 3.2.7 NGO activities to improve women's inheritance rights as daughters 105
- 3.3 The case of Anita – *Ce qui est à César est à César!* 106
 - 3.3.1 What is at stake? Introduction to the conflict story 106
 - 3.3.2 Locking the father's room to hinder the lineage from "property grabbing" 109
 - 3.3.3 Taking over the funeral management to contest lineage privileges 110
 - 3.3.4 Demanding to administer the father's share in the grandfather's land 112
- 3.4 Summary 132
- 4. *Le maïs a toujours tort au pays des poules* – Negotiating marital rights 137**
 - 4.1 Institutionalising marriage within the plural legal field 137
 - 4.1.1 The flexible face of customary marriage and the changing role of bride-wealth 138
 - 4.1.2 Insisting on a customary marriage institutionalisation 143
 - 4.1.3 Insecure constitution of marriage through pregnancy 146
 - 4.1.4 Civil marriage and its construction through everyday practice as a private male affair 149
 - 4.1.5 Using church marriage to prevent or end informal and customary polygyny 153
 - 4.1.6 Refusing to get married in church in order to keep the option for divorce 154
 - 4.1.7 NGO activities to improve the institutionalisation of marriage 155
 - 4.2 Struggling for economic and reproductive rights during marriage 156
 - 4.2.1 *La femme qui travaille n'obéit pas son mari*: Struggling for the right to work 156
 - 4.2.2 Disputing marital budgets: Gendered aspects of social support to enforce economic rights and obligations 161
 - 4.2.3 *Dans le foyer, s'il n'y a pas d'enfant, c'est rien!* – Negotiating reproductive rights and obligations 166
 - 4.3 Dissolving marriage and negotiating child custody, maintenance, and housing support 172
 - 4.3.1 Customary divorce on the woman's initiative 172
 - 4.3.2 New forms of repudiation 175
 - 4.3.3 Fighting the disgrace of being a divorced woman 179
 - 4.3.4 Polygyny as a strategy of divorced women to conquer new social spaces 180
 - 4.3.5 From averting to initiating a divorce in court 182

- 4.3.6 *Tu pars comme tu es venue, avec tes seins seulement* – Claiming child custody, maintenance, and housing support after divorce 184
- 4.3.7 Changing perspectives on marriage norms 188
- 4.4 Summary 189

- 5. *La belle-famille va te faire voir de toutes les couleurs* – Negotiating rights as a widow 195**
- 5.1 Widowhood ceremonies and the negotiation of alternatives 195
 - 5.1.1 Customary widowhood ceremonies embodying gendered power inequalities 195
 - 5.1.2 Family support for refusing to undergo widowhood ceremonies 200
 - 5.1.3 Christian women’s groups lobbying for alternative widowhood ceremonies 202
 - 5.1.4 *Quelle est cette femme là qu’on veut épouser, elle fait des lois?* Fixing widow’s rights in a marriage contract 203
 - 5.1.5 The half-hearted protection against widowhood ceremonies by state law 206
 - 5.1.6 NGO-support to control the husband’s funeral against intimidating in-laws 208
 - 5.1.7 Re-activating the traditional flexibility of customary norms to abolish degrading widowhood ceremonies: The Fiokpo campaign 209
- 5.2 The problem of widows’ housing and inheritance 212
 - 5.2.1 Avoiding to confront “property grabbing” in-laws 212
 - 5.2.2 Levirate – a desirable alternative? 214
 - 5.2.3 Discrimination against widows in the inheritance of land and houses according to customary, Muslim, and state legal norms 217
 - 5.2.4 *Et moi, la mère ?* State law antagonizing mothers while privileging widows 218
 - 5.2.5 NGO strategies to avert widow’s exclusion from inheritance 220
- 5.3 Accessing widows’ pensions and orphans’ allowances 222
 - 5.3.1 Jurisdictional and administrative undermining of state laws to the detriment of women 222
 - 5.3.2 State law provoking conflicts between widows and their in-laws 224
 - 5.3.3 Controlling one’s pension by strengthening ties to in-laws 225
 - 5.3.4 NGOs trying to enhance widows’ access to pensions 228
- 5.4 Summary 229

- 6. **Continuity and change in the gendered construction of legal pluralism in everyday life** 231**
- 6.1 Socially approved and sanctioned procedures to settle a conflict 231
- 6.2 Working one’s way through the plural legal field 234
- 6.3 The multifaceted use of the legal field by “custodians of tradition” to create new legitimacies 238
- 6.4 Legal forums juggling with the normative repertoire available 241
- 6.5 Legal forums between competition and cooperation 242
- 6.6 *Femme, laisses-tomber ce litige, sinon tu vas mourir!* Gendered access to customary and religious legal forums 245

- 6.7 *Si tu n'as pas les bras longs, la loi ne peut pas t'aider* – Gendered access to and use of state legal forums and difficulties in enforcing statutory rights in everyday life 251
- 6.8 NGO legal counselling centres and paralegal advisors providing alternative legal forums for women 258
7. ***Nous vivons une révolution culturelle!* Women's rights NGOs creating new female spaces** 263
- 7.1 Changing gender relations in everyday life 264
- 7.1.1 Enhancing women's negotiating power with husbands, state services and employers 264
- 7.1.2 Changing the lives of paralegals 266
- 7.1.2.1 Paralegals enlarging their room for manoeuvre by juggling with the legal repertoire – The case of Benida 271
- 7.1.2.2 *Je ne veux pas te piétiner, ne me piétines pas non plus!* The personal is political: Struggles of a paralegal within her family and community – The case of Sophie 275
- 7.1.3 *Certains maris nous accusent d'insuffler la révolte à leurs femmes* – Letting men into the paralegal field? 279
- 7.1.4 Walking the tightrope between countering and reproducing gendered systems of ignorance 285
- 7.2 Strengthening and engendering civil society: *L'état nous laisse très peu d'espace de manœuvre, mais ce petit espace nous l'utilisons à cent pourcent* 288
- 7.2.1 Bringing women's rights to the agenda of associations and NGOs 289
- 7.2.2 Forming, institutionalising and “up-grading” women's groups 290
- 7.2.3 Paralegals acting as conscious citizens 291
- 7.2.4 The creation of female spaces for political and legal discourse and interaction through journals, conferences and paralegal district networks 292
- 7.2.5 *Homme ou femme, la vie de la nation c'est mon affaire* – Promoting women's participation in political decision-making 295
- 7.2.6 The political is private: Promoting women's decision making at the family and community level and linking gender to democracy 296
- 7.3 Making traditional authorities and state structures accountable to women's rights 298
- 7.3.1 Initiating new societal dynamics by training male and female traditional leaders on women's rights 298
- 7.3.2 Constituting a public eye on state legal and administrative practices without becoming co-opted by the state 302
- 7.3.3 Capacity building among registry assistants to ensure women's access to identity papers as a basis for their social, economic, political and civil rights 303
- 7.3.4 Training judicial and extra-judicial stakeholders on gender, women's rights and the application of international human rights standards 304
- 7.4 Lobbying for law reforms on the national and international level 308
- 7.4.1 *Les femmes veulent monter sur les hommes* – The revision of the Family Code in the clutches of politics 308
- 7.4.2 The achievement of a Protocol on women's rights to the African Charter on Human and People's Rights 312

- 8. Conclusions and outlook** 315
- 8.1 The reproduction of the gender order through normative orders and legal forums 315
- 8.2 *With tight belts and long arms*. Resources for negotiating women's rights 316
- 8.3 Modes of negotiating women's rights 318
- 8.4 Women's ambivalent stance towards legal pluralism 319
- 8.5 Women's rights NGOs creating female spaces in overlapping private and public spheres 320
- 8.6 Challenges for women's rights NGOs in Togo 321
- 8.7 Strengthening women's rights – strategic considerations for development 322
- 8.8 The increasing relevance of “glocal” interdependencies for negotiating women's rights 323

Annex 325

- A1 Biographical background of women from case studies 325
- A2 Form *Procès-Verbal du Conseil de Famille* 327
- A3 Form *Certificat d'Hérédité* 328
- A4 Leaflet *Une femme, une identité* 329
- A5 Cartoon *Nécessité du mariage civil* (Femme Autrement 22/1998:8) 330
- A6 Cartoon *J'ai tout perdu!* (Femme Autrement 18/1997:8) 331
- A7 Photos 332
- A8 List of interviews 336
- A9 List of legal counselling sessions, mediations, court sessions, NGO-workshops and other events attended 338

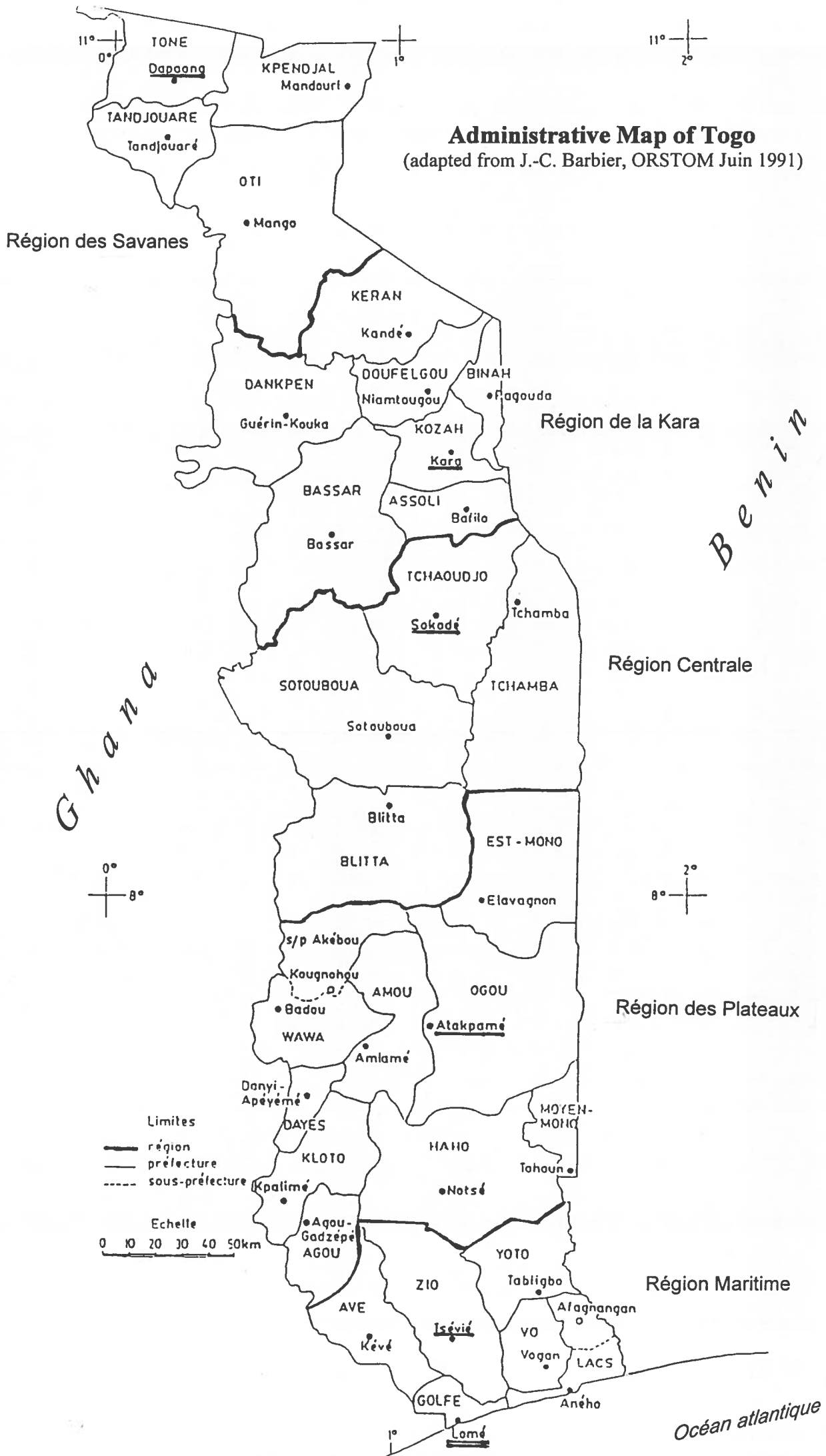
Glossary 342

Abbreviations 345

Bibliography 349

List of Figures

- Administrative Map of Togo VIII
- Photo 1 Queen mother's speech at the Fiokpo ceremony I
- Photo 2 Customary court in Lomé 332
- Photo 3 Graffiti at disputed house 332
- Photo 4 Paralegal sketch on marriage of underage girls 332
- Photo 5 The Fiokpo campaign on women's family rights and civil rights 333
- Photo 6 Chiefs attending the Fiokpo ceremony 333
- Photo 7 Sacrifices at the Fiokpo ceremony 334
- Photo 8 Dancing women celebrating the Fiokpo ceremony 334
- Photo 9 National forum of paralegal advisors 335
- Photo 10 Posters of the civic education campaign 335
- Photo 11 World March of Women in Togo 335



Administrative Map of Togo
 (adapted from J.-C. Barbier, ORSTOM Juin 1991)

Ghana

Benin

Océan atlantique

11° 0' 1° 11° 20'

0° 8° 2° 8°

Limites
 ——— région
 ——— préfecture
 - - - - sous-préfecture
 Echelle
 0 10 20 30 40 50km

TONE
 Dapaong
 KPENDJAL
 Mandouri
 TANOJOUARE
 Tandjouaré
 OTI
 Mango
 KERAN
 Kandé
 DANKPEN
 Guérin-Kouka
 DOUFELGOU
 Niamtougou
 BINAH
 Paqouda
 KOZAH
 Karg
 BASSAR
 Bassar
 ASSOLI
 Bafilo
 TCHAOU DJO
 Sokodé
 Tchamba
 SOTOUBOUA
 Sotouboua
 TCHAMBA
 Blitta
 BLITTA
 EST - MONO
 Elavagnon
 s/p Akébou
 Kougnohou
 Badou
 WAWA
 Amlamé
 AMOU
 OGOU
 Atakpamé
 Danyi-Apéyémé
 DAYES
 Kpalimé
 KLOTO
 HAHO
 Notsé
 MOYEN-MOHO
 Tahoun
 AGOU
 YOTO
 Tabligbo
 AVE
 Kévé
 Isévié
 VO
 Vogan
 LACS
 GOLFE
 Lomé
 Aného

Région des Savanes

Région de la Kara

Région Centrale

Région des Plateaux

Région Maritime

1. Introduction: Theoretical and methodological outline

1.1 How the research question evolved

Before starting my doctoral studies¹, I spent some years in West Africa, doing consultancies on gender in education, community based health care, and women's rights, as well as working for the United Nations Population Fund (UNFPA) in Togo (1997 – 1999). Here I was confronted with the everyday realities of living in an authoritarian state that frequently disrespects the rule of law and suffocates most societal dynamics. I asked myself how at all people could exert their statutory rights under such conditions. The first thing I had to learn was that it is of no use to draw a black and white picture regarding the political situation in Togo, but that everybody somehow attempts to survive under, work with, profit from or overcome the repressive structures – i.e. that despite the repression, widespread negotiations and manifold arrangements take place, however with differentiated consequences.

As UNFPA program officer I was responsible for a project to strengthen both governmental and non-governmental institutions for the reduction of gender inequalities. In this context I got to know different approaches of NGOs and the government to promote women's rights as well as some of the underlying structural problems. I also participated in NGO workshops for the training of paralegal advisors and in various conferences and seminars to discuss specific rights related gender issues, such as child traffic and reproductive health.

Observing the strong male dominance in state structures and frequent paternalistic behaviour of government officials, I assumed it to be extremely difficult for women to use the state legal and administrative services. This assumption was furthermore nurtured by the prevalent discourse (especially among ministerial staff, NGOs and some donors) on Togolese women having no rights, being traditionally treated as minors and legal objects of men, and being excluded from using their statutory rights due to their ignorance and illiteracy. I asked myself whether, under the undemocratic political conditions, Togolese women's rights NGOs would be able to initiate any substantial changes or whether their busy activities were just driven by a quirk of donors, who were surfing on the international gender wave and who were hindered by the undemocratic structures in Togo to spend money otherwise. On the other hand, I was impressed by the economic strength of many Togolese traders and market women as well as by the personal strength and outspokenness of other women with a successful professional career, some of whom were active in these very same women's rights organisations. As a con-

¹ This dissertation was supported by the Heinrich-Boell-Foundation.

sequence, I started to doubt the above-mentioned discourse, especially its simplistic dichotomy of a state law protecting women's rights versus ignorant women being the victims of the "heavy weight of tradition".

As a German trained ethnologist (with some geography and law) and having been exposed to British social anthropology during one year at the School of Oriental and African Studies (SOAS) in London, I found it challenging to combine interpretative and everyday sociology and approaches of social and gender construction and orders as practiced at the Sociology of Development Research Centre in Bielefeld, with debates on legal pluralism in Africa. Thereby I decided to adopt a common approach of negotiating meaning and practices of women's rights in Togo.

I wanted to find out how women in situations of legal conflict as well as in everyday "troubleless cases" (Holleman 1986) negotiate their rights, assuming that norms are generally negotiated, but that a broad field of legal pluralism is even more conducive to processes of negotiation. I therefore decided to analyse how the dynamic and complex situation of what is regarded to be legal pluralism in Togo – consisting of statutory, traditional, religious and international norms as well as of their respective courts, legal authorities and manifold mediators – translates into everyday life from the perspective of women. This required to discern the most prominent legal problems of women, to analyse how and in which interpretation women use the legal repertoire of norms and institutions in practice when tackling these problems, which economic, cultural and social resources they mobilise during the negotiation processes, and the "rationality" of their socially embedded strategies². This allowed me to carve out – from a gender perspective – interactions between women's agency and socio-legal structures as well as the relevant power dimensions involved.

I expected that, in the Togolese context, the social space for legal negotiation processes (cf. Strauss 1978) would be very limited and constitute an issue as such fought over by the actors. I assumed, furthermore, that women are especially disadvantaged by the state legal system and therefore have to mobilise the whole range of normative orders. This would mean that modes of negotiating rights within legal pluralism can be especially well studied by focussing on women. On the other hand, a gender perspective of the analysis would allow to throw light on continuity and change of the societal gender order.

² Cf. Schuetz (1960:337-339), Lachenmann (1991:68ff, 1983:7), Long (1977:187-190, 1984), Giddens (1984).

In order to explore everyday legal practices of Togolese women and women's rights NGOs, I undertook nine months of empirical research in southern Togo, five and two months in 2001 and one month each in 2002 and 2003. The data collected comprise 63 narrative, semi-structured and biographic interviews with 27 individual women and men as well as extensive participant observation in more than 40 legal events. The latter included sessions at state courts and customary courts as well as mediations, legal counselling, and other activities of women's rights organisations. This was supplemented by the study of court files, NGO archives and the consultation of various libraries.

The result is an empirically based qualitative study of women's legal agency and the social construction of legal pluralism and gender relations within the authoritarian state of Togo, both at the level of the everyday lifeworld of individual women and at the level of women's rights organisations and their interactions with the population, civil society, the state and the international arena.

This means, on the one hand, that women as actors, their perspectives and manifold interactions – including with men – constitute the focus of this analysis, while the perspectives of men (except as representatives of legal forums) figure less prominently in this text. This has been a conscious choice, justified by the general scarcity of socio-legal analysis of women's perspectives on legal pluralism as well as by pragmatic considerations of 'how much one can handle within one dissertation'. Nevertheless, a study of the perspectives of men (as husbands, sons, fathers, in-laws, divorcees, widowers, inheritors, heads of family, employers, judges, chiefs, policemen etc.) on legal pluralism would be desirable to further enrich the gender dimension of the analysis. However, following H. Moore's gender approach³, in this text neither women nor men are treated as a homogenous group. To the contrary, a multitude of facets of legal negotiations according to differences between women and between men, as to their economic situation, education, religion and family status are carved out.

On the other hand, as this dissertation is first of all an empirical study, it focuses on Togo, a small country in West Africa that is largely neglected by sociological and anthropological research – and within Togo on its southern part. Data from central and northern parts of Togo, as well as from other African countries are only occasionally referred to in order to mark specificities or commonalities, but the dissertation is not meant to be a comparative analysis.

³ H. Moore (1993, 1994) emphasized the importance of not only studying gender differences but also commonalities between men and women, furthermore differences within the gender categories as well as different social identities that individuals adopt through the course of their life or even simultaneously (cf. Hauser-Schaeublin/ Roettger-Roessler 1998:15-18).

1.2 A short review of the literature⁴

Legal agency in everyday life – i.e. going beyond the normative aspect of legal orders – was already studied by Llewellyn/ Hoebel (1941) as well as Gluckman (1955), who analysed conflicts and “trouble cases”. Spittler (1980) and Chanock (1985) looked into the practices of various courts. Many authors analysed the interaction between state law and various non-state orders in legal pluralism (Spittler 1975, Pospisil 1982:142, F. von Benda-Beckmann 1994⁵). As soon as rights are claimed – and this happens not only in courts – this social activity is characterized by multiple interpretations by the actors involved (K. von Benda-Beckmann 1984, F. v. Benda-Beckmann 1993, Alber and Sommer 1999). The power aspect of legal negotiations came into focus, where the transfer of law in the context of development projects was scrutinized as to its communication problems (Starr and Collier 1989, Merry 1992). However, most of these works contain no gender perspective.

The anthropological research into women and gender, having taken off since the eighties, did focus on women as social actors, yet mostly failed to consider legal aspects⁶ (cf. Wanitzek 1998:121-122). At the same time also jurists and legal sociologists turned towards gender questions. Even if they tackled mainly western legal culture, their insights are important for the present study: As opposed to work done by women’s rights activists (cf. Schuler 1990, 1986), who focus on the consequences of laws for women (Stewart 1993), feminist jurists are looking at the very construction of gender through the law itself; legal discourse thus is scrutinised as a social practice (Smart 1991, 1989).

On the other hand, while there exists plentiful scientific literature both on legal pluralism in Africa⁷ and on women’s rights organisations in Africa⁸, the everyday legal practices of African women – including their varied and often contradictory interaction with normative orders and legal forums, as well as the role of women’s rights organisations in this reflexive process – have hardly been studied. Similarly, within the context of development cooperation, especially since the Fourth World Conference of Women in Beijing (1995)

⁴ This review does not claim to be exhaustive but rather attempts to indicate some general tendencies.

⁵ The sociological and anthropological literature on legal pluralism is vast; more of it will be discussed in chapter 1.3.

⁶ Among the exceptions are e.g. Ludwar-Ene (1993), Mukhopadyay (1998), Bledsoe (1980).

⁷ Cf. Rouveroy van Nieuwaal (1975), F. von Benda-Beckmann (1992), Hazdra (1999), Alber/ Sommer (1999), Woodman (2001), Schmid (2001) etc.

⁸ Cf. Schuler (1986), Armstrong (1992), Klemp (1997), Schaefer (1999, 2001), Braig/Woelte (2003) etc.

a big gap between modern legal institutions and norms on the one hand and the everyday legal reality on the other hand (Diaby-Pentzlin 1996:311, similarly E. A. Spittler 2000:1)

has been realized and manifold projects “to ensure that women’s existing rights are put into practice to a greater degree” (Osterhaus 2001:3) have been supported. But the call for in-depth studies on women’s legal agency to bridge the gap between law and everyday life has so far remained largely without response.

Among the few gender-specific compendiums including sub-Saharan Africa and taking legal questions into account are the ones edited by Potash (1986) on widow’s interests and strategies, by Parkin/ Nyamwaya (1987) on specific aspects of marriage, such as bridewealth, polygyny and divorce, as well as by Baerends (1994). She points out that the gender ideology, which was implemented in Africa by Western colonizers through legal and administrative measures – and which constructed a male public and a female private sphere –, reinforced African ideas about male superiority and undermined actual power of women (Baerends 1994:12, 16). It becomes clear that the African legal pluralisms bring about great legal insecurity for women: Because of the inefficiency of the state judiciary system they can hardly ever push through their statutory rights; but even their traditional rights are distorted when applied in state courts in ways detrimental to women, for instance by overlooking male duties towards women, which traditionally were linked to male rights (Baerends 1994:83-86).

Geographically looked at, the main focus of research about women’s rights in sub-Saharan Africa has been on Anglophone countries, especially of southern Africa (e.g. A. Griffiths 1997). As Schäfer (1999) shows, most activities in this latter area are connected to the *Women and Law in Southern Africa Research Project (WLSA)*⁷. The situation in countries North of the Sahara is largely dealt with by the organisation *Women Living under Muslim Law (WLML)*. Concerning women’s rights in Francophone Africa, apart from some more recent works¹⁰, an early study by Dobkin (1968) has to be mentioned: It demonstrates the negative effects that French colonial decrees, issued in a zeal for civilization and totally ignoring the cultural embeddedness of traditional norms, had for social institutions, which used to provide women with security and some room for manoeuvre. Recently this geographic area started to

⁷ For example Armstrong et al. (1993), Stewart/ Armstrong (1990), Armstrong/ Ncube (1987).

¹⁰ E.g. Maddox Toungara (2001) about marital rights in Ivory Coast, Jansen (1998) about divorce in Cameroun and Grohs (1998) about widowhood in Burkina Faso.

be covered also by publications of the newly founded West African branch of the women's rights network WILDAF¹¹.

Concerning Togo, mainly missionaries of the *Norddeutsche Mission* (Spieth 1905, 1908) and French and German colonial officials or representatives (e.g. R. Asmis 1911a, 1911b, Schlettwein 1928a, 1928b, 1930, Pic 1931) studied the colonial legal situation, as part of the efforts to effectively control the colonies¹². The post-colonial situation of legal pluralism in Togo, as well as people's strategies to deal with this situation, have been studied by legal sociologists and legal anthropologists¹³. From a historical perspective Mignot (1985) analysed the relationship between land rights and political power among the *Mina* during the time of the *Glidji* kingdom. From an ethnographic perspective Lohse (1970) described property rights among the *Ewe*, while the embeddedness of *Ewe* customary rights in their religious world order was depicted by Rivière (1981). Rosenthal (1998) pointed out the meaning of Voodoo spirit possession in southern Togo for the negotiation of the moral order, including the gender order.

While there exist studies about gender as well as about legal questions for the *Anlo-Ewe* of neighbouring Ghana (cf. Greene 1996, Nukunya 1973, 1969) the legal situation of women among the *Ewe* of Togo as well as among other ethnic groups in Togo received hardly any scientific attention. As an exception, Baerends (1990) analysed the marriage system of the *Anufom* in Northern Togo. She found out that women's scope in everyday practice is much bigger than the more restrictive ideological representation given by women and men about their norms. In a journalistic work Deffarge and Troeller (1984) describe the practical aspects of polygyny in everyday life through the eyes of Togolese women, whereas Adjamagbo-Johnson (1994) deals with women's difficulties to push through their land inheritance rights from a juridical perspective. Also remarkable are the publications of local women's rights organisations, which will be further described in chapter 2.3.5 and 7.2.4. This study with its gendered focus on legal agency between everyday life, civil society and the state in francophone Togo constitutes therefore a new approach.

¹¹ Women, Law & Development in Africa (WILDAF) or in French *Femmes, Démocratie & Développement en Afrique (FEDDAF)*, has its headquarters in Zimbabwe.

¹² Cf. von Trotha (1988) and Rouveroy van Nieuwaal (1980, 1979).

¹³ Such as Rouveroy van Nieuwaal (1998, 1994, 1987, 1976), Rouveroy van Nieuwaal/ Rouveroy van Nieuwaal-Baerends (1986, 1977), Adjamagbo (1986).

1.3 Conceptual debates

In this dissertation, through analysing the empirical material on women's individual and collective negotiations of rights in Togo, women's room for manoeuvre within legal pluralism will be carved out by showing women's social spaces in the sense of the social relations they construct, the rationalities or logics of action (cf. Lachenmann 1990, 2001a:18-22) they develop and sometimes institutionalise, the dynamics they create between personal social relations or networks and societal structures by pushing or reinforcing social boundaries. Thereby four theoretical concepts will be of special relevance: the concepts of negotiation, legal pluralism, systems of ignorance and female social spaces.

The concept of negotiation in the legal context

Negotiation is a sociological concept, introduced by symbolic interactionists (such as Husserl, Mead, Weber, and Schuetz) to name the continuous process, that actors engage in, in every social interaction and in social relations of any kind, to mutually fine-tune their definitions of the situation, i.e. the meaning they ascribe to their own and each other's actions, thereby establishing a common working agreement, which has to be constantly produced and reproduced (Meuser 1994:71).

By using the concept of negotiation in the legal context and applying a gender perspective, I want to propose an innovative combination, not yet been undertaken regarding West Africa.

I use the term "negotiation" in the legal context to look at the dynamic aspect of norms¹⁴, i.e. the interactive – yet not always peaceful–process that individuals, groups or institutions engage in to establish the legitimacy of a claim, ideally by reaching a common working agreement on this legitimacy. Thereby legitimacy refers to the cognitive and moral validity of one's claim, established by ascribing a meaning to it and loading it with positive value (Berger/Luckmann 1999:98-112). The meaning of a claim is subject to interpretation, especially concerning the underlying values, the context-specific conditions to be taken into account, the priorities to be observed etc., and thus constantly reconstructed. This approach goes beyond the general sociological definition of norms "as a cultural (shared) definition of desirable behaviour" (Williams 1972:204).

¹⁴ I do not differentiate between legal and extra-legal norms, as the underlying criteria of the existence of a norm-authorising sanctioning power are not universally applicably and are strongly biased towards a state-centred perspective (cf. Roberts 1981:17-29).

As is highlighted by the term “working agreement”, such shared definitions or compromises can be ad-hoc or, to a certain degree, stable over time (especially if they are codified and sanctioned by powerful authorities), but nevertheless, once established they are constantly subject to interpretation and redefinition. In fact, as G. Spittler has acknowledged, norms are “nothing else than a compromise”, resulting from different interests and means of power, and the stability of norms is questioned in any new situation or change in power relation (1967:87). This is to say, on the one hand, that norms are not only used in negotiations of any kind, but they are themselves subject to negotiation (Olivier de Sardan 1999:36, Comaroff/Roberts 1981:14).

My focus on negotiating rights therefore serves to operationalise a perspective on “law [as] a living growth – not a changeless code” (Thurnwald 1934:8, quoted in Schott 1983:189). On the other hand, this indicates that the negotiation of norms is always accompanying social change. In most cases, the change of norms reflects previous or ongoing changes in social order (gendered role expectations etc.), i.e. the norms usually lag behind the social reality. For instance, in Togo various everyday practices of inheritance are neither reflected in customary norms nor in state law. In some cases, the change of norms contributes to induce social change. For example, the colonial institution of a right to consent to marriage encouraged many women to refuse arranged marriages. However, such legal engineering is by far less often successful than governments and development agencies are inclined to believe and propagate.

The term “negotiation” should be distinguished from the narrower concept of “bargaining”¹⁵. The latter is used in economics and game theory and applied in studies of labour bargaining, diplomacy, conflict resolution, and market bargaining, assuming profit-oriented individuals who make rational choices and engage in positional bargaining with zero-sum win-lose solutions – even in household power relations –, in more or less formalized one-to-one interactions (Strauss 1978:7-10). Negotiation, as I define it here, does not exclude that the parties involved pursue their own interest and make use of their knowledge and experience in rational ways and formalised settings. Yet, I see actors’ rationalities, their subjective meaning and their biographical streams of life as deeply embedded in societal structures, which they contribute to reproduce and change. These societal structures include dynamic power relations – manifested for instance in knowledge systems and status positions – which influence legal ne-

¹⁵ Many authors do not make this distinction and use the terms in an exchangeable way. Other authors (such as Agarwal 1994) are reflecting on negotiation, yet call it “bargaining”, even if they trespass the narrow frame of the related thought schools.

gotiations. The individual and collective negotiations under study here are therefore taken as social actions (cf. also Lachenmann 1983:7) pointing to the social construction of reality (Berger/ Luckmann 1999).

This allows to take into account negotiation processes that have neither a clear starting point nor a fixed end, which include very ambivalent actions and frequent re-negotiations. One typical aspect of legal negotiation processes is that their results are not always stable but can be re-submitted to further negotiations ever again (whilst a contract, a sale etc. once bargained has a clear-cut duration and a fixed end, and if a bargain is re-submitted to bargaining this means that the former bargaining obviously had failed). Negotiation, as I understand it, can consist of a greater variety of modes of action, such as more subtle and more aggressive ones, and it can take place on a continuum between non-conflicting everyday interactions and very harsh and exceptionally threatening conflicts; it can involve and combine a whole range of societal and symbolic contexts, which turns the fine-tuning of definitions of the situation and the ascription of meaning into a multi-layered and multivalent endeavour.

Nevertheless, the question of the limits of negotiation remains to be answered. Firstly, probably not everything is admitted to negotiation (cf. the question of *doxa*). Secondly, the most extreme aggression, such as murder or poisoning, evidently turns negotiation into a lost opportunity. Thirdly, there might be moments where negotiation is suppressed, like if one side is intimidated and threatened in such ways as to withdraw its claims. But, on the other hand, we know from studies of women's protests against colonial interventions in several African countries (cf. Lachenmann 1996a:234), that in oppressive situations actors tend to stretch the boundaries of negotiation in unexpected ways. We know that every oppression receives some kind of answer, be it in the form of simple oblivion, "an active ignoring of [hegemonic] representations and the prosecution of one's own point of view" (Hobart 1993:16). Also, even those who seem to be powerless "are still able to resist, to subvert and sometimes to transform the conditions of their lives" (Kabeer 1995:224). From this perspective, even the giving in of one side, withdrawing ones claims or just falling silent, does not necessarily have to be seen as a ceasing of negotiation, but can sometimes also be interpreted as a temporary suspension, as an intended tactic to irritate the other side, or to nurture feelings of victory and security, while recollecting ones forces or developing new lines of action.

The concept of legal pluralism – weak, blind or strong?

Max Weber first acknowledged the idea of „legal pluralism“ both as a sociological concept and as everyday practice, around 1913:

The fact that, in the same social group, a plurality of contradictory systems of order may all be recognized as valid is not a source of difficulty for the sociological approach. Indeed, it is even possible for the same individual to orient his action to contradictory systems of order. This can take place not only at different times, as in an everyday occurrence, but even in the case of the same concrete act (Weber 1956).¹⁶

Since then, it became common sociological knowledge that norms are specific to a social unit and therefore of inter- and intra-cultural variability (Lamnek 1989:468, Bahrtdt 2000:49). Accordingly, legitimacy is always socially defined, as it refers to the validity of one’s claims in the ears of a certain audience which can vary from a group defined by gender, age, kinship, profession, class, organisational, territorial, ethnic, or religious markers, to a group defined by state law (i.e. the citizens of a nation state) to transnational and even global communities, the latter being thought of as including, cross-cutting, or trespassing the before-mentioned criteria. It is equally accepted that every person is member of various social units at the same time (in which he or she might play different roles) and therefore always at the interface of several normative orders (Popitz 1961:189-197).

Nevertheless, the term “legal pluralism“ has been for a long time – and often still is – used, mainly by jurists, in a normative way in order to design ways for colonial and post-colonial governments of dealing with “customary law”. According to J. Griffiths (1986) this view of legal pluralism is loaded with an ideology of “legal centralism”, where law is defined as the law of the hegemonic nation state, uniform for all persons, exclusive of all other norms, and administered by a single set of state institutions. From this perspective, legal pluralism is a “technique of governance on pragmatic grounds” by recognizing the supposedly pre-existing customary norms, which are for that purpose decontextualised and codified, while subordinating the resulting “customary law” under the hierarchically superior state law¹⁷. This tech-

¹⁶ Translation by Henderson/Parsons; by the latter also the note on 1913 as the year Weber had written the original text, which reads: “Es macht der Soziologie keine Schwierigkeiten, einander widersprechende Ordnungen innerhalb des gleichen Menschenkreises anzuerkennen. Denn sogar der einzelne kann sein Handeln an einander widersprüchlichen Ordnungen orientieren“ (Weber 1956:23).

¹⁷ This technique was developed for colonial rule and implies many technical regulations as to the base on which “customary law” is applicable (such as membership in ethnic or religious groups, or residence in certain geographical areas), the subjects to which it can be applied (such as family law), the institutions allowed to handle customary conflict cases (customary courts), and especially how these exceptions and institutions are to be integrated and controlled by the state legal system (J. Griffiths 1986:3-8).

nique was designed in the context of nation building as a temporary compromise to be replaced as soon as possible by a uniform law.

Leaders of newly independent African states, looking back on pre-colonial ethnic diversity and the subsequent colonial manipulation of ethnic pluralism through 'divide and conquer' approaches, initially saw pluralism as a source of conflict within the modern nation state (Maddox Toungara 2001:33).

However, this state-centred view of legal pluralism as a potential source of conflict characterizes many national legal systems still nowadays, reason why the pressure for a unification of the legal system continues. This legalist concept of legal pluralism was termed "weak legal pluralism" by its critics. In Togo, this unifying pressure influenced the design of the Family Code in 1980, which includes several confirmatory references to customary norms. These references are, however, severely criticized by women's rights NGOs who see them as a step backwards. Furthermore, they are under international critique as they break human rights standards.

Legal anthropologists (including academics as well as colonial officials and missionaries engaging in legal ethnography) on the other hand, focused for a long time, even throughout the 50s, 60s, and 70s on legal orders at the level of villages and ethnic groups, while totally ignoring their interaction with the colonial state, thereby remaining blind to the full complexity of legal pluralism (cf. F. von Benda-Beckmann 1994:4-5).¹⁸

Since the 1970s, sociologists and anthropologists more and more reject both „weak legal pluralism“ and its ethnographic and state-blind counterpart. They argue instead for an analysis of what they label

strong legal pluralism [as] an empirical state of affairs, namely the coexistence within a social group of legal orders, which do not belong to a single 'system' (J. Griffiths 1986:8)

and they demand research into its full complexity (F. von Benda-Beckmann 1994:5, 10, Guenther/ Randeria 2001:28-29). This approach has been further differentiated as to the following aspects:

Legal pluralism hints not only to different normative orders but also to different legal actors and institutions or forums within a socio-political unit, some of them being related in a mutually constitutive hierarchical way, others standing as alternatives next to each other. They con-

¹⁸ For Togo, such accounts were produced by Spieth (1905, 1908), Asmis (1911a, 1911b), Schlettwein (1928b), Schultz-Ewerth/ Adam (1930), Westermann (1935), Manoukian (1952), Froehlich et al. (1963) and Lohse (1970).

tain parallel and often contradictory rules for societal and political relations on the basis of different legitimacies, and they have their own legal cultures, i.e. different ways of expressing and legitimising claims, amending rules, settling disputes and sanctioning infringements¹⁹.

Consequently, legal pluralism is not the same as a mere plurality of legal orders of different ethnic, religious or social groups within a state, but refers to the fact that social relations of the same individuals or groups can be regulated at the same time and in complementary or contradictory ways by different legal orders with varying “legal horizons”²⁰ and overlapping boundaries of legitimacy. This results in multiple structural interfaces (Long 1989, 1992) where legal orders—with their respective logics of action, worlds of meaning, systems of knowledge and institutional arrangements – meet and rights are negotiated. Correspondingly, I use the term “law”²¹ not to depict the normative claims of only the state, but to refer to various forms of ordering, be it by the state or by non-state (both local and translocal) actors, focusing on modes of creating and using legality rather than on rules as a normative product. These modes can

derive from multiple sources and sites, which draw on written texts, institutions, and broader social frames of references contained within unwritten customary law (...) (A. Griffiths 1997:114).

This perspective of law and legal pluralism enables us to analyse the ways in which actors make use of modes of legal transactions and procedures, sometimes engaging in processes of “forum shopping”, “system shopping”, and “idiom shopping”, when choosing between different legal alternatives and their forums as well as their ways of speaking and reasoning (NEDA 1997, K. von Benda-Beckmann 1984) or using them in a sequential way (Alber/ Sommer 1999:94), at other times combining or amalgamating elements of different legal orders to cumulate legitimacy and create multiple legal “capital” (in the sense of Bourdieu 1983). Actors interpret and present legal norms differently, depending on the context of the situation, such as their relation to the other actors involved, their own social, economic and professional background, how the situation is defined, the political circumstances etc. (Guenther/ Randeria 2001:30, F. von Benda-Beckmann 1994:7-8, 1993:119-125, Alber/ Sommer 1999:94-95).

¹⁹ Cf. F. and K. von Benda-Beckmann (2001:1), Woodman (2001:57), NEDA (1997:9), Alber/ Sommer (1999:97-98), Merry (1992:372).

²⁰ This spatial metaphor of „legal horizons“ is used and translated by Santos, who suggests that “different legal orders, like maps, have different scales, different forms of projection and centring, and different systems of symbolisation” (Santos 1987, referred to by Merry 1992:358).

²¹ This requires a continuous awareness of the legalistic and state-centred bias which is so easily imported with legal vocabulary. I do not agree, though, with Roberts’ (1998) statement that such a distance from the “robust self-definition of state law” is altogether impossible.

This wide repertoire of overlapping and partly dovetailed normative orders, institutions, and ways of presenting and legitimising claims, constitutes the room for manoeuvre in which a multiplicity of legal negotiations take place. This social space is constantly worked upon, as rules for access and exclusion (for instance through ascription of ignorance, definitions of appropriateness, relevance etc.) are applied or questioned and transformed. Through such negotiations, actors not only further the situational flexibility of legal orders, but also create new forms of legality. Finally, by “snatching” certain aspects of social order “from the jaws of” unquestionability (or *doxa*, cf. Bourdieu) and “throwing” them into all kinds of debates, they actively promote social change, not least in gender relations.

This view of legal pluralism does not fall back on reifying some national legislator’s concern of whether to recognize, integrate into the state law, or suppress certain customary and religious norms. Instead, the ways in which actors legitimise their claims, and the different authorities and legal discourses they refer to, become themselves an object of the empirical study of legal pluralism. On the other hand, this view makes it possible to identify and describe the transnational dimensions of legal pluralism, such as the increasing reference to international norms, the legislative dynamic within international organisations and in interaction with states and international NGOs, as well as the global spread of local norms or their influence by transnational regulations (Guenther/ Randeria 2001:30-32).

I use the term “legal pluralism” in this “strong” sense. It follows that when, in the next chapters, reference is made to legal pluralism in Togo, the term is not used to refer to the perspective of the state, but to the empirical reality of legal orders, actors, institutions, and ways of legitimising in Togo, a reality in which the state is seen as just one of several actors and institutions which all have their own view of the legitimacy, relevance, and hierarchical order of the various legal orders available.

This reality will be analysed on three different levels: on the level of an overview of the normative and institutional repertoire available and its gendered construction in everyday life (chapters 2 and 6), on the level of individual women’s negotiations of their rights (chapters 3 to 5), and on the level of the negotiation of women’s rights between NGOs, the state and the international arena (chapter 7).

Systems of ignorance referring to women's rights

As mentioned in the beginning of this introductory chapter, in Togo as elsewhere the topic of women's rights is frequently presented as the problem of women being excluded from the benefits of "modern" state law and subjugated by patriarchal traditions because being "ignorant" of their statutory rights. The solution is accordingly defined by reference to a hegemonic knowledge, in this case knowledge about state law and the state legal system. Government, NGOs and donor organisations therefore focus on informing women about their "modern" rights in order to improve their lot²².

Although legal information is not the only approach of women's rights promotion, the above observation hints towards a "system of ignorance", a typical product of development discourse based on a modernisation approach, i.e. on the idea of transforming traditional societies into modern ones by way of externally induced social change (Hobart 1993:1-6). Following the sociology of knowledge by Schuetz/Luckmann (1979), Lachenmann operationalises the concept of "systems of ignorance" by suggesting to empirically analyse their social formation, distribution, structure, ways of transfer, as well as their consequences – with the intention to understand social change (Lachenmann 1994: 285-293):

Systems of ignorance are socially constructed and tied to the formation and distribution of knowledge. They are a product of the relationship between everyday knowledge and expert knowledge, characterised by expert knowledge devaluing (as being irrelevant), segregating, or even systematically ignoring and thereby blocking everyday knowledge—however without eliminating it. Thereby, the boundaries between knowledge and ignorance are fluid and strategically handled. The access to and concrete outline of general and specialist knowledges – and thereby the distribution of knowledge and ignorance in society—are regulated by social norms about roles and statuses (for instance according to age, gender, descent, education). As such they are subject to and indicative of power relations, which they serve to stabilise. This does not impede that hierarchically structured groups mutually ascribe ignorance to each other, creating dynamics that render communication extremely difficult. General knowledge becomes lay knowledge only through the emergence of specialist knowledge due to differentiation processes within society. In the development context expert knowledge can itself turn into a system of ignorance, if it only transfers knowledge and technologies from a culturally, socially and economically foreign context without checking its appropriateness and relevance

²² Cf. ICJ (1997:18), CASS (1995:2), Ngo Innack (1997:6), Giovarelli and Akmatova (2002:iv), Kuechemann 2000:2, EPWDA (2001:3), GTZ (2001a:10, 2001b:11, 25).

against everyday local realities. In their search for legitimacy, experts tend to shield themselves against local knowledge by defining their clients as ignorant. The resulting power difference between expert and everyday knowledge can have a paralysing effect, as it creates feelings of powerlessness among the non-experts. The latter may try to defend themselves against such expropriation and loss of power by refusing to accept expert advice. The self-ascription of ignorance can also be an important survival strategy in systems of domination. The result is a growing distance between laymen (or laywomen) and experts who refuse to cooperate with each other, as well as the growing dependence of the former from the latter, due to their competence of solving everyday problems being disqualified and transferred to experts (Lachenmann 1994: 285-293).

Benda-Beckmann (1993) takes the legal engineering technique in development, i.e. the attempt to achieve social and economic change through government law (which is often designed by foreign legal experts) as illustrative example of a system of ignorance: The failure of such projects is often attributed to the existence of local laws and customs that allegedly hinder development. This assumption is upheld despite repeated evidence “that local law can be sufficiently flexible in its adaptation to social and economic changes” (F. von Benda-Beckmann 1993:117). The example of an Indonesian government project, aiming at establishing legal certainty and economic progress among rice farmers in Minangkabau, shows that the image of inflexible local law impeding development is even reproduced by rice farmers themselves, at least towards local-level bureaucrats: In order to refuse the expensive registration of their land and other uncomfortable bureaucratic control measures, they efficiently claim that their local law (*adat*) does not allow for individualized, ownership-like rights, although local *adat* practices prove to be far more flexible and negotiable. As a result they are spared from undesired obtrusion, but bureaucrats’ biases against local law are reconfirmed (F. von Benda-Beckmann 1993:123-125).

For the empirical research of this dissertation we have to ask the following questions: Which actors contribute to this discourse and in how far do women themselves reproduce this discourse? How is this discourse dealing with legal pluralism? Which role does legal knowledge and ignorance, its self-ascription and ascription play for negotiating women’s rights? Do women’s rights organisations refer to and include local knowledge about traditional rights and everyday practices, thus breaking with the marginalizing of women’s life worlds? Is it sufficient to inform women about their statutory rights in order to strengthen their autonomy?

Which other structures in Togolese society do women's rights NGOs strengthen in order to further gender democracy in Togo?

The creation of female spaces through negotiating women's rights

The study of women's rights has to be seen within the broader context of the study of social space. Following Lefebvre (1979, 1998) space can be perceived as the site for actions and as the social possibility of engaging in these actions. While the first of these two facets draws attention to the physical aspect ("site") of social activity, the second uses the term space in a metaphorical way ("possibility" for action) providing for the understanding that human activity is socially negotiated, taking place within socially defined symbolic and physical boundaries, and thus being shaped by social relations. According to this concept, physical space is always socially constituted.

Taking account of the gender dimension of social space, Lachenmann analysed "female social spaces", especially in the economic field (1995a, 2001a, 2001b) but also relating to women's agency in the public sphere (1996a, 1996b). Considering the creeping loss of traditional female social spaces, due to structural adjustment programs and the formalization of local power structures in the context of democratisation processes, she analyzes how social movements and development NGOs contribute to create and maintain new female social spaces (2004: 323-324).

Women's family and inheritance rights – the legal focus of this text – are relevant to both facets of space: On the one hand, they are important for women's access and control over physical space, such as houses, land, mobility, their own body, speech, legal forums, market places etc. On the other hand, they are part of the negotiation of social space in the sense of the legitimacy of women's actions and relations, i.e. their socially approved validity. It will be of special interest for this study to analyze how women's rights NGOs in Togo contribute to enlarge female social spaces in a continuum of overlapping private and public spheres.

1.4 Empirical Research Process

Geographical focus of the research – reflecting urban-rural interactions

In order to analyse the negotiation of women's rights within the context of "strong legal pluralism" – such as defined above –, I decided to focus on the geographical area of southern Togo, including the capital of Lomé and the administrative *Maritime* and *Plateaux* regions (cf. Administrative map of Togo on page 1).

In this area I expected, first of all, to find a high density of co-existing and overlapping legal forums and normative systems: In the capital of Lomé state law and state legal and administrative services as well as international norms have a strong influence, not the least through the activities of women's rights NGOs, who want to both enforce and change them. But southern Togo also covers both urban and rural localities²³, where customary and religious norms (of Christian, Muslim and animist orders) are widespread and alive. Secondly, due to my prior two-year stay in Togo (from 1997 to 1999) this was the area where I had already the greatest number of contacts, which permitted me to rapidly access interview partners whom I knew well enough to achieve a high validity of data. For the same reason, it was the area about which I had the broadest context knowledge and in which I would have the easiest access to secondary literature (from libraries and archives), necessary to triangulate my own data with other perspectives. Thirdly, this spatial focus allowed me to conduct most interviews in French, as the *maîtrise* of this former colonial language strongly relates to rates of schooling, literacy and urbanity. This language aspect enabled me to delve into direct communication with most of my interview partners, so that I was not slowed down by translation or confused by points of view that interpreters might represent when translating. Furthermore, my knowledge of some *Mina* and *Ewe*, i.e. the languages predominantly spoken in Lomé and Southern Togo, – even if it was limited to the most basic vocabulary of greetings, courtesy, and simple interactions –, helped me to raise interest among possible interview partners. Moreover, it allowed me to create the degree of trust needed, as it distinguished me from most other white people, who are either tourists or development expatriates and rarely take the hassle to get to know everyday realities of the population including their local language.

²³ Over a third of the Togolese population (of 4,3 millions in 1997) lives in the *Maritime* region, where rural to urban migration is high, with Lomé (about 860.000 inhabitants in 1997) growing at an estimated rate of 6.1% per year. The population growth rate of 3.2% is one of the highest in the world and results in a population density of 75 inhabitants per km², greater than that of most West African countries. (World Bank 1996:1, DHS 1999:2, Rép. Togolaise 1998:5, 12)

While in the beginning I concentrated more on my urban contacts, the field itself led me soon to widen my focus to rural cases and legal negotiations in rural settings. However, I soon found out that the urban-rural dualism was not appropriate for the reality I encountered: First of all, it turned out that most of my urban female interview partners had a rural background, i.e. had spent part of their life in the countryside. Due to the patri-lineal organisation of society, marriages go along with patri- or viri-local residence; i.e. women marry into their husband's family and move to his place, but maintain strong relations with their families of origin and engage in frequent interactions with their home villages and areas, not least through the exchange of goods and services and commercial trade. As a consequence, they are constantly dealing with the normative systems and legal forums of both urban and rural contexts²⁴. Secondly, about one third of the NGO-trained paralegal advisors on women's rights are active in urban areas and two thirds in rural areas. The main objective of their activities is to improve women's access to state legal and administrative services, which are to the great majority based in the district towns and difficult to access from rural milieus. Thirdly, the prevalent discourse of women's ignorance of the state law as constituting their main hindrance to free themselves from discriminatory customary norms is often formulated by urban actors referring – in an “othering” way – to rural women.

I therefore undertook most of my interviews either in Lomé or in a small village in southwestern Togo with women and men who came from Lomé and the towns of Tsevié, Atakpamé, Vogang, Aneho or Kpalimé or from the surrounding rural areas. As most of them have a Christian or animist religious background, Muslim norms and practices figure less prominently in this dissertation. The sessions of customary and state courts as well as of NGO mediations that I attended all took place in Lomé, but again involved women and men of a variety of backgrounds, while in the village I was in subtle ways excluded from formal legal events.

Legal focus of the research according to actors' priorities

I first decided to concentrate on women's family and inheritance rights, as from my prior knowledge I assumed that most intense negotiations would be observable in these legal domains, because they are in multiple and contradicting ways regulated by statutory, customary, religious and international norms. Furthermore, family and inheritance rights directly concern

²⁴ According to Lachenmann (2001b:26), this intense urban-rural exchange is reflecting the translocal embeddedness of especially female economic activities in social relations in contemporary Africa.

the lifeworlds of women, revealing in manifold conflicts their negotiating power as well as its limits. Moreover, these rights constitute the basis for women's economic and political rights. The latter came also into direct focus, especially when I started to analyse the activities of women's rights NGOs.

However, within these legal domains I myself did not pick out and isolate single legal issues or single legal forums (as from a juristic perspective), but followed the topics and priorities presented by the interviewees and the various cases I observed, while paying also attention to how they are linked in everyday life and within biographical streams of life from the perspective of actors themselves.

The resulting legal focus included, on the one hand, the inheritance of land and houses, the succession to social positions within the family, the form of marriage institutionalisation, the economic, social and reproductive rights and duties within marriage and upon divorce or widowhood, as well as the various informal and formal support systems and resources accessible to women; on the other hand, women's political rights, their rights to participate in decision-making at all levels of society (including the household level) as well as the struggle over room for manoeuvre by women's rights organisations.²⁵

Research phases

I undertook a total of nine months of empirical research in southern Togo, which were composed of four stays, i.e. five months (January – June) and two months (August – October) in 2001, and one month (February – March) each in 2002 and 2003.

During the first couple of weeks I refreshed friendships and contacts in Lomé that I had established during my prior work stay in Togo. I also organised the research logistics (housing, transport, translation, transcription etc.) and took intensive classes in *Mina*, the language of the coastal population and the lingua franca in the capital of Lomé as well as in many towns of the interior, with an experienced Togolese peace-corps teacher.

The contacting of my former acquaintances was not only joyful but at the same time very encouraging and helpful for my research. One of them instantly shared with me in detail her

²⁵ This inevitably includes the construction of legality itself, i.e. what is contestable and what remains "doxa" (Bourdieu), what is to be regulated by norms and thus might be contested, and what is even outside norms, i.e. because totally self-understood (Strauss 1978:3 talks about "tacit agreements previously worked out, that now affect the kinds of issues that can be fought over"). Thereby differences among individual women and between women's rights NGOs are also possible.

frustrations and fears from her current family conflict (without me even having mentioned my research topic), thus initiating a whole series of interviews and providing one of the richest case studies of this dissertation. Several activists of women's rights NGOs invited me immediately to take part in some of their activities of legal information, advice and mediation as well as in conferences and training seminars, which enabled me to rapidly up-date my knowledge about recent events and topical discourses on women's rights and to contact further interview partners. The result was that even during these initial weeks I already gathered a multitude of information and made several in-depth interviews.

From the third month onwards I shifted my main focus from the capital of Lomé to a village in the Fiokpo valley about 125 km northwest of Lomé and 25 km from the town of Kpalimé. This area is of special interest as, due to its relative closeness to the capital of Lomé, it is subject to strong socio-economic changes, while traditional structures either still exert a great influence or are creatively reinvented or redefined.

My entrance to that village was organised through its "queen mother", whom I had met at a paralegal training workshop in Lomé in 1999 and who introduced me to her spokeswoman. It was the latter who hosted me during my stays in the village, whom I interviewed, who presented me to the chief, his main advisor, the pastor, priest, principles of the primary and secondary schools, her parents, brothers and sisters, her widowed neighbour and her divorced friend. I interviewed several of these persons, partly with my hostess' help for translation, and participated in her daily life.

Between the stays in that village, which in most occasions lasted several days each, I retreated to Kpalimé to write up my field notes in the computer, transcribe some of the interviews, reflect on my material and decide on the steps to take next. I also took breaks from my stays in the area as such to go back to Lomé, where I conducted further interviews and participated in several hearings at customary and state courts as well as in manifold NGO activities.

During my second, third and fourth trips to Togo, I mainly revisited my former interviewees to clarify further questions, which had come up during the analysis. During my second stay (August to October 2001) I also participated in an evaluation of a pilot training of male paralegal advisors on women's rights by the NGO *Groupe de réflexion et d'action Femme, Démocratie et Développement* (GF2D)²⁶. This included a five-day trip to visit twelve of the trainees in the Plateaux and Maritime regions, attend their legal awareness raising activities

²⁶ The NGO GF2D will be presented in chapter 2.3.5, and its activities and approaches will be further discussed in chapter 6.8 and 7.

and discuss their paralegal work with them. During my fourth trip (February – March 2003) I participated in a similar monitoring trip to female paralegals in two villages in the Maritime Region.²⁷

These main phases of empirical research in Togo were supplemented by interviews with Togolese individuals conducted in Germany, as well as by several communications via e-mail and telephone with former interviewees after my return.

Entering the field through key persons and friends and sampling along chains of mutual trust

I was interested in women's personal experiences of negotiating their rights at the various normative and institutional interfaces of legal pluralism, as well as in the interplay of the different normative systems and legal forums as such. Such negotiations frequently take the shape of conflicts. However, within the Togolese society everybody (and especially women) wants to keep up the image of being sociable and peaceable. Nobody is interested to wash his or her dirty linen in public, due to the high degree of social control and accordingly extensive culture of gossip or *radio trottoir* that is typical for predominantly oral societies (Ellis 1993, Bergmann 1993).

I therefore had to find, first of all, women (or men) who would trust me enough to either tell me about specific conflicts (such as around access to inheritance, maintenance, housing, pensions, reproductive health, marital budgets) which they experienced, or to give me accounts of how they had lived through specific events of their life (such as marriage, divorce, death of their husband etc.) that are frequently accompanied by *rites de passage* and marked by negotiating and achieving a new normative status.

I found such interview partners, on the one hand, through Togolese friends (urban professional women) from my prior stay in Togo, whom I interviewed, who invited me to take part in their lives (join them for lunch, for a family party or to go to church, stay over the weekend etc.) and who presented me to other interview partners. On the other hand, I knew several European development expatriates and volunteers who put me into contact with interview partners (their domestic employees as well as their Togolese NGO colleagues), who in turn allowed me to attend their activities and provided contact to additional interview partners.

²⁷ The paralegals visited during these evaluation trips were active in Lomé and the towns of Kpalimé and Atakpamé as well as in the villages of Tchekpo, Ouamé, Kuma-Adamé, Amou, Amlamé, Hiheatro, Ountivou, et Elavagnon, the latter being located about 230 km north of Lomé.

Contrary to my expectations, I was hardly able to explore one and the same conflict case or life event from the perspectives of different participating actors because this would have raised mistrust, hindering my interviewees to share confidential information with me. But sometimes I could discuss mediations I had observed in customary courts or NGO-counselling centres afterwards with the NGO-counsellor or the secretary of the customary court. It was not possible to discuss observed mediations with the persons involved in the conflict themselves, as they did not know me well enough to confide me with more personal information, and I did not want to harm the reputation of discretion of the NGO-counselling centre respectively its personnel by sticking my curious nose into their clients' personal lives. Further triangulation with many other sources allowed nevertheless to validate or contextualise their case accounts (see below).

Rather than focusing on a specific socio-economic category of women, I tried to collect as many variations of cases as possible in order to assess the whole spectrum of relevant aspects within women's legal negotiations as well as the commonalities of experiences across this spectrum. I therefore interviewed more and less urban or rural, more and less wealthy, more and less educated, more and less self-confident and outspoken women.

Secondly, I had to find key persons who would sufficiently trust me to mobilise their contacts in order to enable me to assist state court hearings, customary court sessions, legal counselling or mediations by NGOs, as it is these legal forums that are the official site for legal negotiations and where the phenomena under study were intensely represented.

Again, I found such key persons among my prior work acquaintances, such as among women's rights activists from the non-governmental organisations GF2D, ALAFIA, LTDF and WILDAF as well as from the Ministry for the Advancement of Women. They introduced me to the respective court authorities and NGO counsellors and mediators. These contacts opened the way for my participation in court sessions in Lomé, whereas in the villages my presence at formal conflict mediations and court sessions did not seem to be welcome and was several times cleverly hindered. Therefore, in the rural settings I had to rely on case studies, expert interviews, and the observation of informal negotiations. Furthermore, I decided not to concentrate on many people from state administrative and legal forums, such as state court judges, police officers, district officers etc. This was due to my concern not to draw too much official attention to my research endeavour, as I expected my interest in legal subjects to raise

mistrust from the government. This means that I also selected the persons I approached to access these forums according to the degree of trust I myself had either in them or in the persons who had arranged for me to meet them.

However, the key persons that I did contact also invited me to participate in their training workshops, seminars and conferences, which in turn provided opportunities to get to know other possible interview partners, especially some of their colleagues as well as paralegal advisors. The latter, in turn, invited me to attend their paralegal activities and helped me to get to know further interviewees. Furthermore, the key persons gave me access to the libraries, archives and many brand-new studies and documents of their respective institutions that were relevant to my research topic.

Although both approaches (to individual women and through legal forums) included interviewees that were introduced by former interviewees, I could only reach a maximum of two to three persons in one “snowball“, i.e. through being referred from the initial acquaintance to a further interviewee and so on, because the more recent the contact was, the more time I had to invest by visiting the person regularly, participating in her daily life etc. in order to build up the degree of trust needed to discuss such personal issues as family conflicts. In several cases the chain of contact was from an NGO to a paralegal advisor to a village woman.

As one or the other legal issue under study is relevant to every Togolese woman’s life, every woman (in the selected region) was a potential interview partner for me. However, due to the sensitivity of the issues, my main criteria for sampling was mutual trust. Once the contacts to individual interviewees or legal forums were established, the decision of whether to come back to that person or forum for further interviews or to observe further cases was made in the style of “theoretical sampling” (Strauss 1998:70-71), according to my growing understanding of the subject under study and my expectations about where to find the most relevant cases.

Interview methods used

Biographical processes, complex knowledge and familiarity with legal pluralism as well as sensitive or lengthy family conflicts are difficult to observe during the relatively short research phase of a dissertation project. This is why I decided to do mainly narrative (cf. Schutze 1987, Flick 1995:116-124, Hopf 1995:179) and semi-structured interviews. These were

supplemented by ethnographic interviews in the context of participant observation, while the phases of participant observation themselves served to contextualise the verbal information. However, I pragmatically and in a flexible manner combined the different interview types: A semi-structured interview could develop into a narrative one, for instance if “expert interviewees” were offering information from their own life experience; these were then taken into account as such, i.e. not as expert knowledge or representing a group of experts; an informal conversation during participant observation could develop into a semi-structured interview etc. Contrary to Flick (1995:109-110), I did not see such situations as a failure to correctly apply a specific interview technique, because I was also interested in how the interviewees act at structural interfaces, for instance, how an ordinary village woman, once she becomes a paralegal activist, renegotiates her marital room for manoeuvre; or how a traditional leader, when having a personal legal concern, acts towards state legal and administrative authorities.

Narrative interviews

Through an initial question I incited the interviewee to give a narrative either about her (or his, or another close person’s) life history, a specific phase of it (such as marriage, divorce, widowhood etc.) or about a specific conflict. I listened actively until its *coda*, added questions to clarify or complement certain aspects and finally asked the interviewee for self-interpretations and generalisations. This interview technique had several advantages:

Firstly, it brought up the course of actions or events, for instance how women find their way through the legal field for specific legal problems, as it was subjectively experienced. It also brought up development processes, for instance how women’s attitudes change during the course of a conflict or how their perspectives on the social expectation of marriage and child-birth change throughout their life. Secondly, due to the dynamic created through the situation of the narrative account, the interviewees were incited to tell even experiences, events or attitudes that they would tend to hide in normal dialogue situations with a stranger, due to feelings of guilt or shame (Schuetze 1976:225), in my case, for instance, unpleasant conflicts with a husband or relative, feelings of malicious joy or hatred. Thirdly, it allowed the interviewees to set their own priorities, thereby pointing to their fields of relevance. For instance, I had not expected the institutionalisation of marriage to be such a rich topic, as it turned out through the interviews. Fourthly, as I proceeded in the manner of theoretical sampling, I was able to adapt my initial questions (and mind-maps) to each and every new interviewee, so as to fit to

my respective stage of understanding. Finally, this method was especially rewarding in the context of legal pluralism, as

life histories yield the narratives in which official and customary law emerge as interconnected in personal experience. (A. Griffiths 1997:3)

The disadvantages were for instance that, the more educated the interviewees, the more irritated they reacted with such an open interview situation: They expected to answer either a questionnaire or another type of structured interview guideline. That is why in many such cases I started the interview with a mind-map of questions and issues, thereby more strongly structuring the interview (see below). Some parts of interviews went “off track”, for instance one interviewee presented me her life story as a trajectory of religious enlightenment; since it was so important for her, I first listened to her narrative and only later on asked specifically about her marriage and divorce or the way she negotiated social room for manoeuvre with religious authorities. Of course, the narratives I was given were influenced by the ideas of the interviewees about my assumed expectations, about my role, about the light they wanted me to see them in and their role in the conflicts they described. If the narrative was about an ongoing conflict, the respective stage of the conflict or specific brand-new events influenced the account – but these were of interest to me as well.

The result was interview transcripts of up to 50 pages per interview, which lead to few but extensive cases studies. They are not always easy to compare, yet yield very rich material of the spectrum of cases, strategies and resources.

Semi-structured interviews

For each interview I made a list of open questions and topics (in the style of a mind-map) I was interested in and that I hoped the interviewee would be ready and knowledgeable to talk about. For instance, I asked most interviewees about rights and practices concerning land, inheritance, marriage, divorce, widowhood, access to legal forums, and gender relations. NGO activists I asked mainly about their motivation to work for women’s rights, their legal counselling and mediation experiences, the collaboration between NGOs and state institutions, their perspective on specific legal issues, specific forums and lobbying activities for law reforms etc. Representatives of legal forums (secretaries of customary court, chiefs’ advisors, “queen mothers” etc.) I asked mainly about their institution and its history, about current conflicts or examples of cases. One or the other question of my list gave the impulse for the inter-

viewee to narrate, whereby she or he would follow her or his own priorities. I flexibly added questions from my list or mind-map or asked about issues that came up in the interviewee's account in order to clarify aspects, give and get feedback on my comprehension etc. The mind-maps and lists of questions changed in the course of the empirical research phase according to my growing insight into the topic (cf. theoretical sampling). The interviews with NGO-activists, traditional leaders, judges, secretaries of customary court, ministerial officials often took the shape of *expert interviews*.

Ethnographic interviews in the form of spontaneous and informal conversations during participant observation

I conducted participant observation in three different contexts: Firstly, in Lomé, joining a friend for lunch or to go to church, giving somebody a lift, doing shopping at the market, going to various offices to regulate my own situation (visa, car documents) etc. Secondly, I participated in the daily life of my hostess in the village near Kpalimé. This included farming, processing of agricultural products (yams, maize, palm oil etc.), household work, care for her children, attendance of the catholic mass, shopping trips to Kpalimé, walks to visit her mother and her married daughter in neighbouring villages, visits of her husband in Lomé, the organisation of huge festivities for the funeral of her father, the participation in a meeting of the parents' association of her daughter's school as well as of a *tontine* of village women, her participation in festivities of the neighbouring village, and her meetings with the „queen mother“ and male advisors of the chief, to exchange news and discuss village problems. Apart from providing ample opportunities for informal conversations, it gave me several occasions to directly observe negotiations, for instance between my hostess and her husband concerning his monetary contributions to her father's funeral, between her and the „queen mother“ concerning the handling of a dispute among village women etc. But the participant observation also served to contextualise the information I obtained through interviews. One problem in doing ethnographic interviews during participant observation developed rather towards the end of my research stay: The better people got to know me and the less stranger I appeared, the more difficult it became for me to maintain or re-establish an interview situation (cf. Flick 1995:112) and ask new questions, as people accepted my presence and accorded less attention to me and my eventual curiosity. On the other hand, this gave me access to un-mediated participation in people's life, i.e. to first-hand observations of “natural” situations. Thirdly, I attended various NGO mediations, workshops, conferences and monitoring trips, whereby my

role was either mere observation or active participation, provided that discussions were held in French or translated to me. These gave me the opportunity to gather data on discussions and negotiations between NGOs and paralegals, between paralegals and the population as well as among participants of NGO-training workshops and conferences. The latter included also observations of discussions about legal issues (for instance the pros and cons of the statutory inheritance law as compared to the traditional scheme) and gender relations, and thus partly replaced the technique of group interviews. I took “field notes” in the form of detailed records from my memories as soon as possible after such observations and ethnographic interviews, but at least the same day.

The interview situation and interactions

Most of the interviews I conducted and most of the NGO workshops and conferences as well as some of the NGO-mediations I attended took place in French. Three interviews were translated from *Ewe* resp. *Mina* into French by Togolese women, whom I had previously interviewed. Several customary and state court sessions as well as several NGO-mediations and legal counselling sessions took place in *Ewe/Mina* and were translated for me either by a male assistant (a student, brother of a friend of mine) or by NGO-staff. Some statements in the state court were made in *Kotokoli* or *Kabye* and translated to me as well as to the judge by the official translator of the court.

The tape recording during interviews proved to be extremely valuable for analysing the data, but was not always easy to handle in the field: If the interviewees showed to be very uncomfortable with the tape-recording, I restricted myself to ask more general questions during the recording, and left the more personal and intimate questions for the seemingly more informal part after I had stopped the tape or for the next interview meeting, which I conducted without the tape recorder. I totally refrained from recording mediations and court sessions, as this was neither appreciated by the conflict parties nor by the mediators or judges.

Several times, during my research, I was confronted with expectations that I would be a source of donor money and donor contacts (especially by those who knew me from my prior work with the UN) or else with influential contacts to the government and therefore rather to be mistrusted. I always tried to convince people of my genuine interest in the everyday life of women and women’s NGOs in Togo and that my results might have a positive impact in the

long run, but that I neither made any profit with my research nor could provide access to donor money. However, where appropriate I shared some basic knowledge about how to proceed in order to obtain a financing for development projects and which institutions possibly to contact. Furthermore, I reassured my interview partners that I keep confidential information to myself and render my data anonymous.

In the beginning of my empirical research, I tried several times to discuss my research concept with some of the experts I interviewed. They generally appreciated my interest, encouraged and supported me in my endeavour, and never hesitated to answer my questions or discuss certain details with me. However, I understood that some of them either would have preferred me to focus on another topic, such as women's political participation, or they missed – either in a social engineering way or in the sense of action research–the immediate usefulness of my approach for their work, as I did neither promise to come up with concrete recommendations for their work nor to mobilise donor funds. A few other times, my qualitative approach was met with a complete lack of appreciation, as the only type of social science research known to these persons so far was quantitative and standardized.

The type of data collected

All in all I conducted 63 interviews of a duration between half an hour and two hours each with 27 persons (19 women and 8 men), among them housemaids, market porters, farmers, seamstresses, social workers, unemployed youth and students, missionaries, secretaries, teachers, school inspectors, university professors, paralegal advisors, members, staff and managers of women's rights NGOs, ministerial jurists, judges, as well as women and men from the “traditional” chieftaincy at the village and cantonal level. These represented social actors with a great spectrum of socio-economic backgrounds and very different rooms for manoeuvre. Some persons were interviewed several times, either after several weeks, because the focus of our first interview had been an ongoing family conflict and I wanted to find out about its follow-up and consequences; or a couple of days after the first interview in order to add questions, clarify or deepen certain aspects of the first interview, which came up after a first analysis of its transcription. In one case I clarified further questions after my return to Bielefeld via e-mail. Two interviews were conducted in Germany with a Togolese living in Bielefeld and an NGO-activist visiting Berlin on the occasion of a conference. Three more in-

interviews were conducted via telephone from Bielefeld to Togo. Of these interviews 31 were tape-recorded and transcribed, while I took notes during or after the other interviews (cf. List of interviews in annex A8). Part of the transcriptions were done by a young Togolese woman, who had studied sociology and some law and whom I paid for that job, the others I did myself either in the field or after my return.

I took field notes during or after (partly participant) observations of more than 40 events, among them 4 NGO-mediations, 4 NGO-legal counselling sessions, 13 case hearings at customary courts, 5 hearings at the state court in Lomé, 5 NGO-awareness raising campaigns, 3 NGO-training workshops, 2 NGO-monitoring and evaluation trips to paralegals, and various other relevant events. I also kept a research diary to record and reflect on the research process. In December 2002 I attended an international conference on violence against women in Berlin, organised by the German Agency for Development Cooperation (GTZ) and UNIFEM. Furthermore, I included my notes and memories from several NGO-events observed during my prior working stay in Togo (1997-1999) in the analysis (cf. List of legal counselling sessions etc. in annex A9).

Finally, I consulted 100 cases in the register book and several protocols from the customary court at Lomé-Bé and copied 23 court protocols of cases involving women from the *Tribunal de Première Instance de Lomé, Chambre Civile et Commerciale*. These data were completed by numerous publications, studies and unpublished documents from the *Maison de la Femme*, the regional office of WILDAF-West Africa, the Institute Goethe, the UNFPA country office for Togo—all of them situated in Lomé –, as well as by internet publications and documents accessible through the (national and international) library services of Bielefeld university.

These publications and unpublished documents were mainly of qualitative type, but also included some statistical data. The latter were either produced by women's rights NGOs and referred to legal knowledge among the population or the scale of activities of paralegal advisors; or they were produced by demographers of the university of Lomé or other universities, the statistical unit of the Ministry for planning and development, the World Bank and UNICEF. In the latter cases they referred mainly to violence against women, female genital mutilation, health, family planning, education, demography, state budgets, and development aid.

Data analysis and textual presentation

My way of analysing the data was inspired by the style of “grounded theory” (Strauss 1998): In accordance with the concept of theoretical sampling, I already started to transcribe my interviews and analyse the transcripts and field notes during the empirical research phases as a basis for continuously refining my research question and deciding step-by-step on the choice of interview partners and research sites (or which of them to re-visit) as well as of topics of interviews and observations. This was supplemented by a first in-depth analysis during the two months break between the first two research phases, while the main bulk of analysis and interpretation took place after that second stay in Togo.

I read and scanned the interview transcripts, field notes, copied court files, and other data for emic legal concepts, prominent legal problems in women’s lives, recurrent strategies and surprising differences in ways of dealing with legal pluralism, and other relevant dimensions emerging from the material. I then developed the following frame for analysis in order to explore the negotiation of women’s rights: I asked which are the typical issues negotiated in the realm of women’s family rights, in which arenas and under which conditions do such negotiations take place, and how are they negotiated, including the strategies and the resources mobilised; furthermore how the actors make use of the multiplicity of normative orders, legal forums, everyday legal practices and legal discourses; which approaches do women’s rights NGOs use in order to change gendered societal and political power relations; finally, what are the structural consequences of such individual and collective negotiations of women’s rights for legal pluralism, for civil society and democracy, as well as for female spaces (in the legal and in the political sphere) in Togo. This frame of analysis tries to link the micro-level of individual negotiations with the institutional and societal level.

As my total sample of 27 interviewees was rather small, any common patterns as well as differences observable became of special interest and value to my analysis. I furthermore analysed the inter-relations between these categories and dimensions (for instance between communicative skills as important resource for negotiating rights and the juggling with the legal repertoire). Based on this, I elaborated in-depth case descriptions to compare in detail the negotiation of specific legal issues at which the cases had hinted – such as the negotiation of the institutionalisation of marriage within the pluralist legal field –, or to compare certain dimensions – such as the type of support systems and resources mobilised during the negotiation.

This was done by contextualising individual cases in relevant societal contexts (cf. Lachenmann 1995b:12), which permitted to include the perspectives of actors, and avoids perceiving them as victims of societal conditions.

The cases stemmed from my own semi-structured and narrative interviews, my observations of mediations in NGO-counselling centres and customary courts as well as of court sessions, my analysis of files from customary and state courts as well as from accounts of cases given in NGO-publications and in socio-legal publications, such as by Rouveroy van Nieuwaal, Baerends, and Adjamagbo.

For the contextualisation I used my prior context knowledge of two years living in Togo and working in the field of gender, my context knowledge gained from participant observation, my expert interviews with traditional leaders, women's rights activists – several of whom were lawyers, judges etc. –, with staff from the Department of Women's Legal Status of the Ministry for the Advancement of Women etc.²⁸, as well as socio-legal studies on Togo by other authors, legal studies by Togolese jurists and numerous publications of Togolese women's rights NGOs. This was supplemented by knowledge from the literature of legal anthropology and sociology, especially as far as referring to legal pluralism, gender and franco-phone Africa.

I finally presented the results along the main legal issues and dimensions I had carved out, i.e. comparing the experiences and strategies of different women as well as of non-governmental organisations with the same legal issues. This allowed to explore the multiple dimensions of specific legal concerns, the variety of strategies and the spectrum of social, economic and personal resources, applied by women. At the same time, I tried to maintain – as far as possible – the chronological structure of cases or the biographical flow of experiences, carving out how different legal issues are related to each other in everyday life. This was done by telling the case studies of several women in the form of serials, i.e. their cases were taken up several times under various chapters and sub-chapters, discussing each time different legal issues and aspects of negotiations²⁹. This served to explore social change, for instance the historical change of norms, forums, actors etc. I thereby carved out how women act across different overlapping and competing normative systems and legal forums or at their interfaces.

²⁸ However, these “experts” were themselves objects of my study, whose accounts I contextualised.

²⁹ Where available, biographical background information of the women whose cases are presented in more depth will be given in the annexA1.

Although my sample permitted me to work out typical conflicts, problems and strategies, I refrained from constructing types of negotiation strategies, support systems etc. The result is therefore less a theory of legal negotiation, but more a detailed description and analysis of how legal pluralism is practiced in everyday life, whereby the multitude of perspectives and aspects carved out can be seen as constituting a middle-range theory.

Triangulation of perspectives to correct and validate primary data and partly escape the power dilemma

The interviewees had hardly any chance to control my interpretations, because even if I spent parts of the interviews with getting the interviewee's feedback on my interpretations, it remained my own decision what to make out of this material in the end. However, the open style of my interviews also gave the interviewees ample possibilities to collect information from me (for instance, how to acquire donor money) or get a certain perspective or message – about the ways in which they handled conflicts or certain life phases – across to me; for instance, in one case that her marriage breakdown was the only fault of her husband, in another case that she had only non-egoistic/benevolent/social motives in fighting for her inheritance, in yet another case that it was Jesus Christ who had saved her life etc. On the one hand, this told about the interviewees' subjective experiences and priorities and was therefore revealing of their construction of meaning. On the other hand, it was difficult for me to get other people's perspectives on the very same accounts in order to compare the presentations.

However, I counterbalanced this deficiency by a triangulation of methods with the same persons, or with different persons from within the same geographical areas, as well as by a triangulation of this material with data from a multitude of other sources, such as NGO-studies and publications, studies of other social scientists, statistical information etc. (cf. Lachenmann 1995b:24-26). For instance, with various interviewees, apart from interviewing them (some even several times) I also participated in their life, be it by staying a couple of days with them or accompanying them to various activities. For example, one of the paralegals interviewed, I had met in her initial paralegal training in 1999 and at the national paralegal conference in 2001; I assisted in one of her legal information campaigns in her home area, stayed with her in her home village, and acquired oral and written reports from two different NGOs (GF2D and ALAFIA) referring to activities, in which she had actively participated. It was this same

area, where I conducted interviews with many other people, spent a lot of time with participating in the daily lives of these interviewees, participated in several activities of an NGO from Lomé, visited paralegal advisors in the context of a project evaluation, attended the preparation of a radio programme by paralegal advisors, and accessed several articles in the NGO-journal *Femme Autrement*, referring to that area. This procedure permitted me to weave a dense web of overlapping and mutually relevant data.

During the whole time of analysing my data and writing the text, the discussions of my regular presentations in the doctoral colloquia of my two supervisors, Prof. Gudrun Lachenmann and Prof. Joanna Pfaff-Czarnecka, with my supervisors and my colleagues were of invaluable importance, as they gave additional perspectives³⁰ on my material, forced me to enrich my arguments, formulate them with more precision and present them in a better structured way. Furthermore, my participation in the research colloquium and several workshops of the Sociology of Development Research Centre at Bielefeld University, as well as in a variety of other conferences organised by legal sociologists and social anthropologists, NGOs, political foundations and governmental development organisations working for gender democracy and women's rights enabled me to discuss my ideas with other researchers and practitioners as well as to constantly widen my horizon concerning the relevance of my research topic and its embeddedness in global developments.

1.5 Structure of the dissertation

This introductory chapter served, on the one hand, to introduce the main theoretical concepts used in this dissertation, as there are those of negotiation, legal pluralism, systems of ignorance and female social spaces. On the other hand, the empirical research process was described, including its geographical and legal focus, the research phases, the sampling technique, the interview methods, the interview situations and interactions, the type of data col-

³⁰ In accordance with my supervisors' focuses on gender research in developing countries and transformation processes in West Africa (Prof. Lachenmann) and on social anthropology, especially political, legal and development anthropology (Prof. Pfaff-Czarnecka), several of my colleagues work on related topics. These are women's social force in environmental legal change in Cameroon (Ngo Youmba), the construction of traditional leadership in South Africa (Lang 2004), gender and local governance in India (Strulik), female economy in Cameroon (Batana), Kenya (Laaser), Zimbabwe (Schneider 2000), Namibia (Wanzala 2001) and Uzbekistan (Yurkova 2003), women's construction of social space in Sudan (Nageeb 2000), the construction of space by displaced women in Kenya (Achieng), local knowledge and gender in Ghana (Ch. Mueller 2002), and the constitution of social security in Tanzania (Steinwachs 2004).

lected, and finally the methods for data analysis and textual presentation. This shall allow the reader to understand the research process and validate the results of this study.

Building on the theoretical concept of “strong legal pluralism” that was introduced above, chapter 2 gives an overview of the currently available repertoire of normative orders (customary, religious, national and international) and legal forums (customary, religious, state, non-governmental and international structures) as well as their interplay, as the arena of negotiating women’s rights in Togo. Thereby, the history of this legal pluralism is sketched, differentiating between colonial and post-colonial times, the one-party regime as well as the time after the so-called “democratic transition”, whereas it is not attempted to reconstruct the pre-colonial legal situation for lack of reliable resources. Where “traditional” or “customary” norms are dealt with, this refers to present-day non-statutory norms that – nevertheless – are often presented by the actors as if being handed down from an undefined past. This overview is intended to enable the reader to situate the negotiation of women’s rights in its historical and societal contexts and to get a first idea about the room for manoeuvre for such negotiations.

Chapters 3, 4 and 5 carve out, through a biographical lens, facets of women’s negotiating strategies in conflicts, their rationalities for action and their interaction with societal structures. The focus is put on the ways in which women make use of legal norms and institutions as well as how norms and institutions influence women’s lives at strategic points. These chapters are structured around important conflicts in women’s lives that emerged from women’s biographies in the field research, as there are inheritance (chapter 3), marriage – its set-up, its everyday consequences in terms of rights and obligations, and its dissolution – (chapter 4) and widowhood (chapter 5). Such a detailed description and analysis of women’s legal agency cast in the context of their biographies allows to unfold the construction of legal pluralism from actors’ perspectives.

Chapter 6 takes up the construction of legal pluralism from actors’ perspectives, this time focussing on the legal forums and the way they are used by actors, respectively use themselves the legal repertoire, with their manifold interactions, competitions and dynamic changes. The gendered access to and use of customary, religious and state legal forums is analysed and the ways NGOs try to improve women’s access to these forums are introduced.

Although the legal fields dealt with in chapters 3 to 5 are categorized as family rights, the scope of women’s legal negotiations goes far beyond mere family rights, as they form the

base for women's economic and political rights. This is recognised by women's rights organisations, who constitute the third level of analysis and the focus of chapter 7. Here it is asked in how far NGOs and their paralegal advisors do treat state law and legal procedures as embedded in the social realities and thus contribute to increase the relevance of state law for the everyday life of people. The NGOs are therefore analysed in their interaction with individual women as well as with all kinds of legal actors, including various state actors, private legal service providers, traditional leaders and civil society groups. The biographical accounts of chapters 3 to 5 as well as the gendered construction of legal forums, presented in chapter 6, are a necessary base for understanding these interactions. Carrying this analyses further, the focus is on the way the NGOs integrate the paralegal approach into a comprehensive empowerment strategy, trying to overcome gender-biases of legal forums, improve the communication between traditional and state legal systems, handle challenges under the current oppressive political situation, engage in networking among paralegals as well as among NGOs on the national and regional level, and combine this approach with other activities to create synergies and achieve structural changes.

Thereby, it is shown how NGOs expand female social spaces and in which way they link the public to the private sphere. The creation of forums of expression, exchange and political participation is especially important in the context of Togo, where for several decades the repressive regime has been actively limiting social spaces of the population in all domains (economic, social, political, cultural etc.) thereby reinforcing women's marginalization. The question is therefore, whether the manifold activities of women's rights NGOs in Togo serve to promote not only gender equity, but also democracy.

The final chapter 8 draws conclusions from the previous chapters and finishes with an outlook on the increasing relevance of glocal interdependencies for the negotiation of women's rights.

Chapter 2 Arenas for negotiating women's rights in Togo as a dynamic field of legal pluralism

This chapter will retrace both the historical and contemporary construction of normative and institutional legal pluralism in Togo, thereby sketching out some special characteristics that are nowadays relevant for negotiating women's rights in Togo.

The first sub-chapter will deal with the dynamic field of customary and religious norms and legal forums – including “animist”, Muslim and Christian religion –, focusing on their social embeddedness as well as on tendencies of delimitation and mutual integration.

The second sub-chapter looks at the ways the colonial and the independent state contributed to and struggled with legal pluralism. The colonizer's efforts to combine efficient administration and the control of power with a civilizing and christianising mission as well as the resulting combination of dual legal systems and interference in local customs with their implications for women's rights will be addressed. Subsequently, focusing on the new Family Code of 1980, the struggles of the independent state to install distinctive national laws, which protect some African traditions while, at the same time, responding to local and international demands for the respect of women's rights as human rights will be analysed.

The third sub-chapter describes the political history of Togo under the one-party regime and since the temporary democratic transition, in order to situate the new Constitution of 1992, which added twofold to the plural legal field: On the one hand, it explicitly integrated international human and women's rights conventions into national Togolese law. On the other hand, it allowed for the emergence of new legal actors and forums, namely women's rights NGOs, who provide legal counselling and mediations in counselling centres and by a network of paralegal advisors. At the same time, both this historical background and the newly integrated international norms and legal NGO forums are scrutinized as to the changing spaces for women's political participation.

2.1 Customary and religious norms and legal forums

Corresponding to the concept of “strong legal pluralism” that was introduced in chapter 1.3, customary norms can vary between those presented as norms by the population and sometimes written down by legal ethnographers, customary norms as orienting everyday life and

embedded into „animist“ religious thinking, practices of customary courts, and practices of state courts when applying custom. In the following sections these accounts shall be presented. Furthermore, the introduction of Muslim and Christian norms and their insertion into customary-animist worlds of meaning will be analysed.

2.1.1 Customary legality as socio-religious paradigms

Following Le Roy's concept (1974) of *communautarisme*, customary legality implies balancing the interests of the individual and the group, so that social relations can continue. This means that, as opposed to state law, customary legality focuses rather on interpersonal relations than on an abstract act. Thereby, similar principles of seniority, patrilinearity, solidarity, and reciprocal dependence have to be observed as between the visible world of the living lineage members and the invisible world of the unborn and deceased ancestors and the spirits and gods. Customary legality therefore has to be seen as a series of socio-religious paradigms for producing law, rather than as a legal product in the sense of a body of rules (Comaroff/Roberts 1977).

This mode of producing law is characterized by orality, which allows for the pragmatic and flexible deduction of *a posteriori* solutions in concrete situations³¹, and thereby – subject to power relations – for the negotiation of new norms, including ones that may induce changes of the gender order (Adjamagbo 1986:128-129, 152-169, 217). This means that customary law is inherently contingent to evolve as long as it is not codified.

The specific way of translating the socio-cosmic order into practice sometimes varies between the 41 ethno-linguistic groups in Togo as well as from family to family and even from situation to situation, although due to constant hybridisations of culture there are many commonalities and overlappings. Most of these groups can be localised in certain areas of Togo, but, due to intense migration³², the capital of Lomé as well as most towns and rural areas have a multi-ethnic population.

³¹ According to Elwert, communication and societal memory in oral cultures is organised in complex ways, disposing of a variety of rigidly distinguished institutions and forms of communication (1987:243, 260). Thus, a complex societal organisation of knowledge corresponds to the orality and flexibility of customary norms.

³² Concerning migration in Togo we have to consider the following: From the 12th to the 16th century the *Ewe* migrations from the east (Dahomey) to Tado and Notse and then spreading all over southern Togo; the *Mina* as a mixture of people of very diverse ethnic origin having migrated from Ghana, Togo, Benin, and Brazil; the Muslim *Kotokoli* as traders between central Ghana and Niger; before the German colonization, the area of nowadays Togo having been a kind of free trade zone between Brit-

Customary mediations and arbitrations can only be successful, if those concerned are interested in maintaining or re-establishing social relations or power structures. Increased economic and social independence through schooling, salaried work, and distancing from „animist“ worlds of meaning, as well as increased anonymity due to urbanisation and mobility often weaken the interest of and pressure on individuals to maintain good social relations, especially with their own family, lineage, or village community. This leads to shifts in normative orientations, values and priorities, as we will see throughout the case studies in chapters 3 to 5.

2.1.2 Constructing customary norms as fixed rules

Despite the paradigmatic, flexible, and open character of customary legality, and although – as will be shown later – customary rules were never codified in Togo, discourses on customary norms as fixed rules are very popular.

Such discourses are, on the one hand, provided by ethnographers, using “ethnographic present tense” (Elwert 1984a:380) to project timeless “traditional” structures that with colonisation and modernization suddenly underwent intense social change. In the following example by a Ghanaian ethnographer the focus is on the ideal institutional set-up of social control among the south-western *Anlo-Ewe*.

“In traditional [...] *Ewe* society, the group that effectively controls the conduct of its members is the lineage group” (Abotchie 1997:73). This patri-lineage³³ (*fome*) is a group of persons, descending from a common identifiable male ancestor and constituted by several families. The lineage is headed by the senior surviving male, who is at the same time the acknowledged representative of the ancestors, the repository of wisdom, the main priest, and the political authority. As such, he interprets the traditional moral code, expressed in proverbs, aphorisms, axioms and examples, which prescribe the ideal norms of behaviour to guide lineage members. This moral code is ultimately sanctioned by the ever vigilant ancestors, who maintain an active interest in the welfare of society and will punish severely anyone who violates the norms, be it with misfortune, disease, or death. Sanctions, such as expulsion from the group, loss of the right of land use, fines etc. can also be enforced by the lineage head in consultation with the (mostly male)

ish and French colonial territories; during German and French colonisation labour migration from the North to the cash-crop areas in the Plateau-region and to neighbouring Ghana, to jobs in the phosphate-mines in the Maritime region, in the public and private sector in Lomé and all regional capitals and district towns; to high schools, vocational training centres and universities in Lomé and the regional capitals; during the suppression of democratisation efforts in the beginning of the 1990s political refugees to neighbouring Ghana and Benin etc.

³³ The dominant role of the patri-line, however, does not exclude the importance of matri-lineal relations.

lineage elders³⁴. Belief is held, that the supernatural forces sometimes choose to spare the wrongdoer and strike an innocent member of his or her lineage instead. This notion of collective responsibility of the whole lineage for crimes committed by any one member serves as efficient social control.

The individual is socialized into the moral code on a succession of rites of passage, from the outdooring of the newborn, through his or her puberty and marriage, to his or her funeral, introducing the individual to a new social status and new roles in life. Only when disputants are dissatisfied with the arbitration of their head of lineage or clan head, they appeal to the village chief. He is selected from the royal lineage, i.e. the lineage group whose leader is acknowledged to have been the first to occupy the land of the village and therefore is seen to be the natural custodian of the customs and traditions of the people. With the help of his advisors, i.e. the other lineage heads, he can trial and settle cases³⁵. The sacred derivation of the political norms means that the chief and his elders are equally accountable to the omniscient ancestors for the manner in which they administer justice. But the chief owes his secular authority also to his people, who can dethrone him when he severely defaults in his obligations (summary of Abotchie 1997:73-81).

This construction ignores the variability, contextuality and flexibility in the interpretation and application of the moral code. It hardly mentions the role that ordinary individuals (i.e. apart from the lineage elders, lineage heads, and chiefs) and especially women can play in the negotiation and renegotiation of conflicting interests, their exercise of agency, and the various spaces and limitations for negotiation.

On the other hand, such discourses are part of everyday legal negotiations in Togo, inside as well as outside customary or state courts. Such discourses are strengthened by their reference to tradition. According to Giddens (1996:150) the reference to tradition is a means of building identity through a continuous process of remembering and reinterpreting, i.e. connecting the past to an anticipated future. The past referred to is, however, not historical, for example pre-

³⁴ Nowadays, this institution of the lineage head and the lineage elders is called “family council” and is explicitly referred to in the state law, concerning for instance the choice of the inheritance administrator.

³⁵ Apart from the office of the chief (*fia*) and his advisors (*notables*), the *chefferie* consists of the speaker of the chief (*nusu tsiami*), the representative of the village founder (*mancraro*), the “defence minister” (*asafoche*), and the “army commander” (*asaforere*), an office hinting to the wars against Ashanti invasions in the beginning of the 19th century, but nowadays more of a ceremonial job). Concerning the female chieftaincy offices see below. None of the chieftaincy offices is elected for. The village elders secretly choose somebody among the families to be considered, without asking or informing the person in question and without consulting with the rest of the population either. People are not keen to take over these life-long offices, as they require a lot of unpaid work – one even has to put in one’s own money – , plus the obligation to live in the village. The office conveys a high status to its holder, but this provokes a lot of jealousy which can be quite dangerous. Therefore, people mostly try to escape these offices. Thus, the chosen persons are kidnapped and forced to undergo the enthroning ceremonies. Once enthroned, i.e. made responsible towards the visible, living, and the invisible community of the unborn and the ancestor’s, they risk their life if they try to escape and thus break this contract (Mensah-Amendah 2000c:3).

colonial, but rather an imagined history (cf. Alber/ Sommer 1999:89). Besides this integrating function for the community, the reference to tradition serves to reinforce the authority of the so-called *détenteurs des us et coutumes* (custodians of tradition) such as lineage heads, chiefs and *vodu*-priests. They strengthen their power position through their selective interpretation of customary law. This is not surprising as, since colonial times, local political structures had to compete with a central power, the nation state, who partly draws its authority from the imposition and control of laws.

These discourses frequently depict women as dependent on their family and husband, deprived of the right to speak up, take decisions, or inherit land and houses:

Légalement, dans notre coutume, quand quelqu'un veut prendre une femme, il envoie sa famille à la famille de la femme pour demander sa main [...]. (Kossiwa 1:9)

La femme n'a pas d'autorité. Elle n'est pas suffisamment forte pour les questions de terrain. (Mancraro 3:13)

Selon notre tradition, la femme doit se soumettre à son mari, quel que soit le cas. (Secr. Chefferie 1:27)

Chez nous, la femme n'a pas droit à la parole. (Afi 1:1)

La veuve ne mange pas l'hérité, mais peut manger sur l'hérité. (Amega 1962:727)

Une femme n'a pas d'enfants (meaning that a woman has no right to make decisions or to take part in decision-making concerning her children's marriages). (Baerends 1990:36)

Such normative statements ignore that women's customary rights are often – especially relating to property – secondary rights, i.e. derived from the rights of male relatives or husbands, rather formulated in terms of men's obligations than in terms of women's rights, and therefore not so easily to make out from a rule-seeking state-centred perspective (Baerends 1990:42, Wanitzek 1995:197). Such reifications of customs in a way biased towards “visible” male rights contribute to prevent women from making claims and negotiating their rights.

The fact that many of the popular customary norms revolve around gender relations (or that the reference to tradition goes mostly along with its gendered presentation) turns gendered norms into a marker of neo-traditional identity. It is quite fashionable indeed to confirm male-biased interpretations of customary norms and one might speculate that this serves to compensate feelings of inferiority due to unemployment, poverty and a lack of perspectives. It is only recently that women's rights NGOs started to question this coupling of tradition and gender

inequality, as will be further discussed in chapter 5.1.7, 6.8 and 7.3.1.

2.1.3 Women as customary legal authorities

In the south-western Kloto district besides the male chiefs (*fiawo*) also “queen mothers” (*nyonu fiawo*)³⁶ and their speakers (*tsiami*) engage in mediations at the village level, as long as only women are involved³⁷. They are responsible for women’s affairs within their village and do not have much say in general village politics³⁸. There are also several women “ministers” to advise the „queen mother“ as well as women “soldiers” who act as denounciators of “improper” female behaviour in the village. Apart from that, “queen mothers” and their advisors are responsible to keep the village clean and presentable, both in the physical and spiritual sense (Justine 1:5). For instance, women are not allowed to quarrel in public:

On a fait la loi chez nous que les femmes ne doivent pas se quereller (Justine 3:5).

This type of political village structure in the south-western Kloto district used to be “parallel”, in the sense that an idealistic complementarity between male and female structures – each with a certain autonomy in its own gender-specific field – was established. However, in Togo as well as in other African colonies, the colonizers integrated only the male chiefs into their administrative system, thereby diminishing the “queen mothers” role and women’s participation in decision-making processes on the local level (cf. Stoeltje 1998:177-178, Ch. Mueller 2002:108, 119).

A similar female leadership structure exists – although with diminishing importance – in rural areas among the *Kotokoli* in Central Togo: It is composed of the *kpenyã*³⁹ who is said to be a female authority “in the shadow of the cantonal chief” (Froelich et al. 1963:36), responsible for receiving and feeding honorary guests; of the *mangaziya*, who has to judge or mediate

³⁶ People in Togo disagree as to the origins of these female chieftaincy offices. They might have been copied from the *Akwamu*, an *Akan* state who had to pay tribute to the *Asante* and, during the 18th century, had subjugated western *Ewe* groups, some of which, in 1890, became part of the British Gold Coast while others were integrated into the German colony of Togo (Meyer 1999b:2-5). Contrary to the structure among *Akan* groups in Ghana (Ch. Mueller 2002:112-113, Stoeltje 1998:177) in the Togolese Kloto district neither the institutions of “subqueenmothers” nor of “paramount queenmothers” exist.

³⁷ When it comes to filling one of the female offices, the decision is taken not only by the male assessors of the chief (*les notables*) but some elder women are also included (Mensah-Amendah 2000c:3).

³⁸ However, as chapter 5.1.7 and 7.3.1 will show, the recent training of “queen mothers” as paralegal advisors opened new ways for their participation in political decision-making.

³⁹ This *kpenyã* is not identical with the position of *naná nyo*, reported by one interviewee for the *Kotokoli* as hierarchically organised Muslim women’s leader under the Imams (Alfa 1).

conflicts between women; and of their deputies. The degree of their influence and power seems to depend strongly on their personality and interest (Lallemand 1994:27-37). Furthermore, a senior woman is designated as *reine* to be responsible for the observation of religious norms and festivities concerning women and girls, while affairs concerning both men and women are to be treated by the *imams*. However, contrary to the *queen mothers*, the Muslim *reines* are structured hierarchically, with the *reine* of the town of Sokodé supervising the *reines* in the villages and urban wards. All the *reines* are enthroned by the spiritual chief of the *Kotokoli*, who is also supervising the imams (Alfa 3:1-2).

In all other areas of Togo, except for single cases of *vodu*-priestesses (Rosenthal 1997:185, 1998:21, 43, Nyonu Fia 1:8) and female interim chiefs⁴⁰, customary legal institutions are mostly in the hands of men. However, for instance in marital conflicts, these male leaders are often more interested “to maintain or mend affinal relations between men” who constitute their power base, than to protect a woman’s right (Baerends 1990:66), with the indirect consequence of legitimising and maintaining societal gender inequalities.

2.1.4 The religious embeddedness of customary legal institutions

The above described customary legal principles and institutions are embedded in the religious world view, from which they derive their authority: In southern Togo, the „animist“ religion finds its expression in the *vodu*⁴¹-cults. In the area between southern Ghana and southern Nigeria hundreds of *vodus* (or *vodu*-deities, *vodu*-spirits), each with different qualities, are worshipped, yet a different selection in every locality. Despite more or less intense Islamisation and Christianisation, the *vodu*-cults are not diminishing. This may be due to their explanatory power concerning misfortune, sickness and death, to the constant incorporation of new, similar cults (thus renewing their legitimacy), and to a very strict and hierarchical internal organisation with powerful modes of sanctioning: The *vodus*’ demands for reciprocity are never satisfied. Only the respect of manifold taboos, sacrifices, regular consultation and absolute obe-

⁴⁰ A daughter can follow her father as a chief only in very exceptional cases, i.e. if there is no capable son: *S’il n’y a plus personne dans la famille au niveau du chef, la maison royale, s’il n’y a plus personne compétente, donc là on peut choisir une femme.* (Secr. Chefferie 1:5)

But, as the families in Togo have numerous children, it is very rare that one cannot find a single capable man in the chief’s family. That is the reason why currently, among several hundreds of chiefs across Togo, there are only two women enthroned as chief, one in Langabou in the Central Region and one in Niamtougou in the Kara Region (Christophe 8:2) .

⁴¹ I follow Rosenthal (1998:1, 21, 61) in using the emic term *vodu* for three related concepts: the spirits or divinities worshipped, the underlying religion, as well as the spirit hosts during possession ceremonies, however without distinguishing the different aspects by capital and small initial letters.

dience to the mostly male *vodu*-priests (*hunno*) and their demands for the recruitment of initiates (*vodussɪ*) into their cults and for monetary contributions may protect from either misfortune, sickness and death as metaphysical sanctions, or from monetary fines, beating, and social isolation as sanctions in the power of the *vodu*-priests (Elwert-Kretschmer 1997:12-21, 1995).

The *vodu*-cults provide a normative orientation, as the *vodu*-spirits are believed to insure a just arbitration of disputes for their worshippers (Rosenthal 1997:184). Their openness allows for the syncretic incorporation of elements from other religions, such as Christian saints, thereby enriching the local normative field. The *vodu*-priests represent local foci of power and dispose of strong institutions of social control, working through secrets, coercion and fear (cf. Mancraro 2:6). They can sanction religious norms, but they can also interfere with secular norms, if they redefine them as religious norms. Finally, *vodu*-norms are manipulated according to the social position of the accused and depending on the monetary and power interests of the *vodu*-priest and the diviner involved (Elwert-Kretschmer 1997:12-21, 1995).

On the other hand, despite the male dominance among *vodu*-priests (Rosenthal 1998:170) there is evidence that *vodu*-cults provide spaces for women to enforce their interests and exert power. For instance, in 1932 about 3000 to 5000 women from Lomé and the surrounding areas (led by market women) violently but efficiently protested against colonial tax increases, the levying of new market fees, the arresting of two leaders of a male opposition movement by the French governor, and the political inertia of the deadlocked triumvirate of urban political authority in Lomé that accentuated the domestic economic pressure on women. Thereby they used *vodu* as a vehicle of shame and protest, while at the same time marking

“the gendered perimeters of political authority for Ewe women and men [...], a division between ‘Western’ political legitimacy and cultural/religious power of vodou that operated along male/female lines” (Lawrence 2003:1).

Intrinsically related to the *vodu*-cult is the *afa*-divination, i.e. the interpretation of the *afa*-oracle. *Afa*-diviners (*bokono*) are consulted by animists, Christians, and Muslims alike (Rosenthal 1998:157-158) before taking important decisions, in case of illness or misfortune, in order to find out, which socio-religious norm was transgressed, which *vodu* was neglected and demands compensation, or in order to determine the sentence in case of offences (Elwert-Kretschmer 1997:21). The distinction between *vodu*-priests and *afa*-diviners is often blurred,

as many of them cumulate both religious powers in order to be more efficient and have a greater clientele (Rivière 1981:176).

2.1.5 The introduction and localization of Muslim norms and institutions

The expansion of Islam into West Africa reached Togo only during the second half of the 18th century through invasion by the *Anufom*, who came from what is nowadays the centre of Ivory Coast and established their kingdom in Sansanné-Mango. From here they subjugated the chieftaincies of *Gourma*, *Mossi*, *Mamproussi*, *Kokomba* and *Bassar*, thus dominating at times great parts of what today are Togo's northern *Savannah* and *Kara Regions* (Gayibor 1996:128-132). Upon their arrival, only the small group of *Karomom* were Muslims, "who acted as councillors and magicians to the rulers at their request [...] and it was not until the first decades of [the 19th] century that the whole ruling estate and part of the commoner estate gradually adopted Islam" (Rouveroy van Nieuwaal 1977:94). During the second half of the 19th century, "Sudanese" traders who regularly crossed the country on their trade of kola nuts from Ghana against sodium, leather, and other products from the *Haussa* cities in Northern Nigeria introduced Islam to the central area of Togo, where it spread especially among the *Tchamba* and *Kotokoli* (Gayibor 1996:125-136, 152-154).

Nowadays, the Muslim population lives mainly in the Central and Savannah Regions as well as in Lomé and all major towns. Estimations about the current share of Muslims in the Togolese population vary between one sixth and one third⁴². All estimations recognize a growing tendency, due to manifold conversions. With financial support from Saudia Arabia, especially during the last 10 years, and partly also from Lybia, mosques were built all over the country, primary and secondary schools were opened with smaller classes and teachers who are better paid and more motivated than in public schools, scholarships are offered to excelling pupils, and medical services and literacy classes are organized in many Muslim socio-medical centres (Amadou 1:1). Several radio stations broadcast Muslim religious programmes.

The practice to recite the Koran in Arabic is taught in many small Koran schools, however without teaching its content, as generally neither the teachers nor their pupils do understand Arabic. This might have contributed to the fact that although Islamic norms became partly re-interpreted from local cultural perspectives, even in the Muslim areas of the country they did

⁴² According to the *Union des Musulmanes du Togo*, these differences are due to political interests: While Muslim leaders advance numbers between 30 and 35%, the government assumes much lower numbers, allegedly to please the interest of France and the Catholic church (Amadou 20.2.03:1).

not influence the practice of the – colonially created – “customary courts” in any considerable degree (cf. Rouveroy van Nieuwaal 1976:64, 90-92).

Muslim law in West Africa – generally the sunnit law of the Malikian law school – was locally re-interpreted and adjusted to local traditional rights, rather than substituting them:

Islamic teachings are not imposed uniformly in all West African cultures. Thus, the written law of Islam interacted with each specific set of pre-existing customs and traditions to create distinctive Islamic societies that differ, sometimes strongly, from each other. [...] As the pre-colonial cultures were certainly patriarchal, it is difficult to determine which parts of current culture come from Islam and which from predisposing elements in pre-Islamic society. (Callaway/Creevey 1994:31-32)

This adjustment was facilitated by the strong orientation of both Muslim and „animist“ legal orders towards reconciliation and the reestablishment of social peace.

According to a Muslim interview partner, the mutual influence of Muslim with customary norms in the Islamised areas of Togo lead, for instance, to an improvement of women’s inheritance rights, but to the maintenance of traditional polygyny:

Notre coutume a perdu sa force avec l’islamisation. C’est à dire que, si on veut parler de la culture *Kotokoli* pour la femme, la femme n’héritait pas en réalité. Mais avec l’islamisation, on est obligé de se soumettre aux règles de l’Islam, puis que c’est ça qui est devenu notre culture, et que moi en me promenant, de décès de l’homme on n’a jamais fait sortir la femme de la maison de son mari. [...] Donc, on ne dépossède pas la femme des biens de son mari décédé en milieu islamique. [...] (Latif 2 :2-3)

Ce qu’on déplore – en fait, l’islam n’a jamais recommandé la polygamie. [...] La preuve est que les grands foyers des musulmans n’ont jamais été polygames. [...] Mais dans notre tradition la polygamie existait. Donc tu vois, le mélange du coran avec la tradition a été utilisé par les hommes pour [accepter l’Islam mais] insister sur la polygamie. (Latif 2 :12-13)

Gender norms and legal practices among Muslims in Togo vary with the degree to which Muslim elements have taken precedence over non-Muslim local customs. This differs from region to region, from villages to towns, and from family to family. Consequently, Muslim norms in Togo (which are not written down) can be thought of as the customary norms of islamised groups or sub-groups, which coexist with non-Muslim customary norms.

While, among the *Kotokoli* of central Togo, the hierarchically related traditional chiefs⁴³ are responsible for sanctioning customary norms, the chiefs of Muslim quarters (*male ouro*) and the Imams are responsible for sanctioning Muslim norms. However, the latter are appointed

⁴³ I.e. the *Ouro Kumo* at the village level, the *Ouro Kubonu* at the cantonal level, and the *Ouro Eso* as paramount chief.

by the paramount chief upon proposition by the Muslim communities, the same as non-Muslim spiritual chiefs are appointed by him. The sanctioning of customary norms is therefore hierarchically distributed among the various chiefs and the Imams.⁴⁴

2.1.6 The mutual integration of Christian and customary norms

Both the Catholic and the Protestant missions⁴⁵ invested early on not only in the training of African clergymen and lay preachers⁴⁶, but also in schools⁴⁷ that mainly served to christianise the young generation, as well as in hospitals, health posts, vocational and agricultural training centres (Erbar 1991). Little is known about the gender distribution in these schools and the school curricula, but it is most likely that, like in other African colonies, “missionaries began to influence notions of appropriate gender roles for women by holding up as a model the most conservative of Western family ideologies” (White 1999:100). This comprised the assumption that women should be under the control of a male guardian, the rejection of polygyny and divorce, and the despise of married women engaging in independent economic activities such as trade (White 1999:93, 100-107). These efforts were supported by male elders and male colonial rulers.

At the same time, the German missionaries, since 1884 strictly controlled by the German colonial government, were ordered to maintain the “traditional structures” of the African soci-

⁴⁴ Cf. Rouveroy van Nieuwaal (2000:263), Rouveroy van Nieuwaal/Rouveroy van Nieuwaal-Baerends (1986:189), Froelich et al. (1963:35-38).

⁴⁵ Since the Portuguese construction of the Elmina fortress at the Gold Coast in 1482, Christian missionaries were present along the coast (Amos 2001:295). Their god soon became identified with the god of the white slave traders. Not surprisingly, it took several centuries for the churches to install themselves permanently in the country. The missionaries gained more influence with the decline of the slave trade during the 19th century and the opening up of new opportunities for the trade of African raw materials against industrial products from Europe, through which the Christian god became associated with a new image of progress (Sebald 1997:201-204). The first *Catholic* church in the area was built in 1845 in Agoé (now Benin) by the Afro-Brazilian community, who was heavily engaged in slave trade until its repression by the British in the 1850s. The *Wesleyan Methodist Mission*, coming from Freetown, established a missionary station with a school in Aného (Togo) in 1850; the *Basler Mission* and the pietist *Bremer Mission* (later *Norddeutsche Missionsgesellschaft*), both Protestant, started their work in the *Ewe*-region around 1853. The latter codified the *Ewe*-language, translated the bible into *Ewe* and taught *Ewe* in their schools (Gayibor 1996:147-149, Sebald 1997:204). Catholic and Protestant missionary societies competed strongly with each other, enticing Erbar (1991) to talk of a “scramble for souls”.

⁴⁶ In 1913, the Catholic staff in Togo thus counted 77 Europeans and 215 *Nationalhelfer*, the Protestant staff 32 Europeans and 202 Africans, and the christianised population of both congregations was estimated to attain 50.000 (Sebald 1997:213f).

⁴⁷ In 1913 more than 15.000 girls and boys were enrolled in missionary schools (Sebald 1997:213). The percentages were not available.

ety. The newly trained African staff was much more critical towards the colonizers and lobbied not only against their racist rule but also in favour of an independent Ewe church. This africanisation trend in the churches became reinforced by the departure of all German missionaries from Togo at the outbreak of World War I. The first Catholic bishop was installed in Lomé in 1955. When the French colonial territory of Togo became independent in 1960 the statistics cited 215.000 Catholics and 45.000 Protestants among the Togolese population (Sebald 1997:212-219).

Since the 1980s a variety of Pentecostal and charismatic churches are mushrooming in Togo, the biggest and most established one being the *Assemblée de Dieu* (cf. also Meyer 1999a:152). When Togo was still under a one-party system, most of them evolved underground and were frequently raided by the police. But with the lifting of the banning of religious groups in 1990, the number of charismatic churches began to proliferate. Since then, the Ministry of Interior has recorded 500 charismatic churches in Togo (Tadegnon 2003).

There are many Catholic and Protestant parishes, churches, and schools all over the country as well as several monasteries of Benedictines and Franciscans. Christian radio-stations⁴⁸ are regularly broadcasting. American Baptists started evangelisation in Lomé in 1974, branching into the interior also from the towns of Kpalimé, Kara and Dapaong, and entertaining a centre for the blind, hospitals and a bible institute. The bible is published in various local languages, and bible books are widely distributed among the population. Most churches have choirs, women's associations, bible reading groups (in Ewe *habobowo*) – often separate for men and women –, as well as youth clubs. Priests and pastors as well as church authorities of lower rank are consulted by the population for advice and help. Frequently, they address and lecture their believers also on their own initiative, admonishing them to stop polygyny and marry in church, preaching against abortion and divorce etc.

In the beginning of the 1990s 22.16 % of the Togolese population were estimated to be Catholics and 2,5% Protestants, mostly Presbyterians and some Lutherans (Toulabor 1997:223, Ulferts 1994:149). Nowadays, Christians are estimated to make up one third of the population, though the Christian influence is probably higher (Nohlen 1998)⁴⁹. However Rosenthal, describing religion among the Ewe, points out:

⁴⁸ Christian radio stations include *Radio Maria*, *Radio Zion*, and *Radio Évangile Jésus Vous Aime* (cf. Zodzi /Perrin 2000).

⁴⁹ Gebhard estimates the Christians to make up even 37% of the population, of which 75% would be Catholic (1991:2)

Today numerous city-dwelling Ewe are firmly and exclusively Christian in that they do not perform the Vodou or Tro ceremonies of their forebears, and they do not frequent Afa diviners. [...] Probably more numerous, though, are Ewe who both attend church and take care of their family or village vodous. They have Afa divination performed before making important decisions, as well as for significant events such as birth, death, marriage, the purchase or sale of land, illness, and spirit possession. But a significant third group exists. These are the inhabitants of villages along the Togolese coast, a great number of whom do not engage in any Christian practices whatsoever. Many consider Christianity, which is said to be white and European, to be at odds with Vodou practice that are categorized as truly Ewe. (Rosenthal 1998:20)

In many instances, Christian beliefs therefore did not replace the customary religion, but were integrated into the customary world view, or vice versa, customary beliefs were re-interpreted from a new Christian perspective. The result is a broad syncretic field spanning a continuum between purely „animist“ and purely Christian beliefs and values, and therefore a broad field of Christian-animist social norms. This becomes obvious, for instance, during funerals, which comprise both Christian and „animist“ elements (cf. chapter 3.3.3). Likewise, Christian norms were selectively taken over by male customary authorities, especially where they supported existing or desired male privileges.

While the majority of Christian parishioners, church attendants, and catechists are women who are very active in community work, the spiritual leaders and decision-making authorities are mostly male, except in the Evangelical Presbyterian and Methodist churches where there are a few women pastors⁵⁰. As elsewhere in Africa, the bible interpretation generally referred to is a male-biased one. For instance, from the passage that God created Eva from a rip of Adam it is deduced that women are supposed to be inferior and under male authority. Such interpretations are used by men to legitimise male privileges in society – which are allegedly rooted in customs –, like in the following citation:

La femme doit se soumettre à son mari, obligatoirement. Même dans la bible la femme doit se soumettre à son mari, même le Bon Dieu l'a dit. Selon nos coutumes aussi, la femme doit se soumettre à son mari, quel que soit le cas. (Secr. Chefferie 1:27)

However, these male-biased interpretations are questioned by women's rights activists in Togo (cf. Tovieku 2001:7), who confirm their demands for the respect of women's rights accorded in the Family Code by citing bible passages, in which the husband is asked to love and respect his wife (such as Eph. 5/25-29, Prov. 31/10-12, Cor. 7/3-5).

⁵⁰ In 1992 the Evangelic Presbyterian Church of Togo counted two female pastors (Norddeutsche Mission 1997), the Methodist Church of Togo one female pastor in 2001 (Anita 5:4).

La bible comporte des droits et des devoirs, ainsi un groupement religieux est bien placé pour vulgariser le droit et le rendre accessible à la population. La bible, pour être honnête, est le premier livre démocratique. [...] Selon l'Épître de Paul aux Ephésiens chapitre 5 verset 25, l'homme doit aimer sa femme et selon le code togolais de la famille, l'homme a le devoir de respect et d'affection à l'égard de sa femme (Mme Adokou, secretary of the *Union des Femmes Méthodistes*, interviewed by N. Akakpo 1995b:8).

Also some women who are active in the *Fédération des Associations Féminines de l'Église Évangélique Presbytérienne du Togo*⁵¹ are promoting a gender balanced reading of the bible by referring to Gen. 1,27 (Ulferts 1994:163-164).

Christian influence during the last hundred years contributed to morally devaluing not only polygyny and divorce, but also abortion and medical contraception (cf. chapter 4.1.5, 4.2.3 and 4.3.5). The Christian norm of monogamy stands in opposition to customary as well as Muslim norms and is therefore hardly respected. Likewise the concept of lifelong marital unions – including faithfulness of both husband and wife – is not necessarily supported by Muslim and customary norms. Apart from that, Christian churches started to play an important role in offering alternatives to the customary widowhood ceremonies (cf. chapter 5.1.7).

According to article 25 of the Constitution of 1992, Togo is a secular state (Rép. Togolaise 1996), prescribing neither Muslim nor Christian norms while guaranteeing freedom of religion. However, as we shall see in the following sub-chapter, at various points the Family Code refers to customary norms that are embedded in religious norms, mainly of „animist“ or Christian origin.

2.2 State struggles with legal pluralism in historical and contemporary perspective

This sub-chapter looks at the way the colonial and the independent state contributed to and struggle with legal pluralism in Togo.⁵² Here, the colonizer's efforts to combine efficient administration and the control of power with a civilizing and christianising mission as well as the resulting combination of dual legal systems and interference in local customs with their

⁵¹ The *Fédération des Associations Féminines de l'Église Évangélique Presbytérienne du Togo* assembles thousands of women's associations of the Evangelical Presbyterian Church in Togo (bible reading groups, choirs, pastor's wives and social workers of the church). It was founded in 1971 in order to coordinate their activities and promote the gospel work. The relatively high degree of organisation of Presbyterian women was further promoted by the creation of the women's department in 1989/1990, headed by a female pastor, within the administration of the EEPT in Lomé (Ulferts 1994:149-164).

⁵² This historical overview will not include pre-colonial legal and gender relations in Togo, as material about this aspect is scarce and highly filtered by the ethnocentric and male-biased perspectives of German and French missionaries and colonial officers (such as Westermann, G. Asmis, R. Asmis, Spieth), who were first to write down people's oral accounts of their past social organisation.

effects on women's rights will be addressed. Subsequently, the struggles of the independent state to balance the striving for an "African identity" (by protecting African customs within a modern state) with local and international demands for the respect of women's rights as human rights will be discussed.

Before we enter into the analysis of the state's contribution to legal pluralism, we shall briefly mention some of the main commonalities and differences between state law and customary legality:

Both constitute institutionalised modes of ordering society, firstly in that they represent habitualised ways of producing rules, the state law referring to the constitution, to political programs or popular referendums, customary legality referring to the ancestors and the „animist“ world view of interrelated worlds of the living and the spiritual; secondly in that they apply these rules to concrete cases, the state law using written law books, customary legality referring to legitimised authorities' memory.

Customary legality claims only local applicability and also stands for a certain degree of local self-regulation. It is deeply embedded into everyday life and its main actors never treat the facts under question as distinct from the social relations within the community. State law, on the other hand, is produced by a central political authority. In Togo from 1970 to 1990 this used to be the president and his one-party government. Nowadays, it is the same actors plus a weak parliament, which became again dominated by the former one-party. State law is conceived of as a differentiated system, relatively autonomous from the rest of society. It consists of written laws, jurisdiction and decrees, formulated in a juristic language, to be activated through juristic specialists in the form of an abstract act. Decisions and judgements are supposed to follow fixed rules, which refer to precise facts, disregard other aspects of the social relations between the conflicting parties and are enforced through specialized state institutions.

2.2.1 Setting-up a dual legal system under German colonial rule

The German colonisation of Togo began in 1884 with the first "Schutzverträge", contracts negotiated with local chiefs along the coast by Nachtigal, German consul in Tunis, in order to make the area accessible to German trade companies, establishing a protectorate. Due to Bis-

marck's doubts about the profitability of a big colonial enterprise and other internal political disputes, the German government tried to copy the British model and limit its intervention in the colonies to a minimum, ordering the trade companies to administer the new territory by themselves. Mainly out of a lack of sufficient numbers of German officials, the *Schutzgebietsgesetz* of 1900 stipulated that legal relations among the African population should continue to be ruled by their own law, the latter being termed "customary law" (*Gewohnheitsrecht*) to be applied by "customary chiefs", as long as they were not contrary to "the convictions of European civilisation". Apart from the explicit efforts of Christian missionaries which preceded and accompanied the colonial enterprise, these "convictions of civilisation" were entrenched in a Christian worldview and thus implicitly transported Christian norms. This observation is important in order to avoid to dichotomise between customary and state norms along religious versus non-religious lines. We rather have to conceive of norms as being always embedded in worlds of meaning which are coloured through religion, though, perhaps to different degrees (Rouveroy van Nieuwaal 1980:27-33).

Meanwhile, the European population of the colony was to be ruled by German private law to be applied by German courts in the colony, where at first mainly colonial administrators (*Bezirksleiter* or *Stationsleiter*) were working. The two systems were connected in the sense that Africans who were unsatisfied with the chief's jurisdiction could seek appeal with the colonial officials. As this policy failed, the German Reich took over the administration by installing a governor in 1908. The German penal law was to be applied to Europeans and Africans alike by German colonial officials (Rouveroy van Nieuwaal 1980:27-33).

In 1907 and 1911 colonial officials set out to "collect and write down" what they expected to be "the customary law" of Togo. Thereby, they discovered that the customary norms of the various "tribes" and even within each "tribe" were often quite different from each other. They explained these variations with various outside influences from Ashanti and Dahomey customs as well as from European legal thinking, especially along the main trading routes. However, the extensive material collected was never analysed, due to the outbreak of World War I in 1914, when Togo was invaded by French and British colonial troops from the neighbouring countries (Rouveroy van Nieuwaal 1980:27-33, G. Asmis 1911, Schlettwein 1928:248-250). The German colonizers' proclaimed idea behind the codification of customary rules had been not to suppress these developments, but to further the "civilisation" of the indigenous population by "instructing and advising" them, as long as their customs did not conflict with "civi-

lized morality”. This stipulation – equivalent to the repugnancy clause in British colonies –, recognized the validity of customary law while severely limiting its autonomous development. Thus, for example, in 1907 child betrothal was outlawed. Also, the chiefs were ordered to abandon “oracle judgements”, the threatening of supernatural sanctions, and other “uncivilized” ways of enforcing customary law (Rouveroy van Nieuwaal 2000:111). This shows that, although no codification was achieved, nevertheless the customary law was heavily manipulated, a process designated with the German term *Fremdtraditionalisierung* by von Trotha (1992:443).⁵³

2.2.2 French colonial efforts to exclude chiefs from jurisdiction and motivate the population to “renounce custom”

After renegotiations of the border in the Versailles contract in 1919, the Society of Nations attributed the eastern part of Togo to France as “territory under mandate” and the Western part to Britain⁵⁴. Despite this special status of Togo, in 1920 the French just extended the administrative organisation of the *Afrique Occidentale Française* to the new territory⁵⁵. Similar to the Germans, and in line with the French policy of assimilation, the French installed a dual legal system, in which the African population (called “French subjects”) was to be ruled by customary law, thought of as uncivilized and inferior, while the European population and the few Africans who achieved the status of “French citizens” were placed under the French civil law, i.e. the *Code Civil* of 1804, also called *Code Napoléon* (Rouveroy van Nieuwaal 2000:113, 1976:35-36, Cavin 1998).

Different from the British system of “indirect rule”, which accorded independent authority for traditional jurisdiction to customary chiefs, the French withdraw in 1924 all penal and jurisdictional competence from the chiefs and relegated them to a mere mediational role, limited to commercial and civil affairs, devoid of any binding power (G. Spittler 1975:204-205). While the Europeans in Togo had professional French judges to treat their cases in court, the customary jurisdiction was run by colonial administrators, who neither spoke any of the local

⁵³ On the other hand, although customary law was manipulated by the colonizers, it nevertheless continued to exist and absorbed some of the colonial innovations, in the sense of a syncretic *logique métisse* (Amselle 1990).

⁵⁴ In 1956 British Togo was integrated into the Gold Coast which became the independent state of Ghana.

⁵⁵ As Togo joined the French colonies only after the first World War, Togo did not undergo the same legal development as countries like Senegal, where the French established a protectorate already in 1881 and reorganised the judicial sphere many more times (Callaway/Creevey 1994:4-6).

languages nor were acquainted with the culture of the population, but were equipped with powerful repressive instruments, such as the *indigénat*⁵⁶. Civil affairs of Africans were treated by the district officer (*chef de subdivision*, later called *préfet*) in the *Tribunal coutumier de 1er degré*, who had two local assessors to inform him about the (unwritten) customary law. As these assessors were always male and selected mainly according to their colonial loyalty, the representation of customary norms and principles as well as of women's rights remained rather fragile. Appeals in civil affairs as well as penal matters involving Africans were treated by the *commandant de cercle* in the *Tribunal coutumier de deuxième degré*. Through this set-up, the chiefs not only lost jurisdictional power, but the colonizers also installed a non-separation of jurisdictional and executive state power, which was taken over by Eyadema's dictatorial one-party regime soon after independence.

The French as well made efforts to codify customary law. In 1926 they published, under the title *Coutumier indigène*⁵⁷, customary rules, collected in the southern districts of Lomé, Aného, Atakpamé, and Kloto. This collection of mainly *Ewe* customs was intended as a legal guide for *all* ethnic groups of the territory, except for Muslims, Europeans, and *assimilés*⁵⁸. However, it never became widely applied (Schlettwein 1928:250). In 1939, the *Coutumes Juridiques de l'AOF* was published. Again, this compilation proved to be incomplete, not adapted to emic legal concepts, and thus useless (G. Spittler 1975:204-211). Only in 1946, when Togo changed from a "territory under French mandate" to become a "territory under French tutelage", the African population received the status of French "citizens". Henceforth, Africans became subject to the French penal code (to be applied by French judges) and to French public law; in civil matters, however, they could only apply French civil law after having formally renounced to custom (Rouveroy van Nieuwaal 1976:36). This means that, different especially from many British colonies (such as Tanzania, cf. Klemp 1995, and Kenya), Africans in Togo did not have to prove that they were leading a "modern lifestyle" in order to make French law applicable to them, but it was sufficient to declare their renouncement of custom, certified by a colonial official.

⁵⁶ The *indigénat* allowed the colonial administrators at the district and sub-district level to punish any disobedience against the colonial power with monetary fines or imprisonment of up to two weeks without any prior trial (G. Spittler 1975:206).

⁵⁷ Cf. supplement to the *Journal Officiel du Territoire du Togo* of October 1st 1926.

⁵⁸ The status of *assimilé* was attributed as a rare favour by colonial administrators to those Africans who completely renounced their customs, subordinating themselves completely to French law, and who displayed to lead a Western life style (Cavin 1998:36).

Albeit this effort to push back customary norms, people generally did not take up the option of “renouncement” but continued to bring their affairs – civil as well as penal cases – before the customary chiefs, who were keen to thereby maintain their authority and make some extra money (Rouveroy van Nieuwaal 2000:113, 207-220). In French West Africa only a small percentage of all the cases reached the above mentioned colonial customary courts (G. Spittler 1975:207-211).

2.2.3 The non-codification of customary rights and its consequence for women’s rights

As was laid out, neither the German nor the French colonizers of Togo succeeded in codifying the customary norms of the population. It has been demonstrated for other European colonies (cf. Chanock 1982 for Rhodesia and S. F. Moore 1989:300 for Tanganyika) that a codification of local customs always implied a restricted selection and filtering from the great variety of everyday practices and a subsequent generalisation for all in all situations (cf. Risseuw/ Palriwala 1996:34). Moreover, it mostly lead to a modification and re-invention of traditions according to the colonizers’ values and expectations and according to negotiations between the colonizers and the so-called “local authorities”. The latter comprised the persons instituted as chiefs by the colonizers and accorded the authority to explain local traditions. As the whole personnel of the colonial administration as well as the designated “chiefs” – who were keen to gain back some of the autonomy they had lost through colonisation – were male (concurring with the patriarchal worldview of the colonizers), custom became re-interpreted in a male-biased way (Chanock 1982). This demonstrates that the process of re-inventing and re-localising cultural patterns and traditions as a consequence of the encounter of different worlds of meaning and logics of action (cf. Long 1996) is not only a phenomenon of recent globalisation but has been going on since colonial times (and probably even before) although it nowadays has acquired a new dynamic.

The danger for women of loosing the negotiability and flexibility of customary norms when they get written down and sanctioned by the heavy, inflexible, and male-biased state legal system, is formulated by a women’s rights activist from Togo as being valid still nowadays:

Les textes de lois souvent entérinent un statut inférieur de la femme. Il y a des pays, au Mali par exemple, où c’est écrit dans les textes que la femme n’a pas droit à la parole. Ça entérine le pouvoir de décision de l’homme. Hors, ce qui est oral, c’est donc quelque chose qu’on peut négocier. Et c’est à force de négocier qu’on fait évoluer les mentalités.

Mais une fois que c'est écrit, c'est terrible ! (Marlène 1 :3-4)

It can be deduced, that the non-codification of customary norms in Togo strengthened customary legal reasoning as well as the continuous evolution of customary norms. It also spared women from having one-sided and disadvantageous interpretations of customs written down and accorded a status and irrefutability previously unknown – at least until the passing of the new Family Code in Togo in 1980, into which some alleged customs became integrated, as we will see further below. Nevertheless, the colonizers hindered the free evolution of customary norms by imposing colonial decrees, as the following sub-chapter will show.

2.2.4 Colonial decrees to free women from “inhumane” and “uncivilized” customs

The French colonizers continued the German efforts to extend European values of “civilisation” to the African population in Togo, especially to women, whom they saw as treated in inhumane ways. In his circular “The Instruction of Native girls” to his lieutenant governors, Jules de Coppet, the governor-general of French West Africa (AOF), made it clear that the goals of female education were

the inculcation of European ideas on health and child care, the training of suitable wives for the French-trained male elite, and also the socialization of future generations in French mores and culture (Barthel 1985:145-146, quoted in White 1999:107).

In 1939 the “Mandel Decree” was enacted for AOF, setting the minimum age of marriage for women at 14 and for men at 16, and instituting a right to consent to marriage. All marriages involving children under this age as well as all marriages without the woman’s consent were invalid before the law. Henceforth, women who did not agree with the marriage arranged by their families, and widows who were not ready to marry their deceased husband’s brother (despite the chance of the in-laws eventually providing for the widow in case of such a levirate) could appeal to the *Tribunal coutumier*, – a new legal option which was readily taken up by many women.

The “Jacquinot Decree” of 1951 extended these stipulations by limiting the maximum amount of bridewealth. The latter had served to legalize a marriage, determine the legal paternity of children, and establish affinity between the families of the couple, but had seen exorbitant increases with the monetarisation of market relations. Furthermore, it abolished the obligation

of the wife or her family to pay back the bridewealth to her in-laws in case of divorce. Henceforth, customary marriages could be registered under the option of monogamy at the registry office.

Both decrees were enforceable with the French penal code and infractions could be sanctioned with up to five years in prison. They considerably diminished the authority of lineages over marriages, improved women's autonomy in relation to marriage and divorce, but also limited the support a woman could expect from her lineage in case her marriage went wrong (Maddox Toungara 2001:35, Baerends 1990:67-68, Dobkin 1968:391-396). The diminishing lineage support was partially counterbalanced by new structures of networking among women, especially in the so-called "informal" sector (*credits-tontines*, associations of market women, religious women's groups, women farmers' associations etc.) thereby creating new female spaces (cf. Lachenmann 1996a:243-244).

The opinions about the actual impact of the colonial circulars and decrees upon everyday practices in French Africa diverge. While G. Spittler (1975:203) suggests that they had no impact at all, Dobkin is convinced that they had "devastating effects":

The institution of marriage was removed from the nexus of social relations in which it had previously functioned, and was isolated by judicial tampering. [...] The very nature of social groups changed as a result of the clash [of two very different value systems], with the individual losing his psychological support in the extended family and becoming more and more dependent upon himself. (Dobkin 1968:397)

Although this opinion probably overestimated the actual impact of colonial legislation, and furthermore, emphasized its negative effects while totally ignoring its positive aspects, it can be agreed with Maddox Toungara, who states that

colonial rule both recognized and subordinated African customary law to the French system, thus interfering with the [...] evolutionary process of African traditional legal practice (Maddox Toungara 2001:34).

However, French colonial interventions concerning women were not limited to their domestic spheres. The introduction of the French currency in 1922 (which hampered free trade with the British colony of the Gold Coast), the changing of the market cycle in 1925, efforts to regulate market women in designated zones, the increase of taxes and the introduction of fees for market women (in 1932) all affected market women. They made their protest known in organised strikes as well as in spontaneous traditionally framed mass-protests (Lawrence 2003,

d'Almeida-Ekué 1992, cf. Lachenmann 1996a:234).

If we widen the horizon to look at the general impact that colonialism had on women in Africa, we see that

the colonial rulers joined with lineage elders in attempting to limit women's independence and autonomy, for fear that women would not continue to subsidize the colonial economy by providing subsistence with very few resources [i.e. with difficult access to fertile lands and labour force. Moreover,] rather than support women's traditional avenues to political power, the colonizers often actively undermined the political power of elite women. (Lachenmann 1996a:233)

Therefore, White hits the nail on its head when she resumes that

perhaps the greatest irony of the colonial era was that Europeans used an ideology that suggested that they would improve African women's lives as part of their justification for imposing colonial rule. (White 1999:13)

2.2.5 State law after independence: Attempts to uniform legal structures

For understanding the legal changes since independence, we have to bear in mind that these were not adopted and implemented in a state of law, but that – more often than not – other than juristic rules determined the chances of individuals to exercise their rights. Already one year after Togo's independence in 1960, Sylvanus Olympio, the first head of state, changed the constitution from a parliamentarian to a presidential system of government and started to erect a one-party system in order to suppress oppositional forces in the country. The government in power after Olympio's assassination in 1963 did not manage to control the tensions among the inimical parties within a civil government. After the military coup in 1967, the new president Eyadema founded again a party of unity (*Rassemblement du Peuple Togolais, RPT*) and systematically demolished the rule of law and order: Political loyalty to the president and his party was positioned above the law, as the government came to rely on clientelist structures and military power instead of a democratic legitimacy. The president was given the power of a supreme judge, who stands above law and constitution. These circumstances were deeply modelling the legal practices of the state and within society in general.

As for the official organisation of the legal field, right after independence the dual court structure of modern law courts (*tribunaux de droit moderne*) and customary courts (*tribunaux coutumiers*) was at first maintained⁵⁹. The legislator promulgated a series of new laws, such as on

⁵⁹ The reorganisation was ruled by the *Loi relative à l'Organisation Judiciaire* of June 12th 1961 (Rouveroy van Nieuwaal 1977:103).

social welfare (*Code de Sécurité Sociale*) in 1973, industrial law (*Code du Travail*) in 1974, and nationality (*Code de la Nationalité Togolaise*) in 1978. These were applicable to all citizens – including women –, whereas in other parts of the civil law, especially in family law, each citizen was free to choose whether “modern law” (comprising a selection of laws taken over from the French civil law as well as some new Togolese legislation) or uncodified “custom” should be applied. The customary courts were to apply customary norms and handle civil cases with a limited amount in dispute, while the modern law courts had the authority to judge both according to custom and modern law of any amount in dispute, as well as in cases in which the litigants did not agree on which legal system to apply. However, the modern law courts were to apply the modern law as common law to all citizens, except if the latter protest and insist on being judged according to customary norms (Rouveroy van Nieuwaal 1976:37-40, 49). Thereby, they reversed the before-mentioned renouncement-logic of the French colonizers. The modern law courts were attributed a superior status to the customary courts and served as appeal court to the latter. The *court d’appel* served as appeal court to the modern law court, both in cases of modern and customary law, and was itself controlled by the *court supreme*. This way, customary cases could easily be referred to the modern law courts, but not the other way round.

The most important difference to the dual court structure under the French colonizers was the “upgrading” of customary courts, which were now presided by professional judges, trained in European-style law, instead of mere colonial administrators, thereby at least partly installing a separation of powers. In “customary courts” this *juge de paix* was to be accompanied by one court clerk, eventually by translators, and by two customary assessors of the same ethnic origin as the litigants, who were chosen from a list of names designated by the head of state upon proposal by the Ministry of Justice⁶⁰. However, the assessors’ opinions were not binding. Although presided by a jurist, the customary court was obliged to first attempt to reconcile the parties, this aspect following customary legal thinking. The litigants could bring in witnesses, yet no defence lawyers were allowed. In case no reconciliation was achieved, a judgement was pronounced to be executed by the district officer (*chef de circonscription*, later *préfet*), who had himself investigative power and cooperated with the police and the gendarmerie (Rouveroy van Nieuwaal 1977:103-105, 1976: 50-57). In the “modern law courts” the judge was accompanied by a representative of the Ministry of the Interior and by customary asses-

⁶⁰ This aspect was not much changed by the *Ordonnance de 1978 Réforme de l’organisation judiciaire*, even though this reform changed the dual court structure with so-called customary courts and state courts, into a unified system by officially suppressing the customary part (Adjamagbo 1986:205).

sors – probably all male – who had an advisory role in customary appeal cases (Adjamagbo 1986:204).

In practice, however, the possibility of opting for the “modern law” through the “modern law courts” was only taken up by a small informed elite, while the majority of the population continued to consult the “customary courts”, or else addressed themselves to the chiefs, especially the cantonal and the paramount chiefs. The latter, although officially limited to mediate in civil affairs, nevertheless continued – like in colonial times – to mediate and judge both civil and criminal cases (Rouveroy van Nieuwaal 1976:41-46, 1977:104-110). As Rouveroy van Nieuwaal observed in comparing cases treated by the *juges de paix*, who were trained in state law, with cases handled by the chiefs, who were the “experts” for “traditional” norms and values, both institutions had to deal with family affairs and thus frequently competed with each other. This provided “an excellent opportunity for many a litigant to play off these institutions against each other” (Rouveroy van Nieuwaal 1977:105) “in their search for as favourable a settlement as possible” (Rouveroy van Nieuwaal 1986:190). Thereby the judge had the tendency to apply a *coutume en pleine évolution*, taking over innovative aspects from the state law, such as the condition of free consent to marriage – already propagated by the French. But also the chiefs could not totally ignore the social changes either, but made efforts to nevertheless safeguard some traditional principles, such as the marriage exchange relations between lineages in northern Togo.

In 1978 the government reformed the judicial organisation once more and abolished the customary courts, leaving a uniform state court structure of *tribunaux de 1e instance*, *court d’appel* and *court supreme*. Since then, all of the state courts can handle modern as well as customary law cases, in the latter instance with the help of customary assessors with advisory role (GF2D 1999b:62, Adjamagbo 1986:207). Nevertheless, the chiefs again continue to act as “traditional judges” on their own initiative (Rouveroy van Nieuwaal 2000:210-219).⁶¹

⁶¹ On the other hand, this overlapping of traditional and modern forums was officially maintained in the administrative field, as some rural cantonal chiefs remained invested with registry authorities (*investi du pouvoir d’officier de l’état civil*), as opposed to the urban cantonal chiefs, whose administrative powers were replaced by the creation of urban municipalities in 1972 (cf. GF2D 1999c:56, Secr. Chefferie 1:2, Enyonam 1:2).

2.2.6 The new Family Code of 1980: Emancipating counterforce to custom or discriminatory hotchpotch?

Let us begin this sub-chapter with a quotation from a paper of the Ministry for the Advancement of Women:

Dans la société traditionnelle togolaise, du Sud au Nord, de l'Est à l'Ouest, la femme jouissait d'un statut inférieur à l'homme. Depuis le jour de sa naissance jusqu'à son décès [...] elle est placée sous tutelle [...] La femme allait au mariage sans son consentement, il revenait à son père de la donner en mariage quand il le voulait et selon la coutume. Elle pouvait être promise dès le berceau. Elle valait la dot qui est versée à ses parents. Une fois mariée, elle n'avait pas voix au chapitre, toutes les décisions dans l'intérêt de la famille émanaient de l'homme. [...] Elle devait obéissance totale à son mari. [...] Très tôt, le pouvoir central au Togo a eu le mérite de créer le cadre juridique devant être le support de la promotion de la femme [...] Ce *joyau* [du Code des Personnes et de la Famille] qui a été *offert aux femmes* togolaises, a été *arraché de haute lutte*. *Les dents dures de la tradition n'ont pas voulu le lâcher*, raison pour laquelle il a été pris par ordonnance et non pas par un texte législatif. [...] Le Code a fait tomber beaucoup de tabous ancestraux traditionnels rétrogrades. (Tchagnao/ Hohoueto 2000:2-3, 9-12, italic emphasis by I.K.)

The image, conjured in this quotation, resembles a fairy tale, with tradition being animated into a fierce beast that oppresses women and prevents the brave state from liberating them via a precious jewel in the form of statutory law. In an “othering” way women are depicted as weak, vulnerable, passive, backward and dependent on the strong male state for emancipation. Tradition is referred to, not as a product of human creativity and invention, but as something detached from people, something not human but rather animal-like, i.e. lacking reason and negotiability.

This image is rooted in modernization discourses (cf. Arce/ Long 2000:2-5), which have been widely criticized, especially within the world of development organisations and development studies, yet are still powerful and active within “development countries”, especially those – like Togo – which are dearly hoping to acquire more donor funds. Yet, neo-traditional authorities use reifying depictions of the customary law in their search for legitimacy of their own, i.e. mostly male, privileges. Against this, the ministry's interest (and likewise the intention of some women's rights NGOs and donor organisations) pursued with such images is to diminish male privileges and traditional influences, by underlining the advantages of state law. Furthermore, the ministerial reference to tradition serves to strengthen the power of the centralized state. Interestingly, these janus-faced uses of tradition counteract their very claims

to essence.

After independence, except for labour and commercial law, most civil affairs continued to be judged according to the French *Code Civil* of 1804 and various colonial decrees, until in 1980 the Family Code (*Code des Personnes et de la Famille*) was adopted. The elaboration of this family law had taken five years and discussions seemed to never end, especially as some of Eyadema's close collaborators strongly disapproved of its innovations. Rumour goes that finally – in order to “rescue” the Family Code – the president adopted the law by decree without awaiting the vote of the newly constituted National Assembly (Latif 3:2). Here, the construction of the male state (embodied in the person of the president himself – and as such in line with his overall propaganda) as rescuing women is again reiterated. Ironically, through this “heroic act” women were instrumentalized for further undermining potentially democratic structures.

As the above citation illustrates, this Family Code is generally presented as a huge progress for women both in terms of family and citizenship rights⁶². It stipulates, among other aspects, women's legal capacity independent of their marital status, marriage only with free consent of both partners, a choice at the registry office between monogamy and polygyny, separation of property between spouses as common law (joint property being an alternative option); mutual obligations to fidelity, respect, affection and assistance between spouses; joint obligation to contribute to household expenses (if the husband fails to contribute, the wife can obtain a distress warrant); joint parental authority of mother and father for children born in marriage; clear and equal reasons for divorce (i.e. no more unilateral repudiation); under certain conditions a right to compensation and child maintenance from the divorced husband, both in monogamous and polygynous cases; equality in inheritance between daughters and sons; widows' right to inherit from their husbands and to be the guardian of their minor children (Rép. Togolaise 1983).

However, closer scrutiny reveals that the Togolese legislator kept parts of the French colonial law, modernised other parts in an attempt to conform to human rights standards, while at the same time referring at various points to customary norms, allegedly necessary in order to

⁶² The progress obtained through the Family Code becomes more evident, when comparing Togo to neighbouring Benin. Here, the *Coutumier du Dahomey* (a codification of customs and traditions of various ethnic groups by the French colonial administrators in 1933 that denied women any legal capacity) was declared unconstitutional as late as in 1991. Nevertheless, it continued to be applied in state courts until June 2002, when finally a new Family Code was passed, after immense lobbying activities of women's right organisations (Marlène 1:13, Alber/ Sommer 1999:106, Klissou 1995:20, Boko Nadja 2002a, 2002b).

make the law acceptable to the population. This led to the following unusual and often contradictory results in respect to gender relations.

The first example is article 105, which grants the wife matrimonial freedom and full legal capacity. Yet, at three other points, this matrimonial freedom and legal capacity are severely reduced: Firstly, articles 101-110 confirm the husband's dominating role as *chef de famille*, who bears the main material responsibilities for the household and has the ultimate decision about the couple's residence⁶³ and the wife's option to take up paid work. Secondly, article 57/2 demands to attest the payment of the bridewealth by the bridegroom to the bride's parents (limited to 10.000 Francs CFA), or else the parents' renunciation of such payment, as a precondition for marriage. If the bride's parents refuse either to accept or attest the bridewealth or to renounce to such a payment, the couple cannot marry. The woman is thereby made dependent on her parents for obtaining a civil marriage⁶⁴. Thirdly, the legislator did not change the *Ordonnance no. 39/79* of November 12th, 1973, on social security, which forces widows of civil servants and salaried workers to submit the protocol of their in-laws family council session, in order not to be deprived of the widow's and orphan's pension, i.e. the widow needs the approval of her in-laws in order to access her rights. This obligation for widows to submit a family council protocol constitutes an effective instrument for the in-laws to prevent the widow from enjoying other rights, such as inheritance, or the widow's say in her husband's burial.

The second example refers to civil marriage, which became the only marriage recognised by the state (art. 75, 76 CPF). In order to make this stipulation locally acceptable, the choice between monogamy and polygyny was included (art. 42), contradicting the obligation to mutual fidelity (art. 100). Furthermore, children fathered outside marriage are recognized as heirs in the same way as "legitimate" children (art. 413), thereby taking, once more, the wind out of the sails of this obligation.

The third example refers to inheritance: As in many other African countries, the Togolese legislator recognised the devolution of "real property through customary law or practice. The al-

⁶³ There is a colonial element in here, in the sense that it was in the European coloniser's interest to reduce "women's capricious choice in marriage, sexual relations, divorce and residence" (Guyer 1987:4 referring to Chanock 1985). They thereby constructed African women, whom they perceived as sexually menacing, as being immoral.

⁶⁴ Here again, colonial male interests and customary male interests were merged, in the sense that bridewealth was indeed a pre-colonial practice in Togo, but it were the colonizers who had made bridewealth payments a precondition for recognising a customary marriage as legitimate (Guyer 1987:5). This aspect was taken up by the Togolese legislators in the new Family Code, this time making bridewealth payments a precondition for a civil marriage.

ternative legal mode of wills does exist but is not much used, even by the wealthy” (Goody 1987:3). However, the construction in the Togolese Family Code is more confusing: Section IX (art. 392 – 556 CPF) introduces a rather European-like inheritance model. It treats all the property of a deceased person (i.e. land, houses and movable goods) the same (art. 400 CPF) and stipulates that the inheritance is to be shared between, on the one hand, the descendants – male and female alike – (who will be replaced by the parents or collaterals only in case the deceased had no descendants), and the surviving spouse or spouses in so far as they were married at the registry office, on the other hand (art. 399 CPF)⁶⁵. Yet, according to article 391, these stipulations on inheritance do only apply in case the deceased had declared by testament or in the presence of a state official his or her rejection of the customary inheritance rules. These customary rules are, however, not further specified, turning inheritance into a matter of negotiation, a risky undertaking for women considering the unequal gender relations.

Taken together with a series of other laws (*Code du Travail, Code Pénal* etc.), the Togolese legislation concerning women’s rights can nonetheless be called quite comprehensive, at least compared to colonial times in Togo and to contemporary legislation in many other African countries. As the above discussion has shown, the new Family Code has many advantages for women to pursue their claims in state courts or state administrative services, but also many snags. Both aspects influenced legal practices in and outside the state structures, as will be further carved out throughout chapters 3 to 6. These gave rise to a series of lobbying activities of NGOs towards the government and parliament, as well as of the Ministry for the Advancement of Women towards the presidency to revise the Family Code, which will be discussed in chapter 7.4.1.

2.3 International human rights instruments and national women’s rights NGOs enriching the legal field

In order to understand the current meaning of international women’s rights standards and national women’s rights NGOs in Togo, we will first turn our look back to the history of women’s political and civil society participation under the one-party regime.

⁶⁵ The respective shares depend on the composition of the group of inheritors. The inheritance can be divided among the inheritors, or kept in an undivided state to be administered by the *administrateur des biens*, who is chosen in unanimity by the inheritors (art. 496 CPF).

2.3.1 Women's political and civil society participation under the one-party regime – Between suppression, instrumentalisation and taking advantage

After having come to power by a military coup in 1967, Eyadema, in an effort to stabilise his power and enlarge his clientele, forbade all existing political parties and created the *Rassemblement du Peuple Togolais (RPT)* in 1969, which remained the single party until 1990. To impose its power, the RPT tried to absorb all existing civil society organisations⁶⁶, including youth associations, Scouts, Christian associations, unions, women's associations etc. Any social, political or religious group was forced into the line of RPT or banned. Eyadema did not hesitate to misuse traditional chiefs, churches, mosques, *vodu*⁶⁷ convents, secret religious societies (such as the Rosicrucians and Freemasons), schools and folklore groups for his canonization. In 1971 the youth became organised into the *Jeunesse du RPT (JRPT)*. From 1972 on, women could only become active as members of the *Union Nationale des Femmes Togolaises (UNFT)*, the female wing of RPT⁶⁸. Since 1973 unions were forbidden, except under the roof of the *Confédération Nationale des Travailleurs du Togo (CNTT)*. In 1987, the *Association Nationale des Chefs Traditionnels (ANCT, later UNCTT)* became officially integrated into the RPT (Afi 2:1, Toulabor 1986:85-92, 211-216, 1997:225, Rouveroy van Nieuwaal 2000:143-162).

This strategy of including women into the one-party and at the same time segregating them into a separate but dependent and powerless organisation, is known from many other African regimes⁶⁹. Also in Togo, the UNFT was never accorded a real voice in the politics of RPT,

⁶⁶ As NGOs – per definition – are only thinkable in relation to a national government, the first NGOs in Togo are traceable to colonial times and might have started as church associations, trade associations and political formations. Nevertheless, they were not formed or imposed out of the blue but certainly built on traditional forms of self-organisation such as councils of advisors to the chief (*conseil des notables*), religious cult groups etc.

⁶⁷ As opposed to the Catholic church, whose main Togolese leaders either became silent accomplices or active supporters of Eyadema and his regime (Toulabor 1997), *vodu* cults have a much more subtle way to react to and process relations of domination and power, such as demonstrated in detail by Rosenthal for Southern Togo. On the one hand, they resisted and escaped in manifold ways oppression during colonial times (Rosenthal 1998:73-99). On the other hand, the Gorovodu cult nowadays worships and welcomes “the spirits of northern slaves [of historical pre-colonial times, I.K.] into their midst, even the midst of their individual minds and bodies, in trance” (Rosenthal 1997:185). Moreover, she points out that although “there is no explicit *Vodu* resistance to national government as such, an implicit refusal to be defined and controlled by the state continues in current practices” (Rosenthal 1998:74).

⁶⁸ This was not so new, however, as already Sylvanus Olympio, the first president of independent Togo (who governed from 1960 until his assassination in 1963) had forced women into his one-party-like *Comité de l'Unité Togolaise* (Lawrence 2003:12).

⁶⁹ Cf. Lachenmann (1992a:85-86, 1997b:198), Chazan (1989:190-191 cited in Lachenmann 1996a:237).

it's role being limited to what the men in power considered to be "female issues". Thereby, it contributed to stabilise the regime. According to the RPT-statutes, the UNFT is organised into national, district and local cells and is directly bound to the directives of the RPT, to which it is obliged to report. Officially, it was created in order to "mobilise" women and train them in economic, political, social and cultural domains.

Literature about the UNFT's performance is scarce and contradictory. On the one hand, it is said that the UNFT was notorious to be the "sexual fishpond" of high-ranking officials. It therefore acquired the satirical label of being the National Union of Women of the Helmsman ("the Helmsman" being a self-chosen synonym for the president, who is infamous for his "thigh rights" and "libidinous economy"), while the UNFT chairwoman, who was at the same time Minister for Women and Social Affairs, was slandered as "Eyadema's prostitute" (Toulabor 1994:67-68). It is claimed that "appointments [of women] to government or to high-ranking civil service positions [were] far from being perceived as promotions, but [were] in fact offered as recompense, or a sexual snare into which many Togolese women have been lured" (Toulabor 1994:68). While there is probably some truth in these accounts, the denigration of women who engage in politics as prostitutes is nevertheless a typical male strategy to undermine women's political power and influence. It is therefore very likely that women engaging in politics under the regime of Eyadema had and have to face a triple hurdle: being a woman, being misused by the regime in power, and being accused of political opportunism by the oppositional parts of the population.

On the other hand, we should not forget, that the UNFT was the only place where women were allowed to do politics; i.e. several of today's women's rights activists had once been active within the UNFT, as – at the time – they had no other choice, if they were not willing to passively let the regime's policies wash over them. Not surprisingly therefore, the UNFT did not contend itself with "enhancing the status of the men in power"⁷⁰ and contributing to legitimise the regime by organising women dance groups to cheerfully "decorate" the diverse party events. Such events were – and continue to be – regularly held on all levels and in all parts of the country in the effort to praise and mystify the "all-mighty president" and his party. The UNFT successfully lobbied for the recognition of modern contraceptives by the government⁷¹, for the creation of the *Direction Générale de la Condition Féminine (DGCF)* within the min-

⁷⁰ In the French original *faire-valoir des hommes au pouvoir* (Adjamagbo-Johnson 1997:65, translation by I.K.).

⁷¹ However, until 1992, the official policy obliged women to present a written authorisation by their husbands in order to benefit from reproductive health services (cf. chapter 4.2.3).

istry of social welfare in 1977 – encouraged by the United Nations Decade for Women 1975-1985 –, for the adoption of a Family Code (CPF) in 1980 with the legal improvements and contradictions for women discussed in chapter 2.2.6, as well as for the ratification of the CEDAW-convention in 1983.

The DGCF was ordered to “integrate women into development”, the prevalent social engineering approach to women of the late 1970s and 1980s (Rodenberg 1999:38-41). This ministerial department was supposed to give concrete technical – and not only rhetorical – support to women. However, between 1985 and 1993, its budget fluctuated between 0,1 and 0,04% only of the global national budget. Moreover, its personnel situation is rather tight: Apart from the staff at the ministerial department in Lomé of 26 persons, it disposes of a regional department for the advancement of women in each of the five regions, while at the district level it is the social affairs departments who have to deal at the same time with “female activities”. These aspects prove the lack of a sincere political will in this direction and partly explain the meagre performance of the DGCF (Rép. Togolaise 1997:9-11, 2001:3, 18, Adjamagbo-Johnson 1997:65).

Since 1972 the UNFT encouraged the organisation of women into income generating groups. However, these groups only received adequate support from the 1980s and especially 1990s on, when international and slowly also national NGOs became more active. Apart from that, the UNFT served to support the “authenticity policy” (proclaimed since 1974) of the regime by organising “cultural weeks” that presented African handcraft, music, theatre and fashion shows as well as traditional Togolese meals (Ulferts 1994:164-167, Toulabor 1986:161-182, 193-222, UNFPA 1996:12, 19-20).

Achille Mbembe’s (1988, quoted by Lachenmann 1992a:84) observation that one-party systems in Africa systematically inhibited the evolution of intermediary organisations, which could have enabled societal groups to act in the political arena, applies to Togo in general and to the difficulties of Togolese women to develop an independent women’s movement as well (cf. Lachenmann 2001b:85). Many women tried nevertheless to continue with their associational activities by taking on the new UNFT-label, without engaging too much in its activities, such as witnessed by Toulabor (1986:204) of an association of fishmongers in a southern Togolese village. Other women’s organisations deliberately approached the one-party regime in order to carve out privileged rooms for manoeuvre. This was the case for the successful

nana benz cloth traders, who made so much money with the import of Dutch and British roles of the so-called *wax*-cloth and its sale to cloth trading women from all over West Africa, that they could afford themselves a certain type of German luxury cars. In 1965 they had founded the *Association des Revendeuses Professionnelles de Tissues (ARPT)* and as such became a member of the above cited RPT-controlled CNTT. They gained the sympathy of the regime by taking actively part in its festivities. Several of them were appointed to high offices in the UNFT by the president of the republic himself, which they used in order to defend their corporatist interests (Weigel 1987:38)⁷². In 1977 one of them was appointed Minister of Social Welfare, even though she could not read or write. Reportedly, she was not accorded much say in the government. Nevertheless, the influence of the *nana benz* was so strong that they managed to negotiate extremely profitable tax-reductions for their own commerce, which remained uncontrolled by any law until 1990⁷³. This situation by far contributed to their enormous commercial success during the 1970s and 1980s⁷⁴. However, this “economy of the rich women” (Lachenmann 2001b) did not change anything to the economic marginalisation of the big majority of women in Togo through the economic crises since the 1980s.

2.3.2 A temporary breakthrough for democracy, human rights and the separation of powers: 1990-1993

The social and political turmoil in Togo between 1990 and 1993 started off as student protests against the dictatorship. Winged by the democratic “wind of change”, blowing through Africa (Benin, Gabun, Congo) since 1989, the students were following the example of neighbouring Benin, where a transitional government had been installed (Toulabor 1997:233). The conflicts with the regime escalated when, upon a public show trial against oppositional students, the crowd started to sing songs of liberty within the courtroom.

At first, the social upheavals in Togo seemed to bring crucial changes to the political rule of the country. In October 1990 a National Conference was organised with men and women representing all political and societal relevant groups (including the army and RPT). It declared itself sovereign, installed a pluralistic transitional parliament, and elected a transitional gov-

⁷² Processes of similar ambivalence – using the UNFT to make corporatist claims while being used by it for propaganda purposes – were recorded about the *Association des revendeuses de poisson du port de Lomé* and five other market associations by Weigel (1987:45.46).

⁷³ Also under the socialist government of Kerekou in Benin and the populist government of Rawlings in Ghana *nana benz* traders established themselves close to the regimes and considerably influenced economic policies (Lachenmann 2001b:84).

⁷⁴ Cf. Cassara 1991:74-76, Diallo 1997:62-63, Sanogo/Assogba 2003:80, Inter Press Service 12.2.2002.

ernment with the instruction to prepare a democratic constitution and communal, parliamentary as well as presidential elections within one year. During this transition period, Eyadema was left in his position, although with restricted powers.

However, during its breakthrough phase, this process was violently cut off – the young Togolese democracy was “aborted”, as Toulabor (1996:63) calls it – and reversed or at least distorted by Eyadema, who, with the help of the army, re-installed himself to power: In December 1991, he ordered the security forces to encircle the office of the transitional prime minister. The latter called the French army for help, an outcry that was ignored, as the French continued to support Eyadema instead. Ten months later, the security forces encircled the transitional parliament and maltreated the parliamentarians.

Nevertheless, the regime left some of the new structures formally in place, probably in order to show Togo in a new democratic guise to the international world: As such we can list the new Constitution (drafted by the National Conference in 1990 and adopted in a public referendum in October 1992) which institutes a semi-presidential governance system, a multi-party parliament to be elected in direct universal suffrage (i.e. the end of the one-party rule of RPT), the separation of executive, legislative and judiciary powers, the respect of human rights, freedom of expression and press, freedom of conscience and religion within a secular state, as well as the right of association. Several of these democratic innovations became even confirmed by the passing of a series of organisational laws by the parliament in 1993⁷⁵.

These proclaimed new democratic features were mostly hollowed out by being either never put into practice or systematically dismantled by the regime. For instance, the Constitution protects the *Commission Nationale des Droits de l'Homme*, which had been created in 1987 and enacted by the organisational law no. 96-12. It provides for people, whose human rights have been violated, to address themselves to this commission, which shall then undertake inquiries and recommend measures to stop the violation. However, the independence and impartiality of this commission never became a reality. Togo's population is regularly experiencing violations of human rights, such as violent attacks, imprisonments and torture against leaders and supporters of the opposition parties, journalists, human rights activists and everybody who criticises the government, thereby reverting to the suppressive rule of the height of the dictatorship in the seventies. Although announced countless times, no local, municipal or district elections have taken place since 1985. Mayors of towns, district officers, and the ma-

⁷⁵ Cf. the *Loi organique n° 97-01/PR, 97-04, 96-12, 97-05, 96-10/PR* (Rép. Togolaise 2001:18).

jority of their council members continue to be appointed by the president. The regime continues to interfere regularly in the nomination of cantonal and village chiefs and even in the composition of village development committees (CVD)⁷⁶. Since the so-called democratisation of Togo, Eyadema was confirmed – or rather confirmed himself – three times (in 1993, 1998 and 2003⁷⁷) as Head of State in presidential elections that were accompanied by extralegal executions, tortures and imprisonments of supporters of oppositional parties by the security forces, albeit blessed by the respective French presidents (Amnesty International 2003, 2002, Schuster 2003:51-52, Zinsou 1997).

Even if more or less hollow, the formal democratic structures offered, since then, a base for continuous struggles and claims by newly evolving civil society forces in Togo⁷⁸ and for pressure by international NGOs and donor organisations. Therefore, the new structures most relevant for women's rights, namely the constitutional reference to international women's rights standards and the permission of NGOs, shall be shortly presented in the following sub-chapters.

2.3.3 International women's rights standards anchored in the new Constitution

Le Togo a une particularité, c'est que nous signons tout et les instruments juridiques ratifiés ont force de constitutionnalité, nous pouvons donc les revendiquer. (GF2D activist, quoted by Santos da Silva 2001:7)

The new *Constitution de la IV^{ème} République* of 1992 is a strong foothold for women's rights. On the one hand, in its articles 2 and 11, it anchors gender equality as a basic principle without any restrictions. It thereby goes far beyond the provisions of the Family Code of 1980, which accorded gender equality in some domains, while denying it in many others, under the pretext of the traditional orientation of society. On the other hand, it provides that

the rights and responsibilities stated in the Universal Declaration of Human Rights and in the international instruments relative to human rights, ratified by Togo, are an integral part of the present Constitution. (art. 50, *Constitution de la IV^{ème} République*)

⁷⁶ Officially, the *Comités Villageois de Développement (CVD)* and *Comités de Développement du Quartier* are elected by the population of each village or quarter, the chiefs being normally their honorary chairmen (Latif 3:9). For the official nomination of cantonal and village chiefs, see chapter 2.1.2.

⁷⁷ For his last re-election, the non democratically legitimated parliament had first to change the Constitution, which had hitherto foreseen that a president could only stay for two electoral periods (Schuster 2003:52).

⁷⁸ Especially women's rights organisations, cf. chapter 7.

Furthermore, in article 140 ratified treaties are granted “superior authority compared to the law” and article 58 highlights that the Head of State is responsible for the observance of international treaties (Republique Togolaise 1996, OMCT 2002:4).

These articles are very valuable for women’s rights in Togo as, being a member of the United Nations and of the Organisation of African Unity (OAU, now African Union), Togo adhered to almost all international declarations and conventions concerning human and women’s rights. As such we have to list the Universal Declaration of Human Rights, the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, the Convention for the Elimination of all forms of Discrimination Against Women, the African Charta of Human and People’s Rights, the ILO-Convention on Women’s Night Labour, the International Convention against Women’s Discrimination at the Work Place⁷⁹. All of these conventions are equipped with special follow-up institutions, such as commissions, conferences, reporting obligations, and special advisors.

The *Universal Declaration of Human Rights (UDHR)* of 1948, for instance, confirms equality in human dignity and human rights (art. 1), gender equality (art. 2), the right to life, freedom and personal security (art. 3), the right to freedom from torture as well as from cruel, inhuman or degrading treatments (art. 5), women’s legal capacity (art. 6), the right to property (art. 17) and to social security (art. 22).

The *International Covenant on Economic, Social and Cultural Rights* (of 1966) and the *International Covenant on Civil and Political Rights* (of 1966) as well as its *Optional Protocol*, ratified by Togo in 1984 and 1988, enable the United Nations Committee on Human Rights to receive and examine communications on behalf of individuals. Governments have to regularly submit reports to the Committee. Togo’s third report to the UN Human Rights Committee of 2001 was criticized both by the Committee itself and by the World Organization Against Torture (*OMCT*) for rarely referring to discrimination against women in the public and private spheres, especially concerning domestic and other forms of violence, such as early and forced marriage, rape, forced or unsafe abortion, female genital mutilation, “certain customs and traditions”, trafficking in women and children etc. It was also rebuked for only announcing measures for women’s protection but showing no affirmative action (UNCCPR 2002:1-2, OMCT 2002:2-3).

⁷⁹ Furthermore, Togo ratified the Convention on the Rights of the Child of 1982 as well as the African Charta on the Well-being and the Rights of the Child of 1990 (Lambert d’Almeida 1996, CRC 1998). These are both relevant to women’s rights, for instance concerning age of majority, legal capacity, the right to bodily integrity, to maintenance etc.

The *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)* of 1978 was ratified by Togo in 1983 without any reservations (Rép. Togolaise 2001:3). Like all the other international treaties, signed by Togo, CEDAW emphasizes gender equality and non-discrimination. However, CEDAW – which was elaborated with the participation of numerous women’s organisations (Schaefer 1999:301) – goes beyond this general statement by specifying in detail the consequences for all areas of women’s life, such as access to jurisdiction, administrative services, public offices, political posts, schooling, vocational training, employment, credit, land, inheritance, health (including reproductive health) and social protection. Furthermore, article 2f obliges governments “to modify or abolish existing laws, regulations, customs and practices which constitute discriminations against women”. This means that, by adhering to CEDAW, the Togolese government committed itself to change not only state law but also to interfere in customary norms as well as in administrative and everyday legal practices.

Togo is, however, not a party to the *Optional CEDAW-Protocol*, which allows individuals or groups – after having exhausted all national remedies – to present communications concerning violations of the Convention to the CEDAW-committee, which would enable the committee to undertake investigations (OMCT 2002:4). Nevertheless, every four years the government has to submit a report on its women’s rights performance to the CEDAW-Commission in New York. Although it took eighteen years for the Togolese government to come up with its first report, this reporting obligation helps to bring women’s rights on the governmental and public agenda, as it symbolizes international attention to national women politics and practices (Rép. Togolaise 2001:3, Tchagnao/ Hohoueto 2000:7-8, OMCT 2002).

The *African Charta on Human and People’s Rights*, ratified by Togo in 1982 and in force since 1986, confirms gender equality (art. 2) and equality before the law (art. 3). It does not go into details regarding women’s rights, but obliges states to

ensure the elimination of every discrimination against women [and] the protection of the rights of the woman and the child as stipulated in international declarations and conventions. (art. 18/3 African Charta)

Every two years member governments have to submit a report on their human rights performance to the African Commission on Human and People’s Rights in Addis. The reporting lines concerning women’s rights are designed by the Special Advisor on Women’s Rights who is a

member of the African Commission and works in collaboration with the UN Special Advisor on Violence Against Women as well as with the CEDAW-committee (Mensah-Amendah 1999:6-7). However, while CEDAW urges governments to interfere in discriminatory traditional practices, the African Charta, in its preamble, highlights

the virtues of their historical traditions and the values of African civilization, which should inspire and characterize their reflection on the concept of human and people's rights. (African Charta, Preamble)

Moreover, in its articles 17 and 18/2, it obliges the state to promote and protect "morals and traditional values recognized by the community" and the family. On the one hand, this "African approach" might constitute an important bridge to international human rights, which are otherwise often rejected as not being adapted to African realities. On the other hand, the references to African values are ambiguous and institute a cultural relativist position, which opens the way for many kinds of restrictions on women's human rights. In order to counteract this ambiguity, a group of African women's rights NGOs and networks lobbied successfully for the adoption of an encompassing *Additional Protocol on the Rights of Women in Africa*, which will be presented in chapter 7.4.2.

Last but not least, the Togolese government confirmed its commitment to women's rights by supporting the process and outcomes of the *IVth World Conference on Women* in Beijing and signing the preparatory Dakar Plan of Action in 1994 as well as the *Beijing Platform for Action* in 1995. One of their important novelties was the equality of inheritance rights and access to land, fought through by the African countries (cf. Lachenmann 2001a:34-35, Wichterich 2000, United Nations 2000).

Via this integration of international human and women's rights standards into the Togolese Constitution, the already wide spectrum of customary, religious, and state norms in Togo is further enlarged by another dimension. These standards have become a central reference point in international discussions of moral, legal, and political issues since the second World War, and even more pointedly since the end of the Cold War. Except for the African Charta, they claim universal validity (Wilson 1997). Nevertheless, like any other norm or legal system, they are differently interpreted and used for different purposes by different actors⁸⁰ (K. von Benda-Beckmann 2000). For instance, the Togolese government tends to refer to them in or-

⁸⁰ For instance, there is a tendency for governments to raise international standards, especially when criticizing other countries, while ignoring them when internal policy issues are concerned (cf. also Lachenmann 1996b:8 regarding the German government at the Beijing conference in 1995). On the other side, women's rights NGOs started to use CEDAW in order to circumvent discriminatory national laws, as will be further described in chapter 5, 6 and 7.

der to hide its undemocratic practices that regularly break with human rights, whereas Togolese NGOs – supported by international NGOs and donor agencies – do more and more often use them to underline their demand for a revision of national laws. As these demands were not yet responded, Togolese NGOs recently started to train lawyers and judges on how to use international human rights law in order to circumvent discriminatory national law, as will be further explained in chapter 7.3.4.

2.3.4 Women’s political and civil society participation after the “democratic transition”

Different from other “democratised” African countries, such as Benin and Cameroon (cf. Lachenmann 1996a:246) with the opening of Togo to a multiparty system neither women’s parties nor special women’s lists of candidates were created. Although women had played an active role in the anti-colonial struggle (Kponton 1991) and in the “democratic transition” of 1990–1993⁸¹ (Toulabor 1994:62), women now had great difficulties to establish themselves within the new political structures (Adjamagbo-Johnson 1997:68-69). In 1994 only one out of 81 deputies of parliament was a woman, and only four out of 79 deputies in 1999 (WILDAF 1999). This might be explained by several aspects: Firstly, women politics under Eyadema had been so much linked to sexual services for the dictator and his party barons (Toulabor 1994:67-68, 1992:116) that it would not be surprising if Togolese women made use of the new liberty of just staying outside this “dirty business”⁸². Secondly, it seems that, faced, on one side, with their continued marginalisation by the male power holders, and on the other side, with the powerlessness of the new political parties in relation to the re-installed, now pseudo-democratic regime and the regular harassment of oppositional politicians, many women preferred to become active in the evolving women’s NGOs to engaging in formal party politics.⁸³

Nevertheless, women’s civil society engagement can not be called “informal”. To the contrary, women’s rights NGOs consciously and in a determined way work on institutionalising

⁸¹ For instance, in 1993, the newly created *Collectif des Associations de Femmes* published a statement to warn the new political class of becoming divided and compromising with the old dictatorial power (Adjamagbo-Johnson 1997:69).

⁸² GF2D formulates this observation aptly as follows: *Le dégoût des femmes pour le pouvoir politique tel qu’il est actuellement exercé* (GF2D 2001b :57).

⁸³ This reminds of the separate social spaces within parallel political structures, that women in some societies with matri-lineal traits, for instance among the Akan in Ghana as well as among the Yoruba and Igbo in Nigeria, enjoyed before colonial times (Zdunnek 1987:14-23, Stoeltje 1998:177-178, Ch. Mueller 2002:108 referring to Okonjo 1976:45-65).

women's participation in political decision-making. Also, their increasing strength is partly based on their high degree of national and international networking⁸⁴.

The husbands of several leading women's rights activists in Togo are active in oppositional parties. This is not to be equalized with the tradition of "wifeism", i.e. the leadership roles in state-initiated women's organisations that wives of presidents and other political leaders were accorded by their powerful husbands under the military regimes in Nigeria and so many other countries around the world, without letting them share in the mainstream of power (cf. Abdullah 1995:213-217, Lachenmann 1996a:232). The Togolese women's rights activists are neither appointed to their posts by their husbands, nor are there any indications that they benefit much from their husbands' political activities or vice versa, in the sense of an interweaving of their NGO-activities with their husband's activities in political parties, which would be a typical mode of accumulation in the economic sector (cf. Lachenmann /Dannecker 2001, Geschiere/ Konings 1993). We cannot even emphasize that, through their husbands, they are connected to "the establishment" (cf. Lachenmann 1996a:245), because they themselves, with their high, often academic, education and their good jobs (as independent lawyers, university professors, judges, doctors or NGO-managers) are already part of the establishment. On the contrary, their marital relations seem to provide the regime with further targets: Some of these women are harassed by the regime, allegedly in order to hurt their oppositional husbands, while the regime continues to pretend not to be bothered by the women's NGO activities (An-gélique 1:2).

Influenced by the Beijing conference in 1995, the Togolese government upgraded the department for the advancement of women into a ministry (in 1996) to be headed by a woman. However, this was rather a continuation of their cosmetics regarding gender policy, as the everyday political reality points towards a continuation of its marginalisation and misuse, within both the still powerful RPT⁸⁵ and the government: On the one hand, the technical staff of the Ministry of the Advancement of Women is very qualified and committed, and thus quite successful in acquiring donor funds. On the other hand, the frequent exchange of the head of this ministry gives the impression that this post serves more to fob politically active

⁸⁴ Cf. chapter 2.3.6 and 7.4.2.

⁸⁵ The marginalisation of women within the RPT becomes visible in the following incident: In August 2003 a leading member of the UNFT, who is its delegate for external relations and former minister of social welfare and the advancement of women, was excluded from the RPT, because, for the celebration of 33 years of RPT, she had suggested within the UNFT to address a letter to the president, telling him about "the sufferance of the Togolese people". The decision to exclude her was taken by the secretary general of the RPT, who is the actual prime minister of Togo. At the same time she was "relieved" from her office of senior consultant to the manager of the Lomé airport.

but conformist women off with prestigious posts, than to ensure a congruent, sustainable policy in women's affairs, let alone a transversal gender policy. The now almost decade-long delay – with flimsy excuses – by the government of the adoption of the National Policy for the Advancement of Women, the chronic under-equipping of this ministry with financial budgets (calculating the donors' inclination to promote at least this fashionable sector), the regular blocking or misappropriation of donor funds destined for that ministry, as well as the chronic protraction and petering out of the revision of the Family Code prove the lack of a sincere political will to make real progress in the “advancement of women”⁸⁶. Neither the establishment in 1998 of national and regional follow-up committees to the Platform of Action of the Fourth World Conference of Women in Beijing, nor the training of ministerial key employees on gender by various organisations or the creation of “gender focal points” within all ministries in 2000, changed anything to this diagnosis. However, this is not special to Togo, but a well known way of maintaining the gender order.

2.3.5 Non-governmental women's rights organisations in Togo

Under the one-party regime NGOs were mostly co-opted or suppressed, except for international ones (such as *Care International*, *Save the Children*, *Institut Africain pour le Développement Economique et Social* etc.). The latter started their work in Togo in the 1980s, often along established pro-government church lines and promoted by bi- and multi-lateral international donors, who were looking for more efficient and more grassroots oriented partner organisations. Donor organisations also supported the creation of local NGOs, who popped up especially in the field of health, agriculture, rural development and saving/credit⁸⁷. These domains were perceived by the regime as apolitical and therefore unthreatening. In 1983 the *Confédération des Organisations Non-Gouvernementales au Togo* (CONGAT, later *FONGTO*) was created as umbrella organisation for all national NGOs (Ulferts 1994:171). Very likely, CONGAT was unofficially designed to bring the NGOs back under party control. The official recognition of national NGOs by the government⁸⁸ was as well promoted by the

⁸⁶ Kipfer (1999:1), UNFPA (1996:31), Rép. Togolaise (1997, 2001:3, 18), cf. also chapter 7.4.1.

⁸⁷ Examples are the Kpalimé based NGO *Association Villages Entreprises (AVE)* that was founded in 1981, as well as the *Fédération des Unions Coopératives d'Épargne et de Crédit du Togo (FUCEC-Togo)*, created in 1983 and nowadays constituting – together with the public *Caisse d'Épargne du Togo* – the biggest micro-finance institution of the country (Sanogo/ Assogba 2003 :76).

⁸⁸ NGOs and associations are obliged to register with the ministry of the interior according to the *Loi no 40-484 du 1^{er} Juillet 1901 relative au contrat d'association*. For that purpose, they have to hold a general assembly, establish their statutes, elect a board, make their official declaration to the ministry of the interior, and publish that ministry's approval in the *Journal officiel de la République Togolaise*

pressure from several donors during the first donor conference in 1985 (Sanogo/Assogba 2003:75-78).

It was only in the aftermath of the National Conference of 1990, that also socially and politically oriented NGOs and women's associations were allowed to register and become active in Togo (cf. UNFPA 1996:29).

Since 1990, local NGOs sprang up like mushrooms across the country⁸⁹. Many of them were founded by intellectuals from the middle class (often by state officials, who had become unemployed or were seeking to top up their meagre salaries) with the aim to "help the poor". Most of them are urban based or have their head office even in the capital of Lomé. Thus they often lack a strong societal base, especially in the countryside. Some were indirectly and unofficially created by the government itself in an effort to keep access to at least some of the international donor support⁹⁰ by competing with the new NGOs. Typically enough, many of the latter exist only as "briefcase NGOs". Other NGOs evolved, especially in the interior of the country, out of proper self-help associations⁹¹.

The same has to be observed in the field of women's rights NGOs. They could only appear on the scene, once the RPT-hegemony (and with it the dominant role of the UNFT) was – or at least seemed to be – broken.

As such we have to highlight the *Groupe de réflexion et d'action Femme, Démocratie et Développement (GF2D)*. It was among the first women's rights NGOs in 1992 to become active in Togo and the one unfolding the most intense dynamics, working not only for women's social and economic rights but also for their political rights. Its office is located in the centre of Lomé and run by six staff members. Its objective is

within one month after the date of signature. These requirements give the government ample room to hinder NGOs to officially register and thereby to avoid their legalisation.

⁸⁹ In 1994/95 about 181 NGOs were officially registered in Togo (World Bank 1996:82). A similar explosion was observable with religious groups: Since their ban was lifted in 1990, the interior ministry has recorded 500 charismatic churches in Togo (The Mercury Online Edition 14.11.2003). This hints towards a significant loss of government control over the population and the renaissance of a civil society.

⁹⁰ As most of the bilateral development cooperation with Togo (such as the German, American, and EU-cooperation) had been completely cut after the suppression of democratisation in Togo – and remains so until nowadays, except for small projects of humanitarian assistance – , many donors turned towards the newly created NGOs, welcoming the possibility to fuel money directly "to the grassroots" and thus bypass the undemocratic and corrupt state.

⁹¹ According to Neubert (1995:147-149), self-help groups are based on the principle of reciprocity and work to the benefit of their members, while NGOs are non-profit making organisations that work to the benefit of non-members.

to sensitize politicians and decision makers on all levels of society to admit women's right to participate in the management of the public sphere as an integral part of democracy (GF2D 1992, translation by I.K.)

If the democratisation had not been violently suppressed, GF2D would have had a high chance to bring its objectives into government politics, taking into account the good qualification, juristic expertise and political connections of their members and staff as well as their impetus and tenacity to work under adverse circumstances. Nevertheless, GF2D would have had to face some of the difficulties women's NGOs from other formally democratised countries had been confronted with (cf. Lachenmann 1997b:198, 1996a:246), due to the structurally anchored male domination of the nation state (cf. Kreisky 1995). But, with the reestablishment of the regime – albeit under the guise of a multi-party democracy – GF2D's approach to engender democratisation was rendered more difficult and the NGO was forced to broaden its strategy, promoting women's political rights in the context of general awareness raising and capacity building on women's rights, but conceiving also special programmes to engender political decision making bodies.

Founded by 30 women, GF2D nowadays counts about 40 voluntary members, all women of various professional backgrounds, among them several lawyers, judges, journalists, economists, university professors, teachers, social workers, health personnel, students and accountants. This testifies to the growing consciousness among a committed female elite to demand their rights as well as those of non-elite women (Adjamagbo-Johnson 1997:72). Furthermore, the members contribute personally with voluntary work to this objective, for instance in the editorial team of their journal *Femme Autrement* as well as by participating in the monitoring trips to paralegal advisors. In this latter respect, GF2D differs from many other African NGOs, who are rather donor-driven service providers and less an expression of societal self-organisation (cf. Neubert 1995:156-158).

This relatively small number of members means that membership fees have only marginal importance in the budget of GF2D. Also, GF2D does not receive any funds from the government – to the contrary, it has to take care to hinder the government from accessing and (mis)using international donor funds that are destined for NGOs. This financial independence from the government protects them from becoming misused as para-statal service providers, although the ministry for the advancement of women nevertheless tries to present GF2D's achievements as its own. GF2D earns some money by providing consultancy services to other

organisations (for instance as gender trainer for health personnel by order of the health ministry and paid by a UN organisation), but this does not suffice to keep their broad range of activities going. However, due to GF2D's technically sound work and its focus on women's rights, democracy and civil society, it regularly receives financial support by several northern NGOs (especially from Canada, the US, and Germany) and multilateral organisations (such as UNFPA, UNICEF, UNDP, the European Union and the World Bank). Although this dependency on donor money risks to limit its autonomy somehow, thanks to the broad choice of supportive donors GF2D manages to stick to its own priorities. Furthermore, this international support also strengthens GF2D's standing and legitimacy towards the rather suspicious and hostile government⁹².

GF2D continuously analysis women's legal situation and informs the population about women's rights and their difficulties to enforce these rights. In 1995, GF2D organised a conference of 59 Togolese women organisations to critically study the Dakar-report⁹³ and prepare their own report on the position of women in the Togolese society for the IVth World Conference of Women in Beijing. They published this report as a "white paper" under the title *Femmes Togolaises Aujourd'hui et Demain – Livre Blanc* (GF2D 1995, N. Akakpo 1995a:7-8). Furthermore, they published a manifest (entitled *Autrement*), a bimonthly journal (*Femme Autrement*, since 1994) and a legal guide (GF2D 1999d) on women's rights in Togo.

These information and publishing activities are reinforced by the use of other media. In the context of the yearly campaign on violence against women, GF2D prepared TV-spots. For instance, in 1998 they staged and filmed a fictitious trial about a woman, victim of aggravated assault from her spouse, who files a complaint at court (WILDAF 1999). In 2000, GF2D produced a series of 15 radio programmes on women's participation in the public sphere, and in 1999 and 2002, GF2D members recorded sketches and moderated discussions on women's inheritance rights that were broadcasted by several public and private radio stations (Christophe 1:2, C. Akakpo et al. 1999b:8, 2000:7, 1999:8, Adjamagbo-Johnson et al. 2003:7).

Moreover, GF2D engaged in the creation of legal counselling centres and the training of hundreds of paralegal advisors (*parajuristes*) on women's rights, supported by a whole series of measures to promote women's participation in political decision making. These activities will be presented in detail in chapters 6.8 and 7.

⁹² The mistrust of the government against such an NGO becomes visible in the fact that the interior ministry took four years to register GF2D as "association" according to the law.

⁹³ The Dakar-report was a preparatory document for the Fourth World Conference on Women in Beijing, jointly prepared by African women's NGOs (Lachenmann 1996a:245-249).

A different Togolese organisation for women's rights is the *Ligue Togolaise des Droits de la Femme (LTDF)*. It was founded in 1993 by a group of civil servants, several of them from the *Direction Générale de la Promotion Féminine* from the Ministry for Social Affairs and the Advancement of Women, after the restoring of the autocratic regime. Its creation seems to be strongly related to UNFT's loss in members, authority, and political legitimacy with the end of the one-party regime. Its poor anchoring in civil society becomes visible in its small number of active members, all decisions being centralized to the president, who is rarely available due to her multiple engagement in several governmental and non-governmental organisations at a time. As opposed to GF2D, LTDF is characterized by a strong dependence on and support – at least politically – from and to the government. Its main activities so far consisted in the opening of a legal counselling centre in Lomé, the training of over 100 *assistantes juridiques* (a kind of paralegal advisor), the gender training for parliamentarians and the lobbying for a revision of the Family Code (see chapter 7.4.1). A salient feature of the work of LTDF, concerning its lobbying activities, is that they are rather obsequious towards the regime (Nadine1:1-3, Kipfer 1999).

Several other Togolese NGOs are active in the field of women's rights : *ALAFIA* does awareness raising in the suburbs of Lomé as well as in villages of south-western Togo, focussing on women's health and women's rights⁹⁴. *La Colombe* was created in 1990 and is based in Lomé. This NGO engaged for instance in the sensitisation of traditional chiefs on women's rights and frequently works as consultant carrying out small studies. *Forces en Action pour le Mieux-être de la Mère et de l'Enfant (FAMME)* was founded in 1992. This NGO runs a health clinic near the central market in Lomé, geared towards the needs of migrant and marginalized women and girls who work as prostitutes and *portefaix* (load carriers, vegetable hawkers and coconut vendors). It trains "peer educators" on reproductive and sexual health, offers functional literacy classes and provides small credits for income generating activities (Mensah-Amendah 2000a:7, FAMME11Apr01:1-3). The *Comité Inter-Africain de lutte contre les pratiques néfastes à la santé de la mère et de l'enfant (CI-AF-Togo)* is the Togolese branch of the African-wide NGO CI-AF, which concentrates on the elimination of harmful traditional practices in Africa, especially female genital mutilation (FGM), and the promotion of beneficial ones⁹⁵. The creation of the *Fédération Togolaise des Associations et Clubs UNESCO*

⁹⁴ Their innovative approach to cooperate with traditional leaders to change customary law will be presented in chapter 5.1.7, whereas their cooperation with a newly founded "queen mother's association" will be discussed in chapter 7.3.1.

⁹⁵ The continental umbrella organisation CI-AF was created in Dakar in 1984, has since 1990 its head office in Addis Ababa, a liaison office in Geneva and national committees in 26 African countries

(*FTACU*), as its name already says, was promoted by UNESCO. It raises awareness in schools on human rights, HIV/AIDS etc. *Femmes, Enfants et Développement (FED)* is a network of women's cooperatives, based in Mango in northern Togo, and engaged, for instance, in sensitising its members and their husbands on women's rights. Furthermore, we have to list the *Association pour la Promotion et la Réinsertion des Jeunes Filles-Mères (APR-JFM)*, *Association pour la Promotion et l'Éducation des femmes Rural (APER)*, *Centre Africain pour la Démocratie, les droits de l'homme et la Protection des détenus (CADEPROT)*⁹⁶ and *Femme, Développement et Avenir (FDA)*⁹⁷.

2.3.6 National and international networks of women's rights NGOs

While many of these NGOs compete with each other for development funds, they nevertheless formed networks in order to coordinate their activities and create synergies, but also to improve their standing in negotiating with the state and international donor organisations:

In 1997/98, women's rights activists from several NGOs created WILDAF-Togo as the first national network on women's rights in Togo. It serves as umbrella for 34 women's associations and NGOs (plus 46 individual members). It is this national standing and the international legitimacy, through being part of an Africa-wide network, which gives WILDAF-Togo some security to act within the repressive regime in Togo. Its country office was opened in Lomé in 1999. Supported by the sub-regional WILDAF office for West Africa⁹⁸, its main activities so

(www.iac-ciaf.ch). The national CI-AF committee of Togo was founded in 1986. However, it only became really active since 1995 (Poutouli 1998:32-34). Its head office is in Lomé, while most of its activities are organised and carried out by its central regional branch in Sokodé.

⁹⁶ CADEPROT, based in Lomé, is helping prisoners to enforce their rights.

⁹⁷ FDA is based in Lomé and organises, since 1999, training sessions for young unemployed academic women in the elaboration/formulation of projects to help school drop outs, eradicate illiteracy etc. (WILDAF 2002:6). As such it is much more a product of the almost total retreat of the Togolese state from the social and educational sector and its dependence on development assistance, than a civil society organisation.

⁹⁸ WILDAF-West Africa was equally founded in Lomé in 1998 with the mission to support the country offices in Benin, Burkina Faso, Ivory Coast, Mali, Senegal, Ghana, Nigeria, Cameroon and Togo with training, infrastructure, personnel and publications. WILDAF-West Africa achieved an observer status at the African Commission on Human Rights (cf. chapter 7.4.2). By setting up their regional office in Togo, the NGO ensured the presence of an international eye on the Togolese politics towards women's rights and women's NGOs. WILDAF-West Africa also manages to organise international conferences in Lomé, such as the workshop on *Women's access to legal services in Sub-Saharan Africa* in November 2000, in which representatives from civil society, governments and parliaments of several African countries discussed with each other (www.wildaf-ao.org).

far included the organisation of the yearly campaign on violence against women⁹⁹, the setting up of a rapid reaction chain for victims of violence, the elaboration of a draft bill against sexual harassment, the lobbying for a revision of the Family Code and of the Penal Code¹⁰⁰, and the training of judicial and extra-judicial stakeholders on women's rights¹⁰¹.

In the same year of 1998 some intellectual women in Lomé took up the international initiative of a World March of Women. They founded the *Coalition des ONG et Associations du Togo pour la Marche Mondiale des Femmes en l'An 2000 (MMFT)*, of which 93 NGOs became a member. This coalition held a national forum in September 1999 to analyse the most pressing problems of Togolese women and formulated a Plan of Action, containing seven major concerns: Women's access to micro-credits, identity papers, land rights, professional training, health care, drinking water, new information technologies, and decision-making posts. This plan was presented to the Prime Minister in October 2000 in Lomé as the highlight of the Togolese march, in which over 2000 women from all over the country participated¹⁰². The Prime Minister promised to ease women's access to credit and literacy, to revise the stipulations on inheritance and widowhood of the Family Code, and to increase the number of women in district and municipal councils, in the national assembly, as well as in the public administration¹⁰³ (MMFT 2000, Horn 2000:24-25). However, since then, the engagement of this NGO-network seems to be petering out (Christophe 8:12).

⁹⁹ This campaign starts every year with the International Day against Violence Against Women on the 25th November and takes 16 days until the 10th of December (Adjamagbo-Johnson et al. 2001a).

¹⁰⁰ In the context of the revision of the penal law, WILDAF-Togo submitted a law project to repress sexual harassment in schools, universities, apprenticeships and at the work place (WILDAF-Togo 2002:4, 8).

¹⁰¹ The lobbying for a law revision and the training of various stakeholders will be further analysed in chapter 7.3.4 and 7.4.1.

¹⁰² For the Togolese World March of Women see photo 11 in annex A7.

¹⁰³ Furthermore, MMFT collected 4000 signatures to support the World Plan against poverty and violence against women, thus contributing to the 4.736.000 signatures collected during the World March in New York on October 17, 2000 (MMFT 2000, Horn 2000:24-25).

Chapter 3 *C'est pour mon père et je dois réclamer ça !* Negotiating daughters' inheritance rights

While the first part of this chapter presents the pluralist legal field of women's land and inheritance rights, the second part concentrates on everyday inheritance practices, carving out typical conflicts and negotiating strategies. The attention of the third part lies on the case of one woman only, named Anita. Her case is presented in great detail, as it allows to study the large repertoire of women's strategies to fight for inheritance. Although Anita's great performance in playing that repertoire is typical only for a small elite of urban, educated and prosperous women, the difficulties she faces – despite her manifold social, economic and personal resources – are representative for Togolese women in general.

3.1 The legal field of women's land and inheritance rights

Up until the adoption of the *Code des Personnes et de la Famille* in 1980, inheritance in Togo was only regulated by customary norms, i.e. the colonial interventions did not touch explicitly on inheritance rights, but, of course, the colonial interventions concerning land rights had manifold consequences on inheritance practices.

The question of land transmission via inheritance in customary law in Africa has provoked a remarkable controversy and an great amount of literature¹⁰⁴. Customary inheritance of land is embedded in the general conception of land rights in Togo, which will be briefly sketched.

3.1.1 Customary land rights and their evolution

It is common to depict African land rights as 'collective rights'¹⁰⁵, where individuals are given only user rights and it is prohibited to sell land, because of its essential function for the material and spiritual subsistence of the group (Rouveroy van Nieuwaal 1993:192). According to Chanock (1991:62-66), this "imagery" of African customary land law as the entitlement of all as members of the community, individual land ownership being excluded, was a construction of both the colonial governments, who used it to justify dispossession of land, and of African

¹⁰⁴ For Togo the relevant works are Pic (1932), Binet (1965), Verdier (1959), Mignot (1985), Adjmagbo-Johnson (1994:5).

¹⁰⁵ According to Becher (2001:53) individual claims to land traditionally existed, but were always dependent on social units, such as extended families, villages, ethnic sections or other groups and networks. The access to land was therefore linked to the access to labour and productive resources and to the distribution of power over land use.

communities, who used it to certify African control of occupation, use, and allocation of land in order to defend themselves against further land loss.

Correspondingly, also among the *Ewe* and *Mina*, land is presented as enclosing an ontological reality: The first occupants of the land concluded alliances with the powers of earth and local spirits. It is the earth priest (*maître de terre*), as authorised descendant of these first occupants¹⁰⁶, who controls the respect of this alliance by bringing the necessary sacrifices in order to obtain the agreement and protection by the mythical owners. However, he does not become the owner of the land – the boundaries of which are rarely precise, as they depend on the subsistence need of the contemporary and future population –, but only its manager and guardian, responsible for distributing user rights to the different lineages. If he receives gifts, such as cola nuts or a symbolic sum of money, these serve only to confirm his authority over the land and are not to be misunderstood as a payment for the land. The head of every lineage distributes user rights to the family heads, who in turn are obliged to provide user rights to their dependents according to their status within the group and their personal needs (Mignot 1985:285):

Le papa a donné à chacun un peu de parcelle de champs à cultiver. Chacun trouve la portion qu'il faut utiliser. Pendant qu'il vit, c'est toujours sa propriété. (Mancraro 2 :12)

These user rights are neither durable nor absolute. Land can be “occupied” by overlapping rights of different users according to their different social positions. Customarily, lineage land can only circulate within the lineage, but cannot be sold outside the lineage. It is possible to bequeath land within the lineage, or else to adopt strangers into the lineage and provide them with user rights to land (Mignot 1985:85, Adjamagbo-Johnson 1992:215, 1994:3-11). As in patrilineal societies women are thought of marrying “into” other families or patrilineages, where they are accorded new user rights to land, they lose upon marriage their user rights to land within their lineage of origin, but can be accorded new user rights after separating from their husbands and returning to their family of origin (cf. also Becher 2001:58 for northern Ghana).

According to this view, land in Africa is embedded in collective and patriarchal socio-spiritual relations, essential not only for the material but also for the ideological and spiritual reproduction of the group, i.e. land is seen as a source of life for deceased ancestors, living families and unborn generations. Yet, even before colonial times, land was sold to foreigners,

¹⁰⁶ However, the myth of being the “first occupants” was also presented in cases of lands acquired by war, in order to justify the imposed social order (Mignot 1985:84-86).

reflecting the evolution of customary land rights. In Lomé, since its foundation as a commercial centre in 1830, individual land property became very important.

During colonial times, land in Togo became a hot issue. As early as 1902 certain user rights (for fishery, pasture, hunting, and firewood collection) to non-registered land could be registered by Africans, whereby the land became subject to German law. From 1904 onwards, Africans could be allowed or even obliged by the governor to inscribe their land in the *Grundbuch*. However, these regulations became rarely applied and did not avoid that the local population got pushed away from the most fertile lands by financially powerful German companies, such as the Deutsche Togogesellschaft (DTG). Tensions over land user rights increased in 1908, when the German *Reich* installed a governor with the aim to increase its control over the *Musterkolonie Togo*. After brutal conflicts in the colonies had become known, the colonial minister Dernburg tried to better protect the interests of the local population who were supported by the missionaries, by partly reinstalling judicial power to the local chiefs. He also stipulated that only *herrenloses Land*, i.e. land which was not proven to belong to local populations, could be conceded to colonial companies. In Togo, additional requirements made this kind of land expropriation more difficult: An official visit to the land under question had to be made in the presence of the official for indigenous affairs (*Eingeborenenvogt*) who was to defend the interests of the local population and the Africans concerned (Rouveroy van Nieuwaal 1980:27-33, Erbar 1991).

When the French took over colonial rule in Togo in 1919, land rights registered under the Germans were fully acknowledged, until in 1922 France reorganised the validity of customary law and the judicial system (Rouveroy van Nieuwaal 1980:33-34), in order to entrench the individualisation of land rights. Following §544 of the French Code Civil, individual land property became the rule, collective property the exception (Adjamagbo-Johnson 1992:215). At least in the commercial town of Lomé this policy was successful: Around 1930 all the plots of the town area of Lomé at the time had been sold, due to intense land speculation among the new urban and strongly commercially oriented society of Lomé¹⁰⁷. In a neo-traditional fashion they based their self-esteem on the prestigious establishment of new family branches, to which the acquisition of a family house was an essential requirement (Adjamagbo 1986:195-200, referring to Marguerat 1983, 1985a, and 1985b). In the interior, however, like elsewhere in French West Africa, colonial land policies (such as the concept of “vacancy”, the introduction of a *livret foncier coutumier* in 1925, and after 1935 the rule that the colonizer could

¹⁰⁷ The population of Lomé was composed of people coming from outside like “Mina” and Europeans, and the autochthonous *Ewe* from the villages of Bè and Amoutivé.

claim land that had not been used for at least ten years) met with stiff resistance by the population. The latter claimed that all land was subject to traditional claims and could not see the use of the costs and complex procedures for the registration of their land (Rouveroy van Nieuwaal 1993:190-193).

In customary legal discourse women's rights tend to be left rather implicit in men's obligations. As in many other African countries, these implicit rights were mostly ignored by colonial and post-colonial rulers in Togo, who formulated their laws from a rule-centred and male-biased perspective. When land was partitioned, land titles were distributed to individual adult men, while the usufructory rights of women to land allotted to their husbands were frequently considered as merely 'informal' and left out of formal registration, thus losing institutional protection and becoming undermined. Thus, women were made increasingly dependent on men (Baerends 1990:37, 89-92, Knowles 1991:3-5, Chanock 1991:73, Schaefer 1998a:25, Le Meur 1995). But, even during colonial times, some women moved to the cities, where they took advantage of a new urban estate market to buy land (cf. Lachenmann 1996a:238).

Attempts by the independent Togolese state to enforce its land control by a land tenure reform in 1974¹⁰⁸ as well as subsequent laws and decrees were no more successful than similar attempts in other countries, such as Cameroon or socialist regimes like Benin (Rouveroy van Nieuwaal 1993:194-195, Fisiy 1992). In Togo the reform project aimed at abolishing the privileges of individual over collective property. Nevertheless, under the slogan "*la terre à ceux qui la travaillent*" ("land to the tiller") it was again attempted to impose on "customary property" the obligation to continuously use the land for agriculture or forestry (except for a fallow period of up to ten years) while registered private property was free from such conditions¹⁰⁹. Although there had been "no reference to women's tenure rights in any of the government's land tenure laws or ordinances" (Furth 1998:129) it can be assumed that its enforcement would have contributed to exclude women from land property, due to continuous male-biased registration practices. Although the government failed to implement the reform, many peasants, as a reaction to the reform law, immediately sold their land cheaply to urban dwellers, thereby becoming landless. Meanwhile these city dwellers lacked the necessary financial means and competences, and thus put the land only to use during the registration period. The reform therefore did not achieve its objectives, such as an increase in agricultural production (Furth 1998:126-127, Adjamagbo-Johnson 1992:215-233).

¹⁰⁸ Cf. the *Ordonnance no. 12* of 1974 on land tenure reform.

¹⁰⁹ However, unlike in many other African countries, such as Tanzania, the land reform in Togo never declared all land to be state property.

Women's rights NGOs deplore the failure of this land reform as a lost opportunity to reorganise the land law in a way that would ensure that women's access to land does not depend on inheritance or marriage any more, stop the creeping sale of family land by male family or lineage heads – who do not even share the proceeds with them – and enable even less wealthy women to buy land (GF2D1995:145-149, Akouegnon et al. 2000:3).

3.1.2 Contemporary land practices in Togo

Land sales in Togo are still ruled by a French decree of 1906, written for the overseas colonies and territories of French West Africa. There exist two different administrative options to sell land, the ordinary and more lengthy “sale by contract” and the exceptional and faster “sale by confirmation judgement“. This fact is frequently exploited, leading to illegal double sales. For the ordinary “sale by contract”, the land has first to be surveyed by an authorised land surveyor and the established map has to be officially authenticated. Then the bill of sale has to be established, the property right of the vendor to be verified by the cantonal or village chief, before the bill of sale can be certified, first by the district officer or mayor, then by court¹¹⁰. After another three months, to be respected in order to exclude any customary claims to the land, the *certificat administratif* is issued. In order to obtain a land title (*titre foncier*), one has to sign a „request“ for entry into the land register, which is published in the Official Journal, then sent to the National Cartography and Cadastre Department, which – after three months – fixes a date for the setting of the boundary stone, to take place in the presence of the contract parties, the neighbours, and the cantonal chief, the protocol of which has to be signed by the contract parties and the surveyor. Thereafter, the title deed is inscribed in the land register and a copy dispatched to the persons concerned (GF2D 1999c:208-210, Rouveroy van Nieuwaal 1986:187).

In case of conflict it is advantageous to have as many written and official proofs as possible (Rouveroy van Nieuwaal 1986:181). For a long time, private land property was registered mainly in case of conflict (for instance between inheritors, if the same land was sold several times to different people, or if land was misused by an administrator), in case land was sold to foreign companies, or in order to obtain a mortgage. Otherwise, it was common to conclude

¹¹⁰ I agree with Rouveroy van Nieuwaal's claim that “in that way, folk law practice is sanctioned by the administration” (1986:176) only under certain conditions: As we have seen in the foregoing subchapter, according to customary practice land could not be sold at all, only user rights could be distributed and re-distributed. But we have also stated that customary practice has evolved, nowadays including even land sales. It is this evolvement of customary law which is sanctioned by the administration by including the chieftaincy in the administrative procedures.

oral or written sale contracts in the presence of a customary chief and witnesses from both parties, sometimes combined with a land survey, yet without obtaining either the administrative certificate or the land title (Furth 1998:128). However, the registering of private land property in order to obtain land titles is becoming more and more frequent, especially in urban areas (cf. state court files from Lomé).

The first authority to solve land conflicts in rural areas, including quarrels about the inheritance of land, is nowadays the village chief. However, this office was heavily transformed by interference from the colonial powers and later from the one-party-regime (cf. chapter 6.4). In some areas the population preserved the above mentioned position of the earth priest as main advisor to the village chief or in competition to him. He can settle land disputes or oppose land sales sanctioned by the *village chief*, if he estimates them to harm the community. Among the *Ewe* of the Kloto district near the southern border with Ghana, this position is called *mancraro* (chef de terre) or *duto*, village owner¹¹¹:

Quand il s'agit des limites des forêts ou des champs je suis l'administrateur. Quand il y a une question, c'est moi seul qui va aller voir sur le lieu ce qui se passe. Si ça va devenir un problème, je vais appeler quelques gendres, quelques conseillers, que telle famille me cherche querelles sur les limites. Et on va faire le jugement. C'est pourquoi personne n'a le droit de faire délimiter sans moi. Personne ne peut aller toucher là-bas ! Il faut m'aviser ! Si nous avons les limites, un autre qui dépasse, il faut me le dire. Je vais le raisonner. S'il ne veut pas je vais appeler les cousins et les conseillers, on va faire le jugement : « Pourquoi tu fais ça ? » (Mancraro 3 :25-26).

Land continues to be an important asset in individual or collective strategies to access means of production and accumulate wealth and power. It is nowadays common among economically successful women, be they single or married, after having contributed the necessary to the household expenses and invested their own business, to invest their surplus money in land and houses with their own names on the property papers¹¹². This is an important security strategy. They continue to live in their husband's house and rent out their own place or else have relatives moving in, until – when separating, divorcing or becoming widowed – they leave

¹¹¹ Cf. Mancraro 2:2-4, Togbui 1:1, Justine 2:36-38, Adjamagbo-Johnson (1994:9), Meyer (1999b:3), Rouveroy van Nieuwaal (2000:193, 217). Among the *Anufom* in northern Togo, this position is called *myefo* (E.A.B. and E. van Rouveroy van Nieuwaal 1976:90).

¹¹² An inquiry at the *Tribunal de première instance, Chambre Civile et Commerciale* in Lomé into court files about land affairs involving women, out of 24 cases selected randomly from the years 1990 to 2000, 4 were about land disputes while 17 concerned sale confirmations. In both types of affairs women appeared either as vendors or as buyers.

UNICEF-Togo estimates that in southeastern Togo women own 17% of the land parcels (1998:98). This might be attributable to prosperous women from Lomé who buy commercially promising land close to the coastal “highway” and near Lomé, as this is not too far away to be regularly surveyed by them.

their husband's house¹¹³. The fact that they do not depend on their husbands for housing or maintenance considerably increases their negotiating power within their marriage.

Less wealthy and especially rural women frequently try to compensate their loss of traditional user rights to land and their lack of means to buy land by forming women's groups who collectively demand from the chiefs the allocation of land for joint or individual cultivation (cf. Lachenmann 2001b:98)¹¹⁴.

But in spite of the increasing privatisation, land – especially in rural areas – is not necessarily thought of as a market commodity. Once a plot of land is bought, it is not resold, except as a last resort. There exist proofs of land sales in villages along the coast as well as in the Plateaux Region, while in other villages of the Plateaux and of the Savannah Region land sales continue to be customarily prohibited (Adjamagbo-Johnson 1994:3, 9-14).

Apart from commercial land transactions, there is a tendency for actors, both in urban and rural areas, to turn their user rights into – even if highly contested – private property rights for instance by selling plots after the division of inherited land, as we shall see in the next sub-chapters¹¹⁵. This is confirmed by Chanock as being a general tendency. According to him, in West Africa there were two distinct tendencies at work: On the one hand, the widespread individualization of lineage land. On the other hand, “a lineage will usually postpone a legal partition of its lands as long as possible, since it is realised that ownership in common of undivided land is the most powerful means of preserving the unity and strength of the lineage”. Furthermore, “there is a tendency for lineage claims to land to become consolidated – to become proprietary instead of usufructuary” (Chanock 1991:70).

The concept of individual property gained ground with the expansion of the market economy (Mignot 1985:285). Land sales and purchases of cash crop land, along with the practice of renting land or share tenancy, became common. A share cropper (*métayer*) of subsistence land pays with one third of the harvest, while a share cropper of cash crop land pays with half of the harvest. Nowadays, the planting of perennials such as trees, cocoa and coffee, as well as vegetables are interpreted as private individual appropriation of land. Therefore, share tenancy of cash crop land is limited to five years (Justine 1:13). Another factor contributing to the individualisation of land property is the growing population density.

¹¹³ Cf. Justine 2:49, Cathérine 2:29, Mancraro 3:28-30, Dorothée 1:16-18, Latif 2:1-2.

¹¹⁴ In Togo, such groups are often created, supported or advised by paralegal advisors (cf. chapter 7.2.2).

¹¹⁵ Cf. Rouveroy van Nieuwaal (1986:181), files No. 722/91 and No. 256/99 at *Tribunal de 1^{re} instance, Chambre Civile et Commerciale* in Lomé.

3.1.3 Gendered inheritance of family land and houses in customary norms

Like elsewhere in Africa, in southern Togo the discourse on customary inheritance gives more importance to ‘succession’, i.e. the ‘transmission of office’ of the family and lineage head, than to the ‘inheritance’¹¹⁶ of property. This is due to the central and powerful role of these offices in the management of the material and spiritual life of the lineage and family, as well as to the fact that entitlements to inheritable goods are tightly linked to these social functions (Adjamagbo 1986:175-177, 181-182, Adjamagbo-Johnson 1994:3, 16, Mignot 1985:83-89).

According to customary rules among *Ewe* and *Mina*, if a lineage head dies, the follower to this position is designated by the lineage elders, combining the principles of seniority and patri-linearity to the one of primogeniture (Eriksen 1995:86). Thereby, also the principle of ‘personal merit’, i.e. the respect which the candidate already acquired within the lineage, is taken into consideration: If the eldest (*l’aîné*) married man in the lineage, i.e. a brother or cousin of the deceased, is a respected person, he will inherit the power over the lineage members and resources, be responsible for distributing user rights to land among the family heads, who will distribute it to the members of his family.

The lineage head will also control the use of the family house (*la maison familiale*), watch over the ancestral ceremonies, and mediate in family conflicts (cf. Mancraro 2:12), i.e. he will be responsible for the preservation of all the goods necessary for the reproduction of the lineage (Adjamagbo 1986:172, 182, Mignot 1985). If there is no “capable” man in his generation, because of infirmities, extreme poverty, migratory absence, or lack of being respected, they can choose somebody (if possible the eldest male) from his descent group to become the new head of the lineage. This privileging of the generation of the deceased as against the generation of his children is called “horizontal succession”. It is the common inheritance mode in lineage societies (Westermann 1935:269, Adjamagbo 1986:184)¹¹⁷. Alternatively, they can also designate a capable and “strong enough” (i.e. very self-confident, prosperous etc.) woman of the generation of the deceased or among his descendants to take over this power position¹¹⁸, but this is rather rarely the case (Adjamagbo 1986:181-184, 260, Westermann 1935:268-269).

¹¹⁶ The distinction between ‘succession’, as transmission of office, and ‘inheritance’, as transmission of property, is made here according to Eriksen (1995:85).

¹¹⁷ The same mode applies to the inheritance of the position of the village chief, in so far as the state does not mix in (Mancraro 2:4).

¹¹⁸ This is called the “epiclerate” or “residual” heir (Dwyer 1982:96).

Concerning the inheritance of land, houses and other material goods, the *Ewe* and *Mina* distinguish objects attached to the lineage group from those attached to individuals:

Land and houses attached to the lineage (*togbe*) remain undivided, to be administered by the head of the lineage, who is mostly male, as we have seen above. He distributes user rights according to the position of an individual, his status within the group and his assumed needs (Mignot 1985:245). This way, user rights are distributed mainly to the sons, on the assumption that daughters have no dependents under their responsibility but are dependents themselves: Once they get married, they are expected to move to their husbands' families and be accorded user rights there. Unmarried sisters, widows or divorced women are also assumed to be dependent, this time on their brothers, who might accord them user rights to land according to their means and goodwill, leaving such women in a very precarious situation.

Ici on ne permet pas que la femme prenne des responsabilités parce que les ancêtres ont dit que la femme, elle est femme. Elle va se marier dans une autre famille. Les enfants qu'elle va donner, leur papa est à l'étranger ou bien au village voisin. Donc, les enfants de la femme ce sont des étrangers. Par contre les enfants du fils resteront toujours sur place, dans la famille. C'est pourquoi il faut confier les terres aux hommes. Seulement si le mari est parti et la fille est revenue au village on lui donne souvent un terrain pour construire sa maison. Ou bien, si la fille est plus utile que le fils, on confère des fois la responsabilité pour les terrains à elle. (Mancraro 3:13-14)

Married sons are expected to accord parts of their own user rights to their wives. If a male lineage member dies, his user rights to houses and land are redistributed by the lineage head, mostly to the person who succeeds the deceased in his responsibilities towards his dependents¹¹⁹, i.e. often a brother of the deceased (Adjamagbo 1986:99, Adjamagbo-Johnson 1994:16-18, 28, 36).

On the other hand, land, houses, and movable goods (such as harvests, tools, furniture and clothes) which are considered to be privately acquired property of the deceased – disregarding whether the latter is a man or a woman – may be divided between the male and female descendants, thereby following a vertical inheritance model¹²⁰ (Adjamagbo-Johnson 1994:17,

¹¹⁹ Widows, who had married into the family, may be allowed to stay and accorded user rights as long as they do not remarry, and especially if they have minor children to care for. But their rights are very fragile, as they continue to be considered members of their lineages of origin (Gayibor/Komlan 2000:5, GF2D 1995:21). Frequently, however, the widow is expected by her in-laws to marry a brother of the deceased, i.e. the levir, or otherwise leave the house (cf. CRIFF6Sept01, Akouegnon et al. 2000:2, Christophe 2:1, Secr. Chefferie 1:40). The room for manoeuvre of widows will be discussed more extensively in chapter 5.2.

¹²⁰ There are slight differences in women's inheritance rights of individual property among the *Mina*. As the *Mina* adopted individual land-ownership already since early contacts with European traders, most of their land and houses are individually owned. Both the *Mina* and the *Anlo*-subgroup of the

28). Brothers of the deceased only inherit in secondary position. The division of this individual property among the inheritors is undertaken by the head of the lineage in agreement with the other lineage elders (cf. Westermann 1935:268). It is his task to make sure that the interests of individual lineage members do not harm the interests of the lineage group as a whole. The head of the lineage will be compensated for his efforts with a small part of the transmitted goods, even if sometimes only symbolically (Adjamagbo 1986:185-186). Everything a woman inherits this way, including private land, she can in turn bequeath to her own children (Adjamagbo-Johnson 1994:28).

Women's rights NGOs confirm women's exclusion from inheritance mainly for the past. However, they point to the fact, that with the increasing commoditisation of land since colonial times, more and more land became parcelled and registered as individually owned private property, and thus – following the above line of argumentation – inheritable by women.

[Selon le droit coutumier] la femme, qu'elle soit épouse ou fille, ne pouvait hériter des biens immeubles de son conjoint ou de son auteur. La terre, en effet, était un bien inaliénable qui doit rester dans la famille. Or la fille, en se mariant, rejoint son conjoint et est susceptible de dépouiller sa famille d'origine au profit de sa nouvelle famille. Pour éviter de telles situations, on a trouvé raisonnable d'exclure la fille et la femme des successibles d'un bien immeuble. Mais la terre a fini par faire objet de morcellement pour respecter les plans de cadastre, et même vendue. Le produit de la vente qui est désormais représentée par une somme d'argent devient un bien meuble et dès lors peut profiter à la femme. (Akouegnon et al. 2000:3).

But this social change is highly contested, giving frequently rise to fierce conflicts between the brothers of the deceased and his descendants, as well as between male and female descendants. This aspect is also acknowledged by women's rights NGOs:

Bien des règles relevant des coutumes en pleine mutation restent défavorables à l'accès aux biens successoraux par la femme. Le problème se pose principalement pour l'accès aux biens immobiliers. Les coutumes n'admettent pas l'accès à la terre pour la femme, cette dernière en est très souvent privée, surtout en milieu rural. (GF2D 1995:21)

According to some informants, the gender bias is less an old than a new phenomenon, as with the growing economic problems of the recent decades men would be more and more keen to

Ewe had, in former times, close contacts with matri-lineal ethnic groups along the "gold coast" such as the *Ashanti*¹²⁰. Nowadays *Mina* and *Anlo-Ewe* observe patri-lineal descent. Nevertheless the *Mina* have a tendency to bequeath privately acquired property to the sister's children of the deceased (Adjamagbo 1986:279, Schlettwein 1928a:251). In both cases it is common to privilege the eldest child (cf. Westermann 1935:264-269, Adjamagbo 1986:179-186, Adjamagbo-Johnson 1994:18).

exclude women from the inheritance of land (cf. Justine 1:7). This underlines how much the economic crises contributes to reinforce gender inequalities.

As this sub-chapter has shown, women used to have only user rights to land and even these merely on a secondary basis, i.e. dependant on men. With the increasing individualisation of land property, women have in theory the possibility to acquire land (also through inheritance), but in practice – especially with the economic crises since the 1980s – they still have to struggle for it, as their right to land and inheritance continues to be contested.

3.1.4 Inefficient protection of women's inheritance rights by state law

As in many other African countries, the Togolese legislator recognised the devolution of “real property through customary law or practice. The alternative legal mode of wills does exist but is not much used, even by the wealthy” (Goody 1987:3). However, the construction in the Togolese Family Code (CPF) is more confusing. The situation is characterized by Adjmagbo (1986:188) as a “relatively undetermined open space” between the traditional normative frame and “modern” inheritance law:

Section IX of the Family Code (art. 392 – 556 CPF) introduces a rather European inheritance model, which treats all the property of a deceased person the same, be it land, houses or movable goods. The inheritance is to be shared between the descendants (equally among them, disregarding their sex and age), and the surviving spouse or spouses¹²¹, in so far as they were married at the registry office (art. 399 CPF) thereby emphasizing the conjugal family (Adjmagbo-Johnson 1994:17). Only in case the deceased had no descendants, the ascendants (parents) or collateral relatives (i.e. brothers, sisters, cousins) of both the paternal and maternal side will receive a share, besides the widow. The inheritors hold a family council meeting (*conseil de famille*) in which they designate a trustee (*administrateur des biens*) amongst them – or a third person – and decide whether to divide the inheritance (land, houses, bank accounts etc.) or keep it in an undivided state, to be administered by the trustee. If one of the inheritors insists on a division, the inheritance has to be divided, as the division is the mode favoured by the legislator in its effort to promote individual private property¹²². If all inheritors agree to keep it in an undivided state, they take a majority decision about how to exploit the inheri-

¹²¹ However, this statutory right of the widowed spouse to inherit from the deceased is cut back for women in art. 397 CPF, which makes her right to inherit from her late husband dependent on her observance of customary mourning ceremonies. This aspect will be further discussed in chapter 5.2.

¹²² Cf. art. 493 of the CPF which states that *nul ne peut être contraint à demeurer dans l'indivision*.

tance and how the administrator shall distribute the profits of the administration, such as incoming rent or interest rates. In any case, the trustee is mandated to observe equity among the heirs.

Still according to the Family Code, the inheritors have to take the protocol of this family council meeting, signed by the family head, to the townhall (*mairie*) or the district administration (*préfecture*) and then to state court to be certified, and thus serve the trustee as authorizing document for his actions. While in customary terms the family council was mainly composed of the relatives of the deceased, not of his wives or children, the law now protects the interest of the latter by requiring their approval (in their capacity of inheritors) of the family council decision in the presence of the certifying judge. The legal inheritors can even hold their own council and take the relevant decisions, without associating the other relatives of the deceased (art. 496 CPF).

Yet, according to article 391 of the very same Family Code, all of the above described provisions of this section “are only applicable to the inheritance of those who have declared to have renounced the status of customary law in matters of inheritance. This declaration can take the form of a will or an option taken in the presence of a registrar”. Even though more and more people do write testaments (Christophe 3:1), according to interviews with jurists from the Ministry for the Advancement of Women and from women’s rights NGOs, so far (i.e. up until 2001) hardly anybody in Togo is known to have officially renounced customary inheritance rules¹²³. If nothing was declared, the inheritance will follow customary norms, without these customary norms being any further specified¹²⁴. This way, the legislator strengthened custom as a mode of producing law rather than as a legal product. Even when inheritance cases are treated in state courts, the precise content of customary inheritance rules has to be searched and stated for every single case. For that purpose, the judge can consult with his “customary assessors”. However, according to Adjmagbo (1986:206-207) the presence of these customary assessors serves mainly to legitimise decisions, which are often taken according to the judge’s “feelings of justice” or to achieve a politically desired solution, but not in the search for a customarily accepted solution. This means that the judges have a large room for manoeuvre to interpret the meaning of customary norms and adapt them to the respective cir-

¹²³ Women’s rights activists estimate that this is due to the fact that the Family Code generally is not well known to the population (Akuegnon et al. 2000:2).

¹²⁴ Other African countries, like Senegal, demonstrate a firmer commitment to the state inheritance model by stipulating that, if nothing is declared, it is the state inheritance model which applies (A. Sow 1993 and P. Bourel 1981, cited by Adjmagbo-Johnson 1994:19).

cumstances, thereby allowing for more consensus-oriented negotiations than if the customary rules were codified (Adjamagbo 1986:189, 1994:20).

Conflict parties are aware of this room for manoeuvre of judges to juggle with the references to customary norms. As a consequence, they often try to underline their claims, especially in the field of inheritance, by producing arguments based on alleged or real customs (Christophe 8:4). This confirms Benda-Beckmann's observation, that

“if people take account of law when making up their minds, they are usually influenced by the whole of their normative universe, out of which they select those aspects which they deem to be relevant points of orientation in a specific situation (F. von Benda-Beckmann 1993:129-130).

The consequence for women is that they are frequently excluded from the inheritance as well as from the designation of the inheritance administrator. This will be discussed in more detail in the following sub-chapter.

3.2 Everyday practices of inheritance as the dynamic negotiation of manifold options

The above given construction of customary inheritance, the “modern” inheritance model that is half-heartedly presented in section IX of the Family Code, as well as norms of gender equality stated in the Togolese Constitution of 1992, but also in international norms, are all part of the legal discourse in Togo. Therefore, they influence the practices, which by themselves are again interpreted, re-constructed and changing over time according to the socio-economic development. This is true not only for cases treated in the context of state courts, but also for those mediated in the urban so-called customary courts, in rural sessions with village chiefs, in rural and urban family council¹²⁵ meetings, or even in less formalized situations, although, of course, to varying degrees. The result is a large variety of inheritance practices.

3.2.1 The selective use of the state inheritance model

According to interviews with jurists from the Ministry for the Advancement of Women and from women's rights NGOs, even though the number of people writing testaments is slowly increasing, so far hardly anybody in Togo is known to have officially renounced customary inheritance rules in the sense of article 391 CPF (Christophe 3:1). They estimate that the

¹²⁵ These legal forums and their relationship to each other are introduced in chapter 2.1 and 6.

quasi-non-existence of such declarations is due to three aspects: Firstly, that the Family Code (and its article 391) is generally not well known to the population¹²⁶. Secondly, that registrars are not equipped with any forms, on which to make such a declaration, and thirdly, that to make such a declaration is, in any case, more complicated than not to make one (Adjamagbo-Johnson 1994:18-19). All these three aspects hint at the lack of political will on the side of the government to enforce its law, also mirrored in the half-heartedness of the legislator's presentation of the modern inheritance model. What these jurists do not reflect, however, is the possibility that people might be well informed, but still reject the state inheritance model, for instance because its privileging of the widow as against the mother of the deceased undermines the common security system (cf. chapter 5.2.4).

On the other hand, while such renunciations are generally not made, other aspects of the state inheritance model are frequently applied in inheritance quarrels, even if they never reach the state courts. Among these we have to cite the management of the administration of the inheritance by a trustee, the division of the inheritance among the inheritors, and the descendant's prerogative over other lineage members in case of such a division. This observation confirms the very selective use that actors (in this case mostly men, as they are still the main land owners and also constitute the majority of judges, lawyers and registrars) make of the norms "offered by" the state law, whereby women's exclusion from the inheritance of land is maintained.

3.2.2 *Les administrateurs des biens – la plupart du temps ce sont des voleurs!* Abusive inheritance administrators

One of the reasons for a division of the inheritance among the inheritors is the widely known practice of inheritance administrators to misuse the undivided goods under their control to the detriment of the inheritors¹²⁷ (or of the co-inheritors, in case the administrator is one of them, for instance the eldest son). They are perceived to do so mainly in order to accumulate the means necessary to provide for their own families or establish themselves as family heads and successful members of society. For instance, they move into the house of the deceased or misappropriate the produce of the heritage, which they are called to administer until the minor children of the deceased have grown up, or else until the inheritors have decided upon the

¹²⁶ Cf. Akuegnon et al. (2000:2), GF2D (1994:10-29, 1999b:44-46), Mensah-Pierucci (1998:63-65), UNICEF-Togo (1998:98). The construction of ignorance will be further discussed in chapter 7.1.4.

¹²⁷ Cf. also the citation (from Anita 4:20) in the title of this sub-chapter.

“division of the succession” (Adjamagbo 1986:194-196, cf. Mancraro 1:1, 2:11, Chefferie 10.5.2001 case III). Their abusive decisions are first of all contested by the lineage head, but more and more often also by individual heirs, leading to endless discussions that can take several generations before they are brought to court. In the latter case they mostly lead to the division of the inheritance (Adjamagbo-Johnson 1994:34).

As, according to the Family Code, all the inheritors have to agree on a division of the inheritance, and as the group of inheritors sometimes comprises more than 20 or 30 persons, it can take umpteen years to find an acceptable compromise. That time is often taken advantage of by abusive inheritance administrators. The longer it takes, the more unlikely the division becomes, due to the growing number of legal heirs with each new generation:

La famille de ma mère a beaucoup de terrains. Mais depuis le décès de son père, ils sont en train de pourparler, ils n'ont pas encore eu leur part. Ça fait 35 ans que leur père était décédé, ils sont encore en pourparler. (Anita 4:16)

During this period the various conflict parties develop new strategies to put pressure on each other, among them the application of magic-religious practices (Adjamagbo 1986:289).

As most of the state legal provisions on inheritance are only selectively observed (see above), the custom of designating a male relative of the deceased as inheritance administrator is mostly maintained. Both female relatives and the widow of a deceased man are thus often excluded from controlling the inheritance and, as a consequence, are frequently disadvantaged from the use of its benefits.

3.2.3 The transition from lineage to descent entitlements

So-called lineage land is nowadays more and more often parcelled, divided and registered as individual property¹²⁸, especially if the land is situated in or close to towns, i.e. considered to be “urban” and therefore of commercial value. In this case, conflicts typically erupt between the descendants (supported by the widows) of the deceased, i.e. the nuclear conjugal family privileged by the state law, and his collaterals and parents, i.e. the extended family, who is referring to the “customary” lineage-logic. Thereby, both groups aspire to profit from the valu-

¹²⁸ The opposite transition occurs as well: Houses and land are often acquired as individual property but later turned into the “family house” and family land of the new lineage branch that, with the coming generations, will become a lineage on its own. In such cases, both the house and the land can be considered essential for the reproduction of this new lineage and will therefore not be divided among the inheritors, but used by them in an undivided state (cf. Adjamagbo 1986:176).

able land¹²⁹. Even if urban land is surveyed and registered in the name of a group – often the descendants –, such as in the case of Anita’s grandfather’s land (see below) –, the number of persons with entitlements is henceforth fixed and excludes many other lineage members (Adjamagbo-Johnson 1994:22-24). Although the increasing tendency is for the extended family to come second after the claims of the nuclear family, the former nevertheless uses every possible inch to access the inheritable goods (cf. Yawa 1:3, Mancraro 1:1, Justine 4:21).

These conflicts between descent group and lineage are especially acute concerning urban family houses (cf. also Adjamagbo 1986:74-93, Adjamagbo-Johnson 1994:23):

Là où on trouve la complication, c’est surtout au niveau de la maison familiale. Si le défunt n’a pas construit sa propre maison mais il vivait dans la maison familiale, donc là c’est très très difficile. Il y a aussi ses frères, ses oncles, sa tante dedans. Comment on va faire maintenant ? Si le défunt a eu trois chambres dans la maison, donc on donne deux chambres à la veuve avec les enfants, on laisse l’autre pour la famille, par exemple. Mais ça cause beaucoup de conflits. (Secr. Chefferie 1:35-36)

Even in case the lineage members might sometimes lose this struggle, i.e. might not inherit the property, their presence on and user rights to the land and the house of the deceased have often to be tolerated.

In rural areas, lineage land is less often parcelled and divided among the inheritors (Mancraro 2:11). Especially cash crop land is mostly retained by the lineage head in order to provide for certain expenses, such as funerals and other family ceremonies (cf. Adjamagbo-Johnson 1994:35). The descendants nevertheless try to take over the user rights of the deceased, impeding them being returned to the lineage head for redistribution. Thereby, they diminish the lineage control over the land, which gives again ample scope for conflicts (Adjamagbo-Johnson 1994:16). These conflicts tend to be fierce, and often lineage representatives (brothers of the deceased) violently defend their former privileges, trying to scare the claiming descendants (who are mostly male) by threatening to and even committing murder by poison or witchcraft (*envoutement*) (cf. Yawa 1:3).

At repeated occasions (i.e. in 1963, 1965, 1971, and 1974) state courts intervened in this type of disputes between the descendants and other lineage members. They stated that “according to the evolution of the *Ewe* custom” the inheritance goes to the descendants, and only in case of their absence to the collaterals of the deceased, thereby adapting customary norms to the state model of inheritance. However, this did neither hinder actors to continue to claim line-

¹²⁹ This was amply shown by Adjamagbo (1986) in her dissertation about inheritance conflicts in Lomé.

age rights in similar inheritance conflicts, nor did it change the customary exclusion of the widow or the widower from the inheritance (cf. Adjamagbo-Johnson 1994:24-25).

3.2.4 Contesting seniority among descendants

Both in case of a property division of the inheritance and in case of its remaining in an undivided state, whereby only user rights will be distributed, quarrels frequently spring up over the question whether the eldest child (mostly the eldest son) should be accorded a privilege over the other children, or whether all should be treated equally, especially if cash-crop land is involved.

For instance, in the case related by Kossiwa, the eldest son of the deceased (from Kossiwa's co-wife) took over the administration of the land. Yet, he reserved all the profitable cocoa fields for himself in order to be able to feed his polygynous family. Thereby, he excluded both his step-mother, who had raised him, and his younger half-siblings from the benefits, leaving them with very small fields for subsistence crops only, such as manioc and maize (Kossiwa 1:2, Justine 1:14).

In one case the Lomé court of appeal confirmed the privilege of the eldest child by giving the defendant, who was the eldest daughter, the prerogative to choose her plot first. While the privileging of the eldest child is typical, the extension of this privilege to the eldest daughter was rather exceptional.

3.2.5 Contesting male privileges among descendants

The individualisation and commercialisation of land rights does not necessarily include an elimination of the gender bias. Even where inheritance rights are shifted from the brothers of the deceased to his descendants, it is quite common, in rural as well as in urban areas, to exclude daughters. This means that gender inequalities are continued under new circumstances. People justify the exclusion of daughters from the inheritance of land by claiming that these daughters will later on bequeath the land, inherited from their lineage of origin, to their children who – according to patrilineality – belong to their husband's lineage. Bequeathing land to daughters thus “robs” the lineage of part of its land property (Adjamagbo 1986:246).

This argument is also used to exclude daughters from user rights to cash crops, such as oil palm trees¹³⁰ or building-timber:

Chez nous ici, quand on te donne des terrains, tu cultives. S'il y a du bois sur ta parcelle, pour faire les bâtiments, comme *l'iroko*, toi tu ne profites pas. C'est les garçons, tes frères garçons qui en profitent. Et le palmier aussi, tu ne peux pas vendre ça pour trouver à manger. C'est les garçons qui profitent seulement. (Kossiwa 1:3)

To put it another way, as formulated by a “queen mother”, even if a woman has user rights to land, she is not allowed to grow perennial crops there, as they constitute property rights, and her lineage fears that the land will be inherited by her children, who belong to her husband's lineage (cf. Mensah-Amendah 2000c:9).

This argument is discursively strengthened by claiming women's poor spiritual knowledge and inferior spiritual power as well as their resulting lack of personal strength and social authority, which supposedly hinder them from efficiently protecting land property against manifold contestations:

Pour les questions de terrains il est rare de responsabiliser une femme. Il faut être puissant. Donc, les femmes craignent. Parce que la femme n'a pas d'autorité. Elle n'est pas suffisamment forte pour résoudre les problèmes de terrain. (Mancraro 3 :13-14)

On the other hand, women are efficiently discouraged from claiming the inheritance of land by witchcraft attacks or their threat:

J'ai vu ça dans notre village: Quand les filles ont hérité les terrains, on les a tué. C'est les parents [i.e. some relative, often an uncle or brother] qui vont te confier à un des *vodus* pour te tuer. [...] C'est pourquoi les tantes disent : Il faut pas de hasarder pour prendre le terrain, sinon tu vas mourir. (Aku 1:8-9)

In the case of Dorothée¹³¹ from an Ewe-town in Southern Togo, according to the inheritance logic of the Family Code there are sixteen grandchildren of her generation who would be considered as inheritors of her grandfather's land. In a family council meeting under the direction of the eldest son of the eldest son of her grandfather, it was decided to divide and parcel the urban part of the lineage land. The men among them, i.e. Dorothée's male cousins, charged all of them – including the women – to contribute to the costs of the land-surveyor. Yet they de-

¹³⁰ It is not unlikely that this exclusion of women from cash crops was initiated by agricultural development projects of the colonial and post-colonial state, such as was shown by Le Meur (1995:90) for the oil palm plantations of the *Grand Hinvi* project in neighbouring Benin. This project, which was going along with forced expropriation and redistribution of land on a large scale, built upon similar endeavours as the colonial and even pre-colonial Dahomean palm-oil production.

¹³¹ For more information on Dorothée's life story see chapter 4, chapter 5.3.2 and the annexA1.

nied their sisters and female cousins any share of the land on the basis of the “customary argument” that daughters, as they marry into other families, do not need the land:

Il y a les terrains pour la famille. Si le terrain est loin, c'est pour faire les champs. Il y a les fils de mes oncles qui sont en train de cultiver ça. Si ce n'est pas loin, si c'est en ville, on les vend. Ils sont en train de travailler sur ça pour lotir. C'est le fils du grand frère [de mon papa] qui gère le lotissement, c'est eux qui font tout. On fait les conseils de famille. On nous dit de cotiser, on cotise. Après tout, on dit qu'on fait les problèmes de terrains et c'est eux qui bénéficient ! Moi j'ai refusé [de cotiser encore]. Les sœurs, on parle, mais nos frères n'écoutent pas. Quand je suis revenue d'Atakpamé, j'ai appris qu'on a des terrains proches, j'ai demandé pour faire le champ. Un frère a dit qu'il va me montrer là-bas. On est parti. Bon. Ceux qui cultivent, ils sont dans le champ. En ce moment je disais au grand-frère : Ah, on a beaucoup de terrains comme ça ? Donc, ils n'ont qu'à faire vite partager, ils n'ont qu'à vite faire pour lotir, et on va nous donner notre part, nous les filles aussi. C'est en ce moment qu'il me dit que les filles n'ont pas besoin de terrains. (Dorothee 3 :7-11)

Dorothee is a single woman, her husband having separated from her and in the meantime died, leaving her in economic difficulties, which could well be alleviated by her inheriting a piece of land from her father. Here it becomes especially apparent, that the construction of tradition is often done by referring in a very selective way to norms allegedly in vigour since an undefined past, whereby the selection is based on individual interests, in this case her cousins' interest not to share the land with the female inheritors.

Confronted with urban inheritance conflicts between daughters and sons in 1963 and 1965, the – at the time officially recognized – *Tribunal coutumier d'appel* of Lomé, and the *Chambre d'Annulation* of Lomé recognized the inheritance rights of all the descendants¹³². Yet, a couple of years later, in a case which came to be known under the name of *Aboflan* this general accordance of equal inheritance rights was reversed. The development of the case demonstrates the very contested nature of the subject, as will be described in the following section.

3.2.6 The jurisdiction *Aboflan*. Reversing pro-women innovations of custom and institutionalising male privileges

In this case a group of female descendants fought against being excluded by the male descendants from the division and inheritance of their deceased grandfather's land, situated in Lomé. In 1969 the *Tribunal coutumier de première instance* of Lomé agreed that the female descendants should inherit as well, but only half the share of the male descendants. Thereby, they

¹³² *Arrêt du 25 février 1963 du Tribunal coutumier d'appel de Lomé* and *Arrêt n° 4 du 7 janvier 1965 de la Chambre d'Annulation*, cited by Adjamagbo-Johnson (1994:30).

confirmed the evolution of custom in two respects: Firstly to accord the inheritance to the descendants to the detriment of other lineage members, and secondly, to include daughters' right to immovable inheritance, however by quantitatively fixing a male privilege. When the plaintiffs appealed, even this discriminating share was taken away from them: The judges declared that, according to *Ewe* custom, daughters can only get user rights to immovable inheritance, whereas the property rights should go in total and undivided to the male descendants. The women did not give up and finally, in 1972, the *Chambre d'Annulation* attempted to counteract the rigid gender bias of the appeal court and stated that *en coutume ewé* women can inherit urban but no rural immovable¹³³ (Akouegnon et al. 2000:3). Like the first judgement, this third one confirmed that customs are changing and evolving, while insisting on maintaining male privileges, at least for rural land. However, there does not seem to be any logical connection between the arguments of the two judgements. This raises the suspicion that the type of privilege claimed to be "the custom" was not carefully assessed but chosen rather arbitrarily, the sole orientation being that male prerogatives to land should somehow be maintained.

While this verdict improved the chances of women in Lomé and smaller towns to inherit land and houses, it diminished those of women in the countryside. This urban bias of women's rights increases the gap between urban women, who are already privileged when it comes to the access to public services, schools, health facilities, transport, and consumer goods, and rural women who have much higher rates of illiteracy, malnourishment, maternal and child mortality etc.¹³⁴ Moreover, the state court's confirmation of the exclusion of rural women from the inheritance of land reduces, as a consequence, women's access to the means of agricultural production, credit, economic independence and thereby their participation in decision-making.

Women's rights activists deplore that this jurisdiction enacted a gender discrimination in the inheritance of land and real estate in rural areas, which had never been this fixed in the customary inheritance mode, and which contradicts recent innovations of non-discriminatory customary practices (Marlène 1:4). On the other hand, evidence from the field research shows

¹³³ *Jugement n° 1211/69 du 14 août 1969* of the *Tribunal coutumier de 1^{re} instance de Lomé*, *arrêt n° 17 du 18 octobre 1991* of the *Tribunal coutumier d'appel de Lomé*, and *arrêt n° 13 du 7 septembre 1972* of the *Chambre d'Annulation de Lomé*, cited by Adjmagbo (1986:246, 279) and Adjmagbo-Johnson (1994:29).

¹³⁴ For instance, in urban areas of Togo 82% of the population has access to drinking water, in rural areas only 41%; in urban areas 28% of children under 5 years are chronically malnourished as to 37% in rural areas; child mortality in urban areas is at 80 per 1000, as to 92 per 1000 in rural areas; in urban areas 85% of births are assisted in health care facilities as to 38% in rural areas (UNICEF-Togo 1996:33, 59, 68, Rép. Togolaise/ Ministère de la Santé 1999).

that the *Aboflan* jurisdiction, which dates back over thirty years by now, did not hinder people to continue to change their customs of inheritance in favour of women. To give an example for such non-discriminatory practices, in the case of Justine¹³⁵ – who lives in a rural *Ewe*-area, however in the less poor cash-crop zone of south-western Togo –, her father bequeathed all of his subsistence land and most of his cash crop land in equal shares to his children – sons and daughters alike – in the 1990s, while he was still alive (Justine 1:7, 33):

Quand le papa m'a donné, c'est pour moi. Ça demeure à moi seule. Quand je vais mourir, mes enfants aussi vont profiter. Il m'a donné bien que j'étais jeune fille. Donc, on peut dire que quand ton papa t'a donné, c'est comme tu as pris de l'argent pour acheter, ça t'appartient (Justine 1:15)

Furthermore, Justine's father took care to build, next to his own house, four little houses, which he bequeathed to his four daughters a couple of years before he died, while his own house remained the family house. He thereby forestalled the rise of family quarrels after his death and protected his daughters, two of which had married but returned to him after having separated from their husbands, from later being disadvantaged by their brothers and uncles (Justine 1:27). Yet many other families in the Fiokpo Valley, where Justine's village is situated, do still exclude daughters from the inheritance of land and houses and especially from cash crop land (cf. ALAFIA 2002).

Women's rights NGOs criticize the *Aboflan* jurisdiction furthermore, because it might discourage women from all ethnic groups, not only *Ewe*, from going to court in order to claim inheritance rights to both urban and rural land (Adjamagbo 1986:246), despite their right to equality before the law as enacted in article 2 of the Constitution. However, neither law nor jurisdiction define the terms *rural* and *urban*, giving back some of the space for negotiation, which was lost through the *Aboflan* judgement (Adjamagbo 1986:279). This lack of clarity was used in favour of a woman in a case brought before the *Cour d'appel* of Lomé in 1985 by her younger brothers: A rural piece of land near the town of Atakpamé was declared to be urban, and the *Aboflan* jurisdiction was applied to a *Houdou* ethnic context (in analogy to the *Ewe*), in order to successfully defend her inheritance claims against her brothers (Adjamagbo-Johnson 1994:37).

¹³⁵ For more information on Justine's life story see chapter 4 and the annexA1.

The “customary courts”¹³⁶ in Lomé seem to follow the *Aboflan* jurisdiction and eliminate the gender bias for urban land and houses when deciding inheritance cases, whether for *Ewe* or for members of any other ethnic group:

Donc actuellement, l'état togolais même a reconnu l'héritage des filles. Chez nous, à la chefferie, c'est la même chose. Par la modernisation que nous vivons actuellement, la fille a droit. Si le garçon a deux chambres dans la maison, la fille aussi a deux chambres dans cette maison là. (Secr. Chefferie 1:24)

Yet, this kind of decision does not impede the parties competing for the inheritance of urban land, to discourage daughters from making claims by threatening to harm them with witchcraft (Secr. Chefferie 1:25-26, CRIFF6Sept01).

The *Aboflan* jurisdiction seems to have also “trickled down” to the village level (cf. Manclaro 2:8). In the case of Aku, who comes from an *Ewe*-village in the rather poor area near Vogan in the Southeast of Togo¹³⁷, daughters were accorded a share of the land, at least after the village chief got involved, whereby the chief's action was set in motion – typically enough –, by a male urban relative:

Mon père était vraiment à l'aise. Il avait des terres, des palmeraies, des cocoteraies. Mais il n'avait pas de garçons. Tout ce que mon père avait, c'est mon oncle paternel, le plus âgé, et sa famille, qui a hérité tout ça là. Et [moi et ma sœur] nous n'avons rien. Si au moins il y avait un garçon parmi les enfants de mon père, peut-être le garçon aurait hérité. Mais nous, les filles, on n'a rien trouvé. [...] Puis un de mes cousins, qui est à Accra, est revenu pour dire à son frère que finalement c'est les enfants de l'homme qui héritent les terrains. Il est allé voir le chef, que c'est pas normal [que mon oncle a pris tout]. Donc, le chef a dit qu'il retire le terrain pour remettre aux enfants du défunt, que le terrain n'appartient pas à l'oncle. (Aku 1:7-8)

But, again, this did not eliminate the pressure, exercised within the family on Aku and her sister, to withdraw their claims:

Maintenant le chef nous a demandé de venir signer les documents pour retirer le terrain. Mais j'ai peur, j'ai pas fait. Là-bas, quand on prend les terrains et on donne ça aux filles, on te tue, tu n'hérites pas. (Aku 1:8)

Of course, male-biased state interference did not stop with the *Aboflan* jurisdiction. In a case in 1985 the Lomé state court judged that, the inheritable land under question being rural, the

¹³⁶ For the relationship between the state court and the officially abolished “customary courts”, see chapter 2.2.5.

¹³⁷ In the Southeast of the Maritime Region of Togo, since the 70s, vast stretches of land have been expropriated for the (first nationalized then partly privatised) phosphate mining. Both population growth and expropriation resulted in increased land sales, intense parcelling and overuse of the remaining land, and exhaustion of its soils (Furth 1998:128-129, Adjamagbo-Johnson 1994:22).

male-only inheritors are free to attribute to the female descendants whatever share they consider to be sufficient (Adjamagbo-Johnson 1994:36). A pro-women judgement would, to the contrary, have certainly confirmed the custom of some *Ewe*, which obliges the male-only inheritors to provide for their sisters and accord them user rights to the inherited land, instead of stripping off its obligatory character. Nevertheless, more and more women are not ready to accept being discriminated and therefore contest their brother's privileges (Marlène 1:8). Some of them successfully sue their brothers in court, basing their argument on the principle of equality inscribed in the Family Code (Adjamagbo-Johnson 1994:36-37, Christophe 4). Reinforced by the more gender-balanced practices of the state and customary courts regarding urban land, women's inheritance of land becomes less and less contested¹³⁸. Nowadays, a woman who inherits land can not only bequeath it to her own children (who are considered to be part of their father's lineage), but her children can also represent their mother for her inheritance, in case she died prior to the opening of her father's inheritance (Adjamagbo-Johnson 1994:29).

3.2.7 NGO activities to improve women's inheritance rights as daughters¹³⁹

The main strategy of NGOs to improve women's right to inherit land and houses from their father consists of information campaigns in the radio, in their journal *Femme Autrement* as well as through their paralegal advisors. Thereby they propagate the following messages: Women do the main bulk of agricultural work, especially for the production of staple food, and therefore should control their own means of production. Women are often the main providers for their families and thus in need of secure revenues, which they do not have on borrowed, rented or share-cropper land. Women need to become land owners in order to get access to bank credits, indispensable for creating their own business. Women's right to inherit in equality with men is inscribed in the Togolese Constitution, in several human rights treaties (CEDAW etc.) as well as in the Beijing Platform of Action¹⁴⁰, all of them being signed or rati-

¹³⁸ In an inquiry of 200 women, two thirds affirmed difficulties to inherit from their father on an equal base with their brothers (GF2D 1994:16), which means that one third of the women did NOT encounter such difficulties.

¹³⁹ NGO activities to improve the inheritance of widows will be discussed in chapter 5.2.5.

¹⁴⁰ Lachenmann (1996b:5) points however to the fact that governments formulated the right to gender equality in inheritance in the Beijing *Platform of Action* with the reservation that such changes have to take place in harmony with the cultural specificities of each country, thereby taking the wind out of the sails of this fundamentally important demand.

fied by the Togolese government. It is important to write one's testament in order to ensure the application of the statutory inheritance rights, which provide for gender equality¹⁴¹.

As a consequence of such an NGO campaign, a chief and a queen mother in the Kloto district of the Plateaux Region, who had been trained as paralegals and who were supported by the population of the valley as well as by two NGOs, engaged in changing customary inheritance rules in order to permit daughters to inherit in equality with their sons (cf. ALAFIA 2002, Christophe 4, Benida 2)¹⁴². Furthermore, the legal counselling centres as well as individual paralegals offer to mediate in inheritance conflicts (CRIFF6Apr01, GF2D 1999b:13). Finally, several NGOs lobby for a revision of article 391 of the Family Code, in order to make the statutory inheritance the rule and not an exception (MMFT 2000, LTDF 1998:15, Akuegnon et al. 2000:2-4).¹⁴³

3.3 The case of Anita: *Ce qui est à César est à César !*

3.3.1 What is at stake? Introduction to the conflict story

The relationship between Anita's¹⁴⁴ father and her paternal uncle and aunt had never been very good. This was mainly due to her uncle and aunt's jealousy about her father's greater economic success. They extended their animosities to Anita, who – as the eldest child – early on enjoyed her father's trust and support and managed to acquire a high social status herself. Although her uncle's family profited from her income (for instance, it was Anita who bought the fridge and paid for the electricity, water, and phone bills of the house, i.e. for her father's but also for her uncle's family) they did not hide their jealousy and constantly irritated her with their noise and gossiping. During the last fifteen years, Anita was the only child of her father to suffer from these tensions, as all of her siblings live outside the country.

A couple of years ago, being tired of these tensions, Anita bought a medium-size house in Lomé. Either her father had helped her out to acquire the house¹⁴⁵, or she had used some of his money with his consent, thereby being privileged among her siblings and half-siblings and taking away possible resources from her uncle and aunt. This added to the already tense rela-

¹⁴¹ Cf. MMFT (2000), GF2D (1995:20-21), Kuwonu (1999:2-7), Mensah-Amendah 1998b:9-11), field notes GF2D Evaluation 2001.

¹⁴² This innovative activity will be presented in more detail and discussed in chapter 5.1.7.

¹⁴³ This will be further discussed in chapter 7.4.1.

¹⁴⁴ For the biographical background of Anita see annexA1.

¹⁴⁵ Her mother was unable to support her, because she did not manage to inherit any of her royal ancestor's lands yet, the negotiations around the division of the inheritable land having been going on for 35 years already (Anita 4:16).

tionship between the latter and herself. When, two years ago, Anita's father died, these tensions turned into outright conflict, circling around the questions of who should manage the expensive and prestigious funeral for Anita's father, who should have control over the paternal house or at least over Anita's father's share of it, and, especially, what should happen to the huge stretch of land that her late grandfather had bought some decades ago, and that had so far been administered – in an undivided state – by Anita's aunt on behalf of the rest of the family.

What, at first glance, seem to be three separate conflicts, turn out, after looking more carefully, as being intrinsically linked to each other and burning down to a competition between Anita and her father's brother and sister for the take-over of Anita's father's "affairs", i.e. the authority to head his family branch as "*chef de famille*" (*apeto*), and – deducing from there – the authority to manage his personal property (i.e. his bank accounts, furniture, cattle etc.) as well as his share of the lineage property (such as the family house and the above mentioned land, as soon as they would be divided) as inheritance administrator. Yet, in order to access her father's share in the lineage property, Anita pressured her aunt and uncle to proceed to a division, at least of the land. Thereby, she disputed even her aunt's position as inheritance administrator of the grandfather's land and as informal head of the lineage (*fomega*)¹⁴⁶. The latter conflict is also underlined by the quarrels over the honour and responsibility to manage Anita's father's funeral.

This competition for power is, on the one hand, a struggle over the control of social resources in terms of authority over the family (and even lineage) members, social ties within the family (important for social security, i.e. for access to resources in case of sickness or during old age), networks within the community, and status as inheritance administrator and/or as head of family, positions relevant both within and outside the family. On the other hand, also economic resources are at stake, such as the funeral money, the house, and the land.

Anita is relatively well-off with a job in the formal sector, including health insurance and a pension scheme, as well as a house on her own, without having to provide for a husband or children. Yet, like most well-off Africans, she is supporting – and expected to support – many of her needy relatives. Due to these responsibilities and her well-developed sense for business and status, Anita would not let go of any opportunity to increase her income with economic

¹⁴⁶ For unknown reasons, after the death of Anita's grandfather no new head of the lineage was officially appointed in a family council session. But Anita's father's eldest sister was charged to administer the grandfather's inheritance, and henceforward was regarded as new head of the lineage.

resources to be mobilised in her lineage, such as through inheritance from her father (cf. Guyer 1987:7).

Her aunt and uncle, on the other hand, are facing economic difficulties already now: Her uncle is retired, living on a small pension, which hasn't been paid for several years due to the deficits in the state budget. Her aunt was widowed several years ago, still suffers from the sudden loss of access to her husband's resources and currently also from a health problem that is limiting her mobility. Although she is not destitute, she nevertheless still struggles with her considerable decline in status. Both cannot rely on their children who are mostly unemployed or dispose of very meagre incomes. Both have hardly any prospects for future improvement, except, for instance, through participating in Anita's father's inheritance, or increasing and misappropriating the benefits from the lineage property, i.e. the land inherited from the grandfather. Especially the land constitutes a very valuable asset, as the inheritors could either rent it out to farmers, construct houses on it and rent them out, or sell it, these options also being possible to combine. In this time of ongoing economic crises in Togo¹⁴⁷, this prospect is in itself a huge incentive to struggle for the inheritance for both Anita and her uncle and aunt.

The stakes of Anita on the one hand, and of her aunt and uncle on the other, are similar but different in their temporal urgency. Anita's position is economically more secure, her needs are less urgent, but if she wants to change her position within her lineage, she should do so soon, otherwise it would take too much energy and her chances to succeed might diminish over time. Her aunt's needs to access Anita's father's wealth are more urgent, yet concerning the grandfather's land her interest is to delay the division and maintain her position of control as long as possible. One can assume that both parties are generally interested in maintaining more or less harmonious relationships with each other. At the same time Anita clearly aims at changing her position within that relationship, while her uncle and aunt are interested in maintaining the status quo. Yet, their material and social stakes are rather exclusive, as one party's gain is perceived as the other's loss. Therefore, compromises are treated as the very last resort, as the description and analysis will show.

¹⁴⁷ As a reaction to falling world market prices for phosphate, coffee, cotton and cocoa – Togo's main export products – and rising prices of investment-related imports in the 1970s and 1980s, the government relied increasingly on external borrowing. When public debt servicing exploded, the government undertook economic adjustment efforts (SAPs and ESAFs by IMF and the World Bank) with cuts in public expenditure, i.e. in the social sector, in agricultural and food subsidies, large scale early retirement programs, privatisation of state companies etc. Despite a substantial liberalization of the economy and the initial restoring of economic growth, the economy further deteriorated with the political crises between 1991 and 1993 (especially with a general strike in 1992 that lasted 9 months) and subsequent cuts in foreign aid disbursements. (World Bank 1996:1-7)

From the perspective of state law, as Anita's father did not renounce to custom, the inheritance mode of the Family Code does not apply. However both the family house and the grandfather's land are urban. If Anita went to the state court, her chances of winning her case would therefore be quite good, thanks to the *Aboflan* jurisdiction. But even if she went to the customary court, she would probably get the land, however not necessarily the house. However, if she kept the conflict within the (extended) family, her chances would very much depend on her personal negotiation capabilities.

3.3.2 Locking the father's room to hinder the lineage from "property grabbing"

Right after her father's death, and even before the funeral, Anita locked her father's bedroom and living room with his furniture and personal belongings inside, keeping the keys to herself¹⁴⁸. She deemed this necessary in order to hinder her uncle and any other needy relative, sharing the family compound, from "grabbing" her father's property before the mode of inheritance would be clarified in a family council session (Anita 2:3).

Her uncle and aunt both faced serious economic problems and were quite keen to acquire control over their late brother's inheritance, probably to accumulate the resources necessary in order to establish themselves as successful family heads. Yet, to lock her father's rooms, was the first signal Anita sent, that she would not allow the lineage to seize her father's property. Instead, she would insist on reserving it for his children and descendants. The latter, together with the widows, represent the "modern" nuclear family, privileged by the statutory inheritance law. However, Anita did not claim anything in the name of her mother, thereby presenting a partial and selective taking-up of the state model for the sake of legitimising new claims.

Anita presented only altruistic motives for wanting to control the family property. Thereby she hid her individual interests in the house, such as to store furniture and household articles, for which she had no space in her own new house, or to use the house for family ceremonies in order to underline her claim to become the leading manager of the family. As her father's rooms were right in what her uncle now treated as "his" compound, her locking of his rooms provided her with an efficient instrument to disturb him, to be "a thorn in his flesh", and thus

¹⁴⁸ She did so probably in agreement with her mother, who was old and infirm, and thus would have been unable to protect the goods; apart from that, in such patriarchal settings, the widow is hardly given any say in questions regarding her husband's inheritance, as all of it is thought to belong to his family of origin, i.e. to his patri-lineage, or at best to his descendants. This will be treated in chapter 5.2 on widowhood.

to drastically reduce her uncle's control over the contested space, especially after she had moved out (see below).

3.3.3 Taking over the funeral management to contest lineage privileges

Funerals belong to the most important social events in Togo¹⁴⁹. According to *Mina* custom, a funeral should be managed by the head of the lineage who is the representative of its founding ancestor. As Anita's aunt was considered the informal lineage head, after the death of Anita's father she called in several family meetings to organize the funeral. During these meetings it was listed what should be bought for the big feast and which other expenses (for the coffin, music, thanking cards etc.) were to be met. Her uncle demanded from Anita the money, which he assumed her to have received from her "rich siblings abroad". Anita did not agree as she and her sister had already paid for the hospital, mortuary, coffin, grave and the shroud, while her uncle and aunt had not contributed anything to the funeral yet. Already when her father was still alive, her uncle and aunt had frequently profited from Anita's salary, without showing any gratitude or respect, but constantly pestering her. By now she was fed up with their parasitic attitude. In order to legitimise her refusal to hand over any money, she referred to her responsibility as eldest child of her father (*l'aînée*) to economically support her younger half-siblings:

Mon oncle et ma tante, comme mon père n'est plus, donc ils pensent que c'est un droit, que je deviens leur propriété en même temps. Ils pensent que mon argent c'est leur argent, alors que moi je suis l'aînée de mon papa, je vais me battre pour mes frères et sœurs. (Anita 2:2)

Anita also expressed doubts over her aunt's and uncle's capabilities and willingness to manage the money correctly – a virtue which she claimed very well for herself, referring to her management experience.

With the approval of her siblings she decided to organize the funeral by herself against the intentions of her uncle and aunt. She decided whom to invite, how to seat the guests, which food to serve and whom to thank afterwards:

¹⁴⁹ If an old person dies, he or she becomes an important ancestor and deserves a big funeral party to be honoured. This serves to strengthen the ties with the ancestors, who accompany each and everybody throughout their lives, controlling and supporting or sanctioning their descendents by providing health or sickness, success or misfortune, and by making alliances with certain divinities (Adjamagbo 1986:174). Funerals are also an important occasion to strengthen social and reciprocal relations within the living community by inviting and serving as many people as possible.

Donc, j'ai tout organisé. On a monté un grand *apatam* devant la maison de mon père, on a bloqué toute la route, on a installé tout le monde. Le jeudi soir c'était la veille, le vendredi l'enterrement, et le dimanche la sortie de deuil. J'ai dit, le jeudi on va tuer un bœuf, le vendredi on va tuer l'autre bœuf, puis les moutons. J'ai acheté le riz, l'huile et tout. [...] Et puis pour les faire-part, ils voulaient les faire. Je leur ai dit que je ne vais pas participer parce que j'enlèverais d'abord toute une série de gens qui n'ont pas contribué. Après j'ai fait la commande pour mille cartes. Ils voulaient les distribuer et recueillir l'argent auprès des gens, mais je ne leur ai pas donné. Non, je les ai distribués moi-même le jour des funérailles. (Anita 3:4-5)

For Anita, the fact that she imposed her will on her uncle and aunt was of strategic importance. It was not just a question of the proper management of and control over her own and her siblings' money, but also a competition for the honour to host such a big funeral party and thereby reinforce social ties with the neighbourhood, with friends, colleagues, and other relatives. Furthermore, customarily it is the person bearing the bulge of the funeral costs, who will be privileged in the division of the inheritance; i.e. those who do not contribute become unworthy of inheriting (Manclaro 1:1, 2:8-10, Westermann 1935:268, Mignot 1985:247). Moreover, Anita claimed to have her late father's support for her decision, as during his lifetime he had gradually entrusted the management of family affairs to her, as she was not only educated, experienced, and conscientious, but – not being married – lived in his house and thus was easily available.

Once in charge of the funeral, Anita did not hesitate to even exclude her uncle and aunt from the main table of the funeral, not serving them either, and putting herself and her siblings in the centre of the event instead.

Après, quand j'ai vu leur comportement, j'ai changé de plan. J'ai fait seulement quatre colchons que j'ai servi à mes invités. Le dimanche là mon oncle et ma tante se sont installés à côté, mais pas chez nous. Ils ont préparé à manger pour eux mêmes. (Anita 3:5)

She thereby reordered the social relations within the lineage to the benefit of herself and her siblings, ousting the aspirants to power from the generation of her father. Thus, the performance of the funeral meal provided Anita a "contestation ground" (Pfaff-Czarnecka 2002:119) in the sense that it became a means to stage her new position of head of family (of her late father's descendants) and prepare the ground for her striving to head the lineage of her late grandfather. For her uncle and aunt this was an outrageous provocation, which influenced their later actions in the conflict.

3.3.4 Demanding to administer the father's share in the grandfather's land

Selective use of state law and customary norms

Anita's uncle and aunt suspected the inheritance of their deceased brother to be of considerable value, but had no clear information about it. As Anita was his eldest child, they expected her to know about the details of his bank accounts and other possessions, and put pressure on her to share this information. Contradicting her former assertion to have been in charge of her father's money since long ago, Anita now denied any such knowledge. Instead, she reminded them of the bureaucratic procedures to follow in order to access the inheritance of a deceased, such as the designation of a trustee in a family council meeting and the confirmation of the legal inheritors in court (cf. the forms in annexA2 and A4). Thereby, she distracted in a clever way from her unwillingness to initiate them into her knowledge, while at the same time showing off with her knowledge about legal procedures.

To the great disapproval of her uncle and aunt, Anita went one step further and asked them about her father's share in the grandfather's land, which so far was undivided and administered by her aunt. She suggested that the land now be divided among the heirs of her grandfather. She would then charge herself with the administration of her father's share on behalf of her younger siblings and organize the division of that share amongst themselves, when necessary. She was quite conscious of the contingent power of the trustee position and justified her claim again with her seniority position as eldest child of her father:

Moi je serai l'administrateur des biens dans ce cas, je suis l'aînée. Et moi, je vais pas donner mon consentement à qui que ce soit. (Anita 2:3)

Anita's uncle and aunt were furious about that demanding niece, who threatened their claim as lineage members to control the land taken over from the grandfather. Anita's claim to have the land divided is supported by the state law, but contested by everyday inheritance practices. Anita presented the fact that her father's name was mentioned on the land title (together with the names of his siblings) as a proof of him being the rightful proprietor of a share of the land, thereby referring to state law. From the property right of her father she automatically deducted her own claim as descendant of her father:

Je tiens tellement à rentrer dans les biens, les terrains là, parce qu'ils ont écrit le nom de mon père [sur le titre foncier]. Donc je veux prendre ce terrain ! (Anita 2 :4) Ce qui est à

César est à César !¹⁵⁰ Si ça c'est pour mon père là, c'est pour mon père et je dois réclamer ça ! (Anita 4 :18)

While she referred her uncle and aunt to the official procedures to follow, she did not await any family council to designate herself as the trustee of her father's inheritance, but declared her claim to that position on the sole basis of her seniority. She thereby drew selectively on arguments from state law and customary norms, which she cleverly combined.

Redefining customary seniority privileges in terms of generation and gender

Seniority is an important principle organizing the Togolese society. This becomes apparent in the responsibilities accorded to the eldest child from childhood on¹⁵¹. As an adult, the eldest male family member can be accorded the position of the family head (*chef de famille*), which is one of the main "traditional" means to acquire influence and status. Upon his death, it is mostly his eldest brother who will administrate the inheritance, which can be quite a lucrative job (Mancraro 2:11). Nowadays, the status position of *chef de famille* is even strengthened by the state law, which requires "his" signature under the protocol of the family council session deciding over the choice of the inheritance administrator, as well as upon registering immovable property or raising a mortgage on it.

It is this central role of the eldest (who is thought to be spiritually the "closest" to the deceased ancestor) concerning the authority over the family and the command over lineage-

¹⁵⁰ This expression stems from the New Testament ("Render unto Caesar the things which are Caesar's, and unto God the things which are God's", Matthew 22, 21). The bible was translated by German missionaries into *Ewe* already before colonial times and became widely distributed and known in Togo (Gayibor 1996:147-149, Sebald 1997:213-214) not least through the ongoing missionary activities of new religious groups. The verse relates how the Pharisees try to provoke Jesus to criticize the emperor's imposition of a poll and property tax. But Jesus escapes their trap by referring to the emperor's name and picture minted in the coins, thereby confirming the emperor's state power while denying his divine power. The expression seems to have entered the common vocabulary in Togo, whereby it became applied to various contexts, such as conflicts between the authoritarian regime and the traditional chieftaincy (cf. Rouveroy van Nieuwaal 2000) but also to conflicts between lineage claims and individual property claims.

¹⁵¹ Already from early childhood on, the eldest child is spoiled and privileged by the parents in comparison to their other children. It is addressed by onerous names (*fofogaã, dadagã*) and treated almost like an adult. Especially if it is a boy, the mother will consult him to take important decisions in case the father is absent. He is informed about important family matters and is given full responsibility for the younger children, i.e. will be punished if something happens to them, but also has the command over them. In extreme cases, if the father dies, the eldest grown-up son will have the responsibility for and the authority over his own mother and her co-wives as well as over all of the children of his father. An eldest girl will also be privileged, but to a slightly lesser degree. The discrimination towards girls is due to the expectation that the girl will "marry away" into another family, hence cannot be in charge of the patrilineal family affairs.

property, as well as over the division of individual property among the inheritors, which is taken by Anita as her main trump card. Thereby, she cleverly changed the concept in terms of generation and gender in two respects: Firstly, in that she is not the eldest sibling of the deceased but his eldest child, and secondly, that she is not the eldest son but the eldest daughter. This argument is also nurtured by state inheritance norms, which stress the nuclear family and the inheritance rights of the descent group and insist on gender equality.

During and after her childhood, Anita enjoyed all the possible privileges of her age position, because her brother was considerably younger than herself and later emigrated to Europe, while she remained in place. For instance, as a young girl she was allowed to frequently go out for dancing parties – accompanied by an elder cousin – and return only late at night. Her father financed her studies in neighbouring countries, although she had not been very ambitious at school. Finally, she was the only child whom her father helped to acquire a house on her own (Anita 2:5, 4:1-8). Apart from that, during her socialization, Anita was influenced by several strong women among her relatives: There was her own mother – who, in a polygynous setting, is much closer to the children than the father, the latter oscillating between his two or more families, – as well as her mother’s sister. Descending from a “traditional” chieftaincy family in Notse, the historical centre of the *Ewe* (Gayibor 1996:83-85), they knew how to make themselves respected. There was a very outspoken female cousin and also her paternal aunt – the one who now was opposing Anita – whom Anita described as being “cast in the same mould” as herself (Anita 4:14-16). The following statements show her well developed self-confidence:

Moi, je m’en foutais, parce que moi je sais ce que je fais. Ça vraiment, ça m’est égal. [...] Je suis pas un bébé. [...] Même si tu refuses, moi j’irai. [...] Je peux me prononcer. [...] C’est pas eux qui vont m’imposer quoi que ce soit. (Anita 4 :6-8)

All of these aspects certainly played a role in forming Anita’s determination to seize the management of the inheritance, even as a woman who is not yet to be counted among the family elders.

Anita demanded her aunt to divide the grandfather’s land among the inheriting parties. As her aunt did not show any will to cooperate with her, she chose to question the aunt’s position as family head and suggested herself to manage the land division.

Reconstructing gendered customary norms in order to qualify as *chef de famille* and inheritance administrator

Remarkably, Anita never mentioned the bias against women as heads of family or inheritance administrators, which is mirrored in the *Ewe* proverb

Nyonu medo na ava didi-o. (A woman does not piss with a penis, i.e. cannot claim to be the head of the family, to make decisions etc.) (Afi 1:1)

Referring to the urban practices known to her, Anita even denied that her gender could play any negative role in the struggle for her father's inheritance. She attributes the exclusion of women from inheritance to the rural sphere alone, which she associates with illiteracy, ignorance and superstition of rural women.

Que selon la coutume Mina les femmes et les filles n'héritent pas, c'est pas vrai. Peut-être, surtout en milieu rural, que les femmes sont ignorantes et analphabètes et on leur arrache tout. Et puis on leur fait peur avec les histoires de sorcier et tout ça là. Tu peux demander à ma cousine, en ville on se défend. [...] Chez les Mina, on hérite ! Moi je suis Mina mais je ne vois pas qui va me dire que je ne vais pas hériter les terrains de mon père, je vais hériter. (Anita 3:2, 4:17)

On the one hand, she thereby recognized the importance of knowledge and formal education – which she linked to a kind of enlightened fearlessness from spiritual intimidations – for the enforcement of one's rights. On the other hand, she questioned prevalent discourses on customary inheritance among the *Mina*, at least for urban women. Although the predominantly urban *Mina* are known to have a greater tendency to allow for daughters' inheritance of immoveable goods than the predominantly rural *Ewe*, *Mina* women only inherit after tough fights (Marlène 1:10, Adjamagbo 1986: 279). Independently from the ethnic belonging, it is even rarer that women are accorded the position of inheritance administrator. At the time of this research, only two such cases were known in Togo, one of an eldest sister, the other of a widow, who were designated to administrate the inheritance, but none of an eldest daughter¹⁵². Anita's claim was therefore a kind of courageous deviation from the customary norm that – according to the patri-lineal logic – only men can be founders and heads of family branches and therefore inheritance administrators.

Even when looking to the everyday legal practice of inheritance in Lomé, Anita's claim seems to be quite innovative: According to Adjamagbo (1986), who collected and analysed 46 inheritance conflicts in Lomé, in two cases only women managed to assume the position of

¹⁵² Tribunal 15.5.2001 Case II and file no. 731/96 at the *Tribunal de 1e instance de Lomé, Chambre civile et commerciale*.

family head. In both cases it was the wife of a deceased family head. The following conditions were decisive: Either the woman exerted a lot of influence through educating her children, who are the continuation of their father's patri-lineage and can accord their mother this position or impose on the other lineage members to respect her; or she acquired the respect of her husband's lineage by having accumulated considerable wealth in her household, be it by successfully managing her husband's income or by her own business activities (Adjamagbo 1986:249-252).

Anita combined these two conditions in a slightly changed form. As she is neither married nor has children through whom to exert influence on her husband's patri-lineage, she maintained to have to care for her younger brothers and sisters and implicitly for their children as well, all of them being descendants of her father's patri-lineage. This is quite typical for childless women:

When a woman has no children, she is given children by her more fortunate kinswomen. Although sterility is considered a tragedy for a woman, sterile women can always earn respect and recognition through trading, carrying out priestly duties [within the *vodu* order, I.K.], or going into trance during *Gorovodu* ceremonies. They are mothers, in spite of not having given birth, for they participate fully in the raising of lineage children. (Rosenthal 1998:41)

This custom comes in handy for Anita, enabling her to create a kind of substitute responsibility in order to make her claim to become the family head fit to the customary lineage-logic.

She further supported this claim by investing parts of her salary to assume financial responsibilities that are typically attached to that position: She took over the costs for electricity and water in the family house and increasingly also provided for school and apprenticeship fees of her cousins and half-siblings. She played on this economic leadership role within the family also when defending herself against critiques of her being childless, threatening that if she had a child, she would not support her relatives any longer, but invest all her money for the benefit of the child (Anita 4:9-12)¹⁵³.

¹⁵³ On the other hand, she argued out of her life experience, that she does not trust men and doesn't want to risk her child growing up without a father. Thirdly, she said she doesn't have any children yet, as she wants to focus on her job first, thus planning her life in a way which permits her to make use of her high educational training (Anita 4:9-12).

She complemented her economic power with her management knowledge, her knowledge of bureaucratic procedures¹⁵⁴, her manifold contacts, as well as her know-how in ancestral worshipping, as will become clear in the following paragraphs.

Taking over the responsibility for ancestral worshipping

Ancestral ceremonies¹⁵⁵ as well as other family ceremonies, such as weddings and baptisms, are central to family life in Togo and the head of family is at the same time its social and religious head (cf. also Szwark 1981:61). In the context of her father's funeral¹⁵⁶, Anita made sure, first of all, that the customary burial of her father's hair and nails at the ancestral shrine of her paternal family took place the same day as the Christian burial, in order to avoid additional expenses. Secondly, she arranged to participate herself in the libation ceremony carried out by her paternal aunt (Anita 2:9-10). She thereby presented herself as taking charge of the difficult but important responsibility of mediating between the visible and the invisible members of the family, while at the same time assuming the economic direction of this part of family life.

On the other hand, this must have been just another provocation to her aunt, who – as being Anita's father's sister (*tassi*) – was customarily supposed to carry out important family ceremonies¹⁵⁷. Thirdly, she used her new role as spiritual guide of the family to further justify her

¹⁵⁴ Family heads take manifold resort to state law when renting or leasing out property in order to increase the lineage wealth. For this very reason it is an essential quality for family heads to know their way in the bureaucratic “jungle” of the corrupt state, and to dispose of the monetary resources required, be it out of a lineage cashbox or out of their own purse (Adjamagbo 1986:240-241). Especially in urban contexts, where the management of immovable property requires the know-how to handle the administrative system, there is therefore a tendency for a high level of education and bureaucratic experience to compete with seniority as criteria for the designation of the family head (Adjamagbo-Johnson 1994:33).

¹⁵⁵ The cosmologic world of the *Ewe* and *Mina* consists of an interdependent world of the living and the unborn and deceased persons. All kinds of important family contracts (like marriages) or events (like the baptism of a newborn member of the family) have to be concluded in the presence of the ancestors. It is best to communicate with them at the ancestral place (Adjamagbo 1986:131, 134-138, Rivière 1981).

¹⁵⁶ In christianised settings in Togo, a funeral consists of several steps combining Christian with non-Christian elements: The Christian part comprises the wake (*la veillée*), the mass in church with the subsequent burial at the church cemetery, and the final feast (*la sortie de deuil*). This is followed by the customary burial of the hair and nails of the deceased at the ancestral shrine (*yoxo*) and a subsequent libation ceremony, during which contact with the deceased and eventually with other ancestors is made, in order to obtain their consent or receive other advices (Anita 2:9-10, cf. Adjamagbo 1986:175).

¹⁵⁷ Concerning the special role of the *tassi*'s “female father”, cf. footnote 5.1.

control over her late father's room, insisting on the need to perform important family ceremonies there:

La chambre de mon père je peux pas louer, dans nos traditions ça a une signification. Là où mon père a habité, ça reste pour la famille. S'il y a une cérémonie à la maison, un mariage, un baptême, tout le monde sera convié là-bas, on ira toujours à la maison paternelle. C'est là-bas où on doit faire la cérémonie de libation : On met de l'eau dans unealebasse, on appelle les ancêtres, puis alcool, schnaps, on invoque les ancêtres et puis on verse. On prend le fruit là, *evz'*, tu jettes, tu vois, ça a des significations [...]. La cérémonie de libation, ça vraiment, même si tu refuses, si tu meurs on te fera ça. C'est notre coutume. [...] Il faut faire la libation pour ton père, sinon tu auras des problèmes, et toi-même tu vas chercher loin [pour les résoudre]. (Anita 2:8-9)

She could have continued to use the ancestral shrine of her forefathers in the town of Aného, where also the customary funeral ceremonies for her father had been celebrated. Yet, by reserving her father's rooms for such ceremonies, she indicated her intention to establish a new family branch to be headed by her, consisting of her father's descent group, with her late father as the new ancestral focus.

Anita justifies (towards me, the *yovo*) the fact that she gives so much importance to these family ceremonies by referring to the cultural meaning attached to "traditional" norms and to the strong social pressure exerted to conform to religious norms.

She engages in a quite contradictory argument, maybe in order to keep up her image as a "modern" woman towards me, the Western researcher (who is assumed to reject the "animist" religion), while at the same time reasserting her claim to the qualifications of a "traditional" and "modern" family manager. On the one hand, she claims to have knowledge about ancestral worshipping, which is a necessary qualification for taking care of the religious needs of her family. On the other hand, she insists on the limitedness of her knowledge, justifying it by referring to experts and by mentioning that this is a rather new interest of hers. She then adds to her distance towards animist beliefs that she does not believe and does not want to believe in them, but nevertheless observes the ceremonies out of fear of eventual spiritual retributions. She reinforces this ambivalent stance, last but not least, by the following two arguments: She has to limit "unnecessary expenses" attached to the ceremonies, and she is – in spite of what else she might have said – deeply Christian orientated. Again, these two final arguments stress her qualities as family manager, this time highlighting her economic efficiency as well as the "modernity" and "enlightenment" attached to her Christian beliefs:

Moi, comme je suis pas tellement emballée dans ces choses là, c'est seulement récemment, quand mon père est décédé, que j'ai vu ça. Eux, les connaisseurs mêmes, si ça s'ouvre tout, ça veut dire que [...]. Si tu as les moyens tu peux le faire tous les ans. Moi-même, je suis pas tellement sage, ce genre de choses là, je suis pas tellement habituée. Non, il y a beaucoup de choses. C'est parce que moi, je veux pas m'accrocher à tout ces choses là [...], je ne crois pas à ce genre de choses, mais les gens parlent tellement que [je le fais, sinon] moi, je ne veux pas. Tu vois, s'il y a un décès je peux venir, faire ce service, mais moi, mon argent, je vais pas jeter ça comme ça. [...] On va me dire : Il faut acheter ceci [pour les cérémonies]. L'argent, je vais acheter autre chose. [...] Et puis, moi je dis jamais : Il y a cette personne qui me fait ceci. Je dis : Bon, je remets tout à Dieu. Je fais la part des choses. Pour moi c'est comme ça. (Anita 2:10)

This way, she characterizes herself as all-competent family manager who combines all – even seemingly contradictory – qualifications required.

Emphasizing moral responsibilities

Anita stresses the great responsibility towards her siblings and half-siblings, which is and will always be attached to her position of the eldest, especially as she is the only one among them who has a secure job with a regularly paid salary. The latter fact also increases her siblings' pressure on her to make the inheritable land accessible to them:

Je me suis mise dans ma tête que je dois me battre. Et puis je suis l'aînée, je suis à Lomé, et je contrôle ça. Je ne veux pas qu'un jour quelqu'un de mes frères et sœurs vienne dire : « Et toi là, tu es restée, tu n'as même pas pensé à nous, tu as laissé tout à la famille là. Comment tu peux faire des choses comme ça ? Toi, tu travailles, tu sais que tu as un revenu à la fin du moi, tu n'as même pas pensé à nous !? » Je sais que c'est pas nous tous qui auraient assez d'argent pour s'acheter un terrain. Pour le moment les gens ne sont pas payés régulièrement. Si vraiment on arrive à avoir ces lots, on est au nombre de neuf, je peux leur donner demi, demi, et je le ferai. Les demi-frères et demi-sœurs, il faut pas que je les laisse. (Anita 2:4)

Anita's insistence on her manifold obligations as eldest have to be seen as belonging to a communitarian orientation, where legal relations are based on the principle of representation¹⁵⁸. Besides, she was under extra pressure to make her father's share of the land accessible to her siblings, because her father had privileged her among his children by helping her to acquire a house on her own, and she now felt obliged to take care of her younger siblings and her old mother. Anita took care of her mother, providing for her daily living and protecting

¹⁵⁸ According to the principle of representation, an individual can only intervene through a group or on behalf of it, and the group can only act through being represented by an individual. Therefore, a head of lineage (*fomega*) has to fulfil certain requirements, such as to be already a head of a nuclear family (*apeto*) and to observe the rules of reciprocity linking rights to obligations: The head of the lineage is accorded certain rights only if and because he observes his obligations towards his lineage (Le Roy 1974:569).

her against the in-laws, i.e. Anita's paternal relatives¹⁵⁹. In turn, this caring for her old mother underlines her prime position amongst her brothers and sisters. Furthermore, for the sake of justice and the peace of conscience Anita now tried to also help her brothers and sisters:

C'est pas que moi je me contente que j'ai déjà une villa et je peux les laisser. Parce qu'après tout je suis à Lomé, quand ils auront des problèmes ils viendront toujours à moi. Je peux pas les chasser, tu vois ? Je suis tellement consciente de ma responsabilité. J'aime tellement résoudre ce problème, comme ça ma conscience sera dégagee. Comme ça, après je vais pas avoir des remords et dire: Ah, si j'avais su j'allais faire ceci, vraiment ça au papa ! (Anita 2 :5)

Also her father, having been very generous himself, served her as important model (Anita 2:3). Last but not least, upon reflecting on the situation – and referring to the help she experienced in her own life, for instance when living outside the country – she added her moral obligation as a Christian to act in solidarity with her siblings:

Tu sais, la vie, il faut jamais penser que toi, quand tu as déjà quelque chose et puis les autres en souffrent, parce que Dieu, je sais pas. La vie, vraiment, il faut faire la part des choses. Il faut aimer ton prochain comme toi-même. Quand tu aimes ton prochain tu sauras comment réagir devant certaines choses. Moi, de toute façon, je vais pas vite « moi, j'en ai » et puis les autres viendront faire des découvertes. [...] Tu vois, c'est ma philosophie, parce que j'étais partie à Niamey, Accra, je n'avais personne. La façon dont les gens m'ont accueillie, tout ça là, vraiment, je suis rentrée dans la vie. Aimes ton prochain comme toi. (Anita 2:5-6)

Anita, thus again, backs up her need to inherit the land with a multiple argument, presented in skilful rhetoric: It is a social obligation, a personal duty (towards her late father – who now is among the honoured and dreaded ancestors –) and a religious obligation to take the responsibility for her siblings. Nevertheless, her uncle and aunt tried to lie about the existence, the size and location of the land, and to intimidate Anita in order to prevent her from further investigations:

Being frozen out of the family house – a strategic retreat?

As mentioned in the conflict introduction, a couple of years ago Anita bought a house for herself in another neighbourhood in Lomé. She was still living in the old family house, because of some renovations she was about to do, when her father died. Anita gave a rather dramatic account of her moving out: One day, soon after the funeral, she was in a cyber-café nearby when her uncle came in and rudely shouted at her that she should come and “pack her stuff”.

¹⁵⁹ For instance, she protected her from undergoing the customary bereavement rituals (cf. chapter 5.1.1 and 5.1.2).

This was her uncle's first retribution, after she had humiliated him at the funeral. Anita did not hesitate to move out, as she had already been longing to live in a more peaceful place, the main reason why she had bought her new house¹⁶⁰. For the same reason it was no question that Anita's mother should join her, especially as Anita had provided enough space for her in her new house. After Anita and her mother had moved out, the uncle let their rooms to somebody else, keeping the rent for himself.

Anita's retreat from the house can be seen either as an intimidated withdrawal or as a strategic move: As she had acquired her own place, she pretended not to be interested in a division of the family house among the inheritors, through which she could have acquired her personal share of the house. She probably was aware that a division of the family house would incite extremely fierce conflicts with her uncle, who was the one profiting from the undivided situation. According to Anita, also none of her siblings were interested in a division, as they had established their lives outside Togo. Instead, Anita wanted the house to be kept in an undivided state, as the *maison familiale*. She already controlled the heart of the house, i.e. her father's rooms, which she intended to turn into the new place for the ancestral worship of the family branch that she started to be heading. Through this move she and her mother could live in peace in her own place, where she would be less pestered for support by her relatives and less suffering the tensions of jealousy and competition. At the same time, by controlling the keys to the ancestral room, she had managed to "keep a foot" in the family house, which she could use immediately for her family politics without foreclosing an economic exploitation of the family concession at a later stage.

Mobilising spiritual support to counter further intimidations

Anita's father used to raise some sheep in a corner of the family compound. The animals were still there, tended by Anita's cousin, when Anita's uncle sent Anita an unfriendly message that "as [her] father is gone, the sheep should go as well!". Anita took the sheep and distributed them among her maternal relatives, but gave one sheep to the cousin who had guarded them to express her thanks. Her uncle was furious about the left-over sheep. One day, when Anita came home from work, she found the dead sheep in the yard of her new house, an aggressive gesture that duly frightened her.

¹⁶⁰ Anita could also have expected to be "kicked out" of the family house by her father's brother, as this often happens to the widows and their children upon the death of their husband and father (cf. chapter 5.2.1).

This rather anecdotal event is a further example of the struggle between Anita and her uncle to control the family house. By driving out Anita, her mother, and the sheep, her uncle managed to bring parts of the family house under his control. This permitted him to acquire some monetary income by renting out the acquired space.

Shortly afterwards, Anita had a “strange accident” while waiting for a taxi in town. People told her afterwards that she was almost run over by a car, when a moped taxi (*zemidjan*) pushed her away from the road, so she hit her head on the ground. She woke up from coma in hospital and was suffering for months from painful traumatising effects. A couple of months later, a younger cousin of Anita died very suddenly, after having been ill for only one day. Some people speculated that she died of AIDS or else of a wrong treatment she had received to alleviate her skin problem. Anita herself interpreted this “mysterious death” as well as her prior accident as her uncle and aunt’s failing attempts to kill her – Anita –, by black magic (*zo* or *zo vō*) or witchcraft (*adze*). This suspicion is frequently brought forward in situations in which two people are competing for a power position or during intra-family conflicts, such as about inheritance, especially if one party is richer or more influential than the other. In general witchcraft serves to explain bad luck, sickness and death, such as Anita had just experienced¹⁶¹ (cf. Rivière 1981:200, 206). It is widely believed that the person who dares to dispute somebody else’s land prerogatives risks to be killed by witchcraft. This argument is used to intimidate and deter women, but sometimes also men, from claiming land¹⁶². As a consequence of this suspicion, Anita was very scared and nervous for many weeks, fearing for her life.

According to Rivière, sorcery and witchcraft beliefs help a society to avoid overt hostilities and to handle latent aggressions as well as fears in fields lacking a juridical solution, by staging them¹⁶³. Among the *Ewe* and *Mina*, like in so many other places around the world, strong social pressure is exercised on individuals not to stick out of the norm by being more successful than others, and the discourse on sorcery is a popular means to exert this pressure:

Les nouvelles formes de pouvoir et de richesse minent l’ancienne solidarité familiale.
C’est pourquoi elles doivent inévitablement susciter de forts sentiments de jalousie,

¹⁶¹ Yet, as opposed to Rivière (1981:209-212) and according to Rosenthal (1998) and Lachenmann (2001a), “modernising” influences in Togo can not be said to lead to a “défétichisation” but rather to processes of glocalisation of African religions, or to a “modernity of sorcery” (Geschiere 1995:9, 15-17) characterised by its ambiguity and multi-interpretability.

¹⁶² Cf. Anita 4:15-20, Yawa 1:3, Aku 1:8-10, Secr. Chefferie 1:25-26, Mancraro 3:13-14, CRIFF6Sept01.

¹⁶³ Cf. Rivière (1981:190-191, 205) referring to Marc Augé (1975) – as opposed to Geschiere (1995:283).

s'exprimant dans des attaques intimes menées avec l'arme de la sorcellerie. C'est ce qu'on pourrait appeler le « versant égalisateur » de la sorcellerie (Geschiere 1995:17).

Disregarding the question of whether Anita was really aggressed by her paternal relatives or someone else by black magic or other worldly means, due to the fact that her uncle and his family had always been economically much less successful than her own father and herself, that her uncle for many years already had never hidden his jealousy, plus that Anita was aware that she had strongly provoked her uncle and aunt's anger on the occasion of the funeral and the inheritance question, it was to be culturally expected (i.e. within the animist religion of southern Togo) that Anita feared possible retributions by her uncle and aunt (cf. Geschiere 1995:16).

This fear of death is a "fundamental fear" (Schuetz). As such it threatens not only Anita's claims to inheritance and succession rights that question strong patriarchal privileges – under this threat a rather daring endeavour –, but her very own identity. For a while, this fear forced her to think and argue within the animist spiritual world and seek legitimacy and salvation also in the Christian religious realm. But she soon added a whole series of other justifications to reposition the legitimacy of her claims, as will be depicted below. On the other hand, following another observation of Geschiere (1995:16), Anita's suspicion of her uncle's magic aggression could also serve to de-legitimise his claims and keep him out of her aspiration to accumulate power and wealth.

As a reaction to these intimidations, Anita started to attend church more regularly. She also went there to bring monetary sacrifices and pray to *Saint Antoine* for God's protection. She did not say whether she went to see an *afa*-diviner (*bokono*¹⁶⁴) to find out who was aggressing her and how to protect herself, or even a *zoto* or *adzeto* (a sorcerer in the strict sense) to take revenge. Yet, it cannot be totally excluded that she did so, as she herself had suspected her uncle of using such harmful forces, and it is "common knowledge" that such attacks have to be fought with their own weapons (cf. Secr. Chefferie 1:25-26)

¹⁶⁴ The French term *féticheur* summarises what the *Ewe* and *Mina* distinguish as the *bokono* (diviner), the *amadato* (healer), the *eboto* (charm maker), and the *hunno* (vodu priest, who sometimes also serves as chief and judge). Their functional differentiation is often blurred, as many of them cumulate various powers in order to be more efficient and have a greater clientele. Apart from using their power to cure etc., some of them also use black magic (*zo*) or even sorcery (*adze*) to attain their goals, thereby making it difficult to distinguish them from a *zoto* (black magician) or an *adzeto* (sorcerer), the latter being conceived of as always evil (cf. Rivière 1981:176, 186-188). According to Geschiere, however, sorcery beliefs are generally to be characterised as intrinsically ambivalent (1995:283-286).

Apart from the fact that it is common practice – especially among the urban and mostly christianised elite¹⁶⁵ – to call on both Christian and traditional help as complementary forces¹⁶⁶ (cf. Rivière 1981:179), it is no less usual to consult powerful sorcerers while pretending to be pious Christians. Yet, it is widely believed – among both women and men in Togo – that men are spiritually stronger and more courageous to dare to consult a magician, which is thought to be quite a dangerous venture, as black magic attacks can always fall back on the attacker (cf. Dorothee 3:11, Mancraro: 3:13, Secr. Chefferie 1:26, 43).

Nevertheless, Anita did not overtly accuse her uncle of sorcery, an option that – according to Rivière (1981:202) – would have helped to relieve her conscience, which weighed heavy, as she had only partly conformed to the equalizing norms. But, at the same time, such an accusation would have “added fuel to the fire”, i.e. would have further increased the tensions between them. After the forgoing mysterious and frightening events, Anita had become much more careful in her actions towards her uncle and aunt.

Making alliances within the family and mobilising friends

Anita received regular phone calls from her brother and sister in Europe who encouraged her not to let herself be intimidated but to pursue her plan, and who offered their financial support to pay a lawyer, if necessary (Anita 4:21). This support was, first of all, the fundamental justification for her claim to the land and house as their representative, according to both customary norms and the current legal practice. For the same reason she rebuilt solidarity with her half-brothers and half-sisters, whom her uncle had tried to set against her, by convincing them that she would continue to be concerned for their well-being and was fighting for their rights as well. Apart from talking to them, she manifested her caring role by taking one of her half-siblings into her new house and paying for his expensive apprenticeship.

According to Anita, her justification of her claims to her father’s share of land in terms of her role as eldest, and that in this context she even contests her aunt’s power as lineage head, were readily taken up and responded to by her half-brothers and half-sisters, who accorded her full decision-making power:

Il faut que vraiment on s’associe, moi et mes sœurs, même les demi-frères, demi-sœurs, qu’on s’associe et puis on dit : Bon, on va faire ça. [...] Il suffit que vraiment tout le

¹⁶⁵ This has also been shown by Geschiere (1996) and Geschiere/ Fisiy (1994), referring to Cameroon.

¹⁶⁶ For instance, Rivière cites the prayer to *Saint Antoine* among the syncretistic practices of “modern Ewe” (1981:188).

monde me considère comme je suis l'aînée, que tout le monde donne son aval, et ça c'est déjà presque la totalité. [...] Tout le monde m'appelle maintenant, je suis comme leur papa ! S'il y a quelque chose, c'est à moi qu'ils disent ça : Anita, j'ai ce problème, qu'est-ce qu'on peut faire ? Eux-mêmes, ils m'ont reconnu automatiquement comme chef de famille. (Anita 2:4)

She convinced her cousin – who represented a deceased half-sister of Anita's father's, i.e. a co-inheritor of the land – , to support her against her uncle and aunt, thus profiting from this cousin's experience in taking inheritance conflicts to court, from her contacts to high judicial authorities, and from her strong self-confidence:

J'ai parlé avec ma cousine. C'est après qu'elle a compris et maintenant nous sommes ensembles ! [...] Cette cousine et moi, nous sommes sur le même chemin. Nous sommes des bandits. Nous accusons nos oncles tout le temps. Et elle a beaucoup d'expériences dans les successions. Elle a beaucoup de contacts, elle connaît tous les gens, le président du tribunal même. Elle aura tout. Elle ne va pas céder. (Anita 3:1-2, 5)

Apart from sharing the same interest in the division of the grandfather's land, Anita and this cousin took also pleasure in uniting against their uncles, thereby constructing a common identity along the lines of gender and generation and giving a symbolic meaning to the conflict.

Anita contacted also other relatives (such as her maternal uncle, who assumed a leading role within his family), friends, and colleagues, who shared with her their knowledge about legal practices concerning daughters' inheritance of urban land, about legal procedures and psychological strategies to intimidate her uncle and regain her self-confidence. By listening to her friends' experiences of similar conflicts, she managed to take her aunt and uncle's aggressive behaviour less personally, which helped her to see it more as a common societal and gender problem:

Au début ça me travaillait, je réfléchissais tout le temps pourquoi ils ont réagi comme ça, de savoir pourquoi ils peuvent faire de telles choses contre moi. Mais hier il y a eu une amie qui m'a raconté presque la même chose. Donc je dirais c'est comme ça un peu partout. Mais comme je n'avais jamais vécu une telle situation, donc je ne m'y attendais pas du tout. Mais maintenant que j'ai compris que c'est pareil, il faut que je m'en fiche. (Anita 2:6)

At the same time, she also had frequent contacts with me – a white researcher and friend – to whom she extensively talked about the events and her feelings. According to her, our encounters brought her great relief, as they helped her to verbalise and reflect on the events, take some inner distance and calm down (Anita 2:11).

Ne pas se laisser couper les doigts: Defining oneself as fearless and able to claim the land

A couple of weeks later, Anita had managed to distance herself from the witchcraft paradigm by uncovering its psychological mechanism – fear: Women get intimidated and frightened to death by threats of witchcraft, so that they helplessly shut up and stop to make whatever claims:

Tu sais, les gens, on nous fait peur. Surtout au village, si tu es analphabète on te coupe les doigts, c'est pour cela que des fois tu te tais, hein ? Si tu veux parler des problèmes de terre, d'héritage là, même si tu es un homme, surtout nous les jeunes [imitating an urging voice] : *Ne dit pas, hein ! On va t'empoisonner, t'envoûter, il faut pas, hein ! Restes en vie!* [...] Non, tu sais, c'est la peur qui nous empoisonne. [...]

Moi, vraiment, je ne vais pas me rabaisser à ce stade, hein ! Moi, je ne vais pas me taire ! Moi, j'ai pas peur, je vais le dire, même si ça va me coûter la mort. Moi, je crois en Dieu ! Je dis que mon jour va sonner, Dieu même va m'enlever. Je sais que je dois mourir un jour, mais ce n'est pas à cause de ça que je ne vais pas réclamer le terrain. Je vais le réclamer quand même. Si je meurs, c'est à juste titre ! [...] Mais moi, pourquoi me dire que j'ai peur ? Moi, je n'ai pas peur, hein. Je vais leur faire ça. (Anita 4:17-22)

Anita decided not to let herself be paralysed by fear, but to unshakably claim her inheritance share, trusting in god instead. This attitude she considered to be more dignified and better fitting to her social position as an urban, educated woman, whereas she associated to be frightened in a pejorative way with rural, illiterate women. This shows that she considers formal education and the related enlarged access to knowledge as crucial for developing self-confidence.

Je suis en train de négocier: Turning the tables

Slowly, she started to face her uncle and aunt again. Following some of her friends' advice, she tried to harm her uncle and aunt in a rather unchristian way, in order to make them change their minds. However, she took care not to lose her face in public as well as towards her relatives, thereby demonstrating her expertise in image policy (cf. Goffman 1986):

Mon amie là, elle avait plus ou moins le même problème avec sa famille. Elle les a bien insulté [*laughs*] elle a crié, elle a fait comme les femmes du marché. Moi, j'ai pas fait ça. [...] Les copines peuvent te donner des conseils. Il faut les ignorer, ou bien elles aussi peuvent te faire vivre leurs expériences. Si quelqu'un me parle, moi-même je vois mes sentiments, ce que je peux faire. J'essaie de voir la personne même à qui je peux faire ça, si vraiment ça peut lui faire mal. J'essaie d'étudier la stratégie que je peux em-

prunter là. Comme ça, eux aussi ils vont réfléchir. C'est ce que j'aime procéder. (Anita 2:6-7)

One psychological “weapon” that – thanks to the keys she had kept – she used against her uncle was to visit her father’s rooms in the family house, yet without greeting her uncle, showing her disrespect and insulting him. She thereby demonstrated her superior power as the keyholder to her father’s rooms and therefore to his social and material heritage. She thus turned the tables, positioning herself on an equal – if not even superior – standing with her uncle and aggressing him, instead of feeling aggressed and cornered herself:

Je suis en train de négocier [...] Je vais à la maison de mon père, je ne salue personne. Je met la clé, j'ouvre, je fais cinq ou bien dix minutes là-bas, je dis: « Ah, je suis venue. Bon, je m'en vais maintenant. » Je refermes. Donc, tu vois, ça fais mal à mon oncle [laughing] tu sais, parce que je suis venue mais je ne l'ai pas salué. Quand il m'entend, il se cache dans sa chambre, il pense que je viendrais frapper à sa porte. Mais je fais ce que je veux, je ressors. Et puis je sais que ça lui fait mal. « Si tu ne veux pas de moi, moi je ne vais pas faire amitié avec toi ». Il faut pas vraiment gonfler la personne. (Anita 2:7-8, 11)

With a similar intention she ignored a whole series of her aunt’s requests to pay her a visit, and even refused to come and greet her for the new year in the usual respectful way. She gloated when her aunt got visibly irritated, insulting Anita towards other relatives. She did not feel threatened anymore by these insults, but rather amused by the obvious psychological vulnerability of her aunt, and she took pride in her daring behaviour. She had restored her self-confidence to a degree, that permitted her to “crow” again, showing herself independent and fearless:

Après, elle m'a appelé, elle a envoyé quelqu'un, j'ai dit je vais pas. Je disais que je vais chez personne, parce que vraiment, ils méritent pas mes vœux ! Je ne les fréquente plus. Quand mon petit frère est allé la visiter, je lui ai dit de dire à ma tante que je dors à la maison. Comme ça, ça va lui faire mal. Elle m'a insulté, que c'est mon argent que je ne veux pas qu'on bouffe et c'est pour cela que je fais des choses comme ça [laughs a lot]. Tu sais, ça m'a vraiment fait du plaisir qu'elle ressent quelque chose. J'ai dit, non, elle peut m'insulter, je m'en fous parce que ça ne fait pas mal. (Anita 2:11-12)

After some time, her aunt gently invited her. But Anita let her wait and visited her only on her own initiative – thereby displaying the power of the one who can use other people’s time –, only in the company of others, whom she brought along as witnesses, and with the clear aim to discuss the land question. She also attached importance to bringing her aunt self-prepared food as a present, in a way to show her generosity and good will, thus hoping to appease her

aunt's mind (Anita 2:12):

Après elle a envoyé quelqu'un pour me dire qu'elle a besoin de moi, de venir le samedi. Je dis non, je peux pas venir ce samedi, j'ai un programme. Donc, le lendemain je me suis dit : Bon, je vais aller, mais je vais pas aller de mains vides. Je vais quand même lui apporter quelque chose dont moi-même j'ai préparé. Et je ne vais pas aller seule. J'appelle une cousine, j'appelle mon frère aussi, parce que je voulais pas arriver là-bas et dire quelque chose, et on va le transformer, que des choses que j'ai pas dit, on va dire que c'est moi qui a dit ça. (Anita 2:12)

The way Anita “staged” her visit to her aunt demonstrates that she had repositioned herself above her, a much more convenient position to enter negotiations. Anita thus had not only determined that the land question came on the family agenda, but also how, when, with whom and under which conditions the matter was discussed.

Threatening to sue them in court or tell *Papa Eyadéma*

In order to put further pressure on her uncle and aunt, Anita threatened to take the case to court. Anita had the time, money and good contacts necessary to do so: She had obtained from her maternal uncle and from the above mentioned cousin (and “comrade-in-arms”) the information about how to proceed and whom to contact among the high ranks in court, and with the financial support offered by her brother and sister, she would be able to afford a lawyer – and the necessary bribes – in contrast to her uncle and aunt. Still, the corrupt character of the judiciary brings with it that Anita couldn't be completely sure about her success in court¹⁶⁷.

Furthermore, such a move would have had disastrous effects on the quality of her family relations, as going to court against one's relatives is perceived as a very aggressive act: Anita would have had to fear violent retributions, not least of a dangerous supernatural kind (such as witchcraft attacks), a realm in which she assumed her uncle to be more experienced and better “connected” than herself. At best, daily interactions with her relatives would have become even more sour as they already were, as she lives in the same city as them, their neighbourhoods being situated not far from each other. She might have lost the support of parts of her relatives and diminished her influence within the family, thus putting at risk reciprocal relations (in the sense that she provided economic support against their respect) as well as her social security in the long run.

¹⁶⁷ According to Pfaff-Czarnecka (1991:198) it is precisely the disturbing unpredictability of the judiciary, which provides middlemen – such as lawyers – with such a lot of power.

To intensify her threat – and thereby make sure that her uncle and aunt would not dare to take the case to court themselves –, she added that, if she should lose the case, she wouldn't hesitate to call on the president himself, to whom she could have direct access through an old school mate:

Je leur ai dit, hein, si vraiment ils ne font pas, je les amène en court. Là-bas, au tribunal, si jamais on va là-bas et je ne gagne pas la cause, c'est à Lomé II¹⁶⁸ que je vais aller régler le reste. Je vais trouver des gens, je vais trouver des créneaux pour aller là-bas. Quand moi je vais commencer à parler, il [Eyadéma] va dire : « Mais la fille là, elle réfléchit ». Je vais dire : « Mais seulement il faut qu'on nous donne notre part. C'est ça seulement que je réclame ». [...] Ça leur fait peur ! Ils savent que j'ai tellement de relations là [...]. Et puis on va envoyer les soldats pour les chercher ! Et quand ils vont venir, [*laughing*] ils vont leur dire : « Si jamais vous ne leurs remettez pas leur part, il faut que vous revenez, hein !? » Ils vont courir à quatre pas pour nous donner ça [*laughing*]. Ils savent que j'ai tellement de relations là-bas. (Anita 4:22)

She was quite confident that the president would listen to her case and do justice to her, by sending his para-military police to scare her uncle and aunt. Yet, Anita used these options only in order to intimidate her adversaries, while at the same time continuing her negotiations in order to find a low-level extra-judicial solution.

Although she knows well (and personally) the most active women's rights organizations in town, she didn't contact them, as she knew enough other influential people, which she estimated to be more powerful.

Becoming accepted as administrator and inheritor

Step by step, Anita's uncle and aunt started to give in. At first, her uncle changed sides, blaming her aunt for the "misunderstandings". Then, her aunt admitted the existence of the land and declared herself willing to divide it among the inheritors. However, she continued to lie about its exact size and location, pretended the land title to be torn apart and claimed difficulties in finding out the exact location of the plot. She invented expenditures for a land surveyor and other costs related to the putative division of the land, demanding for Anita's financial contribution (Anita 2:12-13). Anita refused "to buy a pig in a poke" and disrespectfully insisted on being shown the evidences:

La dernière fois elle nous a encore rassemblé et elle disait : Il faut donner l'argent. J'ai dit : Non, avant de donner l'argent il faut que je vois un peu le schéma, que je vois les pièces justificatives. Si tu veux acheter quelque chose, tu as les éléments avant de déci-

¹⁶⁸ *Lomé II* here stands for President Eyadéma. The term refers to his private palace, located in a huge cordoned security zone in Lomé, called after the big town zone (on city maps) it occupies.

der. Dans notre langue on dit : *Asevi m̀̀ ǹ̀ ǹ̀ k̀̀v̀̀ m̀̀, ẁ̀ d̀̀ ǹ̀ s̀̀v̀̀ m̀̀.* Un chat ne reste pas dans le sac. Tu dois sortir le chat, puis on n'a qu'à l'apprécier si ça vaut le prix. Et puis elle a commencé à m'insulter (Anita 2:13-14)

Anita insisted on the division of her grandfather's land among all of his children and suggested to arrange a meeting with a qualified surveyor, proving once more how well she was connected to influential people and how much she felt at home in the cloud of legal forums. Land surveyors have quite an ambivalent role to play in land quarrels, as they can contribute to both just and unjust land divisions¹⁶⁹.

[Les géomètres] incitent au morcellement et à l'individualisation des terres, mais peuvent aussi partager la complicité des manœuvres sournoises des héritiers pour usurper des biens qui ne leur reviennent pas. (Adjamagbo 1986:216)

Her aunt also tried to make Anita the scapegoat, accusing her to have prevented an agreement with her uncle. Anita was not lost for an answer, saying that "you get as much as you give" refusing to let herself be treated in a disrespectful way, i.e. to be submissive to her uncle, thereby again stating her conditions for any agreement:

Je dis : Ah bon, c'est ce que l'oncle t'a dit ? Si quelqu'un veut qu'on le considère, il n'a qu'a se respecter, de donner un bon exemple. (Anita 2:12).

Finally, her uncle showed her the land title: a huge map from the hand of colonial officers, showing the location and size of the land (almost four hectares) and citing all the children of Anita's grandfather – including her father – as the legal owners (Anita 2:11-13, 3:1). He convinced Anita, that it was her aunt who tried to misappropriate the land in order to sustain herself in old age, that he had prevented the aunt from selling the land much under its market price, and that she shouldn't listen to her but trust him instead. Together they counted that the land could be divided into 32 plots, or 64 half-plots, to be distributed among the six inheriting parties. This would make more than five plots for each inheriting party, which represents a very high value.

By playing her aunt and her uncle against each other, Anita had split them and turned her uncle into an ally instead. This reassured her that she would always have access to all the information and contacts required, a necessary asset to keep the upper hand in the conflict. (Anita 4:18-19)

¹⁶⁹ The powerful position of land surveyors as intermediaries between chiefs and urban land purchasers was also described by Barbier (1986) for the town of Sokodé in Central Togo under the sub-title *Le géomètre est roi.*

Suspending the conflict in order to mobilise further resources and come up with new strategies

During the following months, it was Anita's uncle with his spouse and children as well as Anita's aunt who came to visit Anita, instead of expecting her to come over to their place. They adopted a very respectful behaviour towards her, probably in the hope that she would advance the money for the land division. Even their children started to address Anita respectfully and accorded her an important role in the family, especially as their advisor and sponsor (Anita 3:1, 4, 5:8).

Nevertheless, even three years after Anita's father's death, they hadn't started to proceed to the land division yet¹⁷⁰. As it turned out, her uncle and aunt were not willing or capable to contribute to the expensive surveying and administrative fees of the land division. Anita and her brother and sister who lived in Europe were ready to pay for their father's share of the costs, without expecting their other siblings and half-siblings to contribute. But they did not accept to bear also their uncles' and aunts' shares of the division costs, as its results would serve all of the heirs, i.e. also their paternal uncles and aunts and their cousin. Therefore, Anita put the land division on hold for the moment, continuing her investigations, looking for new means to put pressure on her uncle and aunt, and waiting for a more convenient moment to push through her inheritance claim, for instance when her brother and sister would come over to visit. Apart from that, she first wanted to make sure that there were no mortgages on the land. Nevertheless, she continued to assume the role as new *chef de famille* by taking her eldest half-brother into her household and paying him an expensive apprenticeship as a hotel cook (Anita 3:2, 5, 6:1).

Anita had managed to get recognized by her uncle and aunt as having an indisputable right in her father's inheritance share of the grandfather's yet undivided land. She successfully had hindered her uncle and aunt to secretly misappropriate the grandfather's land. She also had successfully positioned herself as the only legitimate representative of the heirs of her father and as the new head of her father's family branch, even if the official family council session for the nomination of the inheritance administrator and of the new family head has not yet taken place.

3.4 Summary

¹⁷⁰ This is rather typical for inheritance conflicts in Lomé, cf. chapter 3.2.2.

In the field of inheritance women's main concern is their access to land and the family house. Whereas in pre-colonial times women enjoyed at least secondary user rights to family or lineage land, they became increasingly excluded from the property and inheritance of land with its individualisation and privatisation. The new Togolese Family Code of 1980 offered only putatively a remedy to that: It provided for a gender-just line of succession, but only if the testator had renounced to customary inheritance, which otherwise shall be applied. However, the latter is nowhere specified, leaving ample space for interpretation and negotiation. On the other hand, although the renunciation of custom has hardly ever been opted for, everyday inheritance practices do get influenced by the statutory egalitarian model. As a consequence, we can neither talk about clear-cut "laws and norms to be applied" in conflicts over inheritance, nor refer to a consistent inheritance practice. Rather we can observe a continuum of possibilities within a wide field of options, with new interfaces – and consequently new issues for negotiation – emerging between the different normative orders and their respective worlds of meaning, due to constant influences of new norms (be they local, national or international) or reinterpretations of allegedly old norms, respectively their activation in legal discourses.

This wide range of possibilities causes many conflicts in everyday life: Inheritance administrators take advantage of it to feather their nest on the inheritors' expense; conflicts erupt between the customarily privileged brothers of the deceased and his statutorily entitled descendants, between the eldest and the younger descendants, as well as between male and female descendants. This means that women do increasingly claim their share of inheritance, be it against their uncles, brothers (or in-laws). Where these conflicts reached state courts, jurisdiction cemented traditional male privileges (to the inheritance of "rural" land) contrary both to the principles of equity in the new Constitution and Family Code and to the traditional flexibility of customary rights. However, women's rights to inherit urban land was confirmed by jurisdiction and urban women manage more and more often to get this new right recognized by society, although only after enduring harsh conflicts.

As the cases in this chapter have demonstrated, disputes over inheritance tend to be fierce and all means seem to be allowed, including social pressure, occult practices or threats of witchcraft, as well as the mobilisation of influential relations. Women's rights organisations try to counteract this very problematic situation that harms mostly widows, minor children and daughters of the deceased. They organise information campaigns on gender equal inheritance according to the Family Code and the Constitution, offer to mediate in inheritance conflicts,

train judges and lawyers in the application of international human rights standards in order to circumvent those stipulations of the Family Code which refer back to the customary inheritance model and thus break with the male-biased tradition of jurisdiction, and lobby for a revision of this law as well as for innovations of customary inheritance rules.

The detailed case study of Anita exemplified a typical conflict of descent versus lineage entitlements to the inheritance of land and some characteristic strategies for negotiating within the complex legal field:

First of all, Anita put a lot of energy in activating solidarity from the relatives of her own generation (siblings as well as later on cousins), whose interests she declared to represent against her adversaries from the elder generation, and some of whom offered financial help in case she needed a lawyer or a land surveyor. Furthermore, she mobilised support from her friends, who encouraged her during the lengthy and often stressful conflict, provided useful knowledge about the state law, gave her strategic advice and shared their own conflict experiences with her. This “social capital” (Bourdieu 1983) very much strengthened her self-confidence and negotiating position in that she could efficiently put pressure on her adversaries and, step by step, get her claims accepted. The same effect had her networking with key people from the judiciary, which provided potential backing even up to the president, although the conflict never reached a court – another typical aspect for women’s legal negotiations.

In order to convince her supporters as well as her adversaries of the moral correctness and legitimacy of her claim – which is a central aspect of legal negotiations (cf. chapter 1.3) – Anita creatively combined traditional and modern logics of argumentation that covered the social, economic and spiritual level: In order to demand the division of her grandfather’s land and the authority to administrate her father’s share on behalf of her siblings, Anita used the discourse of “the eldest” who is customarily accorded this privilege. Thereby she had to redefine the concept in terms of generation and gender. She underlined this claim by presenting herself as “the good patron” who is rich and therefore pestered by relatives, but nevertheless generously takes over responsibilities of a male family head (such as to pay for water, electricity, schooling etc. but also to administrate the family land), i.e. she used help to create “social capital”. She presented herself as “a good Christian” who brings sacrifices to St. Antoine and cares for her poorer half-siblings, and as manager of all aspects of the spiritual family life: She organised both the Christian funeral and the traditional libation ceremonies and death rituals for her

deceased father, but protected her mother against degrading bereavement rituals, in both cases limiting “unnecessary costs”. Furthermore, she made clear that she would be capable of efficiently managing the family land due to her knowledge about legal and administrative procedures (designation of trustee, division of inheritance, taking a lawyer etc.) and her know-how about legal and bureaucratic practices and sources of information in a corrupt state (how to find a cooperative surveyor, whom to address in court, how to access the president for support etc.). By merging different legal repertoires while silencing uncomfortable views, Anita thus managed to “cumulate legitimacy” (cf. F. von Benda-Beckmann 1994:7) or manifold legal “capital”.

Finally, Anita subtly manipulated her adversaries by skilfully applying local rules for communication, i.e. whom to greet, whom to invite, how to offend and reconcile, how to frighten or threaten, balancing confrontation with social harmony by diplomacy and fine-tuning the conflict, carefully weighing her words and acting patiently, keeping her emotions of fear, anger or malicious joy under control ¹⁷¹.

In terms of the resources Anita drew upon, apart from her great potential support network that we discussed already above, we thus have to enumerate, firstly, her great rhetoric and communicative skills¹⁷², which enabled her to aptly present herself as strong towards her uncle and aunt (well connected to influential people, knowledgeable about the state law, maybe more knowledgeable than she actually was) and combine all kinds of logics of argumentation. Secondly, we have to cite Anita’s personal strength, that was explained by the strong female relatives that served her as models and by her education as the privileged eldest child of her father, who was early on taken seriously and charged with important family responsibilities. To this we have to add her spiritual strength, rooted in her religious belief and her familiarity with the local syncretism of Christian and animist religion. Thirdly, Anita drew upon her own and her siblings’ economic resources, which enabled her to arrange and manage her father’s expensive funeral (which underlined her claim to the position of the family head), to withdraw from the tense situation in the family house by moving out, and to nurture social relations and acquire prestige as well as social security by continuing to provide for her rela-

¹⁷¹ These skills became apparent not the least when she aptly constructed herself towards me as thrift, forward-looking, with “modern” gender ideas: belittling traditional gender roles (to have children) and counteracting them with new ones (to be independent from men, take over economic responsibility, make use of her high educational status, emphasizing family planning and joint parental responsibilities for children), distancing herself from witchcraft (*je ne suis pas sorcière*).

¹⁷² The importance of communicative skills for women’s legal negotiations was elaborated upon by Stoeltje (1998) for the Asante in Ghana, A. Griffiths (2001a) for the Tswana in Botswana and Hirsch (1998) for Swahili in Kenya.

tives. Whereas the access to these resources is not typical for most women in Togo, the importance of them for legal negotiations is very characteristic. This enables us to estimate how difficult negotiations of inheritance conflicts are for the majority of women in Togo.

Chapter 4 *Le mâis a toujours tort au pays des poules* – Negotiating marital rights

This chapter will analyse processes of negotiating the institutionalisation of marriage, rights and obligations during marriage as well as separation or divorce and subsequent questions of maintenance. In order to carve out the variety of options and ways of negotiating, in-depth case studies of individual women will be analysed. Their interpretation will be contextualized so as to give a broader picture of marriage norms and practices in Togo.

4.1 Institutionalising marriage within the plural legal field

The institutionalisation – some speak of “formalisation” – of marriage is important in the context of this chapter, because the rights a woman can enjoy or claim during marriage depend partly on the legal system in which her marriage is framed. If it is institutionalised within several legal systems, it is of interest to see which legal system is brought to bear or else, how contradicting norms are being dealt with. On the other hand, it is precisely the plurality of marriage options which provides opportunities to negotiate marital rights before, during and after marriage, as the subsequent sub-chapters will demonstrate.

Most marital unions in Togo are progressive affairs. They can be constituted by elements such as a sexual relationship, procreation, joint viri-local residence, the subordination of the wife in relation to her husband, often going along with her economic dependence on him. Ideally, such a marital union is preceded by family negotiations and a series of ceremonies, the most important one being the handing over of the bridewealth from the husband’s family to the bride and her family. It is these last two aspects, which can be labelled “the customary institutionalisation of marriage” and which give the wife some kind of economic and social security, in terms of social and economic support of her family in case of marriage problems or divorce. Apart from – and usually additionally to¹⁷³ – customary ceremonies, marriages in Togo can be institutionalised by a Christian church ceremony, by Muslim ceremonies (within the family and in the mosque), or at the registry office of the state. It is only this last “civil marriage”, which is recognized by the Togolese Family Code of 1980 (art. 76 CPF) and gives access to family allowances and tax reductions (mostly to husbands), accords certain rights within marriage (household contributions, joint residence etc.), after divorce (maintenance

¹⁷³ The progressive character of marriage in Togo is also underlined by the fact, that a customary institutionalisation can be followed by a civil marriage, which may be followed by a religious one, whereby the various steps may be interspaced by several months to years.

and child custody), as well as certain rights to widow pensions or inheritance in case of the husband's death. Almost all of these rights improve women's social and economic security, which is the main motivation for women to aspire to a civil marriage.

The following case studies will be preceded by a short presentation of the changing face of customary marriage, this being still the most prevalent type of marriage in Togo. The procedures and consequences of civil and religious (Christian and to a far lesser degree Muslim) marriage forms will only be discussed as far as they are directly relevant while going through the different case studies.

4.1.1 The flexible face of customary marriage and the changing role of bridewealth

According to customary marriage norms among the *Ewe* (*pour se marier convenablement*), when a young man is considered capable of marrying, he himself or his family will look out for a decent girl. His parents then undertake investigations to find out whether she is unmarried, possibly a virgin – although this is not compulsory –, obedient, hard working in the household as well as in fieldwork and marketing, and from a decent family. If they approve of the choice, they send some relatives (preferably a married woman, known to be faithful) with palm wine or liquor to the woman's family in order to announce their interest (*frapper la porte*). The bride's parents or paternal uncle first refuse the presents and send the visitors away in order to gain some time to talk to their daughter and make enquiries about the (hopefully obedient and hard working) character of the bridegroom and his family as well as about the relationship between the two families. Sometimes, the woman had already been seeing the man or else approving of the proposed marriage. At other times, she is either not informed until the marriage is concluded or put under a lot of pressure to accept the parents' choice. In case her parents approve of the proposed marriage, they accept the presents during the next visit of the bridegroom's relatives in which the latter ask for her hand in marriage (*demander la main*). From then onwards, the bridegroom regularly visits his in-laws and works, at least once, on their fields. The wedding itself consists of several ceremonies (with some variations between different ethnic groups), the most important one being the handing over of the bridewealth (*payer la dot*) from the family of the groom to the family of the bride. Before or after this ceremony, which takes place at the bride's family home and in the presence of rep-

representatives of both families, the bride is led to her husband's home (*amener la fille chez son mari*)¹⁷⁴.

Nowadays, arranged and forced marriages are less and less common, as marriage turns from a contract between families to one between individuals and young people insist on choosing their spouse by themselves. Furthermore, where it still exists, it is more common for women to refuse or to “run away” shortly after the marriage (Nabede 1985, C. Akakpo et al. 2001b). On the other hand, growing poverty incites more and more fathers to marry their minor daughters off to whomever pays the highest bridewealth¹⁷⁵.

Another change to the traditional model of marriage is that the long period of ceremonies is often reduced to the payment of the bridewealth (Meekers/ Gage 1995:2). However, it would be wrong to say for the *Ewe* of southern Togo that “traditional [...] marriage rituals have virtually disappeared [...] since World War II”, as Verdon states for the Ewe of southern Ghana¹⁷⁶ (Verdon 1982, quoted in White 1999:120). In Togo, the bridewealth is considered to be a precondition for the woman to move to her husband and for the husband to establish paternity rights over his children (Secr. Chefferie 1:15-16, Mancraro 2:14-15, Martine 1:5). In this sense, the bridewealth is often interpreted as a compensation to the bride's family for their loss of a fertile woman and adult female work force (Rivière 1984:386, Amega 1962:713). Apart from that, bridewealth is seen as giving social security to the woman, symbolizing her societal esteem and establishing a link between different communities through a variety of services – including work services for the in-laws (Lachenmann 1992a:81).

According to my interviews, depending on the possibilities of the bridegroom and his family, the bridewealth among the *Ewe* and *Mina* of southern Togo nowadays includes several sets of cloth (*pagnes*), shoes, jewellery and scarves for the bride, all presented in new bowls or a chest, accompanied by up to twelve bottles of liquor, several bottles of soft drink, some palm *schnaps*, some staples (a big bag of maize, some tobacco leaves etc.) and a significant amount of money for the bride's family (Mancraro 2:10-12, Dorothée 2:6-7, Martine 2:5). Part of the money goes to her paternal aunts (*tassiwo*), who are supposed to bless the marriage (Rivière 1984:380-383, Abotsi s.d.:36-39, 48-53). According to Mensah-Amendah (2002:102), the fa-

¹⁷⁴ Cf. Mancraro 2:10-12, Kossiwa 1:9, Dorothée 2:6-7, Martine 2:5, Sophie 1:17, Abotsi (s.d. 30-55).

¹⁷⁵ Cf. field notes GF2D Evaluation 2001. In some cases this practice of forced marriage is embedded in the growing practice of international trafficking in girls (especially from West Africa to Gabon in Central Africa). These topics will however not be further discussed in the present study. Some references are made though in chapters 6.2, 6.6, 6.7, 7.1.1, 7.1.3, 7.2.4 and 8.7.

¹⁷⁶ In Togo three quarters of all institutionalised marriages are concluded according to customary norms (Kuwonou 1996:13).

ther's sister has a special status in each family, due to the patriarchal logic, which allows her, as the "female father", to share in the privileges of the *chef de famille*. She is the one who organises the marriage ceremonies, handing over the bridewealth from her nephews or to her nieces, who is asked to bless the newborn during a traditional baptism, and whose curse is feared¹⁷⁷.

If we compare these data to the ones collected by Rivière (1984:384-386, 394) about the *Ewe*, it becomes obvious that since colonial times the bridewealth changed in three aspects:

Firstly, in terms of its content: Cowry shells were replaced by money, palm wine by imported liquors (both used for consumption during the ancestral ceremonies), initial or even life-long work services of the groom towards his in-laws were mostly replaced by presents of clothes, jewellery, and money for the bride to buy herself cooking utensils and soap. According to Frey-Nakonz¹⁷⁸ (1984:174-179) this last aspect points towards a loosening of affinal relations, i.e. a diminishing of power of the elders¹⁷⁹, who cannot oblige their son-in-laws any more to work for them, as they became economically independent due to the possibility to do paid labour. This would imply that the bridewealth is a compensation from the groom to his father-in-law for his failure to work for him.

This tendency to individualise marital unions is further underlined by the change of bridewealth in terms of its destination: A decreasing share is going to the bride's parents and relatives on the paternal, but also on the maternal side, the number of relatives sharing in the bridewealth being also reduced (to her father and aunts¹⁸⁰), while a rising share is given personally to the bride herself (similarly Lallemand 1994:150). Frey-Nakonz raises the hypotheses, that men use the bridewealth increasingly to free themselves from any economic ob-

¹⁷⁷ The special role of the paternal aunt is also known from other ethnic groups in West Africa. However, unlike Lallemand's account of the *Kotokoli* of Central Togo (1994:142) and Alber's account from the *Baatombu* in Northern Benin (2003:447), I found no indications for the *tassi* among the *Ewe* to have a right to demand to raise a child from the married couple in a kind of foster relationship.

Among the *Kotokoli* of central Togo it is either the maternal uncle (Froelich et al. 1963:32) or the mother (Lallemand 1994:142) who assumes the role of a marriage broker.

¹⁷⁸ Frey-Nakonz analysed the origin and development of bridewealth among the *Aizo* and *Tori* in the south-west of Benin (Frey-Nakonz 1984: 170-179). These ethnic groups are distinguished from the *Fon*, but share the same language *Fon*, which is closely related to the *Ewe*-dialects of southern Togo. Also culturally and historically (except for the time since independence) the *Ewe* and *Fon* are very closely related. Therefore her discussion is included here.

¹⁷⁹ Contrary to Meillassoux (1981) who assumed – a decade earlier than Frey-Nakonz – an increase in the power of elders.

¹⁸⁰ This shows that, despite the changing face of bridewealth payments, the paternal aunts (*tassi*) managed to maintain their above mentioned position as marriage brokers.

ligations towards their wife during their marital union, arguing that the wife should use her bridewealth money to start a small trading business¹⁸¹ (1984:169, 204-205).

Finally, the bridewealth changed in terms of its amount, which was, disregarding the Jacquinet Decree of 1951 (see chapter 2.2.4) rising until the 1970s. According to Rivière (1984:394) the inflation of bridewealth reflects the fact that it has become a one-off payment, i.e. after its handing over no other services can be expected by the bride's relatives from the bridegroom. According to Elwert, this is symptomatic for the increasing monetarisation of gender relations. It forces men to migrate in order to be able to individually come up for the enormous bridewealth. However, diminishing job opportunities often hinder them from institutionalising their marriage in such a way as to give the wife a socially recognized status (Elwert 1984b). In 1980, the Togolese legislator limited the bridewealth to a maximum of 10.000 Francs CFA¹⁸² (art. 58 CPF). Nevertheless, bridewealth payments continue to be generally higher than that (Rép. Togolaise 2001:33, ConseilJur30Mrs01).

In contrast to many other African societies, among the *Ewe* the amount of bridewealth does not seem to be object of very extensive negotiations between the two families (Rivière 1984:380, 383). As to the eventual reimbursement of the bridewealth at the dissolution of marriage upon the woman's initiative, the literature is divided, some authors denying, others confirming it¹⁸³. The field research confirmed the general tendency towards non-reimbursement (Latif 1, Justine 1:25, Manclaro 2:19). This could be due to colonial influences in this direction.

Elwert claims – referring to the *Ayizo* in southern Benin¹⁸⁴ – that the practice of bridewealth came up to insure a continuation of kinship control over the marriage (i.e. that the wife is respected in her husband's family and the couple fulfils its marital duties) during colonial times, when the former control through a bride exchange system had decreased. The bridewealth thus came to be a kind of financial guaranty for the “bride-giving” family and an economic

¹⁸¹ This argument might be a trap, as women's independent economic activities are often disputed by their husbands (cf. chapter 4.2.1).

¹⁸² In 2003 10.000 Francs CFA corresponded to 15,24 Euro. Around 1980, the year of the passing of the new family code, it represented about half of the monthly income of a young teacher in a public primary school.

¹⁸³ The reimbursement of the bridewealth is denied by Rouveroy van Nieuwaal (1977:102) and confirmed for the *Ewe* by Manoukian (1952:27) and Amega (1962:713), for the *Bassar* by Szward (1981:55, 67) and for the *Kabye* by Nabede (1985); in the latter case it is the new husband who reimburses the bridewealth to the prior husband.

¹⁸⁴ Like the groups studied by Frey-Nakonz (1984) also the *Ayizo* of southern Benin speak *Fon*, which is closely related to the *Ewe* of Southern Togo, and share many cultural traits with them (Elwert 1984a:45).

security for the bride, who could use the money as a starting capital for her own business (1984a:187-188). However, in Togo some ethnic groups still nowadays do practice bride exchange with bridal services to the prospective in-laws, such as the *Anufom*, *Moba*, *Gourma* and *Konkomba* in Northern Togo¹⁸⁵. In other ethnic groups, such as the predominantly Muslim *Kotokoli* in central Togo the bridewealth from the husband's family to his wife is complemented by the bride's family providing her with a dowry¹⁸⁶, while most ethnic groups practice bridewealth, like the *Ewe* in southern Togo, sometimes in combination with bridal services, like among the *Bassar* of central Togo (Szwark 1981:54-55).

Since 1980, the obligation to pay bridewealth – although limited in its amount – is fixed in the Family Code (art. 57 CPF) while forced marriage – an integral element to bride exchange systems – became forbidden (art. 44 CPF). This was probably preceded by a decrease of kinship control, due to alternative modes of accumulation through paid labour instead of agricultural work on family land since colonial times. This would support the idea that bridewealth came to replace marriage exchange. Nevertheless, our data is not sufficient to confirm Elwert's claim of a historical link (or evolutionary sequence) between the two systems for Togo.

The following case studies will confirm that although customary principles (of fertility, economic responsibility, obedience towards parents and senior family members, liaison between two families etc.) guide the expectations about customary marriages,

unlike a civil or religious marriage, which are registered, [in practice] a customary marriage is not necessarily associated with any particular, identifiable occasion. [...] What leads to the social recognition of a relationship as a marriage depends on a number of elements which cannot necessarily be defined in advance (A. Griffiths 1997:53 for the *Tswana* in Botswana¹⁸⁷).

In Togo as well, the formation of marital unions is a progressive affair, of which a pregnancy can constitute the first step (cf. Kouwonou 1996:11). Furthermore, the concrete elements which lead to the social recognition of a relationship as a marriage are changing over time¹⁸⁸,

¹⁸⁵ Cf. Baerends (1990), Rouveroy van Nieuwaal (1977:101), Pilon (1994:132), C. Akakpo et al. (2001b:3-10).

¹⁸⁶ As the dowry (composed of cooking utensils and other household articles) among the *Kotokoli* is an important symbol for the status of a bride and her family, many girls quit school and migrate to Lomé or neighbouring countries in order to earn and save money for their own dowry. In the 1980s, when the increasing economic differentiation within the population created undesired competitions and tensions, the Muslim authorities of Sokodé in northern Togo forbade the usual public exposure of the bridewealth upon its transfer to the husband's home (Alfa 3:3, Lallemand 1994:150).

¹⁸⁷ Similarly Bledsoe (1980:91) for the *Kpelle* in Sierra Leone, Oppong (1985:488) for Africa in general and Wanitzek (1998:135) for the *Bulsa* in Ghana.

¹⁸⁸ Well adapted to the local realities was, therefore, the way marriage was defined in the Togo Demographic and Health Survey (DHS) of 1988 as "any relationship characterized by more or less stable co-

be it with changing economic conditions or with new hegemonic socio-religious discourses (for instance, when the Christian emphasis on virginity sometimes almost replaces the traditional value of fertility).

4.1.2 Insisting on a customary marriage institutionalisation

In this first look into the case of Dorothée we shall discover some of women's logics of action for marrying according to customary norms and the options and consequences that such a marriage entails for them. Furthermore, the relation between economic independence and power to negotiate a marriage institutionalisation will be analysed.

When Dorothée¹⁸⁹ got to know Joseph, her future husband, he was a university student without any income. At first, she supported him from her modest but secure salary as a housemaid employed by expatriates. As he didn't get any scholarship, he broke off his studies and entered a teacher training college. When, three years later, he was posted as a secondary school teacher in central Togo, he asked Dorothée to join him, thereby implicitly suggesting to live as husband and wife without institutionalising their relationship.

Among less wealthy men in Togo this practice of forming a marital union without institutionalising it by either customary, religious, or civil ceremonies has become more and more common¹⁹⁰. The main reason is that they cannot afford the ceremonies, including the bridewealth payment, any more. This is due, on the one hand, to the economic crises of the country since the 1980s, which leaves many men without a regular income, and on the other hand, to the tendency that the groom has to come up for the bridewealth all by himself, while in former times his father would have helped him¹⁹¹.

Yet, this practice of non-institutionalised unions has also become fashionable among some educated urban better-off men – such as Joseph –, who are not any more under the social control of their parents, the family elders (including influential women, such as their mother and paternal aunt) or the community elders. They use this increasing individualization to remain as free as possible from any marriage obligations, i.e. to be able to easily separate from their wife and marry another woman. In such cases, it can often be observed that men take care to

residence of the partners, independent of whether the relationship was recognized by law, religion, custom, or simply by mutual agreement of the partners" (Meekers/Gage 1995:6).

¹⁸⁹ For Dorothée's biographical background see overview in the annexA1.

¹⁹⁰ Cf. Vimard (1981:3-5, 1984:96), cited by Gage-Brandon/ Meekers (1993).

¹⁹¹ Cf. Mancraro 2:12, 16, Kossiwa 1:10, cf. Frey-Nakonz (1984:171).

well institutionalise their second marriage either in church or at the registry office (in the latter case under the option of monogamy¹⁹²), thereby putting their first wife in a kind of illegal situation with regard to the newly contracted marriage. At the same time, such institutionalisation of the second union might be an attempt to hide the breaking of customary norms (by “dropping” the first wife) behind an image of “modern” legality (cf. CRIFF20Aug01, Kuwonou 1996:6, 17, 20). This shows how the plurality of legal systems may be used to the detriment of women. But other examples will follow, where it is women who use the legal pluralism to their advantage.

Many poor women in Togo accept marital unions without any institutionalisation, for instance if their parents – being unable or unwilling to provide for them any longer – have sent them off to earn money and/or find a husband. In such a situation the woman has no power to negotiate any institutionalisation of the union. Often the husband effectively lacks the means for the customary ceremonies, but promises to do a customary or even a civil marriage later. But once the first child is born, he sees no need to fulfil his promise, as the wife – wishing to stay with her child while being in need of support from the husband – has no other choice than to remain with him anyway. If they have the necessary means, some men nevertheless institutionalise the union later, to please their wife and gain a certain prestige. For women, a non-institutionalised marriage means a loss of economic, social, and legal security (cf. Lachenmann 1997a:400).

The situation changes with the economic possibilities of the wife and her family: If the woman’s family is not destitute, i.e. is able to continue to provide for their daughter, they may insist on a customary or even civil marriage before letting the daughter go. If she earns her own money, she might herself insist on a marriage institutionalisation, or negotiate this with her husband by offering to contribute to the expenses. Some economically independent educated urban women even turn the tables and explicitly seek not to institutionalise their relationship (by the standards of any legal system, including the traditional one) in order to be more free from social control and marriage obligations¹⁹³, as was also observed in numerous studies on other African countries (cf. Gage-Brandon/ Meekers 1993:7-8).

As Dorothee had a minimum of economic independence, both from her parents and from her future husband, and had no child to maintain, she did not accept an insecure marriage set-up and told Joseph to first ask her parents for her hand in marriage, i.e. to marry her according to

¹⁹² In Togo, like in Senegal and Mali, the Family Code allows the spouses to choose between monogamy and polygyny at their marriage at the registry office (art. 42 CPF).

¹⁹³ This will be further discussed in chapter 7.1.2.1 with the example of Benida.

customary norms. On the one hand, she thereby set the involvement of their families and the payment of the bridewealth as conditions for her commitment to become his wife. Such a request did not fit in the common gender expectation of women's obedience and was criticized by Joseph. But he had no other option than to comply:

Un certain moment il a dit de le rejoindre. Je lui ai dit que non, comme il n'a pas demandé ma main auprès de mes parents, je ne peux pas aller. C'est en ce moment que les problèmes commencent à venir. Il a dit: C'est vrai? J'ai dit : Oui. [...] Après, il est venu faire les choses, il a fait tout ce qu'on peut faire pour le mariage, la dot [...] Il a fait ! Ça, je ne peux pas nier, il a fait ce qu'il doit me faire. Et après je l'ai rejoint là-bas. (Dorothee 1:4)

On the other hand, through the customary marriage Dorothee set the base for an eventual civil marriage at the registry office: Customary marriage is commonly perceived to be a necessary step *preceding* a civil marriage. This shows that, by societal norms, marriage is still considered to be an important family affair (Kuwonou 1996:6, 13) that is not replaceable by state ceremonies. This means that the state – with its focus on individual rights – is not recognized as adequately representing the interests of its citizens in marital affairs, i.e. the principle of political representation is not acknowledged. This, in turn, is mirrored in the state law itself, in so far as the Family Code obliges the bridal couple to present an attestation of the payment of a bridewealth to the bride's parents (art. 58 CPF, Komlan 2000:7).

The bridewealth demand from Dorothee's family, the content of which corresponded to the above described social norms, must have been considerable, as it took Joseph one year of teaching before he was able to afford it. As is the custom, his brothers and a paternal uncle came to Dorothee's family to hand over the bridewealth to her parents, thereby underlining the character of a customary marriage as an affair between two families, especially the two patri-lineages of the couple (Kuwonou 1996:6). After the bridewealth ceremony Dorothee gave up her job and moved to her husband.

By insisting on the institutionalisation of their relationship, Dorothee had managed to keep her precious economic and social independence during one more year, i.e. to delay her entrance into a relationship in which her economic autonomy and her decision-making power was likely to be contested, as we shall see below. At the same time she secured her right to the economic and moral support from her family in case of eventual marital problems or divorce. This last aspect is important because the woman enters her husband's family as a stranger (in Mina *deva*, meaning "the one who came from outside"), who is expected to bear and raise

children for her husband's patri-lineage, almost without acquiring any rights within that patri-lineage¹⁹⁴.

4.1.3 Insecure constitution of marriage through pregnancy

The following introduction into Justine's case will highlight the possible role of procreation for setting up a marital union and the precarious character of this link, as it is subject to economic conditions:

When Justine¹⁹⁵ got pregnant, she dropped out of her professional training at a technical college and eloped¹⁹⁶ with the father of her child, who was a teacher in a town 160 km further north. Probably this was the only way to marry him, as in cases of premarital pregnancy the woman's parents, offended, often object that the irresponsible man marries their daughter (Rivière 1984:392).

By joining her husband without her parents' consent, Justine risked to lose the potential support of her kin in case of marriage problems (Meekers/Gage 1995:5, Maddox Toungara 2001:36). Her husband brought her parents a couple of bottles of liquor and promised to pay the rest of the bridewealth later, a promise he never fulfilled. However, he immediately started to provide for her and their child, demanded her obedience and restricted her mobility, thereby fulfilling customary marital rights and obligations (Justine 1:10-11, Mancraro 2:13). Thus, the main elements of setting up this marriage were the sexual relationship, procreation, joint viri-local residence, and the subordination of the wife in relation to her husband.

On the one hand, marriage in Togo (as elsewhere in Africa) is considered to necessarily lead to offspring. On the other hand, children are legitimised through a marriage. Therefore, a woman who is pregnant or has a child will usually declare herself to be married, even if no institutionalisation of the union has taken place (cf. Benida 2:1, 4, Yawa 1:1-2, Kouwonou 1996:12). From the perspective of men, they acquire through marriage

control over a woman's reproductive capacity as a scarce good which enables [them] to reproduce the labour force [which is] central to most African kinship systems. (Baerends 1994:29, similarly Elwert 1984a:96)

¹⁹⁴ Mensah-Amendah (2002:58, 79, 86, 88), Amega (1974:1-3), cf. also Lachenmann (1997a:399), Cavin (1998:92-93).

¹⁹⁵ For Justine's biographical background see overview in the annexA1.

¹⁹⁶ In cases of elopement, people say that the husband "snatched the woman" (*il a arraché la femme*).

Other couples actually institutionalise their union only after the woman has born her first child and thus proven her fertility (Rivière 1984:394). The high social value accorded to fertility and procreation is also reflected in the fact that, in a polygynous household, the wife with the greatest number of surviving children is generally the one who is most respected (Kouwonou 1996:7, Deffarge/ Troeller 1984:63).¹⁹⁷

If a young man impregnates a woman before having undertaken any formal steps of a customary marriage, it will be said that “he made an accident” (*il a fait accident*). The man or his family may hand over a couple of bottles of liquor to the parents of the woman, as a kind of compensation for having flouted customary norms and expectations. If the man or his parents are interested in turning the relationship into a marriage, they might allow the woman to move in with them and provide for her and their grandchild, while promising to pay the rest of the bridewealth later. The couple will henceforth be considered as married (Justine 1:11, 3:9). The man and his parents are then expected to pay for the health costs, clothes, and food of the pregnant daughter-in-law (Mancraro 2:17).

However, while the high value of having offspring is maintained, the necessity of an institutionally protected marriage is more and more questioned. As a consequence, many women are single mothers¹⁹⁸, i.e. have children while remaining unmarried or not remarrying after divorce or widowhood, and many men have children with women to whom they are not or not any more married. In times of economic crises, increasing land scarcity, and rising costs of living, a sudden daughter-in-law and grand-child may be less welcome, being perceived more as “extra mouths to feed”, i.e. as economic burden, than as an enlargement of the agricultural labour force and social and economic enrichment of the lineage. This is especially the case, when the man’s mother is still childbearing herself and does not need the daughter-in-law’s labour force (Mancraro 2:16). If, therefore, the man’s family is unwilling or unable to support

¹⁹⁷ The importance of fertility within marriage will be further discussed in chapter 4.2.3 below.

¹⁹⁸ According to the Togo DHS 1998, 24,3% of all households (28,9% in urban and 22,1 % in rural areas) are headed by a woman, while 75,6% of all households are headed by men (Anipah et al. 1999:11). However, on the one hand, the appropriateness of the underlying assumption of “households” as the primary economic and consumption units is questionable (Joekes/ Kabeer 1991, Kabeer 1995, Sen 1990) as it neglects the great variability of their composition over time and space, the extensive exchange relations between households maintained by women, as well as the important inequalities within households. On the other hand, these numbers can only be taken as an indication for the high share of single mothers, if we consider that in Togo, if a woman is married (or lives in union with a partner of the opposite sex) both she and her husband or partner are very likely to present the husband as *chef de ménage*. Therefore, it is likely that those women, who were statistically counted as heads of households, are single. On the other hand, there might be many “households”, which – independently of whether they are headed by a man or a woman – include other single mothers among their members, an aspect which might increase the actual percentage of single mothers.

the young family, the compensatory bottles of liquor will be all the woman's family may ever receive – if they receive anything at all –, and the woman will stay with her parents. Sometimes the man's family accepts the woman moving in, but neither they nor their son is able to provide for her and the child, leading to situations of extreme deprivation (Justine in Mancraro 2:17).

In the worst case, the man and his family deny having anything to do with the pregnancy and the woman is left without any support by the father of the child or his family, her own family becoming scornful about the extra burden and public shame put on them. In such cases, the woman is often punished for getting pregnant outside any institutionally sanctioned union with a bad reputation, being called a “vagabond”, a prostitute, or a loose girl and having to confront many requests for sexual services by men, who are not interested in marrying her (Mancraro 2:12, 15, 18). Many women in such a situation leave their child with their parents and move to town to look for work and escape the humiliation.

This is especially harmful for young women, who have to leave school in case of pregnancy, without being offered any support by public social services. In 1984 a law was passed to reprimand men who impregnate school girls or apprentices (WILDAF-Togo 2002/2003b:17, Ulferts 1994:166). However, not only was this law hardly ever applied; by its *Lettre circulaire N°8478/MEN-RS* of the same year, the Ministry of Education ordered that pregnant girls have to leave public schools until delivery, thereby continuing to put the blame on the girls and seriously hampering their further education and career¹⁹⁹. Contrary to our expectation, denominational schools in Togo are not so strict in this respect, frequently allowing pregnant girls to continue school (Rép. Togolaise 2001:57). Since 2000, WILDAF-Togo is doing research on and running a campaign against sexual harassment in schools, universities, apprenticeships and at the workplace, culminating so far in the elaboration of a draft bill to protect victims and reprimand perpetrators of sexual harassment (WILDAF-Togo 2002: 4, 8).

Having observed similar experiences, other women expressed their disappointment and mistrust towards men in the following words:

Il y a des hommes qui sont irresponsables. Quand tu te trouves enceinte, après ils vont te faire voir de toutes les couleurs. Moi, je ne veux pas. [...] Ma cousine aussi me dit : Il faut pas compter sur les hommes ! Si tu comptes sur les hommes là, tu auras des problèmes plus tard ! (Anita 4: 9, 11)

¹⁹⁹ In 1998 4,9% of women between 14 and 24 years had left school because of pregnancies, i.e. 3,5% in urban and 6,4% in rural areas (Anipah et al. 1999:22).

To get pregnant is, therefore, not a guarantee for achieving a marriage with the father of the child. Moreover, getting pregnant increases the economic dependence of a woman on either her family of origin or the father of her child, and thus diminishes her negotiating power. However, to get pregnant without being married does not exclude a later marriage (Manclaro 2:13).

4.1.4 Civil marriage and its construction through everyday practice as a private male affair

The Family Code prescribes for civil marriage the free consent of both partners, the option of monogamy or polygyny to be signed by both (art. 42, 52 CPF²⁰⁰), as well as the choice of one of three property schemes: the common property scheme, the separation of property, and a mixed scheme. If the couple makes no choice, it is assumed that they opted for the separate property scheme (art. 61, 348 CPF).

Rather few marriages in Togo are institutionalised at the registry office, especially among the rural and poor urban population. There are two possible reasons for this: One is the lack of precise knowledge and the spread of false rumours about civil marriages and the state legal system in general. At the same time people are more familiar with customary and religious laws and institutions. This is expressed in the common assumption that a civil marriage is only of interest for those who have attended school, i.e. for urban intellectuals or civil servants, as in the following statements:

Auparavant [i.e. before information campaigns by NGOs] les gens ici au village disaient: Aller faire le mariage civil, pourquoi? Moi, je suis cultivateur, je ne comprends rien. (Kossiwa 1:11)

Ils disent que le mariage civil ne concerne que ceux qui sont allés à l'école. (Mensah-Amendah 2001:6).

Ils sont tous des paysans, ils n'ont pas besoin de connaître le mariage civil, c'est pourquoi je n'en parle pas. (A paralegal in Ountivo, 21.9.2001)

²⁰⁰ Before the passing of the Family Code in 1980, such an option between monogamy and polygyny for civil marriages did not exist. Despite the colonial *Jacquinot Decree* of 1951 (see chapter 2.2.4), which allowed to register only monogamous marriages, the practice in Togo was to note whether the marriage was the husband's first, second, or third marriage etc. This implied that the husband could at any time turn the marriage with his first wife into a polygynous one, without the wife's consent. Civil marriages contracted before 1980 thus are nowadays treated as being made under the option of polygyny (cf. CRIFF16Mrs01).

Many men refuse to do a civil marriage, because they assume that a civil wedding would give their wife free access to the husband's money as well as to his inheritance (GF2DEvaluation 2001). This, however, corresponds neither to the legal texts nor to everyday practices: Even if the couple opts for the common property scheme, the law prescribes that the goods of both spouses shall be used only in the interest of the household (art. 354 CPF); furthermore, that the husband, in his position as head of family administers the common property (art. 359 CPF). It is thus the husband – not the wife – who retains ultimate control in the case of a common property scheme. Concerning the question of inheritance, according to state law the wife can only inherit from her husband if the latter had renounced customary inheritance in his testament or in a certified declaration (art. 391 CPF, cf. chapter 3.1.4). Nevertheless, some customary male privileges are reduced in a civil marriage, as was exposed in chapter 2.2.6.

The second reason, especially for women, not to marry at the registry office might be the scarcity of registry offices as well as the expensiveness and bad quality of their services, which are often male-biased and corrupt (cf. Komlan 2003a:22-33, GF2D 1995:15). The registry assistants (*agents d'état civil*) have no or very few professional training (cf. chapter 7.3.3) and thus either do not inform the bridal couple of the option between monogamy and polygyny and of the choice between the various property schemes, or they address the question only to the husband. If women don't know about these options, they will not ask for them. This way they will miss out the opportunity to hinder their husband from later marrying a second woman at the registry office, or to establish a common property scheme, if they wish so and under the condition that their husband agrees.

Moreover, men who are either insured in the *Caisse Nationale de Sécurité Sociale* or in the *Caisse de Retraite du Togo* frequently get marriages registered, even without the presence, knowledge and consent of the bride²⁰¹, in order to access certain monthly family allowances²⁰² (Christophe 7:5, GF2D1995:15). This practice violates both the Family Code and women's

²⁰¹ The following anecdote shall illustrate this situation: During their monitoring trips to the *para-juristes* in the field, the GF2D monitoring-team regularly also pays a visit to the district officers. In one region, the district officer proudly showed them his civil register, in which he notes down the marriages. When the monitoring team remarked that (contrary to the legal stipulations) in many cases either none of the bridal couple or only the bridegroom had signed, the district officer keenly explained: *Oh, mais ce n'est pas nécessaire d'amener les femmes ici. Ces hommes se marient seulement pour avoir les allocations familiales* (Christophe 3:2). However, even this argument is only partly convincing, as a big part of the family allowances, especially the child benefits, are paid independently of whether the children are « legitimate », i.e. born in a civil marriage, or not (cf. GF2D 1999c:114-117).

²⁰² It is possible that this practice took its roots in the fact that between a decree of 1962 and the passing of the Family Code in 1980, customary marriages could simply be declared at the registry office, in order to be recognized by the state (GF2D 1999c:56).

human rights. It may be due to the registrars' lack of knowledge and training about the state law, their carelessness, bribery, or mobilisation of male complicity, as almost all of the several hundred registry assistants in Togo are male.

In the remainder of this section we will look further into Dorothée's case in order to examine some of the difficulties that women face when striving for a civil institutionalisation of their marriage.

The fact that Dorothée had secured family support through the customary institutionalisation of her marriage became noticeable in her uncle's advocacy to institutionalise her marriage according to the state law: As Dorothée had no success in convincing Joseph to let the customary ceremonies be followed by a marriage at the registry office, her uncle intervened on Dorothée's behalf, reminding Joseph of the social benefits (such as a lower initial flat rate on his income tax and a "sole breadwinner allowance"²⁰³) which he, as a civil servant, would enjoy after a civil marriage. However, Joseph told him to mind his own business (Dorothée 2:11, 18). After that, neither her uncle nor Dorothée took up the issue any more, thereby implicitly accepting Joseph's construction of civil marriage as a private and – contrary to the provisions of the Family Code – individual male affair.

To clarify this change: In customary marriages, which are set up as an affair between two families, the wife is accorded some legal agency, even if mediated mostly through a male relative. In Dorothée's case, this meant that, with the support of her family, she could enforce a customary institutionalisation of her marriage. However, the individualization of rights in a civil marriage, combined with the gendered power inequalities between husband and wife – which are strong despite constitutional provisions for gender equality (art. 2 Constitution of the IVth Republic) –, can result in a partial exclusion of the wife from legal agency. In Dorothée's case, this meant that she could not mobilise her family to enforce a civil institutionalisation of her marriage, but had to accept whatever her husband decided.

According to Lachenmann (1992a:75-81), this legal change reflects the general tendency of social change in Africa, which is marked by a decrease in social security for women and in female social spaces, a devaluation of social rules and institutions to protect women within marriage and an increase in individualization. This transpires in an increased dependence of women on their husbands – who are more and more under the pressure of monetary obligations –, combined with women's loss of access to resources (see chapter 4.2.1 and 4.2.2). She

²⁰³ Cf. the Decree no. 61-27 of March 16, 1961 (GF2D 1999c:114). This decree discriminates, however, against wives of public employees, in that they can only receive the family allocation with their husband's authorisation (WILDAF-Togo 2002/2003b:21).

calls the reduced female space within marriage aptly ‘conjugal confinement’ (*Ehepaarengè*). Although this tendency all in all applies to Togo as well, it is partly weakened here by the continuous high occurrence of polygynous marriages²⁰⁴, which are more supportive of an independent female economy and – in their modern form – give women more decision making power than monogamous ones, due to separate matrifocal living arrangements²⁰⁵ (i.e. each wife with her children):

De nos jours le mari polygame ne vit plus avec ses femmes dans la même concession [...] et la femme qui a une résidence à part est en fait le chef de famille chez elle. Elle est le pilier, le mari jouant les courants d’air le plus souvent. (Amendah 2001:27)

Dorothee herself, probably influenced either by the catholic church or by popular rumours about civil marriage, assumes that a civil marriage should normally be a monogamous one. But through her life experience she knows that men generally do not hesitate to marry additional wives anyway:

Chez mon neveu ils ont fait le mariage civil. Mais maintenant l’homme est parti pour prendre une autre femme. Si le mari veut faire, il va faire. Des fois, s’il vont au mariage civil, ils annoncent même qu’ils auront plusieurs femmes. C’est l’homme qui a la force au Togo, les hommes ! (Dorothee 2:19)

Dorothee thus is not aware that polygyny is allowed as a normal legal option by the state law, however an option which has to be explicitly taken by both husband and wife (or wives) at the registry office. She is therefore an example for the above made observation about a lack of precise legal knowledge among large parts of the population.²⁰⁶

In Dorothee’s view, men not only do not respect the law, but the law has no power over them. She correctly resumes that the state law might be designed to protect women’s interests, but is rarely enforced against men’s interests, testifying to the gendered practices of law enforcement.

This means, that even if Joseph had accepted a civil marriage, Dorothee’s lack of knowledge about the legal improvements for women that are offered by the state law, combined with the described gendered and selective practices of administration and law enforcement, would

²⁰⁴ According to the DHS, polygyny is more common in West Africa than in other regions of Africa, achieving the highest level – and rather stable levels over the years – in the francophone countries of Togo, Benin and Burkina Faso. In West Africa the percentage of men living in polygyny is below 30% and of women above 50 % (Antoine/ Pilon 1998:1-3, Kouwonou 1996:20).

²⁰⁵ For further advantages of a polygynous union see chapter 4.3.4 below.

²⁰⁶ On the other hand, many women in Togo – including intellectual ones – prefer an official polygyny to their husband having a *deuxième bureaux*, i.e. a hidden side affair.

have resulted in her not profiting from the new stipulations, as she might unknowingly have agreed in a polygynous marriage.

4.1.5 Using church marriage to prevent or end informal and customary polygyny

Due to the legal pluralism, not only the choice between customary and civil marriage institutionalisations is decisive, but also religious norms can be “played” with against prevalent customs.

For instance, during the last decades, more and more women (as well as some men) have become members of the catholic, the protestant, and especially the multiplying pentecostal churches and new charismatic movements. Often, they used to live in informal or customarily set up polygynous unions. But in order to become fully accepted within their religious groups, they are put under pressure – both by the religious authorities and by other church members – to marry in church. They often do so, once they convinced their husbands. As a consequence, the co-wives become suddenly relegated to an illegal status according to religious norms, which might increase their risk of becoming subsequently repudiated by their husband (field notes GF2D Evaluation 2003). The rise of new churches thus contributes a lot to the dissolution of polygynous marriages. In such cases the repudiated women have neither customary nor statutory rights to be maintained by their ex-husbands and often face severe difficulties to secure their livelihoods. They might acquire maintenance support for their children, but often they lose the guardianship over them. However, the idea to use a church marriage either to prevent or to end undesired (informal or customary) polygyny, is also taken up by many women as a conscious strategy (cf. Cathérine 2:24, 27, Justine 1:28):

Elise, a sixty year old woman from Lomé, had married at the registry office over forty years ago. Twenty years later, against her objection, her husband started a marital union with a second woman, who moved into their house, however, without institutionalising this union by any normative system. As Elise never got along with her co-wife, she recently convinced her husband to confirm her own marriage in church, thereby re-establishing herself as his “true and only wife” in the eyes of the church community, and relegating her co-wife to the second position, respectively to an illegal status from the viewpoint of Christian norms. This strategic move “smoothed” the way for Elise to expel her co-wife from the house with the help of her son (and without much protest from her husband) soon after her church marriage (CRIF16Mrs01). If her co-wife had been married to her husband at the registry office, she could not have been expelled that easily.

This strategy shows how women actively use the legal repertoire to their own advantage, in this case religious norms to protect themselves from customary or informal polygyny. At the same time, this strategy produces differences in negotiating power amongst women, i.e. between those who manage to this way secure their marriage against those who are repudiated, without any chance for compensations. Yet, it has to be added that many men either do not accept a church marriage, precisely because they want to keep open their polygynous options or they accept it, but do not take the Christian norm of monogamy any serious, like Sophie's husband in the following case.

4.1.6 Refusing to get married in church in order to keep the option for divorce

The opposite constellation appears in the case of Sophie: **Sophie's**²⁰⁷ marriage was concluded according to customary and state norms. When her husband suggested to marry as well in church, Sophie refused, as she didn't trust her husband to remain faithful and wanted to keep open the option of divorcing him. In a pragmatic way she thought that it would be easier for her to tolerate his eventual unfaithfulness, if he would not promise otherwise in church. She did not want to risk to feel guilty or be looked down upon because either of them breaking the religious marriage contract by polygyny or divorce.

Her husband did not have such scruples. While she took the church norms seriously, he acknowledged their existence, but questioned their validity in practice out of his everyday life experience:

Je me suis mariée à un homme Mina. [...] Dès le début on a fait le mariage coutumier, et c'est un ans après qu'on a fait le mariage civil. Bon, il a demandé qu'on fasse le mariage religieux, mais moi, je lui ai dit non. Pour le moment je ne peux pas. [...] Comme les hommes ne sont jamais satisfaits, mon mari, je ne le regarde pas trop, parce qu'il se couche à droite et fait ce qu'il veut. [...] Il faut pas qu'on aille devant l'église, dire n'importe quoi et faire autre chose. Ce n'est pas du tout sérieux. Mon mari a dit que c'est moi qui le pense comme ça, et que même au niveau de l'église ils acceptent qu'on ait deux femmes, ainsi de suite. Je dis : Mais ta femme ne trouve pas que tu vas à l'église avec elle, ce n'est pas mon problème à moi *{laughs}*. (Sophie 1 :3, 27-28)

While her husband confirms the general male-biased interpretation and application of church norms in Togo, Sophie questions this and confronts it with a gender neutral interpretation, which accords rights (to divorce) and obligations (to remain faithful) to both wife and husband. To strengthen her argument she can refer to her sound knowledge of the bible, which

²⁰⁷ For Sophie's biographical background, see annexA1. Her case will be further discussed in chapter 5.1.4 and 7.1.2.2.

she acquired during her long-term close affiliation with the protestant church and her participation in choirs and missionary groups.

Moi, je suis chrétienne, je vais à l'église les dimanches. Déjà au niveau de mon église je faisais des activités, j'aidais et tout, et c'est comme ça qu'on m'a remarqué dans l'église et on m'a mis dans un comité paroissial qui faisait l'évangélisation dans d'autres quartiers de Lomé. [...] Mon oncle qui m'a élevé, il est catéchiste d'église évangélique. Déjà quand j'étais au cours primaire élémentaire ils m'ont inscrit dans le choral de l'église. Donc les dimanches matins on préparait la liturgie, je lisais à l'église. [...] Moi, je ne veux pas aller me marier à l'église avant 70 ans. Comme ça, si je veux partir aujourd'hui, je suis libre de partir et de recommencer ailleurs. Parce que le mariage civil ça se divorce, mais au niveau de l'église il n'y a pas de divorce. (Sophie 1 :1, 6, 28)

As was already mentioned, this case is not very typical. But it shows the great difference that personal strength and a sound knowledge of normative orders can make for women's possibilities to negotiate the norms in the way that is most convenient to them within a plural legal field. In Sophie's case, her personal strength was based on her well-developed self-confidence, which she had gained by being educated and encouraged from childhood on to take over responsibilities in church, speak up in public, and thus acquire social recognition. Her long-term experience with social work (which figures strongly in catholic and protestant church activities in Togo) even contributed to her critical consciousness. This became apparent in her critical attitude towards the typical male-biased interpretation of Christian norms in Togo.

4.1.7 NGO activities to improve the institutionalisation of marriage

Through their publications and the legal information and advice provided by dispersed paralegal advisors and in non-governmental legal counselling centres (see chapter 2.3.5), the NGO GF2D tries to encourage women to marry at the registry office: They inform them about the correct procedures to follow (which papers to present, the different options concerning monogamy or polygyny and the property scheme to make) and about the advantages of civil marriage against all other marriage institutionalisations²⁰⁸.

As such they point out that only the civil marriage provides some legal protection for girls and women, i.e. which they can claim in a state court, in the sense that she can neither be married below the age of 17 years, nor without or against her consent; that both spouses are obliged to live together (i.e. the husband can not just repudiate his wife, but has to follow formal divorce procedures), respect each other, and contribute to the household expenses; that the wife has a right to parental authority in equality with her husband. If the husband dies, only the civil

²⁰⁸ Cf. the cartoon *Nécessité du mariage civil* in the annexA5.

marriage gives the wife access to a widow's pension in case he was insured with the *Caisse Nationale de Sécurité Sociale*, to a share in his inheritance, in case he had renounced to custom, and to the guardianship of her minor children²⁰⁹.

Additionally, GF2D trains traditional and religious authorities on women's statutory rights and sensitizes them to promote civil marriage in addition to customary or religious ceremonies among their clientele (Komlan 2003a:5). Furthermore, they train registry aids in order to insure that their services during civil marriages correspond to the law and do not harm women's interests (cf. Christophe 7). Finally, several NGOs lobby jointly for a revision of certain articles of the Family Code, in order to strengthen women's power to negotiate the institutionalisation of marriage. As such they suggest to provide the same minimum age of 18 years at marriage for men and women, the non-reimbursement of the bridewealth – even if the marriage does not take place –, and the possibility to remarry after divorce or widowhood as soon as a medical certificate of non-pregnancy is presented (LTDF 1998:12-13).²¹⁰

4.2 Struggling for economic and reproductive rights during marriage

Having discussed in the previous sub-chapter the various options to institutionalise a marriage and some of the negotiations that can be observed around this aspect, the present sub-chapter will focus on conflicts arising during marriage. The focus will be on women's right to work and control budgets, the pressure for married women to have children, and their right to reproductive health. All of these marital problems are typical also for other African countries²¹¹. Furthermore, the causes of these conflicts and the various options to deal with them, both in terms of intra-marital negotiations and other forums to be addressed, will be reflected upon.

4.2.1 *La femme qui travaille n'obéit pas son mari*: Struggling for the right to work

Many married women keenly strive for income and economic success, be it independently from or jointly with their husbands. Thereby they infringe customary norms of women's subordination. The following case studies will explore both women's logics of action and the various strategies they develop to either convince their husbands, circumvent or withstand

²⁰⁹ Cf. ALAFIA 8Mrs01, 10Mrs01, field notes GF2D Evaluation 2001, Komlan (1999a:5), Soeur Geneviève/Bakai (1999:6), GF2D (2000, 1999c:55-93, 1995:12-25).

²¹⁰ These last two NGO-activities of training registry aids and lobbying for a law reform will be discussed in more detail in chapter 7.3.3 and 7.4.1.

²¹¹ Cf. the overview in Gage-Brandon/ Meekers (1993:4-7) with examples from Ghana, Nigeria, Cameroon and Zaïre.

their opposition to them taking up an independent economic activity. Furthermore, the weak improvement that the Family Code provides – running counter to the constitutional right to work – and the activities of NGOs to enforce these improvements will be dealt with.

Dorothee quit her job to join her husband Joseph at his posting in another town, as we have seen in chapter 4.1.2. When Joseph suddenly got a scholarship, they returned to Lomé, where he did further university studies. As she could not find work as a housemaid again, she started a poultry. A couple of years later, they moved again, this time to Kara (415 km north of Lomé) where he became a teacher in a teacher training college.

Contrary to her hopes, Joseph refused to help her with the transport of her poultry, thereby disparaging her work. Thus, she organised the transport on her own, even against his objection. Once arrived in Kara, Dorothee summoned up her courage and contacted a veterinarian and other people, who gave her advice and helped her to build a henhouse to expand her poultry. Furthermore, with the support of the school headmaster, she initiated a school canteen, jointly run by the teachers' wives, where she did the fish smoking. She asked Joseph a couple of times respectfully for money to invest in her business, but he always turned her request down, confronting her with lies and mistrust. Therefore, she decided to rely on herself instead, as she felt awkward in the position of a petitioner:

Je suis quelqu'une qui ne demande pas. Parce que si je demande quelque chose et on ne me donne pas, ça pèse sur moi, et pour pouvoir sortir chez la personne, c'est lourd pour moi. Alors je ne demande pas, pourtant qu'il est mon mari. Mais il gagnait de l'argent, en ce moment il gagnait quand même. Moi aussi, j'essaie de faire pour mon élevage de poules. (Dorothee 1:6)

Nevertheless, she was proud of her achievements and enjoyed having some money at her disposal independently from her husband, although she took care not to show her pride. She had to apply such deferential image policy in order not to provoke any humiliating response. Such humiliation would have to be expected, as a transgression of the marital norm of women's subordination is likely to be encountered with some kind of sanction (cf. WILDAF-Togo 2002:23).

In total, Dorothee moved four times because of Joseph's repeated study periods and postings. As we have seen, she always creatively found new income opportunities. Although the frequent moves hampered her efforts to build up a business, she saw it as her duty as a wife to follow her husband wherever he is posted, thereby conforming to the common viri-local resi-

dence scheme. This allowed her husband to establish himself as “the” bread-winner²¹² of the family while making her more or less economically dependent on him:

Quand je suis quelque part et je suis en train de faire quelque chose, il est affecté, obligatoirement je dois partir. (Dorothee 2:6)

On the other hand, his job had more status (being a government employment²¹³ and based on academic studies), provided access to family allocations and pensions, and was better remunerated than hers. The latter aspect was important for Dorothee, as she was hoping that he would economically support her business. Dorothee conformed to common gender expectations of marital relations in Togo, according to which the wife is supposed to be obedient, stay in the shadow of her husband, and make no demands on him, while the husband is accorded the role of the proud and authoritarian – but responsible – “cock of the walk”.

Another case, illustrating this role expectation, is Catherine, who was accused by her friends and acquaintances of having contributed to the break-down of her marriage by taking too much of a leading role in the family management:

Quand on a commencé les problèmes, il y a des proches qui ont senti que c’est parce que je faisais tout qu’à un moment donné mon mari sentait que j’ai pris sa place. J’ai dit : « Mais moi je travaille. Quand il y a des besoins financiers, je n’attends pas. » Par exemple, la facture d’électricité vient, je vais payer. Mon mari ne connaissait même pas le propriétaire de notre maison, c’est moi qui allait régler tout. Mon mari était très pris dans son service, au point où il revenait à vingt heures, à cinq heures du matin il repart. Donc, je prenais le devant de tout, lui, pour sa contribution, il me remettait l’argent seulement et c’est moi qui m’occupait d’ajouter et d’aller payer les factures. Voilà. (Catherine 2 :34)

Also in Justine’s case, conflicts with her first husband started when she asked him to help her to find work. She regretted to not have been able to finish her professional training because of

²¹² “In former times”, customary norms prescribed that a man had acquired his own fields, built his own house, and proved to be a good farmer, hunter, and fisherman (in river-fishing), capable of providing for a wife and children, before he could marry. Often, a man was in his thirties before he achieved this status (Mancraro 2:9, Kuwonou 1996:12). Nowadays, if the bridegroom isn’t a farmer, it is expected that he has finished his professional training or studies (Abotsi s.d. 29), i.e. the husband was and continues to be constructed as the main bread-winner of the family. Since 1980 this is confirmed by the Family Code, which stipulates that – although both spouses are supposed to contribute to the household expenses – the main responsibility remains with the husband, who is automatically the *chef de famille*. The wife can only become head of the family if her husband is unable to manifest his will (art. 101, 102, 103 CPF).

²¹³ The events described for Dorothee happened more than 20 years ago. Since the economic decline of the country and empty government budgets, especially in the 1990s (reinforced by the general strike of 1993), the government took the habit of delaying or even suspending the payment of salaries and pensions for its officials – let alone to effect any rises of salaries – and the status of working in the public sector generally decreased (Ludermann 2003:107, Scheen 2003).

her pregnancy and was hoping to find a job in teaching or as a social worker, or else to “go back to school” and receive training as a midwife. Justine argued:

Moi aussi j’ai été à l’école pour devenir quelque chose, pour pouvoir supporter mes parents en temps de vieillesse (Justine 1:27).

She wanted to make use of her schooling and work in order to gain professional prestige and economic capital which would permit her to fulfil her social obligations independently from her husband, such as to be able to support her aging parents. She formulated this as a right she wished to exert in equality with her husband (*moi aussi...*) and as a wish for and a right to personal fulfilment (*pour devenir quelque chose*). Yet, despite her repeated requests, her husband did not respond. He preferred his wife to stay at home and cook for him.

The same way as she had ignored her father’s objection to her marriage (see chapter 4.1.3), Justine now disregarded the objection of her husband and accepted the offer of missionaries to work as a replacement teacher in catholic schools. After a short while, they demanded her to confirm her marriage in church. Like many other women would do in her situation (see above) she readily agreed, as she hoped that this would increase the formal stability of her marriage and represent a moral protection against polygyny. However, her husband refused, saying that he wanted to eventually marry a second wife. After an ultimatum the missionaries finally dismissed her (Justine 1:27-28). Her husband thus had managed to keep his polygynous options open, which permitted him on top to avoid his wife becoming economically independent.

According to Dorothée, men’s lack of support or outright opposition to their wives earning their own money is due to their fear to lose their superiority and control over them:

La femme qui travaille n’obéit pas son mari, toujours comme ça c’est leur souci, que s’il y a une femme qui a beaucoup d’argent, elle n’obéit pas son mari. Mais ce n’est pas comme ça! Si la femme a un peu, toi aussi tu as un peu, vous allez vivre en paix ou bien à l’aise, moi, c’est ce que moi j’ai vu. [Et mon mari aussi] il a eu peur, que si j’ai beaucoup de l’argent je ne vais pas obéir. (Dorothée 2:6).

Husbands’ expectation to be the commanding head of household and the breadwinner of the family (implying the wife’s economic dependence on him) characterizes gender relations in Togo (cf. Rivière 1984:387). This model was promoted for over a hundred years by manifold actors: First explicitly by German missionaries, then by the German and French colonial rulers, furthermore by development projects throughout the sixties, seventies and eighties: The situation of many other countries, where development projects focused on extension services and new technologies for male farmers, assuming “that the male household head controlled

the forces of production, land, labour, crops, and finances, and would be responsible for redistributing [within his household] any increases in his income as the result of technological assistance” (White 1999:127, cf. Lachenmann 1992b, 1995a) applies to Togo as well (cf. Rép. Togolaise 1997:4)²¹⁴. On the one hand, the economic decline of the country forced many men to nevertheless accept their wives’ economic activities in order to maintain the family. On the other hand, as our cases show, many women in Togo – as elsewhere in Africa – do actively and often successfully withstand the above described ‘housewifization’ (*Hausfrauisierung*, cf. Mies et al. 1991) which is coming along with the devaluation and subordination of their work.

Unfortunately, the Togolese Family Code of 1980 confirmed the husband’s right, within a civil marriage, to forbid his wife to practice a profession separate from him (art. 109 CPF). She is not allowed to take up paid work outside the household, if he estimates her work to harm the interest of the family. This stipulation turns women into legal minors and makes them economically dependent on their husbands. It runs counter to the gender equal right to work, accorded explicitly by the Togolese Constitution of 1992 (art. 37). So far, women’s rights NGOs lobbied in vain to change this and other stipulations of the Family Code (LTDF 1998:12, cf. chapter 7.4.1). However, as opposed to the Constitution, the Family Code is perfectly known to many men in Togo, who do not hesitate to forbid their wife any such work (Rép. Togolaise 2001:60, WILDAF-Togo 2002/2003b:18-19). Only through the activity of voluntary paralegals and legal counselling centres, run by NGOs, do more and more women learn that the same article of the Family Code provides for courts to authorise wives to ignore their husband’s opposition if the latter is not justified by the interest of the family (GF2D 1995:17-18). With the help of these NGOs more and more women do go to court and claim this right (Marlène 1:5).

²¹⁴ This is still nowadays the dominant attitude of the togolese government, as is mirrored for instance in the first draft of the CEDAW report (Rep. Togolaise 2001:30) which states that men are doing the physically demanding agricultural tasks while women only “contribute”, that men take all the decisions as to which crops to cultivate and which shares to retain for consumption or sale; furthermore, that mostly men are “*chefs d’exploitation*”, a statement which the report underlines by referring to agricultural statistics that count 80% of households to be managed by a man. Such a logic of argumentation, marked by a lack of analysis and a repetition of stereotypes and doubtful statistics, is likely to lead to wrong conclusions and create or perpetuate unequal power relations within marital couples as well as exclude women from land, agricultural extension, credit and economic opportunities in general (cf. also Lachenmann 1992a:78-79, 1992b:128-129).

4.2.2 Disputing marital budgets: Gendered aspects of social support to enforce economic rights and obligations

This section will focus on the societal expectations and the underlying normative orders around the control of marital budgets as well as the changing possibilities and aspirations of spouses to respond to these expectations. At the same time, women's strategies to avoid such tensions and their options, in terms of possible forums to address in case of marital conflicts as well as the respective social resources needed, will be explored.

In a customary marriage it is expected, in accordance with the above-described model of the male bread-winner, that the husband provides for his wife and children – i.e. for their housing, food, clothing, medical and spiritual expenses –, independently of his wife's income. If the wife earns money, she can contribute to the household expenses, but the main responsibility – especially for the children – remains with the husband²¹⁵. For civil marriages, the Family Code obliges both spouses to contribute to the household expenses according to their respective means, but the main responsibility remains with the husband (art. 102 CPF). This law introduced further innovations in that it specified that the wife's housework can be counted as her household contribution. If the husband fails to contribute, leaving the wife to bear the main financial charges of the family, she can ask the court to order a deduction of his salary to be paid directly to her (art. 103 CPF).

However, women's rights NGOs complain that the (mostly male) judges are very reticent to apply these articles (WILDAF-Togo 2002/2003b:25), confirming, once more, male-biased practices of law-enforcement. Only recently, after a specific training of judicial and extra-judicial authorities on women's rights, deployed by WILDAF, some judges started to rigorously apply these articles: For instance, in the *Ordonnance N° 018/2003* the judge reminded the husband of his obligation to provide for his wife and children and ordered to deduce 100.000 Francs CFA from his salary to be paid to his wife for the children. In cases where the husband is a farmer and his income more difficult to access, another judge ordered the negligent husband to regularly pay the mother of his children in food stuff and other products of first necessity (Komlan 2003a:28).

In Dorothée's case, her husband gave her weekly money for the food, but nothing for the other expenses (such as clothing, health²¹⁶, or later the schooling of their daughter), not even

²¹⁵ Cf. Dorothée 2:31, Mancraro 2:17, Mary 1:1, Latif 2:11, Rivière (1984:387), Szwork (1981:65).

²¹⁶ Only when Dorothée delivered at the hospital, the hospital bill was automatically subtracted from his salary.

on especial occasions, and – as was mentioned above – nothing to help her build-up her own business either. Dorothée complained to one of her brothers-in-law. This was quite a risky undertaking as they could have tried to defend Joseph by accusing her of being ungrateful and *gaduto*, i.e. the one who “eats money” and ruins their beloved brother, which would have been quite a common reaction (cf. Mensah-Amendah 2002:63). Yet her brother-in-law tried to help her and reminded Joseph of his marital obligations by giving him an example: He bought a lady’s outfit and told his brother to give it to his wife. But Joseph didn’t take the hint:

Après la dot, c’est le pagne là qu’il m’a donné, puis c’est fini. (Dorothée 2:25)

Obviously, Dorothée’s brother-in-law was unable to effectively sanction her husband, as the latter was economically and socially autonomous from his family. On the other hand, Joseph’s refusal to provide for Dorothée could also have its explanation in the above described individualization of bridewealth and its convenient use by husbands to free themselves from marital economic obligations (see chapter 4.1.1). However, this male strategy does not remain unchallenged by women, as many such conflicts testify.

As her efforts to get support among her in-laws were not successful, Dorothée could have complained to the chief (Latif 1:9, Secr. Chefferie 1:11). On the one hand, her chances to claim her husband’s household contribution would have increased after she bore a child (see below). On the other hand, to be economically neglected by one’s husband is such a common problem for women in Togo²¹⁷, especially with the impoverishment of big parts of the population since the 1980s, that she would have needed a strong advocacy to make herself heard. But neither was she at home in any of the places where she lived with Joseph – in some places she didn’t even speak the local language that would be used by customary authorities –, nor did she have any close relatives nearby who could have supported her. The relation with her canteen colleagues was obviously too recent to provide support in legal affairs. Furthermore, the latter belonged to her husband’s workplace, and if she stirred up conflict there, she might risk to lose her own job. She couldn’t address state courts either, as her marriage was not formally registered and her claims therefore would not be recognized by the state (cf. art. 76 CPF). As to those officials who emanate from the state but mediate or interfere also in customary affairs (such as the district officer, the mayor, and the police), she could be sure that Joseph would have the whip hand, as – through his school education, his academic studies,

²¹⁷ For instance, out of 675 legal counselling sessions given at the *Maison de la Femme/CRIFF* in Lomé between 1.1.1990 and 30.6.2000, 115 sessions had to deal with maintenance problems (CRIFF13March01).

and his employment by the state – he knew his way in the state institutions and was well connected there, a social capital not accessible to her.

Looking from a historical perspective, neither the customary nor the statutory model of marital economy corresponded ever fully to everyday experiences of large parts of the population. For at least 120 years many women, including unmarried and married ones, have been active in the marketing of agricultural products and trade (cf. Meyer 1999b:7, Lallemand 1994:40-42, White 1999:83, Lawrence 2003) thereby having their own incomes at their disposal. As well already since colonial times, women's responsibility for the subsistence agriculture steadily increased, going along with men's involvement in cash crop production and paid labour, the incomes of which men however increasingly kept for themselves (Meyer 1999b:7, Rép. Togolaise 1997:4). Furthermore, with the decline of Togo's economy since the 1980s through falling prices for export products such as Coffee, cocoa, and phosphate on the world market, followed by structural adjustment programmes, male employment and incomes decreased, making it more and more difficult for husbands to fulfil their marital household obligations. In this situation more and more women – in Togo like elsewhere in West Africa – were forced to secure the survival of the family by starting small businesses in the so-called informal sector, such as with hot food stalls, hairdressing, tailoring, trade of all kind, for instance in food staples, clothes, charcoal, phone cards, cooking utensils etc. (cf. also Frey-Nankonz 1984:203, Lachenmann 1996a, Zdunnek 1987:56-60). In town, women employed as housemaids and nannies also got modestly paid. With increasing school enrolment, some women also found jobs in the service sector and in the public sector²¹⁸.

In the case of Aku²¹⁹, neither her husband nor her mother-in-law provided for her. When she complained to her husband, he grumbled back “whether she was a pig that he bought in order to put food next to her”. This aggressive response shows the tensions created by the husband's inability to provide for his wife. The deprivations Aku suffered are mirrored in the fact that six of her ten children died as babies. In order to survive and feed her children she started to seasonally migrate to Lomé, where she worked at the central market (*asigame*), reselling vegetables as a petty ambulant seller. Her relationship with her husband only improved once

²¹⁸ According to the Demographic and Health Survey of 1998, two thirds of all women between the age of 15 and 49 in Togo are “working” (both in the formal and informal sector, including seasonal and occasional work). Of those, 81% are making money. Out of these, more than two thirds are working on their own account (Anipah et al. 1999:23-24). Although such statistics have to be taken cautiously, as the underlining definition for “working” is not quite clear, they nevertheless indicate the high percentage of women who have some income.

²¹⁹ For biographical background information on Aku see the annexA1.

he had started to work and earn some money himself and thus was able to support his family at least sporadically (Aku 1:3-4):

Donc, maintenant il ne m'insulte plus, parce que lui même il fait des marchés. Quand il va dans un village il m'apporte quand même du maïs, de la nourriture. Donc il n'est plus dur comme avant. Ça a fait que je suis toujours avec mon mari. (Aku 1:4)

NGO-paralegal advisors (*parajuristes*) often have to deal with violent marital conflicts²²⁰, erupting because the income-earning husband does not provide for his wife and children or, less frequently, because the wife refuses to contribute to the household expenses, even if she earns money, while her husband is out of work. In such cases, the paralegal advisors inform the litigants that, according to the Family Code, the husband has the main responsibility, but both partners have to contribute in accordance with their possibilities (Benida 1:9, Sophie 1:3, field notes GF2D Evaluation 2003).

We conclude from the above observations, that marital expectations concerning the distribution of economic responsibilities among spouses (which are reinforced by customary, Muslim, and state legal systems) do not correspond to the spouses' economic possibilities anymore. The latter are less reliable and clear-cut in their gender-division than they might have been in pre-colonial times, when men were in control of the agricultural resources of land and work force, while women nevertheless had their specific economic and social spaces, including user rights to land (cf. Lachenmann 1992a:78-79). This new gap between societal expectations and realistic chances to fulfil them, or else this lagging of norms behind economic changes, causes manifold frustrations in everyday life and lies at the heart of many marital conflicts.

Coming back to Dorothée's case, instead of supporting Dorothée, Joseph continuously asked *her* for money, referring to his outstanding salary²²¹. She helped him out a couple of times until, one day, she caught him counting his hidden money. She did not question his right to dispose of his money as he wished, but criticized his dishonesty and inability to communicate in a spirit of partnership. But as he became aggressive, she fell silent in order not to provoke him any further. Following her mother's model, she continued to fulfil her marital duties (such as to cook for her husband, which is a central marital obligation, but stands symbolically also for

²²⁰ An analysis of hospital registers in Lomé revealed the regular rise of women victims of conjugal violence during the second half of every month, because the husbands run out of money, are unable to fulfil their social obligation of providing for the family, and try to re-impose themselves as heads of family over their wives who start to replace them in their role as the main bread-winner of the family. The same increase in violence cases was observed in the month of September, when husbands are unable to pay for the school fees of their children (WILDAF-Togo 2002:16).

²²¹ This was a very plausible claim, as the government frequently puts the payment of its officials on hold, for lack of state resources.

other marital obligations, such as sexual services) despite the lack of financial support from him.

[Quand je l'ai vu cacher son argent] j'ai dit : « Qu'est-ce que tu caches, l'argent ? Oh, il faut pas faire comme ça. Ce qui est à moi, c'est à moi. Si tu me donnes, je peux prendre. Mais si tu me donnes pas, tant pis, c'est ton argent ! » Il s'est énervé. Moi, (...) je ne dis rien (...). Moi, j'ai dit que ma mère a souffert plus que ça. Moi aussi je devais le faire, c'est mon devoir. Je prépare [à manger] s'il me donne de l'argent. S'il ne me donne pas, je prépare quand même. (Dorothee 1:7)

In the beginning of their marriage Dorothee had trustingly shown Joseph all the money she earned. Her vision had been to both contribute to the household expenses and her husband to provide her with some extra money for her business, so that they could build up the family economy in a spirit of partnership²²². This would not exclude that they keep separate budgets, which is the common property scheme in Togo, according to both customary and state norms, as well as in most other West African countries (cf. Kasmann/Koerner 1992:70-73).

Apart from the incentive to control one's own money, the separation of budgets protects the wife from the in-laws' suspicion²²³ that she might take advantage of their son and feather her nest at their expense²²⁴:

Au Togo ce n'est pas prudent de faire des biens communs. Parce que même si le mari est compréhensible, c'est la belle-famille qui crée des problèmes, et c'est toujours au détriment de la femme. (Catherine 2 :29)

However, Dorothee's vision of a mutual economic support between husband and wife was not shared by Joseph. To the contrary, he breached her trust and tried to impose himself as the family manager who should also control (and use) *her* money. Once she had realized this, she stopped both to give him money and to inform him about her income, thus withdrawing it from his control and setting her own priorities, such as to fulfil her daughterly obligations to-

²²² The idea of investing income shares from (often male) formal employment into (often female) informal businesses, is typical for female economies and shows that the distinctions between the formal sector, the informal sector and subsistence economy are rather fluid, building a continuous structure of social and economic room for manoeuvre for women (Lachenmann/ Dannecker 2001).

²²³ This suspicion of a man's family of origin towards his wife or wives becomes a central motor for conflicts in case the son dies, as both the widow and the parents of the deceased compete for his resources (cf. chapter 5.2.1 and 5.3.2).

²²⁴ Similar suspicions mark the relationship between women and their in-laws in many patri-linear societies of Africa, as for example among the *Shona* in Zimbabwe: Here, the daughter-in-law is expected to support her in-laws by working on their fields or giving them material help. This expectation is justified with the bridewealth they paid for her. It is the in-laws' way of securing continuous access to their son's resources, which the daughter-in-law is accused of "eating" (cf. Schneider 2000:139-147).

wards her family of origin (by financially helping her old mother) and to invest in her own business:

Il pense pour lui. C'est pourquoi, moi aussi j'ai appris ça chez lui. (Dorothee 2:31)

The gendered construction of marital obligations becomes again visible, if we consider that the husband is supposed to provide for his family, while his wife is expected to be submissive and obedient, neither asking questions nor complaining. This puts the husband in a powerful situation, in which he is free to do whatever suits him best. Joseph strategically used this room for manoeuvre in order to accumulate as much money as possible and invest it to his own benefit. However, in one point Dorothee's desire to build-up something together with Joseph was very successful as, during the years they lived in Kara, they jointly put some money aside and built a house in Lomé, which became important after their separation (see further below).

4.2.3 *Dans le foyer, s'il n'y a pas d'enfant, c'est rien!* – Negotiating reproductive rights and obligations

This section explores marital expectations concerning offspring, different gender-specific options that the respective normative orders provide to react to childlessness and their viability. Again, women's strategies to claim or contest these norms as well as the role of social support systems will be discussed.

According to customary norms in Togo, procreation is seen as the main objective of marriage and the base of most marital rights. This high social value accorded to fertility and procreation is embedded in the animist world of meaning. Married women are expected to produce offspring for their husband's lineage to allow them to continue the sacred cycle of the ancestral, living and unborn family members. A childless wife thus often has to face hostility or rejection by her in-laws.

For many years, Dorothee and Joseph did not have any children. This put Dorothee under a lot of pressure and she was afraid that her in-laws might encourage her husband to take another wife:

On avait des problèmes maintenant, sérieusement! On n'a pas d'enfants. On devait avoir un enfant. Dans le foyer, s'il n'y a pas d'enfant, c'est rien! [...] Si tu te maries, tu n'as pas d'enfants, donc saches que tu ne seras pas aimée dans la belle-famille. Tantôt ils vont dire que leur fils n'a qu'à aller ailleurs pour voir si c'est lui, tantôt eux-mêmes ils vont amener une autre à leur fils. J'ai lutté pour avoir d'enfant, tu vois ? [...] Donc, si tu n'as pas donné d'enfants, on ne te considère pas. (Dorothee 1:8, 2:14)

Among the togolese *Ewe*, to have many descendants is a sign of spiritual power and ensures a prestigious funeral (Rivière 1984:378)²²⁵. If a woman is sterile, it is assumed that she violated the spiritual-moral order of society (for instance by committing adultery) and is being punished by a *vodu* who prevents her fertility²²⁶. If this assumption gets confirmed by a *fa*-diviner, she has either to pay for and undergo purification ceremonies or – in extreme cases – be initiated into the cult of the *vodu* concerned, which can take several months to years, in order to appease the *vodu* and be “cured” from her barrenness. In other cases, childless women are accused of having “eaten” their own or other women’s baby, a synonym for having killed the child by witchcraft. Both suspicions provoke societal contempt that can go as far as to expel the suspected woman from the community²²⁷ (Abotsi s.d. 47, Elwert-Kretschmer 1997:116-117, Kuwonou 1996:7). This is translated into pressuring women to get pregnant. Childless women are thus denigrated as being arrogant, of bad character, selfish or “useless to this world” (Benida 2:4):

Si on n’a pas d’enfant, les gens disent que tu es une traînée, ou bien que tu es en train de voir plus haut que toi ! Et les hommes te fuient, que vraiment tu n’as pas un bon caractère ! (Anita 4:10, 12)

This high esteem for procreation is also explained in terms of the economy of the region: A peasant society needs to provide every household with a sufficient number of young people to work in the fields as its most important means of production. As these are “produced” by fertile women, the kinship group exerts great social control on fertile women through the bridewealth system (Elwert 1984a:96). Before colonial times, land was abundant and agricultural labour force generally scarce, due to high rates in child mortality as well as the loss of people through enslavement and slave trade. In such a situation a numerous progeny was essential in order to acquire wealth and status. However, with the increase of land scarcity and individual land ownership since colonial times, together with the tendency for land partition through inheritance, a high number of children became detrimental to economic success, as a

²²⁵ Similarly, Donadjè writes about the *Ewé* and *Fon* of southern Benin, that a person who dies without leaving a single descendant (male or female) who will mourn and bury him or her, is likely to be rejected by society. Procreation is considered to be the duty to continue the work of the mythic ancestor (Donadjè 1992:12-13, cited in Kuwonou 1996:7).

²²⁶ Also among the northern *Bassar*, a woman’s sterility is attributed to her having offended an ancestor or a spirit, and she is requested to repair her faults with sacrificing to the offended spirit (Szwark 1981:44-46).

²²⁷ In Northern Ghana there exist four *outcast homes*, i.e. whole villages for women who were expelled from their communities after being accused to be witches. The accused women are mostly elderly, sick or disabled, poor, widowed, or childless and rather self-conscious than obedient. These *outcast homes* host also alleged witches from the neighbouring countries, including Togo (Schauber 2003:44-46).

limited parcel of land had to be distributed among a growing number of inheritors (Mignot 1985:245, cf. White 1999:67, 85). Nevertheless, the valuation of fertility hardly diminished, probably due to the decreasing role of the lineage and a subsequent shift of security responsibilities (for sickness, old age and widowhood) to the offspring. It is also due to this security aspect that the lack of children evokes societal concern²²⁸ (Elwert-Kretschmer 1997:116).

Nevertheless, childless women can earn respect through commercial or religious activities and their contribution to raise lineage children²²⁹ (Rosenthal 1998:41). This was the case for Anita, who compensated her childlessness with the take-over of considerable economic responsibilities for her relatives, especially for the children's education and professional training (cf. chapter 3.3.4). However, this logic of compensation does not lead as far as adoption. The latter is not a common practice in Togo, because of the emphasis on patri-lineal blood-bonds in inheritance of land, whereas the statutory laws stipulate that an adopted child receives the same rights as a natural child (art. 231 CPF). It is rather frequent for less wealthy or rural families to have their children fostered by more wealthy relatives, especially if the latter live in town and are able to send the child to school. The foster parents then also become the guardians of the child²³⁰. But this does not release the foster mothers from the obligation to have children themselves.

Consequently, infertility is an accepted reason for divorce by customary as well as Christian and Muslim norms; also the Family Law (art. 109/4 CPF) gives medically confirmed sterility of the husband or wife as a reason for divorce.

Not surprisingly, the pressure to have offspring was felt more by Dorothee than by Joseph. She became sexually demanding on him and also suggested to try to get medical help, while he thought to solve the problem by "seeing" other women:

[...] quand je ne donne pas d'enfant. Mais lui, il s'en fout ! Je l'oblige chaque fois, je l'oblige chaque fois. Après tout, il dit que oui, je ne suis pas la seule, qu'il veut aller tenter [avec d'autres femmes]. Et il a tenté, il n'a pas réussi. [...] Moi, quand j'ai un peu d'argent, je lui dit que comme ça ne vient pas, on va aller à l'hôpital. Il dit : Oh non ! que je n'ai qu'à aller premièrement. Je n'ai pas hésité. J'ai fait plusieurs analysis et il me prescrit beaucoup aussi de médicaments. J'achètes pour pouvoir être enceinte (Dorothee 1 :8, 2:12)

²²⁸ Among the *Kotokoli* of central Togo, a childless woman can regain some security when coming to age, as then she is welcome to stay with her eldest brother, where she enjoys a considerable status as *la grande femme issue du lignage* (the eldest woman of the lineage) responsible for ancestral mediation between the living and the deceased family members (Lallemand 1994:139-141).

²²⁹ Cf. also Anita's case in chapter 3.3.

²³⁰ Cf. Lallemand (1994:123) for the *Kotokoli* of central Togo and Alber (2003) for the *Baatombu* in neighbouring Benin.

Joseph's "solution" is accepted in customary legal thinking, which puts the interests of the husband's patri-lineage to get offspring clearly before the wife's interest in keeping the husband attached to herself. Furthermore, whereas the Family Code obliges the married couple to mutual fidelity (art. 100 CPF) and requires the wife's prior consent to a polygynous union (art. 42, 50, 52 CPF), customary norms have a double standard for men and women. While sexual unfaithfulness of a wife is severely punished by purification rites, battering, or repudiation, a husband's unfaithfulness (*il a mis son pied dans la brousse*) only counts as adultery if committed with a married woman. Otherwise, his extra-marital affairs are able to enhance his status, the same as his extra-marital children, which are playfully called *des balles perdues* (Martine 2:7,17, CRIFF19Apr01).

Against that, Dorothée's way of proceeding is contrary to customary norms. The latter expect the wife to be submissive to her husband, instead of publicly shaming him by exposing his possible infertility to an outsider, such as a medical doctor. Likewise Christian norms are not in favour of an open discussion of reproductive health and sexuality and tend to reinforce customary taboos (Ulferts 1994:154). But, apart from the above mentioned state law, also international women's rights standards, signed by the Togolese government, support Dorothée's initiative in that they accord women the right to control their fertility and access reproductive health services. As such we have to cite the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) of 1973, the Programme for Action of the Cairo International Conference on Population and Development of 1994, and the Platform for Action of the Beijing World Conference on Women of 1995.

When Joseph didn't support Dorothée's effort to get medical help, she went on her own to see a doctor. As the treatment didn't have the desired effect, she asked the doctor to include her husband in the treatment, thus touching upon a taboo: The doctor as well as Joseph's female cousin and even Dorothée's own brother let her implicitly know that a wife is not supposed to question her husband's procreative capability, equalized with his masculinity, it being always the woman to be blamed for the lack of offspring (cf. also Gayibor 1999:6):

Un jour je dis au docteur : « Donc, c'est moi seule qui doit venir à l'hôpital? Mon mari aussi doit venir ». Il dit : « Oui. » [Je demande :] « Et pourquoi vous ne l'invitez pas ? » Il rit. Je dis: "Docteur, il faut prescrire quelque chose à mon mari aussi ». Le docteur me demande : « Est-ce qu'il ne va pas se fâcher ? » [Je répons:] « Pourquoi se fâcher ? Je veux son bien, non ? Il faut lui prescrire. S'il ne veut pas acheter, moi je suis capable maintenant, je peux lui acheter. » On nous a prescrit les médicaments. Le jour là, il y a un de mes frères qui a vu le papier, il dit: « Ah Dorothée, ton mari ne sera pas fâché ? » (Dorothée 1:8)

This male bias of the health personnel considerably weakened Dorothée's position in this negotiation. This gendered attitude was, however, supported by another set of state laws and policies regarding access to contraception: Up until 1992 the official policy in Togo²³¹, applied by most health centres, was that women could only acquire modern contraceptives with a written authorisation from their husband. Furthermore, according to a law of 1920²³², the husband could (and still can) even sue his wife in court if she used a contraceptive method against his will (Ulferts 1994:157, UNFPA 1996:20). Although Dorothée was not in search for contraception but for a treatment to improve her fertility, this law and policy, confirming husbands' authority over their wives' sexuality and reproductive health, was likely to undermine her endeavour.

Dorothée's high level of information on the possibilities of medical treatment and her initiative to solve the problem were rather unusual at the time, as during the 1980s, i.e. the period of Dorothée's struggles, reproductive health services were still scarce in Togo. For instance, the main organisation providing such services, the *Association Togolaise pour le Bien-Etre Familial (ATBEF)*²³³, was only founded in 1975. However, nowadays Togo counts more than 150 family planning centres, run mostly by NGOs, dispersed both in urban and rural areas (UNFPA 1996:33). Apart from these centres, also women's rights NGOs, such as GF2D and ALAFIA, inform women on reproductive health issues. The ministry of health, supported by GF2D and UNFPA, even undertook a training of health personnel on gender issues.

As Joseph was not willing to contribute to the expenses, Dorothée paid the medicine for both of them. Her prior insistence on making her own money thus paid off, as it allowed her to take the issue in her hands. Joseph was very reluctant to take the medicine, but she insisted, enduring many quarrels with him. Finally she got pregnant and gave birth to a girl child.

Mais j'ai souffert trop!! avant qu'il ne prenne les médicaments. Il n'a pas voulu ! Il n'a pas voulu. (Dorothée 1:8)

After several years the same conflict erupted again, as one child is not considered to be sufficient for a married couple²³⁴. This time, however, Dorothée was not successful in her negotiations: Joseph – backed up by his family – could not be convinced to see a doctor, but blamed

²³¹ Cf. the *Document de politique et standard en matière de santé* (UNFPA 1996:20).

²³² This law is generally referred to as *Loi de 1920 sur la propagande anticonceptionnelle* (Rép. Togolaise 1997:40). Several NGOs, supported by UNFPA, lobby for its abolition.

²³³ ATBEF is supported by the government and affiliated to the *International Planned Parenthood Federation (IPPF)*.

²³⁴ The pressure to have another child was not due to the fact that the first child was a girl, as the priority given to boy children is generally not extended to this degree.

her for their childlessness and threatened again to find himself other women if she remained barren:

Il dit que non, qu'il ne veut pas aller à l'hôpital, qu'il sait qu'il n'est pas malade. Que oui, lui il peut épouser d'autres femmes. Que s'il n'arrive pas à me satisfaire, ça provient de moi-même. [...] même la fille de son oncle a dit que le problème ne vient pas de chez son frère, que c'est moi, c'est ce qu'ils ont dit. Et c'est après tout ça que pour la deuxième fois, comme j'avais appris tout ça, j'ai dit je ne veux plus, s'il veut aller ailleurs, il n'a qu'à aller (Dorothee 1:9, 2:15)

Dorothee got very angry about the hypocrisy of her in-laws, who also accused her for their childlessness against better judgement in order to save money, cover-up for Joseph's eventual infertility, and ultimately legitimise his separation from her, which followed soon after. Although Dorothee succeeded in getting medical help and having a child, she had to "pay" her initiative and insistence with the breakdown of her marriage. In retrospective Dorothee takes distance to the social pressure of having offspring, considering the high child mortality, the economic difficulties to raise children nowadays, and the unreliability of the in-law's support:

Avoir des enfants? Ma mère a donné plusieurs, nous sommes combien qui restent ? Si moi je ne donne pas, tant pis ! Ma sœur a donné sept, est-ce qu'elle arrive à supporter les enfants ? Ils se promènent ! (Dorothee 2:17)

Anita, on the other hand, managed to withstand the social pressure. She refers to her long formal education and professional training to explain that she does not have a child *yet*. She also gives the costs to raise a child, plus the irresponsibility of many men who disappear when the woman gets pregnant, as main argument. To this she adds that those women who put the most pressure on her would be the least to contribute to raise a child. She counters her relatives' critique about her childlessness with the threat that she would immediately cut her financial support to them if she became pregnant.

Moi, je suis capable de faire un enfant. Il faut pas penser que je suis stérile. Si je veux, je vais le faire, je sais comment planifier mes trucs. C'est pas pour rien que j'ai fait des études. Donc il faut pas me dire que je suis une traînée. [...]

Ma tante maternelle, elle me dit: « Eh, eh, eh, que le dos la gratte, le dos la gratte, qu'il faut faire un enfant qu'elle va porter sur le dos. » Les gens disent: « Il faut faire un enfant, il faut faire un enfant! » Moi, je leur dis: « C'est bien beau de faire un enfant. Mais moi, je suis prudente. Il y a des hommes irresponsables. Si tu es enceinte ils disent: Mais on n'a pas parlé d'enfant ! » Il faut que le papa soit là pour contribuer ! Je n'ai pas pu trouver un mari qui est avec moi à la maison. [...]

Il y a certaines femmes qui préfèrent faire un enfant à quelqu'un comme ça. Moi, j'ai dit: « Non, je ne peux pas. » Il y a une de mes cousines qui a fait ça. Maintenant l'enfant est à sa charge. Mais elle n'a pas trouvé un boulot, elle fait un peu les glaces qu'elle vend, mais elle n'a pas une bonne situation en tant que tel [pour élever un enfant]. Donc il ne faut pas. J'ai dit à mes tantes: « Combien vous lui avez donné ? Com-

bien ? Qui d'entre vous peut prendre l'enfant et l'éduquer [payer pour les frais de scolarité etc.] ? » Les gens me disent : « Mais qu'est-ce que ça va te coûter ? Toi même tu peux l'élever. » Moi, j'ai dit à ma tante : « Si c'est mon enfant que tu attends là, peut-être c'est dans ta propre peau que tu vas trouver ça {*laughs*...}. Si j'ai un enfant maintenant, je vais plus vous donner un franc ! » Ils disent : « Il faut faire un enfant. Il faut pas nous donner de l'argent. J'ai dit : Eh ! Vous mentez, je vous connais bien ! » {*laughs*}. (Anita 4:9-13)

This shows that, although mothers of many children are highly esteemed in society and have accordingly more power to negotiate their rights, it is women's economic independence and formal education that enhances their self-confidence, helping them to question societal norms about procreation and insist on their right to control their fertility.

4.3 Dissolving marriage and negotiating child custody, maintenance, and housing support

This sub-chapter focuses on negotiations that are taking place in order to avoid or initiate the breaking up of both customary and civil marriages, as well as the various rights being negotiated if such a divorce²³⁵ takes place. Wherever NGOs have become active in working on practical and structural changes in order to improve women's negotiating power, this will be discussed too.

4.3.1 Customary divorce upon the woman's initiative

Divorce rates in Togo are estimated to be "fairly high"²³⁶ and increasing over time as well as from rural to urban areas. This is attributed, on the one hand, to increasing difficulties for men to provide for their families and the subsequent reduction of economic cooperation between spouses. On the other hand, it is explained by a loosening of lineage ties and a shift from a lineage-based economy to individual production, with the consequence of diminishing family control of and assistance to couples to avoid their separation (Meekers/Gage 1995:4-5, 11).

Customary divorce proceedings are initiated predominantly by women. This is explained by the fact that

²³⁵ The term "divorce" stands here for a definite separation of a couple, independently of the existence and type of marriage institutionalisation.

²³⁶ No reliable statistical data are available on divorce. The most recent Demographic and Health Survey from Togo (Anipah et al. 1999:72) does only give the rate of women who, at the time of the survey, were divorced without having remarried, which was 1,5%. However, this is not very helpful as most women in Togo remarry soon after a divorce.

“for women divorce or separation is the only solution to an unsatisfactory marriage, but for men divorce is not necessary since polygyny provides them with the ability to marry an additional wife. [Furthermore] when women become economically independent, they are increasingly able to bypass lineage authority over their marriage, and may choose to terminate an unsatisfactory union” (Meekers/Gage 1995:5, referring to Nukunya 1969:108).

As was described above, Justine was very unhappy in her first marriage, because her husband beat her and did not allow her to work. One day, after having endured this relationship for eleven years, she took her children and “ran away” to her father. In case a run-away wife returns after some time to her husband – especially after he came and asked her to reconcile –, the temporary separation is a common strategy to reduce marital tensions (Gage-Brandon/Meekers 1993:24). But Justine did not envisage to reconcile with her husband. She approached her father personally and in the appropriate respectful way²³⁷, showing remorse about having eloped eleven years ago and re-submitting to his paternal authority and responsibility. Justine’s original failure to obtain her parents’ consent for her marriage could have resulted in her kin refusing to support her now (cf. Meekers/Gage 1995:8). But Justine’s father accepted her coming home and wanting to separate from her husband.

Thus, when after a while her husband showed up with his younger brother to ask her to come back, her family council gathered and discussed with them. Justine’s argument for not wanting to return to him was his repeated and “unjustified” battering. She thereby demonstrated her ability to handle the customary legal system, as this was a complaint recognized in customary terms for a divorce. Compared with that, his opposition to her taking up a paid job would not have been an admissible argument, as this behaviour is in line with the customary expectation of a husband’s superior decision-making power in all matters relating to the family.

During that session, Justine’s family was much better represented than her husband’s. The fact that only his younger brother showed up confirmed that his marriage to Justine was hardly supported by his family. This made it easy for Justine’s family to “judge” that it was him who was “in the wrong”²³⁸. But instead of fining him to pay some bottles of hard drinks

²³⁷ She did so by going to talk to him in the early morning hours following the evening of her arrival, which is the proper time to settle conflicts (Amege 1963:33-34).

²³⁸ The vocabulary used clearly depicts the self-understanding of the family council as a legal forum:

Quand il y a bagarre et l’homme bat la femme, et la femme quitte son mari pour aller chez ses parents, bon, des fois l’homme vient chez la belle-famille pour dire ce qui se passe, et les deux familles se regroupent pour discuter de ce qu’il y a. Bon, pour la femme, qu’est-ce qu’ils *jugent*? S’ils voient que la femme *a tort*, ils *amendent* un peu la femme et puis ils la font retourner. Si c’est l’homme qui *a tort*,

to settle things with the ancestors and then send Justine back to him – which would have been the usual way of acting –, they decided that she should rejoin her husband only if he paid the outstanding bridewealth.

As from the beginning Justine’s family had neither been involved in setting up this marriage, nor had they established friendship ties with Justine’s in-laws, they did not have much interest in keeping up this marriage. While, at the time of Justine’s original elopement with her husband, the basic obligation of paying a bridewealth seems not to have been a topic of discussion – perhaps because her family was anyway opposed to that marriage, and also because Justine, being pregnant, did not have much room for manoeuvre –, they now brought it up to legitimise their refusal to force their “recalcitrant” run-away daughter to rejoin her husband (cf. also Rivière 1984:386).

The readiness of Justine’s family to support her divorce hints towards their relative prosperity and ability to provide for her and her children, for instance by according her fields to till²³⁹. However, in the majority of cases, families are too poor and would immediately send their daughter back to her husband, disregarding the husband’s violence or neglect of bridewealth payments (cf. Acoumon 1996:3). To justify this reaction, they either accuse their daughter of having provoked her husband’s violence²⁴⁰ through her disobedience or emphasize the importance of maintaining family-ties with the daughter’s in-laws.

Justine’s husband accepted to bring the rest of the bridewealth, left, and never came back to fulfil his promise. Justine thus stayed with her father, i.e. in her natal home, with her three children. As this separation stayed on, she gradually moved from the status of a “married woman” to that of a “divorced woman”.

on *amende* l’homme et puis ils se retrouvent. On renvoie la femme à la maison. (Justine 1:25, italics by IK).

²³⁹ In fact, after her return home Justine’s father bequeathed several fields to her and even built her a little house adjacent to the family house (cf. chapter 3.2.6).

²⁴⁰ The Togolese Penal Code punishes beating and injuries, however only if the victim can prove to have been unable to work for a certain period as a consequence of the aggression. This law, therefore, only protects salaried women, who constitute a small share of the female population. The excuse of male violence against women is also supported by the practice of state judges, who – in the rare cases in which women sue their husbands for violence – tend to negotiate a friendly solution with the perpetrators, instead of applying the law and punishing them (cf. WILDAF-Togo 2002:15-20).

4.3.2 New forms of repudiation

The following case will go further into the customary rules for handling marital conflicts, repudiation and divorce. Dorothée's case will be taken up to analyse various socio-legal forums that a married woman may or may not address when she is neglected or deserted by her husband, as well as the social and economic resources that she needs in the various forums to make her claims heard.

Soon after the quarrels between Dorothée and Joseph over their reproductive health, Joseph started to go out with another woman, one of his teacher students who was divorced from her first husband. Joseph immediately cut his modest financial contribution to Dorothée's household expenses. Again, Dorothée turned to her in-laws, yet they didn't dare to criticise their son. First of all, people's bonds to their son are mostly much stronger than to their daughter-in-law, as their parental and emotional links predate their marriage (Mensah-Amendah 2002:61-63). A son's account of a conflict is therefore likely to be given more credibility than his wife's account²⁴¹. The difficult position of a woman to negotiate with her in-laws is aptly illustrated in the following togolese proverb (cf. the title of this chapter):

Le maïs a toujours tort au pays des poules.

Secondly, Joseph's paternal aunts (*tassivo*) who are customarily in charge of protecting his marriage (cf. chapter 4.1.1), were not entitled to intervene, as their own marriages were not successful either (Dorothée 2:30, Abotsi s.d.:44). Thirdly, Joseph's relatives had benefited from his financial support in the past and counted on it in the future, thus they were not interested in angering him by sticking their nose in his affairs. Also, Joseph's new girlfriend had much more money than Dorothée to support his parents and had buttered them up with expensive presents. Obviously they were not keen to criticize either Joseph or his new wife, i.e. the hand which feeds them or might feed them one day (cf. Mensah-Amendah 2002:62). Furthermore, Joseph's parents were frightened as their son had more formal education than themselves and, being a public servant, was better connected to influential people:

Dans leur maison, comme c'est lui qui connaît le papier, des fois tout le monde craint lui parler, même sa propre mère.[...] Sa mère n'a pas le courage de l'appeler, même son papa n'a pas eu le courage de l'appeler. (Dorothée 2:10)

²⁴¹ The in-laws' bonds to their son are especially detrimental for women when the couple lives with the husband's family (i.e. the traditional patri-local residence scheme) as in that case the wife generally has a more difficult standing than her husband. For that reason, women like to marry into families in which there is already one of their relatives, for instance an aunt who had married a man of the bridegroom's family. But in Dorothée's case (with neo-local residence) neither herself nor her husband had their families close by.

Thus, once again, Joseph had much better resources – such as emotional bonds, money, education, knowledge and contacts to influential people – at his disposal for negotiating support from his family, than Dorothée. Nevertheless, Joseph’s uncle and brothers (who had been present at the handing over of her bridewealth) tried to help Dorothée by summoning Joseph. Yet, he never showed up. He stopped to visit his own relatives in order to escape their critic, accusing Dorothée of having put him into trouble with his own family, thereby trying to make her his scapegoat.

Dorothée was furious and willing to make it a scandal, knowing that, if it became publicly known that Joseph had a relationship with one of his students, the school director would have to fire him. But, on the one hand, she was afraid of drawing everybody’s (but especially her husband’s) anger on her. On the other hand, her in-laws put pressure on her not to make any “fuss”, threatening to reduce her chances of ever receiving economic support for her daughter from Joseph. From this moment on, she stopped visiting her in-laws, a kind of silent protest against Joseph’s and his family’s behaviour:

Parce que j’ai voulu agir ! [...] Le directeur de l’école leur a interdit, si les maîtresses viennent au stage, de prendre contact avec eux. [...] que les professeurs ne doivent pas s’approcher à ces femmes. Quand j’avais appris qu’ils ont commencé, j’ai voulu agir. Si je réagie, il sera renvoyé. [...] C’est en ce moment que ses frères m’ont dit de ne rien dire, de se taire. [...] Que comme j’ai un enfant avec lui, de ne dire rien à personne, de rester calme. Et je suis restée calme. [...] Je l’ai protégé. [Sinon] c’est mon nom qu’on va crier encore. Je ne veux pas de problèmes. Parce que partout on dit : « C’est toi, tu as fait ceci ! » mais tu n’as pas fait. C’est mal à tendre l’oreille à l’autre. Je me suis retirée d’eux. Il n’a qu’à faire ce qu’il veut. (Dorothée 1:9, 2:9, 21-22)

Instead, she went to see her own mother and brother for help, a step she described as the “normal” thing to do in this situation (Dorothée 2:28). They, as well, summoned Joseph without success. They refrained, however, from taking the issue one step further and talk to his family, as the latter would certainly back-up their son and pester them with false accusations against Dorothée. They even discouraged Dorothée from further pursuing her case for instance by involving the chief, their only support being to offer her to come back home, in case the situation became unbearable.

Like in the context of his wedding with Dorothée, Joseph was again able to reject any interference in the way he handled his marriages, which he considered to be his private affair:

Au moment où mon frère l’a appelé, mon mari me disait que, si un homme veut se marier, est-ce qu’il demande l’avis de sa femme avant d’épouser la deuxième femme ? Qu’on n’a qu’à le laisser ! Si mon frère aussi a demandé l’avis de sa femme avant d’aller se marier [à sa deuxième femme] ? Il a pris sa décision, donc il peut faire ce qu’il veut faire. (Dorothée 2:18)

However, his friends seemed to have a different view on marital obligations and told Joseph that neither a wife's childlessness would justify to repudiate her, nor his taking a second wife, but that polygyny permits to keep both of them²⁴²; that therefore his behaviour was disapproved by societal norms and not at all his private affair:

Les propres amis l'ont appelé, que « même si tu veux te marier [à une deuxième femme], on ne rejette pas la première femme. La première femme doit rester, avant que celle-là vient. Même si celui ne donne plus [d'enfants] et si la deuxième donne, celle-ci peut les prendre. Mais ce que tu es en train de faire, ça ne se montre pas. » Les gens l'ont dit ! Au début. (Dorothee 2:12)

Joseph didn't listen to any of these critics. Without even informing Dorothee, he married his girlfriend at the registry office, probably under the option of monogamy. Although Dorothee, who had heard on the grapevine about his wedding, demanded from Joseph to be treated equally (also in sexual terms) with his new wife – a request in accordance with the customary norms for a polygynous marriage (Latif 2:8) – , he ignored her and stopped to give her any money. Furthermore he beat her. He thereby had “fulfilled” all the common features of a repudiation, except for expelling her from the house²⁴³.

The time that he initially continued to spend with Dorothee was marked by hostile tensions and violence. This is typical in a cultural context where the education of boys encourages them to demand and reaffirm, if needed even violently²⁴⁴, their social superiority over women – especially over their wives, but also over their sisters, mothers and other women –, and to be polygynous or promiscuous while demanding absolute faithfulness from their wife or wives (cf. WILDAF-Togo 2002:13-14). Nevertheless, at one point Dorothee managed to stop him from beating her:

Chaque fois on lance les mots! Des fois il m'a lancé [les mains] ! Et je lui ai dit que c'est la première et la dernière fois. Que s'il me lance, il aura des problèmes. Alors depuis ce jour là, il peut m'insulter mais il me lance plus la main. (Dorothee 2:18)

²⁴² A similar argument was reported by Pilon (1994:139) for the *Moba-Gourma* of northern Togo and by Szwark (1981:67) for the *Bassar* of central Togo: While in case of a woman's sterility, her husband is expected to solve the problem with polygyny, i.e. by marrying additional wives, in case of a man's sterility the wife is allowed to leave him.

²⁴³ A repudiation can consist of the following steps: The husband refuses to have sex with his wife, to pay for the food of the household, and to eat what his wife cooks, he takes away her cooking pot from the fire, beats her, and throws her affairs out of the house. Furthermore, he tells her either explicitly or symbolically, for instance through scattering ashes, to leave the house (Djomba 1998:6, Secr. Chef-ferie 1:18).

²⁴⁴ The frequency of intra-conjugal violence becomes visible in a recent survey on violence against women in Lomé, (commissioned by WILDAF-Togo, carried out by a social scientist, and financed by UNIFEM) in which two fifths of all women interviewed declared having been beaten at least once by their husband (WILDAF-Togo 2000).

She thereby enforced a customary right, according to which a husband is not supposed to maltreat his wife, unless she has committed adultery²⁴⁵. If he beats his wife “without due reason” – an expression mirroring the customary right of the husband, as head of family, to “correct” his wife’s disobedience and lack of submission –, she is accorded the right to separate from him²⁴⁶ (Mancraro 2:18, Justine 1:25).

But Dorothée didn’t show her scorn and disappointment in public, as she was not interested in separating from Joseph. Those who nevertheless knew what was going on, admired her emotional control and praised her as an example of a dutiful wife:

À tout moment on dit: « Oh, le grand frère avec sa femme, c’est bien ! Est-ce que nous aussi nous aurons une femme comme ça, et très calme comme ça ? » [...] Il y a un professeur qui m’a vu, il m’a dit : « Dorothée, après tout ça que tu es restée calme c’est bien, on te félicite chaque fois. » (Dorothée 2:18)

However, it was Joseph who, soon after, completed his separation from Dorothée by simply moving away: When Joseph was posted from Kara to another town, he provided for the transport of his new wife’s household but not of Dorothée’s. Instead of taking his new wife as his second spouse and respecting Dorothée as his first wife, as would be appropriate for a polygynous marriage, he behaved as if he had no first wife. If Dorothée and Joseph had been married at the registry office, he would have had to initiate a proper divorce in court. In court they might have judged the divorce to be his fault and charged him with maintenance obligations for their child.

Joseph was criticised by several friends and relatives, as well as by his superior and some colleagues, that if he wanted to separate from Dorothée, he should at least bring her back to her family and give her some kind of material compensation, but not just drop her like that:

Tous ceux qui étaient là avant qu’il a commencé des choses, tout le monde l’accuse que on ne fait pas comme ça. Quand tu as pris une femme chez ses parents, si tu veux la laisser, il faut l’amener chez ses parents. Tu ne dois pas la laisser hors de ses parents ! [...] de consoler la première femme avant d’amener la deuxième. Il leurs a tous répondu qu’il a déjà pris sa décision. Il dit qu’il ne veut pas, donc il ne veut pas. (Dorothée 2:9, 27-28)

Dorothée thought that the fact that the other woman came from a well known and highly esteemed family in Lomé diminished Joseph’s room for manoeuvre, as he didn’t dare to oppose

²⁴⁵ This customary excuse of a husband’s violence was picked up by the togolese Penal Code which, in its article 56, excuses even a husband murdering his wife, if he catches her in the act of committing adultery (WILDAF-Togo 2002:19-20).

²⁴⁶ This observation, made here for the *Ewe* of southern Togo, is confirmed for the predominantly Muslim *Kotokoli* as well as for the *Bassar* of central Togo (Meekers/Gage 1995:9, Szwark 1981:67).

them, whereas by that time both of Dorothée's parents as well as her brother had died, leaving her with very little family support to stand up against Joseph. Furthermore, as Joseph and his new wife were both teachers, they could only be posted together if married according to state law. Joseph therefore had also a structurally supported interest in marrying his new wife at the registry office.

Joseph's construction of marriage as an institution which gives the husband all the rights (to marry and separate whenever he likes) and none to the wife, is contrary to customary norms²⁴⁷. However, Dorothée received hardly any support, neither from her own family nor from her in-laws, to enforce her husband's customary obligations towards her. She was rather discouraged from taking the case to any higher level, such as the customary chief. This might be due to her husband's economic independence from his family, his superior economic strength compared to his wife, and his good contacts to state institutions and authorities – not the least through his new wife –, which would have protected him well against family claims.

These aspects point, on the one hand, to general socio-economic changes, such as increased mobility, urbanisation, and individualisation that limit the possibilities of families to exert pressure on their men folk. On the other hand, they point to the effects of these changes in the sense of a hybridisation of state legal concepts with customary legal thinking, shifting marriage from a family affair to a fairly individualistic matter, however with gendered implications.

4.3.3 Fighting the disgrace of being a divorced woman

The social contempt that a divorced woman has to face within her community will be described in this section, thereby demonstrating the social pressure on women not to dare to oppose or even separate from their husbands.

After her first and second marriage had broken down, Justine received great material and emotional support by her family, as her father built her a little house adjacent to his own one and bequeathed fields to her (see chapter 3.2.6), on which she grew staple food, vegetables, fruits, spices, and oil palms, both for subsistence and sale. This contrasted with the disgrace she had to suffer from the villagers: As a divorced woman, she had to confront the gloating of

²⁴⁷ If they had been married at the registry office, it would also be contrary to state law, which prescribes the equal treatment of co-wives in a polygynous marriage and sets very specific conditions for divorce (art. 99 and 119 CPF). It contradicts also Christian and Muslim norms as well as international conventions, such as CEDAW and the African Charta.

the village population over her personal “failure”, she was hassled by young men and had to fight not to be called a prostitute:

Ici, quand tu es divorcée les hommes te tracassent. Dès que j’étais rentrée au village les hommes sont venus. Même deux fois des hommes très jeunes sont venus: « Ah, on a appris que tu es seule. Tu ne veux pas faire ceci et cela avec moi ? » Je lui ai dit: « Toi tu as quel âge? Est-ce que tu as des champs? Est-ce que tu peux même travailler les champs comme moi je le fais? Est-ce que tu peux travailler pour moi et mes enfants? Tu pourrait être mon enfant, non? Vas-t-on, c’est l’embêtement que tu fasses, laisses-moi tranquille! » Quand tu es seule, les hommes viennent chaque jour. Même si tu refuses et tu les renvoies, d’autres hommes vont dire: « J’ai vu celui-ci et celui-là chez elle. C’est sûr qu’elle a quelque chose avec X. » Ils parlent de toi comme si tu étais une prostituée. Aussi les femmes, surtout les femmes parlent comme ça. Même si cela pourrait leur arriver aussi, elles n’y pensent pas, elles font comme ça. (Justine 3:6)

Justine expressed outrage over the fact that even young men dared to show a very disrespectful behaviour. In doing so, they demonstrated that the rules of seniority are strongly gendered, underlying the social expectation that a woman should be controlled by her husband and that a divorced woman (who is not any more controlled by her husband) is to be treated like a prostitute. She was equally disturbed by the fact that the other women showed no solidarity towards her, although they could easily suffer the same situation. She felt unjustly treated and became quite aware of the gender inequalities inherent in patriarchal society. Nevertheless, at least for the young men she knew how to defend herself by telling them off, exposing their inferiority in terms of age and generation, and mocking at their lack of “maleness”, calling them to be incapable of hard work, of taking over responsibility for a family, and thus unmarriageable.

4.3.4 Polygyny as a strategy of divorced women to conquer new social, economic and legal spaces

Another way women in Togo as elsewhere in Africa handle the difficult situation of being divorced, is to remarry as fast as possible – if necessary becoming a co-wife of a polygynous husband – in order to escape the virulent critiques of society (Kuwonou 1996:12, Grawert 1998:78-79, Meekers/Gage 1995:2). In such a situation other criteria are brought to play than for a first marriage.

Justine found herself another spouse, both after her first and second marriage had broken down. With every new marriage, she did not only manage to choose a more educated, respected, and wealthier husband (from a teacher, to a school director, to a bailiff and cantonal

chief), but also to achieve a higher degree of institutionalisation of the marriage, from an incomplete customary, to a “proper” customary, to a civil marriage.

However, although she is Catholic, for her third marriage she accepted to become the third wife in a polygynous marriage. First of all, she was well accepted by the senior co-wife. As is the custom in many areas of Togo (cf. Deffarge/ Troeller 1984:65, 76), after the man got to know Justine, he sent his first wife to check out whether she could accept Justine as a co-wife. When both his first wife and Justine agreed, the marriage got sanctioned by the bridewealth payment and at the registry office²⁴⁸. Secondly, according to both customary and state law (art. 99 CPF) in a polygynous marriage the co-wives have a right to equal attention and material support from their husband²⁴⁹. Apart from that, as Justine was not much younger than her husband and co-wives and quite a mature and experienced woman and a multiple mother herself, she ran little risk of being treated badly by them. Thirdly, the marriage with a rich influential man from Lomé (who prestigiously comes to visit her in the village in his own car) improved her status in her village and silenced the harassment she had to endure as a divorcee. Of course, some people from her village were still jealous about her luck and claimed that she was too arrogant to marry a local, but she could easily do away with this kind of critique²⁵⁰. Fourthly, this latest marriage provided Justine with access to a whole set of new “options” (cf. Strauss 1978:100) to pursue her own interests:

As this husband was a lawyer and bailiff, the use of state courts entered her repertoire of negotiating her rights, at least concerning her rhetoric: For instance, she put pressure on the husband of her eldest daughter to better take care of her daughter, pretending that otherwise she would “snatch” her away from him and sue him in court. Furthermore, through this marriage she got access to another level of clientelist networks, which helped her to increase her trade in food staples between the countryside and Lomé. She became so busy that she had to find tenants to lease out her fields and had no time to participate in the women’s rotating saving

²⁴⁸ For the husband, the advantages of polygyny can include the alliance with several families, the increased agricultural work force or other economic contribution of the wives to the household economy, provisions for his old age by numerous children, and a certain prestige. For the wives, polygyny can allow them to share household and agricultural work, and thus liberate them to pursue own business activities. Moreover, it further ensures that marital budgets are kept separate and reduces the husband’s control over the wives’ money (Deffarge/ Troeller 1984:54, 67).

²⁴⁹ The same applies to Muslim polygynous marriages.

²⁵⁰ Or so she thought, as the growing jealousy within the village about her high status (as both the speaker of the queen mother and married to a wealthy influential man) sought expression in other forms, such as a witchcraft attack which caused her serious health problems for almost two years.

and credit association (*tontine*)²⁵¹ in her village any more, being away from the village for several days a week. She even hoped that her husband might be able to rent her a place near the central market in Lomé, an area highly competed for and loaded with tax and corruption, which would otherwise constitute insurmountable obstacles to her. She also profited from his resources for her health problems, as he financed her whole trajectory across various traditional and hospital treatments (cf. Janzen 1978). Finally, as her new husband was knowledgeable in chieftaincy affairs – being appointed cantonal chief in his own village – he understood and accepted the new duties that Justine assumed as speaker of the queen mother, including that she remained living in her village. He might even have seen her “traditional” office as a convenient asset within his own strategies of accumulating political influence in Togo. But among urban polygynous families it has anyway become quite common that the husband provides different housing for each matrifocal family²⁵² if he can afford it, except for Muslim families, in which all the co-wives live together under one roof (Latif 2:7).

4.3.5 From averting to initiating a divorce in court

As civil marriages are not the rule in Togo and rather frequent among state employees and other educated urban couples, also divorce in court is less common.

Cathérine²⁵³ and her husband (both academics, her husband a state employee, she with a successful NGO-career) got married according to customary norms and at the registry office, opting for monogamy, six years after they had their first child. In the beginning, they had planned to get married in the catholic church as well, but when her husband became a follower of an American church, he took distance from the catholic faith and refused a Catholic marriage with Cathérine. Furthermore, within his new religious group he had found another woman whom he wanted to marry. While Cathérine was a devout catholic who took the norm of monogamy seriously, her husband wanted to divorce from her in order to marry both his new girlfriend and Cathérine at the registry office under the option of polygyny, which Cathérine refused (Cathérine 2:24). Obviously, his new religious faith supported polygyny, or at least – which is typical – did not fight it.

²⁵¹ This *tontine* regroups about 30 women. Every week every woman contributes 100 Francs CFA plus two pieces of firewood, which are given to one of the members in turns (Nyonu Fia 1:2). This enables every member to have twice a year some extra cash to work with plus some extra time, being freed from collecting firewood.

²⁵² This living arrangement was called “la polygamie géographique” by Sembène Ousmane (Amendah 2001:27).

²⁵³ For Cathérine’s biographical background see overview in the annexA1.

When he submitted a petition for divorce in court, Cathérine did not show up for the convocations, as she hoped that her husband might end his relationship with the other woman and find his way back to her and as she also was against a divorce due to catholic norms. Only when she received the “order of non-conciliation” did she take a lawyer and make her protest known to the court. Luckily she was advised by friends to do so, as otherwise her absence would have been interpreted as a refusal to conciliate, with the result of being judged to be the guilty party in the divorce, custody and maintenance of the children in that case being attributed to the father²⁵⁴. Apart from temporarily suspending the divorce proceedings, Cathérine achieved a further delay, as she successfully claimed that the judge was not impartial but a close friend of her husband. Subsequently, she moved out of the house that she had rented with her husband into the one she had built from her own money. She probably had declared this move either to the judge or a bailiff, as otherwise it could have been misinterpreted by her husband and the court as proving that the separation was her fault, as the state law obliges married women to reside with their husbands (art. 104 CPF, cf. Komlan 2003a:26). On the other hand, her move shows her negotiating power, as she was economically independent from her husband.

After two years, her husband withdrew his petition for divorce, but wanted nevertheless to maintain the relationship with both women, with both of whom he had children by then. This time it was Cathérine who overcame her religious scruples²⁵⁵ and filed a petition to divorce from him. After that, her husband was imprisoned for five years due to political allegations, and the divorce proceeding was further suspended. During that emotionally and psychologically very demanding time, Cathérine firmly supported him, hoping again that he would find his way back to the catholic faith and to her as his only wife. She found support and consolation within her catholic parish and a charismatic group. She even managed to negotiate with the priest to be readmitted to the Holy Communion under the promise that when her husband would return from prison, she would either marry him in church or divorce. Consequently,

²⁵⁴ According to a legal NGO counsellor, this legal misinterpretation of the wife’s reasons for not showing up in court as a refusal to conciliate instead of a refusal to divorce, is a trap for many women and due to their difficult access to information on legal procedures (cf. Christophe 3:2).

²⁵⁵ She would not have had the possibility to initiate a divorce if she and her husband had been Muslim, as Muslim norms maintain a divorce to be a male privilege. In such cases, some women take to making their husband’s life unbearable in order to provoke them to repudiate them, with all negative consequences for the woman (WILDAF-Togo 2002/2003b:24). Muslim men can divorce their spouse far more easily than Muslim women, but they have to inform the Imam. In case of divorce, Muslim women maintain custody of the children only until the age of six or seven. Fathers are obliged to maintain their children, even if the children are living with the divorced mother. Divorced women and widows are strongly expected to remarry instead of staying single (cf. Latif).

when he came out of prison and continued to go out with the other woman, she re-launched her petition and divorced from him, though against the advice of her own family.

After the divorce, she became very depressed until she further deepened her religious commitment. This enabled her to gain distance from her failed marriage and find her inner balance again, which she expressed in the following words:

Je suis faite moi-même d'abord. Si je perds le mari, je ne perds pas le monde entier ! Mais j'ai passé des moments très difficiles. Si je n'avais pas la foi, si je n'étais pas déjà sur la voie de Jésus, j'allais devenir dingue. Sinon, je me sens très équilibrée maintenant. (Cathérine 2 :35)

She also readopted her maiden name in her workplace and her private life as well as in her identity papers²⁵⁶. This is still a rather rare step for divorced women in Togo, as it means admitting in public that a divorce has taken place. She explained it with the gender awareness that she had acquired in her professional life:

J'ai repris mon nom de jeune fille depuis que j'ai compris que le nom d'une femme, c'est l'identité d'une femme. Tu sais que je suis sur le programme genre aussi. (Cathérine 2 :33)

Nowadays she lives on good terms with her ex-husband, and cooperates with him as far as the education of their two children is concerned. At the moment, she maintains them as she has a well paid job while he is unemployed. But when he has a job, he provides well for his children.

The case of Cathérine highlights that, while civil marriages are rather easy to conclude, they take a long time to dissolve, especially if the spouses disagree on the divorce and expose equal degrees of legal information, contacts to formal legal institutions, and access to support systems (in this case in the form of religion) whereas for customary marriages the opposite seems to apply: Lengthy set-up but rather easy dissolution.

4.3.6 *Tu pars comme tu es venue, avec tes seins seulement* – Claiming child custody, maintenance and housing support after divorce

Women's negotiations to obtain child custody, maintenance, and support for housing from their ex-husbands are the focus of this section. The examples refer to cases of both customary and civil marriages. The presentation includes the respective norms and the everyday prac-

²⁵⁶ For this she had to present her birth certificate and her divorce certificate.

tices as well as NGO-initiatives to improve the latter. Furthermore, the forums to address as well as the necessary resources will be discussed.

In Dorothée's case, after Joseph had married his girlfriend at the registry office and moved with her to another town, she and her teenaged daughter moved back to Lomé into the house that she and Joseph had built there. However, although both of them had contributed to the expenses of the house all the property papers were issued in his name.

This is a common practice in Togo, probably dating back to colonial times: When the German and French colonizers imported the registry system, they assumed nuclear families to be the prime economic unit, run by the male head of the family who was supposed to act selfishly in the interest of the latter (cf. chapter 4.2.1). These values coincided or reinforced the patri-lineal organisation of *Ewe* society, which is mirrored, for instance, in the patrilocal residence scheme: The common pattern was and still is that the husband provides housing for his wife or wives, be it by building a house close to his father's compound or – especially in urban settings – by buying or renting a house on his own. In any case, the house of a married woman is generally considered to be her husband's, disregarding how much she contributed in terms of money or workforce (Latif 2:17, Kuwonou 30/1999:2).

Only highly educated and well-off women have the knowledge and means to get their names included in the property papers of houses that they share with their husbands²⁵⁷. This practice poses big problems for women, as it hinders them from defending their property rights against their husbands upon divorce²⁵⁸. There is however a chance that this deplorable state of affairs will change in the near future. The training of judicial and extra-judicial actors on women's rights, organised by WILDAF in 2002 (see above), shows already some first positive results: In his judgement N° 490/2003 of 11th of April 2003 of a divorce case, a judge from a Togolese family court recognized that the wife had substantially contributed to build the marital home by coming up for regular household expenses, such as electricity, water and food as well as by paying for construction material. From this he followed that she had a right to being compensated (with 1 million Francs CFA) by her ex-husband for being deprived of using the marital home (Komlan 2003a:23).

²⁵⁷ It became more and more common during the last decades that economically strong women buy or build houses (to rent out and have an extra income, or as a security for themselves) which they register solely in their own name, provided that they have the necessary information, know-how, and means to get through the complicated administrative procedures (cf. chapter 3.1.2).

²⁵⁸ This is illustrated by the cartoon *J'ai tout perdu!* in the annexA6.

Anticipating that Joseph would never support her to bring up their daughter out of his own free will, Dorotheé presented him with the *fait accompli* of having occupied what was officially *his* property, i.e. their joint house. Thereby, she clearly left her previous role of a deferential and cooperative wife. Instead, she forced him to either become active himself and try to make her leave the house or accept the new situation. This was a courageous move.

The fact that also his family showed no interest in her daughter is rather unusual. According to customary norms, if a couple separates or if the husband dies, young children stay with their mother, while older ones are taken in by their fathers or other patri-lineal relatives²⁵⁹ (Latif 2:11, 15, 17). Often, a divorced or repudiated woman is categorically refused to keep her children, in line with the above mentioned customary concept of *deva*, according to which she is considered to remain a stranger to her in-laws and acquires no rights whatsoever to her children or her husband's property. If she dares to separate from her husband, she has to "leave the way she came, with her breasts only"²⁶⁰ (cf. Mensah-Amendah 2002:58, 79, 86, 88).

The Family Code changed this norm in the sense that upon their parents' divorce children born within a civil marriage and below the age of seven stay with their mother, but the custody of elder children is determined by court in the interest of the latter (art. 142 CPF). This regulation is frequently abused by ex-husbands who want to get rid of their obligation to maintain children entrusted by court to their mothers: They threaten their ex-wives with making the court withdraw custody from them, if they dare to claim child maintenance. Accordingly many women prefer not to claim child maintenance out of fear to lose their children (WILDAF-Togo 2002/2003a:32). This shows how sure men are about being able to influence the courts in their own interest. In fact, the common court practice in the application of article 142 is to automatically attribute the custody of children above the age of seven to the father. This might also change in the near future: The above mentioned judgement entrusted the child custody to the mother and sentenced the father to come up for the school fees, medical expenses and maintenance costs of the child (Komlan 2003a:23-24).

²⁵⁹ On a national level, 16% of all children below the age of 15 (i.e. not only of those children below the age of 15 whose parents have separated or divorced) do not live with either of their parents, while 24% live with one of their parents: 16% live with their mother only, while 8% live with their father only. Those 60% who live with both of their biological parents are more frequent in rural areas (64% than in urban areas (51%)) (Anipah et al. 1999:11-12).

²⁶⁰ In Ewe *Ano kpo mu xe va asu xoe*, in French : *Tu pars comme tu es venue, avec tes seins seulement* (Mensah-Amendah 2002:88). This expression is also known in Burkina Faso (cf. Bruchhaus et al. 1990:122).

However, if children are born outside a civil marriage, such as in the case of Dorothée's daughter, the Family Code prescribes that child custody remains with the father alone (art. 246 CPF) although in practice most of these children live with their mothers and are maintained almost entirely by them. The reason of Dorothée's in-laws to neglect her daughter might be their attempt to avoid to "feed an extra mouth" in times of economic hardship²⁶¹. A further reason might be that Joseph's new wife refused to take care of his daughter, although customarily, a wife is obliged to raise even extra-marital children of her husband. This obligation is limited by the state law to cases in which the wife has been informed by her husband about his extra-marital children before their birth (CPF art. 196). In the case of Justine, her first ex-husband only took care of the children once they were about fifteen, so he could provide for their attendance of secondary, respectively high school. Before, they stayed with Justine, who was well able to sustain them (see above).

Dorothée could have addressed a customary or state court in order to sue Joseph for child maintenance. Depending on the legal forum, she could have based her argument on customary maintenance obligations of fathers as well as on the Family Code, which asserts the child's right to be maintained by its father, even if the parents were not married at the registry office, as long as the paternity of the child is legally established, for instance through a birth certificate (art. 205 CPF)²⁶². Both the chief and the state judge could have put pressure on Joseph by asking his superiors, such as the school directors and the school inspectors, to have a word with him. If this remained futile, they could have ordered a deduction of Joseph's salary to be paid directly to Dorothée (Secr. Chefferie 1:32, Conseil Jur 12Feb01, Komlan 1999a:5).

This practice is as well supported by NGO-counselling centres: For instance, a handicapped mother addressed herself to the legal counselling centre *Maison de la Femme/CRIFF* in Lomé, complaining that the father of her child did not contribute anything to its upbringing. CRIFF invited the man to a mediation session with the complaining woman, during which he agreed to provide for his child under certain conditions, which the woman accepted. Six weeks later, the lady came back to CRIFF and complained that the man did not fulfil his promise, although she had done what he had asked for, furthermore, that the child was seriously ill and needed medical treatment for which she had no money. The CRIFF-counsellor went to the primary school, in which the man worked as a guardian, and talked to the school

²⁶¹ It might also be a strategy to avoid that – after Joseph's death – Dorothée would claim inheritance in his urban house and land on behalf of her minor daughter (see chapter 5.2 on widow's access to their minor children's inheritance).

²⁶² This provision is in stark contrast to many other African countries, in which extra-marital children are excluded from maintenance and inheritance (cf. Baerends 1994:33).

director and his deputy. They agreed to put pressure on the man to provide for his child or else to deduce a small sum (of 2.500 Francs CFA) from his modest salary (which is monthly paid by the pupil's parents) and send it, via CRIFF, to the lady. The counsellor furthermore threatened that if the man continued not to contribute, the lady could sue him in court. The very same day the man himself showed up in CRIFF and paid maintenance for his child (Conseil Jur 12Feb01).

But Dorothée addressed herself to neither customary or state court nor to an NGO legal counselling centre, probably because she did not know enough about these institutions and had nobody to support her there, and also because she feared to go into further trouble with her ex-husband. As a consequence, she had to work very hard herself to sustain her daughter, and suffered serious health consequences.

4.3.7 Changing perspectives on marriage norms

Si tu ne te maries pas, on va te voir comme une femme prostituée. C'est ça ! Avant quand on dit ça, je m'inquiète, mais comme j'ai mis le pied dedans, jusqu'à voir tout ce que j'ai vu, je dis : Ils n'ont qu'à me dire tout ce qu'ils veulent. Au fonds de moi-même je sais que je ne fais rien de ce qu'ils disent. [...] Depuis que mon mari a commencé à faire ces choses là, les gens m'ont dit d'aller me marier. Je ne veux plus me marier. Je préfère souffrir à la sueur de mon front avant de manger. Peut-être ce n'est pas tout le monde qui doit se marier avant de vivre. Même si j'ai un mari, il ne va pas accepter que je travaille. Et il ne va pas me donner à manger aussi. Comment je vais faire ? Je dois choisir mon chemin aussi ! (Dorothée 1:35, 2:35)

Originally, Dorothée was influenced by the strong social pressure on women to marry. She was keen to be a dutiful submissive wife, but nevertheless felt unjustly treated by her husband. Different from many other women in her situation, she was not ready to accept her husband's lack of respect and cooperation as normal and inevitable. She tried to achieve a desirable situation without moving too far outside gendered role expectations. Despite her partial success, she finally lost out in this struggle and was left by her husband. In retrospective, she questions the social obligation for women to marry, because marriage makes the wife economically dependent on her husband, without ensuring that the husband fulfils his economic obligations towards her.

Donc, de ma vie ça ! Nos hommes sont un peu durs. Mais si la femme qui est dure et gagne sa vie, si tu veux faire faveur à eux, ils montent sur toi. [...] Ils vont dire que c'est eux le patron ! Et tu ne deviendras rien ! Comme moi. J'ai tout fait, mais qu'est-ce que je suis devenue maintenant ? Zéro. (Dorothée 1:10, 2:24)

Dorothee complains about the lack of partnership and reciprocity in marital relationships, caused by the fact that husbands cannot stand a situation of equality with their wife, but ultimately have to reassert their superiority. In her view, if a woman helps her husband economically and socially, he takes advantage of it, but drops his wife off as soon as he finds a more advantageous partner.

4.4 Summary

In the field of marriage, women's rights are differentiated according to the type of marriage institutionalisation. Therefore, this is the first issue for women to negotiate when marrying. Most marital unions in Togo are a progressive affair and constituted by several elements. Such a customary marriage is ideally preceded by family negotiations and the handing over of the bridewealth from the husband's family to the bride and her family, giving the latter some kind of social and economic security in case of marriage problems or divorce. Nowadays, the bridewealth has the additional function of furthering individual accumulation. Marriages in Togo can also be institutionalised – alternatively or subsequently – by a Christian wedding in church, by Muslim ceremonies, or at the registry office of the state. Only this last “civil marriage” is recognized by the state and gives access to family allowances and tax reductions, and accords certain rights and obligations during marriage, after divorce, and in case of widowhood, most of which are meant to improve women's social and economic security. On the other hand and contrary to the intentions of the legislator, the shift from a family affair in customary marriage, in which the wife's legal agency was mediated mostly through a male relative, to an individualization of rights in a civil marriage, combined with frequent gender inequalities within married couples, may result in a decrease of the wife's legal agency. This tendency is reinforced by women's lack of knowledge about legal improvements offered by the state law (such as the request for her consent to monogamy or polygyny), combined with gendered practices of administration and law enforcement.

Rather few couples in Togo marry at the registry office, especially among the rural and poor urban population. As possible reasons were identified the spread of false rumours and the lack of precise information on civil marriages and the state legal system in general as well as people's greater familiarity with customary and religious norms and institutions, the frequent interest of men to maintain their customary male privileges, and the restricted accessibility of state services in terms of distance, time and money. More marriages are institutionalised by customary and/or Christian respectively Muslim norms. Many women in southern Togo – en-

couraged by their church – try to use a Christian marriage to prevent or end undesired polygyny. This can only work, of course, if the husband is not a Muslim. In case he separates from his co-wives after the church wedding, the latter have only a right to be maintained by their ex-husband or to keep the custody over their children, if they had been married at the registry office. Otherwise they face severe difficulties to secure their livelihoods. Yet, many togolese men either do not accept a church marriage, precisely in order to keep open their polygynous options, or they accept it, but disregard the Christian norm of monogamy. However, it has become more and more common in Togo, not to institutionalise marriages at all, bearing severe consequences for the economic and social security of women. It is the economic independence of women, the moral support by their families, and their degree of knowledge on customary, religious, and statutory rights and practices – the latter especially provided by women’s rights NGOs – that strengthen their position to refuse an insecure marriage set-up and to insist at least on a customary marriage, thus keeping open the option of a later “marriage up-grading” at the registry office.

During marriage, typical conflicts circle around women’s right to gainful employment, the control over her income, the distribution of economic household contributions, as well as women’s reproductive rights and obligations.

The economic crises since the 1980s increased the gap between gender expectations and economic possibilities. More and more men are unemployed or their revenue does not suffice to maintain their family. More and more women do some kind of trade or other work to ensure the survival of the family, apart from the conventional core work. Some women achieve considerable success with their business and become economically strong. Often this increases their self-esteem, encourages them to take more decisions for themselves, their children, and the household, and thus to claim an equal position with their husband. This does not remain uncontradicted, as many a husband fears to lose his wife’s respect and his superior position as the bread-winner of the family. If he is poor, he might accept that his wife works outside the house to earn money in order to feed the family. If he is well-off, he might refuse to help his wife to find work or build-up a business, try to control or misappropriate her money, cut their own household contributions, verbally or physically abuse and finally repudiate, leave or divorce her. In both cases, the shift in power distribution among spouses is likely to produce tensions.

Women’s strategies to prevent or escape such tensions vary between keeping separate budgets and hiding their economic power, i.e. assuming many household or family expenses without

telling the husband, continuing to behave submissively in order not to provoke his disapproval, refraining from working altogether (only if the husband maintains the family), letting their husband control their money, or leaving him if they are economically strong enough to maintain themselves and their children.

A wife who is economically neglected, whose work is sabotaged, or who is battered might complain to her in-laws. Yet, unless her husband is economically and socially dependent from his family, she runs the danger of being accused to “eat their money”. She might complain to the chief, district officer, mayor or police, if she is supported by her relatives or colleagues, knowledgeable, and well connected. Finally, she may sue her husband in court for maintenance or legally object his ban on her working outside the household, if she is married at the registry office, knowledgeable about state laws and practices, and again well connected to influential people – or women’s rights NGOs – and overcome judges’ prejudices against women. Men’s predominance in the formal sector provides them with privileged access to the knowledge and connections required.

It is typically women who are blamed for a couple’s childlessness, while their access to medical treatment is made difficult by customary norms and religious taboos. These are mirrored in the lack of moral support that women receive in case of the respective conflicts with their husbands and in-laws. These norms also underlie male-biased behaviour of health personnel who is, in turn, backed up by discriminatory health policies. These adverse conditions very much limit women’s room for manoeuvre in the negotiation of their reproductive rights. This problematic situation is about to change slowly with women’s increasing knowledge on their reproductive rights together with the improved availability of reproductive health services and the rising gender awareness of their personnel through trainings and awareness campaigns provided by NGOs. This has to be complemented by a change of state laws and policies regarding women’s access to reproductive health services.

Like customary marriage, also customary divorce is a gradual process. The woman’s possibilities to separate from her husband depend largely on her economic situation. If she is wealthy, she is likely to separate more easily. If she is not able to provide for herself, she needs the support from her family of origin as her husband is not obliged to pay her any maintenance, except for her children. If her family cannot maintain her either, she experiences great pressure to return to her husband. As additional resources, her knowledge of customary norms in order to convince her family of the legitimacy of her claim for divorce as well as the rhetoric abilities of her family were identified.

If a woman is repudiated, neglected (for instance, as compared to her co-wives) or deserted by her husband, she may only address her in-laws if they do not depend on his resources, or if she herself has interesting material resources to offer, the latter case hinting to the economic competition between co-wives. The decrease in family control over husbands has become quite frequent in Togo due to urbanisation and the rise of individual modes of accumulating wealth, such as formal employment in the public or private sector, to which men have better access than women. This hints also to a power shift from the generation of the (male) elders to the generation of those (men) capable of gainful employment.

The number of women who achieve economic independence and the related social freedom is much smaller than that of men. Apart from her economic resources and the social support she can rely on, also a woman's self-confidence and outspokenness are decisive for her ability to withstand violence or social pressure to give in, as well as to handle the social critiques that await her once she is divorced. Most women try to remarry as fast as possible and the institution of polygyny often provides them with interesting options.

While civil marriages are rather easy to conclude, they are complicated to dissolve, especially if the spouses disagree on the divorce. However, at least the legal texts provide for gender equality concerning divorce. Nevertheless, in practice the degree of legal knowledge and the contacts to state legal institutions, necessary for a successful divorce in court, are highly differentiated according to gender.

Be it upon a customary or civil divorce, the wife mostly has to leave the marital home, as it is still rare that women get their names inscribed in the property papers of houses, even if they strongly contribute to acquire and maintain them. As to child custody, the family law considerably improved women's rights, as it determines the custody in the interest of the children, whereas customary norms deprive women of custody, except for very young children. However, court practice used to follow the customary attribution of children to their fathers. Regarding the maintenance of children, both customary and state law oblige the father. Moreover, it is common practice, both by courts and NGOs, to put pressure on the father via his superiors to pay this money to the mother of the children. Nevertheless, many women neither access child custody nor child maintenance, as they are afraid of further conflicts with their ex-husbands.

All in all the strong gender inequalities make it difficult for married women to realize their statutory rights. However, those women who have the respective social and economic resources and cultural capital at their disposal, do claim their marital rights and might act as a

reference for other women. The number of women, able to realize their marital rights is growing with the moral and technical support (in terms of knowledge and contacts) provided by women's rights NGOs.

Chapter 5 *La belle-famille va te faire voir de toutes les couleurs* – Negotiating rights as a widow

This chapter will present and analyse the fragile status that widows are accorded by both customary norms (among the *Ewe* and *Mina*) and state law, concerning their submission to widowhood ceremonies as well as their rights to custody over their children, remarriage, inheritance, housing and pensions. The chapter will at the same time carve out widows' individual and collective strategies to increase their room for manoeuvre, be it through mobilising support within the family, from churches, as well as – via women's rights NGOs – from state legal and administrative institutions and international conventions. Thereby the various legal orders they refer to (from customary to religious, state, and international norms) as well as the resources they draw upon will be analysed.

5.1 Widowhood ceremonies and the negotiation of alternatives

5.1.1 Customary widowhood ceremonies embodying gendered power inequalities

Upon the death of a man, all his customarily married wives are supposed to undergo a period of mourning ceremonies²⁶³. This widowhood period (in French *veuvage*, in Ewe *Ahowowo*, in Mina *Ahonono*) takes from the day of the burial until the day of the *sortie de deuil*, a big feast organized by the family of the deceased to honour him and officially end the mourning period²⁶⁴. Depending on the status of the deceased as well as on the means and the goodwill of the in-laws who have to finance it (sometimes in collaboration with the widow's family), this final party is organized between a couple of days after the funeral and three to five years later. Nowadays, in many cases the widowhood takes between three and six months. Whereas the details of these ceremonies may vary between regions, ethnic groups, villages and even families, they are everywhere conceptualised in a similar way:

The widow (*ahossi*) is assumed to be close to death as such and therefore dangerous herself. As she is from a strange family, she is even suspected of having murdered her husband by committing adultery and thus mixing his blood with the blood of another man, which is a

²⁶³ One can call the widowhood ceremonies a „ritual“, as they consist of „the performance of a complex sequence of symbolic acts“ (Turner 1985:180) articulating the relationship between „this world“ and „the other world“. Their performative character underlines their being subject to interpretation and negotiation, as this sub-chapter will demonstrate.

²⁶⁴ Among the *Kabye* of northern Togo the widowhood ends only when the widow remarries. In the Danye area of south-western Togo the widow has to remain in the widowhood state until another person from her community dies (EEPT 1998:52, 54).

spiritual offence. Therefore, she has to do penance and is submitted to tests in order to find out whether she is truly guilty i.e. was in fact unfaithful. Furthermore, she has to endure purifying rites and live under harsh conditions to prove her great pain and sincere bereavement as well as to honour the memory of her husband (cf. Sophie 1:17, Cathérine 2:30, Enyonam 1:2, CRIFF13Sept01, field notes 18.9.2001 Kpalimé, WILDAF-Togo 2002/2003a:17, GF2D 1995:19, Amega 1962:714).

On the other hand, the widow is thought to be close to her deceased husband and therefore in danger of being haunted by his soul (which is feared to return and take revenge on her before its arrival in the land of the ancestors) or attacked by vindictive relatives of the deceased. The widowhood ceremonies are therefore perceived as necessary to protect the widow and break the bonds between her and the deceased (Kossiwa 1:7-9, Bada 1997:5-6, EEPT 1998:46, Amega 1962:713, 719). As sanctions that are awaiting the widow, if she dares to refuse to perform the ceremonies according to her in-laws' will, she is threatened either with becoming bewitched, made sick or killed by her husband's soul, or with being accused of witchcraft herself:

Au village, si tu parles là, on va t'appeler la sorcellerie. On va te dire : « Quand tu dors, tu va voir ton mari qui va te dire : Si tu ne fais pas [les cérémonies de veuvage], je vais t'amener, je viendrai te chercher! Si tu ne fais pas, on va t'envoûter. » Donc, les femmes au village ont peur de refuser. (Anita 4 :13-15)

Furthermore, in case of her refusal, her children will not be allowed to feed her from the produce of her late husband's fields, thereby putting her survival at risk (Kossiwa 1:6-7). This shows that widows are by no means free to decide whether to undergo the ceremonies, but forced with the threat of physical and psychological violence.

The ceremonies can comprise the following elements, although for widows of an old man they may be less harsh, as his death is considered a joy, whereas the ceremonies for widows of a young man²⁶⁵ can be very atrocious.

The widow is deprived both of organising and assisting her husband's funeral. After having wailed farewell and ceremonially departed from the corps, she is secluded in a dark room, where she has to remain at least for nine days²⁶⁶. During this period she is guarded by one or more older widows, often from her in-laws' family. Her hair is shaved or she has to leave it

²⁶⁵ It has to be reminded here, that the increasing rates of mortality among men and women in the age of work and employment through the spread of AIDS in Togo provide for an increasing numbers of widows of not-yet-old men.

²⁶⁶ Among the *Lamba* in northern Togo this reclusion takes three weeks (Santos da Silva 2001:7).

undone and her personal hygiene is severely reduced. She is not allowed to wear shoes, proper clothes, pearl strings or jewellery, but is given an old cloth to wear, sometimes even having to stay stripped to the waist. She has to rub her skin and cover her genitals with special herbs to be put in a loincloth fixed with a string (*ahoká*) in order to avoid the dead husband to return and have sexual intercourse with her, which would result in her sickness and death. She has to sit on a special stone (*ahokpé*) and sleep on the rough floor. She is neither allowed to leave the house in order to work in the fields, go to the market, or attend funerals, nor to prepare food for herself, tasks which are taken over by the accompanying widow. Her meals are without meat or spices to underline the tragedy of the loss of her husband. A piece of coal is put on her plate to hinder the dead husband to come and eat from her food. In some areas she is given alcoholic concoctions. Apart from special wailing ceremonies together with other women, she is not allowed direct contacts with anybody except the guarding widow (to whom she has to talk in a low voice) but is expected to mourn in isolation.

The seclusion can be interrupted by humiliating and unhealthy rites which are set up as a test to find out about her guilt: For instance, she has to breath peppered smoke; if she coughs or cries, this is taken as a proof of her guilt. She then has to endure even more atrocious treatments. In some areas she has to drink fermented urine or is rubbed or sprinkled with it. In Aného in south-eastern Togo several widows are assembled for a public ceremony in the house of the chief, where they are forced to kneel on thorny palm nut shells and are symbolically beaten by their in-laws with branches²⁶⁷.

The period of extreme seclusion ends in some areas a fortnight after the husband's death with the burial of the nails and hair of the deceased, in other areas after about one year. The widow is led to the river (or the sea) for a cleansing ceremony and is given a special (often black) mourning dress. As a partial reintegration into normal life she is symbolically taught how to work in the fields, shop at the market, and prepare food. For the remaining months or years of the mourning period, she has to wear this dress and the above mentioned herbs, and walk with a stick, which she has to keep next to her also at night. This stick is symbolising her deceased husband, who is supposed to watch her dutiful and remorseful submission to the ceremonies. She is strictly forbidden to have any sexual contacts during the whole widowhood period. This serves to ensure that a possible pregnancy from the deceased is not attributed to another man. If the widow gets pregnant from another man during her widowhood, it is assumed that she will die (Kossiwa 1:6, EEPT 1998:46, 58-59, Amega 1962:719-720, Abotsi s.d.:102).

²⁶⁷ Cf. Kossiwa 1:5-6, Tadegnon (2001:1), Bada (1997:6), Ulferts (1994:152), Amega (1962:714), Abotsi (s.d.:100-101), EEPT (1998:63), WILDAF-Togo (2002/2003a:28).

As long as the widowhood period is not ended, the widow is considered to be still married to her husband and under the power of him and her in-laws, especially her mother-in-law, to whose demands and treatments she has to submit. If the relationship between the widow and her in-laws has not been good during the husband's lifetime, the purification and penance ceremonies are taken as a chance by the in-laws to take revenge on the "shrew" by imposing humiliating rites on her (*la belle-famille va te faire voir de toutes les couleurs*)²⁶⁸. Apart from the accusation of having murdered their son, the widow is commonly accused of having turned him away from his family (*elle a accaparé notre fils*), impeding their access to his resources, which she is said to have squandered all by herself (*elle a bouffé son argent, elle a gaspillé tout* etc.) (Nyonu Fia 1:7).

Au Togo, généralement, il n'y a pas de mort qui ne soit pas causé par une tierce personne. Donc, quand le mari meurt, on dit que c'est la femme [qui l'a tué]. Parfois, si on ne dit pas que c'est la femme [qui l'a tué], on dit que c'est la femme qui a goûté à tous les plaisirs, maintenant il faut qu'elle goutte aussi à cette indignation. Chez les *Adjigo* [à Aného], dans le temps ils avaient l'habitude de recueillir de l'urine pendant trois jours et jeter ça sur la femme. On la tabasse avec des brindilles. Sur le plan cérémonial c'était juste symbolique, on prend trois brindilles de palmier pour faire comme ça. Mais si la belle famille sent que tu avait accaparé leur fils, ils vont profiter pour bien te taper. (Cathérine 2 :29-30)

The various accusations also serve to intimidate the widow, justify her expulsion from the house, the taking away of her children, her exclusion from her husband's inheritance, and the withholding of her pension, as will be further explored below (cf. field notes 19.9.2001 Amou, GF2D 1999c:123, Abotsi s.d.:102). Even women who separated or divorced from their first husband and remarried somebody else long before their first husband's death, have to take part in the widowhood ceremonies (Aku 1:5-6, Dorothée 3:5-6, Baerends 1990:61). In such cases the in-laws' scorn can be especially harsh.

The inhumane treatment of widows by their in-laws is a very common phenomenon in Togo, although to a slightly lesser degree among practicing Muslims, who tend to limit the widowhood period to forty days and refrain from humiliating ceremonies, arguing that the death was not caused by the widow but the will of Allah. During these forty days, the widow is maintained by her in-laws and her own family, besides receiving monetary presents from condoling sympathizers (Alfa 3:9-10). Christian widows normally have to undergo widowhood rituals as well, unless they actively refuse and are supported in this refusal by their own family.

²⁶⁸ This dependency of widows from the good-will of their in-laws accounts for the great efforts that married women make to institute friendly relationships with them, especially with their husband's paternal aunts.

Their strong commitment to a church, which offers alternatives widowhood rituals, can facilitate their refusal as well, as shall be discussed further below.

At the end of the mourning period the widow is ceremonially cleansed. The ancestors are invoked with palm wine in a libation ceremony to declare the completion of her widowhood, and she is given back her normal clothes. In the southern area around Tsevié she is shaved once more (Dorothee 2:22).

In the Kloto, Kpelé, and Danye areas of south-western Togo, the widow, in order to end her widowhood period, is obliged to have sexual intercourse with a man from far away, to whom she will never be married. Only after he has cut the above mentioned cord (this act is called *asu ahun ka*), her separation from her deceased husband has become definite²⁶⁹ (Nyonu Fia 1:5, Mensah-Amendah 2000c:9, Abotsi s.d.:103, EEPT 1998:56). The widow has to go around and thank the people who contributed palm wine for the ceremonies and food for herself and the guarding women. In Aného the final ceremony is a joyful dance party where the widows are beautifully dressed and offer special food. From now on the widow can return to normal life, i.e. she can do her hair and dress normally, move around freely and remarry if she wishes to do so (Aku 1:5-6, EEPT 1998:55, 64). That her life is still restricted in manifold ways will be explored further below.

Most women are very afraid of the widowhood period. On top of their grief they have to fear isolation, rejection, humiliation, diseases (including HIV/AIDS), bewitchment and even death, as it is not rare that the in-laws use the ceremonies, during which the widow is deprived of any control over her own life (in terms of food, health, protection etc.) to poison her. As widows cannot work during a certain time, their agricultural or business activities severely suffer, and employed women risk to lose their jobs. Furthermore, the ceremonies are very costly, and if the in-laws are unable or unwilling to pay for them, the widow and her family has to finance them. The loss of the husband's labour, the loss of earnings by the widow, topped by enormous expenses²⁷⁰ for the ceremonies in some areas, draw many widows and their families into debenture.

Even educated intellectual women are rarely excluded from the widowhood ceremonies, although the time of their seclusion is much shorter, especially if they are salaried, and some

²⁶⁹ Sometimes the widow is told to leave her door unlocked during the night, so she can be surprised by the man who will cut the widowhood cord (Allahare 2000:6)

²⁷⁰ Although it is well known that in many West African countries, including Togo, people found rotating saving and credit associations (*tontines mutuelles*), which are often used to finance funeral expenses (World Bank 1996:52-53, Sanogo/ Assogba 2003:83, cf. Frey-Nakonzi 1991:186), it is nowhere mentioned whether these also serve to cushion the financial burdens of widows.

manage to escape the shaving by paying a compensatory fine²⁷¹ (EEPT 1998:61-62). Those, whose children are already grown-up and who are wealthy enough and have the necessary contacts outside Togo, leave the country immediately upon their husband's death (for instance in order to join their emigrated children) to escape the widowhood ceremonies, inevitably losing their marital property to their in-laws. But also less wealthy widows make manifold efforts to escape or refuse the ceremonies, as will be explored in the following paragraphs.

5.1.2 Family support for refusing to undergo widowhood ceremonies

In Dorothee's case, five years after her husband had left her, he died in a car accident. As was to be expected, at his funeral his paternal aunt (*tassz*) asked her to stay for the widowhood ceremonies. The suspicion of murder was especially virulent in her case as, having been neglected and humiliated by her husband, she was almost expected to take revenge. Besides, an "unnatural" death, such as through a car accident, is typically associated with witchcraft.

Yet, Dorothee's half-brother, who had accompanied her to the funeral, objected, raising that the deceased had forgotten about Dorothee being his wife and neglected her for quite some time before his death, that he didn't even separate properly from her, which would have meant to respond to her family's summoning and to justify his separation, or otherwise to pay the fine to be fixed by the two family councils:

Comme il m'a laissé bien avant, et même ses parents ne sont pas venus chez mes parents pour qu'on juge les choses, quand il est décédé mes parents ont refusé de faire le veuvage. C'est mon frère qui a refusé que je ne peux pas faire ça, parce qu'il m'a négligé dans la vie ! [...] Après l'enterrement on est parti. (Dorothee 3 :5)

According to this argument, Joseph and his family lost their marital rights vis à vis Dorothee by not fulfilling even the most basic of his marital obligations. This is not a common argument, but again underlines changes in the concept of customary marriage, away from a family contract that extends beyond the husband's death, towards a contract between individuals that involves mutual rights and obligations. However, without the support from her half-brother, Dorothee wouldn't have had the courage to stand up against her in-laws.

It can be generally said that the support of (mainly male) relatives is crucial to enable widows to stand up against the social expectation to undergo customary widowhood ceremonies. More

²⁷¹ The fine serves to pay for the ceremonies, which are necessary in order to appease the ancestral spirits, especially the spirit of the deceased husband, and is not to be confused with a venality of freedom from guilt, in the sense of indulgence payments.

and more often, daughters of widows assume the role of protecting their mother against the in-laws' atrocities. This is especially the case if it is also the daughter who economically supports her widowed mother and bears the costs for the ceremonies, such as in the two following examples:

In the case of Anita's mother, it was Anita, the very self-confident and outspoken daughter in her forties (cf. chapter 3.3), who maintained her widowed mother and successfully objected to the widowhood ceremonies, arguing that her mother hadn't been on good terms with her in-laws and that it was therefore to be expected that they would misuse the ceremonies to take revenge on her:

Quand ils ont commencé [à parler du veuvage de ma mère], j'ai refusé. Moi, j'ai dit: Elle ne fait pas le veuvage! Elle n'a pas du tout été heureuse là-bas [chez sa belle-famille]. Si elle veut, elle va le faire. Si elle ne veut pas, elle ne fera pas. De toutes les façons, elle ne va pas le faire là-bas. Les veuvages ancien temps là, on n'a qu'à les classer. Parce que là-bas, si la belle-famille ne t'aime pas, elle va te faire voir de toutes les couleurs. La famille de mon père, qu'est-ce qu'ils peuvent faire ? Comme moi j'ai la grande gueule, qui va oser ? (Anita 4 :13)

Also in the case of Justine's mother, it was Justine who watched that her widowed mother underwent only very short widowhood ceremonies:

On va lui mettre un pagne très noir. Ensemble avec sa co-épouse elle va rester dans la chambre de mon papa pendant cinq jours. Mais comme elle est vieille, on va faire le veuvage entier pour un mois seulement. Si elle veut, elle peut aussi rester chez ses parents [au village voisin]. Mais on ne va pas la faire souffrir comme ça se faisait autrefois. (Justine 4:6)

Certainly, the fact that, although Justine was her youngest daughter, she was self-confident and well respected in her family and in the whole village, due to her social status as speaker of the "queen mother"²⁷² and her potential economic power through her latest marriage with a rich lawyer from Lomé, played a decisive role. Her marriage to this lawyer, i.e. a specialist of the formal law who is well connected to many influential people in the country and thus to formal societal structures in general, might have additionally helped to hold eventual critiques from her mother's in-laws or from other villagers at bay. On the other hand, as Justine's father had died very old and Justine's mother was well respected by her in-laws, having stayed faithful to her husband during their whole married life and raised all of his 11 children, she probably did not have to fear a cruel treatment anyway.

²⁷² The "queen mother" and her speaker are responsible for women's affairs within the village, see chapter 2.1.3.

5.1.3 Christian women's groups lobbying for alternative widowhood ceremonies

The Federation of Women's Associations of the Evangelical Presbyterian Church of Togo has been lobbying, already since the 1970s, for a relaxation of customary widowhood ceremonies and the creation of alternative ceremonies in church. They consider the ceremonies to be a violence against women, because of their degrading and harmful character, and to be incompatible with the Christian faith. For instance, certain rites, such as the sexual contact with a stranger, are against the Christian limitation of intimacy to marital relations. They deplore that the terrible sanctions, threatened by custom in case of non-submission to the ceremonies, hinder widows from sticking to their Christian faith and refusing the ceremonies, thus putting them into a real dilemma. They also criticize the unequal treatment of men²⁷³ and women during widowhood (EEPT 1998:40-43, 67-70).

In order to replace the customary ceremonies, this Federation developed since 1975 a church ceremony, during which the widow or the widower is accompanied and supported by other Christians and their prayers. It takes place in church during the early morning hours after the funeral. After some initial songs and prayers, the priest explains that the marriage bond, sanctioned by god, binds the spouses during their whole lifetime, but ends with the death of one of them (referring to the bible e.g. Math. 19/4-6, 22/30, Rom. 7/2); that for a Christian his or her bonds with God are stronger than his or her marital bonds, and that a deceased human being has no power over a faithful Christian. The widow or the widower can either wear the clothes of her or his choice, or is given a blessed robe by the priest. After that, he formally declares her or his separation from the deceased spouse. This is followed by intercessions and consoling prayers (such as from the bible sections II. Cor. 1/3-4, Jes. 25/7-8, 60/19-22, Joh. 11/25-

²⁷³ Customary widowhood for men is much shorter, the phase of reclusion taking up to four days and the following phase taking up to three months, and less degrading than that for women. He also remains secluded for some time, shaves his head and has to wear black. Only in some areas he takes a ceremonial purification bath. However, he is not obliged to remain chaste and faithful to his deceased wife (such as symbolised with the herbal loincloth and stick for the widow), but to the contrary, is immediately after the first reclusion encouraged to fulfil his marital obligations towards his other wives, or, if he is monogamous, is "given" as soon as possible another wife. In the south-eastern area around the *Lac du Togo* a niece is sent to the widower to satisfy his sexual desires. Among the *Kabye* of northern Togo the widower is exempted from undergoing widowhood ceremonies at all, which are performed, in his place, by his eldest daughter (Christophe 4:2, EEPT 1998:45, 52, 56, Bada 1997:5-6, Abotsi s.d.:102-103).

The fact that the penance of one person can be transferred to another relative hints to the concept of family liability within customary law. It is this same concept which underlies the custom of *trokosi* (meaning 'bride of the God') among the *Anlo-Ewe* in the Volta region of southern Ghana. *Trokosi* means that virgin girls can be "given" by their families to a *vodu* priest to become the lifelong servant and wife of the divinity – and also of the priest himself – in order to pay off debts towards this divinity, which a parent or relative has incurred through committing a crime or a spiritual transgression (Amendah et al. 2001:12-16, Midgley 2002:31-34, Quashigah 1998:193-195).

27 etc.) reminding her or him of the resurrection and eternal life for all faithful Christians. A similar liturgy is held at the end of the mourning period, where the widow or widower is symbolically given normal clothes by the pastor or catechist (Allahare 2000:6-7, EEPT 1998:72-76, Norddt. Mission 1997:16). However, when the above mentioned Federation submitted their proposal of such alternative ceremonies to the EEPT-synod in 1986, they were met with disapproving silence of the male church leaders (Ulferts 1994:152). It was only approved of after the creation of the *Département Féminin* in 1989/1990 and it took even until 1998 for their proposal to get published and widely distributed (EEPT 1998, Allahare 2000).

The offer of such alternative church ceremonies is readily taken up by many Christian widows and their families, as in the following example of Anita's mother:

Ma mère, elle est dans une église, elle est fervente ! Donc elle a refusé de faire nos cérémonies, et moi-même je l'ai supportée. [...] Elle va faire le veuvage à l'église. Chez les blancs²⁷⁴ là, les choses évoluent. La sœur de mon père, elle n'a pas fait non plus. Elle a dit qu'elle ne trouve pas ça nécessaire, si elle le fait à l'église c'est bien. Ma tante maternelle, elle aussi a fait ça à l'église. À l'église, il faut dire ça à un prêtre, ils vont prier pour toi et puis c'est fini. Ce n'est pas sorcier. Eux là-bas [pour le veuvage coutumier] ils vont t'énumérer du bœuf, du mouton des fois, des volailles, tu dois acheter tout ça pour leur cérémonies. C'est cher ! [...] Et puis, on fait souffrir la veuve. Elle doit dormir par terre. Il faut pas manger, il faut pas nettoyer, tu dois rester dans un pagne, tu ne vas pas te laver tes cheveux, tu ne vas pas te coiffer. À certains endroits, c'est même plus sévère. Mais à Lomé, la plupart du temps on fait moins [le veuvage coutumier]. (Anita 4 :13-15)

Anita's reasons for preferring the church ceremonies are that they are in accord with the widow's Christian faith, that they are less costly than the customary ceremonies, and abstain from humiliating the widow and making her suffer.

The following case study shows furthermore that the sheer existence of these alternative ceremonies serves already to strengthen women in their negotiations of the conditions of widowhood.

5.1.4 *Quelle est cette femme là qu'on veut épouser, elle fait des lois?* Fixing widow's rights in a marriage contract

A very courageous, foresighted, and innovative way of protecting herself from unwanted widowhood obligations was found by Sophie: When her future in-laws asked for her hand in marriage, she requested that they agree in case of her husband's eventual death not to accuse her of having killed him and not to submit her to their humiliating widowhood ceremonies:

²⁷⁴ Anita's mother is probably member of a church with an American or European pastor.

Au moment où on voulait amener ma dot, j'ai posé des conditions. Parce que chez mon mari, quand ton mari meurt il y a des rites à faire. On doit t'enlever tous les cheveux, la tête bien rasée, tu ne dois plus porter des corsages et tu n'a pas de chaussures, pendant trois ans. Moi je ne ferai pas, je ne ferai pas. Parce que moi, je ne me vois pas, telle que moi je suis, marchant dans la ville de Lomé les pieds nus pour aller au marché, où bien aller me caser dans un village pendant trois ans parce que mon mari est décédé. Moi je ne veux pas ça. [...] Je leur ai dit que s'il veut vivre avec moi, au jour où il mourra, ce n'est pas moi qui l'aurait tué. Où bien si c'est moi qu'on ramasse, ce n'est pas lui qui m'aurait tué. (Sophie 1:16-21)

She thereby demonstrated to be knowledgeable of the strongly tabooed widowhood norms, the humiliating character of which she vividly described as well as her categorical refusal.

She based her demand on her understanding that, for a marriage to be successful, both spouses have to make an effort, and that a threatening condemnation of the wife would not contribute to the egalitarian partnership, she obviously desired, as becomes evident in the following citation. This kind of outspoken feminist attitude is rarely encountered in Togo. Furthermore, she gained negotiating power from her social and economic independence²⁷⁵ both from her future husband and from her natal family, in the sense that she expressed to be ready to search for another partner or remain unmarried, if her bridegroom's family would not accept her conditions:

Pour que notre mariage sera le plaisir de notre vie, c'est pas à moi seule, c'est à lui et moi de ne pas faire du n'importe quoi, si je l'aime où je l'aime pas. Donc, s'il veut garder les rites de chez lui – qui ne plaisent à personne –, alors là il n'a qu'à aller chercher une autre femme ailleurs. Si le monsieur tient à moi, il n'a qu'à renoncer à faire le rite là. S'il ne tient pas à moi, je me retire. En cours de route je rencontre un autre homme qui est prêt à me prendre comme moi je le désire. [...] Donc ils ont été obligés de laisser la dot auprès de mes parents pour revenir auprès du monsieur. (Sophie 1:16-21)

Sophie's argument was strengthened by her knowledge about and reference to existing alternative widowhood ceremonies in church – such as described above –, thereby questioning the alleged general acceptance of the customary ceremonies:

Chez moi²⁷⁶ ça ne se fait pas comme ça, ça se fait autrement! [...] Chez nous, on t'appelle devant le pasteur, c'est le pasteur qui prie avec toi, et il donne le pagne béni aux membres femmes de ta belle-famille, eux qui vont te conduire dans une chambre là-bas, tu changes le pagne et tu reviens devant le pasteur. Il te fait des bénédictions. Il dit, gardes la mémoire de ton mari pendant six mois. Et il demande à Dieu de te protéger,

²⁷⁵ From her biographical background (see annexA1) it becomes clear that Sophie has quite a high education as well as a double professional training as a typist and seamstress, providing her with good economic prospects. Furthermore, at the time of her daring demand she was already living in the city of Lomé, quite independently from her parents, who lived in a village, 125 km away.

²⁷⁶ The way Sophie confronts her husband's with her own culture, shows how conscious she is about the fact that, upon marriage, she has to leave her own family and enter as a stranger into her husband's family (cf. chapter 4).

que tu ne seras pas malade, et que tout ce que tu vas faire soit bénis pour que tu puisses nourrir tes enfants que le mari a laissé. Et qu'après ces six mois tu reviens devant lui pour le remercier et changer de tenu. Donc, six mois après on te cherche un autre pagne qui est clair, n'importe quelle couleur, tu retournes et on t'enlève le pagne noir là. Et maintenant le pagne noir là on donne à un membre de la famille de ton mari, une belle-sœur et c'est comme ça que ça se fait chez nous. (Sophie 1:16-21)

Not surprisingly, her demand and ways of arguing were judged as impertinent, because violating gendered norms of behaviour and communication, and she was severely criticized by both her own family and her future in-laws. Her schooling and urban upbringing was blamed for her unwomanly behaviour and – a typical way of intimidating women – she was warned of the danger of spiritual retributions awaiting such transgressions. However, she did not get mixed up into their argument of a family liability for spiritual offences. To the contrary, she insisted on the individual consequences of conforming to the widowhood norms, which she was not ready to bear:

Donc, mon oncle était parti dire ça à mon papa. Mon papa a dit: Ah, une femme ne peut pas dire ça. Moi je dis: Il ne faut pas crier sur moi, parce que c'est moi qui va subir après, et non pas vous. Et je ne veux pas. Il a dit : C'est toujours qui fait l'école dans la ville, et tout ça là. Si c'était une femme qui était restée en permanence chez lui au village, elle ne dirait pas ça. Donc, quand ma mère m'a appelée, elle dit: Non, il faut pas imposer des trucs comme ça, parce que ça peut porter malheur. Je dis : Mon malheur c'est d'aller faire trois ans quelque part sans chaussures, sans corsage. Donc, tu vois, ça m'a apporté beaucoup de problèmes. (Sophie 1:16-21)

As she had well prepared the bridegroom for this situation, he tried to convince his family to accept her demand. When they agreed, Sophie was still not satisfied but even insisted on them signing their promise in a kind of written marriage contract. Her idea of a written marriage contract shows, on the one hand, how much she was impregnated with modern legal tools, be it through her partly urban upbringing, her secretarial training, or her early engagement in associational activities. On the other hand, her precaution demonstrates how much she was aware of the enormous pressure exerted on widows by their in-laws, and of their high vulnerability in the extremely painful and stressful situation after their husband's death. Although the critics increased upon this even more daring and uncompromising request and were accompanied by social sanctions in the form of resentful gossiping behind her back, she remained firm both towards her husband and his family and towards her own family. Finally, she succeeded in both getting the contract signed and getting married according to her choice:

Comme ils sont retournés auprès de lui, c'est lui qui leur a signifié, que bon, si c'est ça, ça n'a pas d'importance parce qu'il m'aime. J'ai bien discuté avec lui avant de partir au village. Après un temps ils sont revenus, l'oncle de mon prétendant et deux de ses tantes. Ils ont dit qu'il n'y a pas de problème. J'ai dit que s'il n'y a pas de problème, moi je

ne veux pas quelque chose de verbal, je veux que ça soit écrit, que je signe et eux aussi ils signent. Donc, le jour qu'il y aura un problème que personne ne viendra me dire: Ce n'est pas ce qu'on avait dit. [...]

Il y a eu plein de critiques autour de moi, les gens ont parlé, ont chuchoté, moi, je m'en foutais. Les femmes *tassiwo*, les sœurs de mon papa, m'ont convoqué, je ne sais même plus combien de fois. La famille du monsieur aussi, ils ont dit: Quelle est cette femme là qu'on veut épouser, elle fait des lois? Les belles-sœurs disaient: Bon, il faut laisser la femme là, elle est pleine de problèmes. Mais j'ai tenu ma position. J'ai dit que je ne peux pas accepter à me mettre une corde au cou et après commencer à avoir des problèmes. J'ai dit à mon futur mari: Tu choisis entre ta famille et moi, parce que moi ce n'est pas mon problème. Je ne suis pas pressée à me marier non plus. Soit, je me marie ou je reste célibataire. C'est ça qui a fait que ma dot a traîné, traîné, traîné plus de dix mois, avant qu'on ait fait les cérémonies de mariage. Finalement ils ont accepté. Et c'est sur ça qu'on a fait les papiers. (Sophie 1:16-21)

Of course, the efficacy of her strategy remains to be seen, as contracts are difficult to enforce within a highly corrupt state, in which people do not hesitate to take the law (or the norms they adhere to) into their own hands, resorting sometimes to quite violent measures. Nevertheless, Sophie indulged in new²⁷⁷ ways of claiming women's rights, putting her own interests above her family's interests, making herself clearly heard, demonstrating unwaveringness and strength, and showing new paths for other women eventually to follow. Apart from her knowledge about both customary norms and modern legal tools, as well as her ability to speak up, bring arguments forward, and not give in to intimidations or critique, her main asset was her economic and social independence, from both her suitor and her own family.

Sophie's position would be strengthened if the state law clearly supported the protection of widows' dignity according to human rights standards. But this is not the case, as the following section will show.

5.1.5 The half-hearted protection against widowhood ceremonies by state law

Probably influenced by the Universal Declaration of Human Rights and other international conventions and treaties, to which Togo adhered (cf. chapter 2.3.3), the Togolese legislator states in article 397 of the Family Code of 1980 that a widow's refusal to undergo bereavement rituals shall not be treated as an insult against the deceased, liable for making the widow unworthy of inheriting from her deceased husband, if the ritual is likely to harm her "bodily

²⁷⁷ The idea of fixing a restriction of widowhood ceremonies already upon marriage in a kind of marriage contract (actually between the wife and her in-laws) did not stem from women's rights NGOs, probably because it would be tremendously difficult for most women to negotiate such a contract upon marriage.

integrity” or her “delicacy”. Nevertheless, within the same article the legislator withdrew from this universal recognition of a widow’s human rights, by adding that the non-insulting character of the refusal shall be appreciated according to the custom of the deceased. The fact that the refusal shall not be appreciated according to the custom of the widow herself underlines, once more, the fact that women are thought of marrying into their husband’s family and “culture”, by the rules of which they have to abide; furthermore that the normative values of the man are given priority over those of the woman.

This addition contradicts other stipulations of the Family Code, in so far as in its article 105 it grants the wife matrimonial freedom and full legal capacity upon the conclusion of the marriage²⁷⁸. Moreover, article 397 is a clear example of the legislator’s attempt to pay lip service to international human rights standards, while at the same time circumventing them by a cultural relativist position, in that it is pretending that the widowhood ceremonies as such are not degrading according to local cultural standards. Such an argument would be supported by the African Charta, which – in its preamble – submits the interpretation of human rights to „the values of African civilization“ (OAU 1981). Although the Togolese Family Code admits that, in exceptional cases, the concrete ceremonies imposed on a widow can be degrading, even according to local standards (for instance when misused by the in-laws in order to take revenge), the formulation seems to suggest that there do exist customary authorities, to which the widow can address herself in cases of misuse, in order to seek exemption or revision.

However, as we have seen, this does not correspond to reality. The way customary widowhood is set up puts the widow in such a position, that she risks her life if she dares to refuse, unless she is supported either by her own family or by another powerful institution, such as a church or a women’s rights NGO. Neither can we talk of an institutionalised form of customary legal appeal, which would suffice to ensure the protection of widow’s human rights, nor is it guaranteed that the widow has access to the chief and his advisors (or, for cases in the south-western Kloto area, to the „queen mother“) in the moment needed.

Togolese women’s rights NGOs recognize, on the one hand, that this article is at least a starting point to end discriminatory widowhood ceremonies, as it opens a space to discuss the respect of the widow’s dignity, a question which had been hitherto hidden by a taboo (Christophe 8:3). On the other hand, these NGOs have been lobbying, since 1997, for a change of article 397 CPF, so that a widow’s refusal to perform widowhood rituals can in no way justify

²⁷⁸ Cf. also Cavin (1998:125) about a similar contradiction in Burkina Faso state law.

her exclusion from inheritance, not even according to customary norms (LTDF 1998:15), but so far without any visible success (cf. chapter 7.4.1).

5.1.6 NGO-support to control the husband's funeral against intimidating in-laws

In 2001, a fifty year old secretary from Lomé university contacted the Lomé counselling centre, which is run by the Togolese NGO *Groupe Femme, Démocratie et Développement (GF2D)*. Her husband had recently died and she complained that her in-laws insisted on burying him – who had been a successful businessman – in their village, although he, before his death, had made them swear in the presence of his wife, to bury him in Lomé, where he had lived all his life. Moreover, her in-laws didn't make any attempt to convoke a family council session, thus hindering the widow's access to her pension (WILDAF-Togo 2002/2003a:17-18).

The NGO-counsellor helped the widow to address a letter to the president of the court, asking to issue a temporary injunction against the burial in the village, which was effected the following day. Furthermore, the counsellor suggested to her to announce by herself a family council meeting, the protocol of which would afterwards be legalized by the president of court, so she could access her pension.

When the widow phoned her in-laws in the village to invite them to the family council, they refused to come. Nonetheless, she could have still held the family council session together with her adult children. But the widow's brothers-in-law became so aggressive, accusing her of being a witch who had "eaten her husband's eyes" and threatening to take revenge, that she desisted to hold the meeting and also withdrew her court request to block the burial in the village. Yet, she refused successfully to take part in the widowhood ceremonies in the village for fear of getting killed.

This is not an uncommon case. As was already mentioned, widows are mostly refused by their in-laws to organise and even assist the burial of their husbands, which normally takes place in the village of the husband's patri-lineal origin, even if the deceased was born, lived all his life, and died in town. Contrary to Kenya (cf. the famous S. M. Otieno case, Ojwang/Aduwo 1989) and Tanzania (Klemp 1995:19), where the widow has to prove that she has led an "urban life" and was married to the deceased at the registry office, in order to claim her legal rights, the urban lifestyle argument is not taken into account by the Togolese law. It is also to the husband's village that the widows are taken by their in-laws for the widowhood ceremonies. For many urban widows, the more or less long detention in their husband's village is a severe

shock, increasing their isolation, pain, and bewilderment. Furthermore, they risk to lose their jobs, due to the long absence.

This example demonstrates that women's rights NGOs (through their legal competence and their good contacts to supportive judges) are able to facilitate widows' access to protection from the state law and its legal institutions against blackmailing in-laws, who try to impose their own will on the widow by threatening to exclude her from her pension and harm her during widowhood ceremonies. It also shows that in some cases this is not sufficient in order to counterbalance the power inequality between a widow and her in-laws, which are reinforced by customary norms. Therefore, in 2002 the NGOs *GF2D* and *ALAFIA* developed an innovative approach, aiming not at fighting harmful customary norms, but at inciting customary norms to change so they would respect human rights.

5.1.7 NGOs re-vitalizing the traditional flexibility of customary norms to abolish degrading widowhood ceremonies: The Fiokpo campaign

The base for this innovative approach was laid, when in March 2001 the NGO *GF2D*²⁷⁹, in the context of its legal advisory services, trained the cantonal chief of the Fiokpo valley in south-western Togo to become a paralegal advisor (C. Akakpo et al. 2001a:8). He already had a paralegal colleague in his canton, as one „queen mother“ had previously participated in a similar training and now was an active member of the women's rights NGO *ALAFIA*. Cantonal chiefs and „queen mothers“ are responsible for mediations and customary jurisdictions in local conflicts about land and other civil affairs (see chapter 2.1.2, 2.1.3 and 3.1.2). Thereby they apply their – often secret – knowledge of *la coutume* or *la tradition* and their individual – often fragmentary – knowledge of the state law. Knowledge is clearly seen as a means of power, as the following *Ewe/Mina* proverb shows:

Ame manya nua, kluvie. (The one who does not know, is a slave.)

Concerning the custom, the chiefs and “queen mothers” are the authorised knowledge carriers (cf. Diawara 1990). As such they tend to act rather as knowledge gatekeepers, who filter information according to their political interests. For instance, as witnessed by an advisor to a „queen mother“ in the Kloto district, some years ago all the chieftaincy members had been invited to a meeting at the district office (*préfecture*) where they were informed that, according to the new Family Code of 1980 the inheritance shall be distributed equally among daughters

²⁷⁹ GF2D was introduced in chapter 2.3.5 and will be further analysed in chapter 7.

and sons. They were asked not only to act according to these laws and politics in their management of village affairs, but also to pass on the news to the population. Yet, they neither passed on this information nor applied it. Only the „queen mother“ gathered the women of her village and informed them, however without much effect, as the men did not share in this new knowledge. This blocking of information by the chiefs is frequently criticized by the population. However, their new training as paralegals gave them more of a role of a knowledge transmitter: They had been trained to sensitize the population on women’s rights, assist them in bureaucratic procedures, give qualified legal advice or orient them to competent state or NGO-services.

As their following statements show, both the cantonal chief and the „queen mother“ appreciated their paralegal training:

Ma formation comme parajuriste m’aide beaucoup. La connaissance du code des personnes et de la famille m’aide dans mes jugements à résoudre les problèmes des femmes. Cela me permet de bien leur parler. [...] Autrefois, nos grand-pères avaient des interdits qui préservaient du mal. Aujourd’hui, il faut garder certaines coutumes qui peuvent être améliorées ou se débarrasser de celles qui sont dangereuses. (Agbedzi Aku, Reine Mère de Yeviepe, interviewed by Mensah-Amendah 2000c:3)

Ma formation de parajuriste, étant une formation en droit, va beaucoup m’aider dans les procès que je donne. Elle ne va nullement à l’encontre de la tradition, mais elle aidera à rendre beaucoup plus moderne et acceptable cette tradition. [...] Je peux dire que cette formation est un pilier pour moi devant mes populations. [...] La tradition n’est pas une mauvaise chose en elle. C’est nous même, les hommes, qui compliquons les choses. Il suffit de la modérer avec les exigences du temps pour la rendre beaucoup plus acceptable et non usurpatoire de la valeur humaine. (Togbui Dzede V chef de canton de Womé, interviewed by C. Akakpo et al. 2001a:8)

Yet, while these citations demonstrate the willingness to apply their new knowledge in their own jurisdiction, they do not reveal any intention to empower the population by sharing this knowledge with them.

Nevertheless, back from their training, the two paralegals together with *ALAFIA* organised workshops to raise awareness among their communities and among the chiefs and „queen mothers“ of neighbouring villages on the negative effects of discriminating against girls in education and schooling, on the advantages of a civil marriage, the rights of widows, the statutory inheritance right, the functions and importance of the registry office, and civil and political rights of women. Discussions rose around the degrading character of customary widowhood ceremonies. Workshop participants were preoccupied that these ceremonies impoverish the mourning families, as the economic and agricultural activities of the widow are re-

duced while the ceremonies induce high costs, that they harm the physical integrity and dignity of widows, run counter to their religious convictions as many of them converted to Christianity, and expose them to the risk of contracting AIDS (Benida 1:16-18, Komlan 2003b:86-88).

ALAFIA took the example of land to show that traditional norms are not static but responsive to social changes: In former times, land was perceived to be a communitarian good, linking the clan and its prosperity to the ancestral land. It was unthinkable to sell and thus to bequeath land. But, with the expansion of the market economy, land became a marketable good in many regions of Togo. Traditional norms were adapted to permit the inheritance of such land which had become private property²⁸⁰. The same way, it should be possible to alter other traditional norms in order to better serve people's needs, for instance by reducing degrading widowhood ceremonies (Komlan 2003b:86-88).

As one women's rights activist explained, it was not easy to get the chiefs on board. It was decisive that *ALAFIA* approached them in a respectful way:

Ce n'est pas tous les chefs traditionnels qui acceptent. Ça dépend de comment tu fais passer le message. Ces chefs là, on les a réunis et on les a sensibilisé d'abord avant qu'on nous promène dans les villages là. Ce n'est pas facile avec les autres chefs. C'est une longue lutte, c'est une bataille que nous allons mener. Ce n'est pas facile. (Benida 1:16-17)

Participating villagers, most of them Christians, admitted that they had wanted to drop these practices for a long time already, but had refrained from doing so out of fear of spiritual retributions. At the same time, the traditional authorities showed their desire to change these practices in order to reduce poverty and misery in their communities. After many meetings, they jointly decided to abolish the identified practices, but insisted on doing so in their own traditional way:

In May 2003, with the financial support of *ALAFIA* and *GF2D*, a solemn ceremony was organized in the centre of the Fiokpo valley. People from all the valley communities as well as the district officer and NGO representatives participated. The chiefs and „queen mothers“, together with their advisors, sacrificed he-goats to invoke and please the ancestral spirits and obtain their approval to change inheritance and widowhood norms. This was followed by joyful festivities²⁸¹. From now onwards, people have to fear spiritual punishment if they continue to disadvantage daughters in inheritance matters or to submit widows to the old widowhood

²⁸⁰ Before, the inheritance of land had concerned only user rights to the land.

²⁸¹ See the photo on the title page and photos 5 – 8 in the annexA7.

ceremonies. The public character of the ceremony ensured that everybody witnessed it and was thus informed of the new norms (Benida 1:16-18, 3:29, Komlan 2003b:86-88, ALAFIA 2002:1-3). This experience proved the existence of societal modes to transform customs, which can be revived²⁸². They allow to harmonize customs with the state law and human rights, without disturbing the social organisation or bringing the traditional authorities in disrepute.

5.2 The problem of widows' housing and inheritance

5.2.1 Avoiding to confront "property grabbing" in-laws

Through customary marriage a woman is taken on as a temporary member by her family-in-law to give birth to and raise offspring to her husband's patri-lineage, but she nevertheless remains a stranger in her husband's family, as discussed in chapter 4. As a consequence, a widow has no right to remain in her house, which is commonly perceived to be the husband's house and thus as belonging to his paternal family²⁸³. She is expected to return to her own family of origin, unless she has a grown-up son who inherited her husband's house and fields²⁸⁴ (cf. also Becher 2001:58-59 for northern Ghana). If her son inherited the house, he may ask his mother to stay. Otherwise she may be allowed to move to her brothers²⁸⁵. Even if the in-laws permit the widow to stay in the house, she definitely has to move out if she wants to remarry outside her husband's family, as she would "sully her late husband's memory" (and offend his spirit) if she had sex with another man in "his" house²⁸⁶ (Kossiwa 1:8, Afi 4:1,

²⁸² Another, more individual, mode to transform funeral ceremonies was reported by one of my interviewees: She told about a woman in neighbouring Benin who had an influential position as the elder sister of the male head of the family (cf. the *tassi* among the Ewe in Togo). Before she died she planned her own funeral. She demanded that all the funeral ceremonies shall be performed, even some of the ones discriminating against women, and she announced that this would be the last time that these discriminatory ceremonies shall be performed at all. Thereby, she inbuilt within the ceremony, the mode to change it (Afi 3:1).

²⁸³ This is different among the *Bassar* of central Togo, where widows who do not remarry are allowed to stay in their late husband's house (Szwark 1981:68) and among the *Kotokoli* of central Togo, where a widow who has born at least one male child is allowed to stay (Lallemand 1994:137).

²⁸⁴ This may not be the case, if the brothers or paternal cousins of the deceased impose a lineage prerogative to the inheritance (cf. chapter 3.2.3).

²⁸⁵ Again, this explains the importance that married women attribute to maintaining good relations both with their own sons and with their brothers, so that they may be allowed to stay or come back as a widow and get accorded land for subsistence use or a share in the yield of their late father's land, which would be administered by their eldest brother (cf. Kossiwa 1:1-2, Afi 4:1 for the *Ewe*, Froelich et al. 1963:32, Lallemand 1994:137-143 for the *Kotokoli*).

²⁸⁶ Another reason is that if the widow has children with another man, these belong to their father's patri-lineage, and if they remained in the house of the deceased husband, the widow's in-laws fear to lose their property (i.e. the house) to the new husband's family.

Gayibor/ Komlan 2000:5). When leaving the husband's house, she may be forced to leave her children behind, as they are under the control of their patri-lineage, i.e. the widow's in-laws, who may want to educate them and use their work force.

Let us return to Dorothée's case: Some time before her husband died, she had moved to the town of Atakpamé to work again as housemaid and nanny. Upon her return to Lomé, her in-laws had taken over the house that she had built together with her husband, and all her furniture and personal things. Dorothée considered such "property grabbing" to be the usual behaviour of in-laws in this situation²⁸⁷. She was even happy that she had not been living in the house upon the arrival of her in-laws, thereby escaping the humiliating experience of being "kicked out" of her own four walls:

Même les gens [qui] se marient et qui ont des enfants, si le mari est décédé, on renvoie la femme de la maison ! On fait ça au Togo ici ! On renvoie la femme !! Les parents de l'homme renvoient la femme de la maison. Comme je suis partie aussi c'est mieux. (Dorothée 2 :20)

At the same time, Dorothée's "happiness" about not having to confront her in-laws demonstrates her lack of power to defend herself in this situation. Equally, after having realized that her house and belongings were gone, Dorothée did not demand any of it back, for fear that her in-laws would try to kill her or cause her to become mad by applying witchcraft:

Si je restais [à la maison que j'avais construit avec mon mari] je n'aurais rien. Je connais la famille, je les connais du A à Z, alors ils n'ont qu'à rester là-bas. Moi aussi, je vais vivre, s'il plait à dieu. [...] Si c'est que j'insistais que je vais rester là-bas, peut-être nous les noirs, ils peuvent me faire quelque chose. Soit, si je ne meurs pas, je serais un vaut-rien. Moi-même j'ai vu c'est mieux [de ne rien demander]. (Dorothée 2:21)

Dorothée had to work hard, at first as a nanny, later as a water-carrier for construction works, in order to secure her own and her daughter's survival. She thus shared the situation of many

²⁸⁷ Dorothée shares this experience with widows in many other African countries, such as for instance Zimbabwe, aptly demonstrated in the Zimbabwean film "Neria" (by Mawuru 1992): Neria is a hard-working resourcefulness seamstress, who enjoys an equal partnership with her loving husband. The happily married pair has not only managed to build a decent home for themselves and their two children, but have been able to set something aside for the future. All this changes drastically with the unexpected death of Neria's husband. While Neria is in her husband's village for the funeral, her greedy brother-in-law takes her furniture, cash, car and bankbook, leaving Neria to struggle to support the children. A friend informs her about the legal advisory services of a women's rights association and urges her to take a lawyer, but she hesitates for fear of offending her late husband's family. Then one day she comes home from work to find that her brother-in-law has changed the locks on the house and taken her children to the village, where she later finds her desperately ill daughter unattended. Neria carries her to the hospital, arriving in time for an emergency appendectomy. At long last, Neria hires a lawyer, who helps her seek justice in the courts (Kempley 1993:1).

other African widows, whose “poverty [is] a result of being evicted from their homes and losing their property to acquisitive and often ruthless in-laws” (Owen 1996:23).

The practice of expelling the widow from her husband’s house is quite frequent in Togo²⁸⁸ (as elsewhere in Africa, cf. Owen 1996:27). However in urban areas, the customary court nowadays – if called upon – takes care to attribute the use of the family house to the widow, or, in equal shares, to her and her co-widows, especially if she or they have still minor children (Secr. Chefferie 1:23, 35). This innovative practice of customary courts was probably influenced by the Family Code of 1980, which stipulates in article 506 that the surviving spouse can demand to postpone a division of the family house among its inheritors, if he or she is living in this house upon the spouse’s death or has still minor children to raise. This article is however rarely applied by state courts, as its precondition of a renouncement to custom by the testator (cf. art. 391 CPF) is hardly ever fulfilled. Here, the advantage of a greater flexibility of customary norms, as compared to state law, becomes obvious.

Nevertheless, as this customary court practice is a rather recent and not very reliable development, well-off business women frequently invest their surplus money to buy a plot of land (be it in town or in a village) on which they build their own house as a housing and financial security for times of widowhood. That means that even socially and economically strong widows try to avoid to confront their “property-grabbing” in-laws (cf. Mancraro 3:28-29, Cathérine 2:5, 27, 29, Latif 2:18-20).

5.2.2 Levirate – a desirable alternative?

Sometimes widows are “offered” to stay in their late husband’s house, if they accept to become the wife of a brother or cousin of the deceased in a so-called levirate marriage (Mensah-Amendah 2001:6):

La famille te propose: Est-ce que tu veux rester avec nous, ou bien tu veux partir? Si tu dis que tu veux rester avec eux, on te propose: Regardes dans la famille, ton mari a eu des frères, celui qui te plaît tu choisis et tu dis son nom, et on va le demander, et tu l’épouses. Mais si tu dis non, moi je ne veux plus aller dans la famille, on te laisse partir. Maintenant tu quittes la maison de ton mari, tu vas regagner la maison de tes parents, et quand tu trouves un homme tu te maries. Ou alors tu restes auprès de tes enfants dans la maison de ton mari jusqu’à ce que tu trouves ton mari. Mais tu ne dois pas

²⁸⁸ Except for some practicing Muslims, who accord the widow the right to stay, even after her children have grown up (Latif 2:3, 7, Kassindja 2000:85). However, Muslim families who accord importance to their local customs, do not hesitate to expel the widow from her husband’s house, such as in the case of Zuwera (Kassindja 2000:105).

rester dans la maison et amener un nouveau mari dans la maison de ton mari. (Sophie 1 :19)

This suggestion comes up, if the widow is still young and potentially childbearing or if she has small children. This is quite often the case in polygynous marriages, where the husband frequently is by far older than his second or third wife. As Baerends formulates for the Anufom in northern Togo:

A woman has the right to refuse a leviratic marriage, but, especially when she has children from her first husband and is not past childbearing, the fact that she is dependent because of her children and still wanted because of her fertility combine in pressing her to marry and stay within her first husband's lineage (Baerends 1990:48)

Most anthropological studies (cf. E. W. Mueller 1988:284) assume that the idea behind levirate – which is still quite common for instance in the area around Atakpamé in southern Togo – is that, in a customary marriage, the family of the husband acquires, through the bridewealth payment, rights to the wife's child bearing capacities as well as to her labour force. These rights extend beyond the husband's death²⁸⁹. The husband's family might therefore try to keep the marriage union with the widow intact by providing a levir. At the same time, such an arrangement is supposed to provide the widow with continuing support by her in-laws, in the sense of housing, being able to stay with her children, and being maintained, herself as well as her children, by the levir²⁹⁰.

The state law prohibits a leviratic marriage only if it lacks the widow's explicit consent (art. 44 and 56 CPF). Although it is more common nowadays that widows refuse to marry a levir²⁹¹ (cf. CRIFF6Sept01), in many cases they are still compelled to accept, especially if they are not allowed to keep their children and remain in the house otherwise (GF2D-Evaluation 2001). The latter aspect is even more important if they can neither move back to their own family nor have the means to rent a house on their own. This shows that socially isolated or economically destitute widows are not likely to refuse a levirate, but the forced character of

²⁸⁹ Similarly for Burkina Faso, cf. Bruchhaus et al. (1990:116).

²⁹⁰ Among the Muslim population, divorced women and widows are strongly expected to remarry (Latif 2:2) but the practice of levirate is decreasing also among Muslims, especially in towns, despite the continuing great number of polygynous marriages there (Alfa 2:5).

²⁹¹ Especially if their children are grown up, they may successfully evoke the caring work they had done for their husband and children during so many years of marriage in order to stay in their house without accepting a leviratic union (Manclaro3:30).

such a marriage will be difficult to prove in court, as state law addresses only cases of personal violence, but does not respond to structural violence²⁹².

The impoverishment of a large part of the population, due to the decline of Togo's economy since the 1980s, had in this context twofold negative implications: Firstly, less women are economically strong enough to refuse a levirate. Secondly, less men are able to fulfil their obligation to maintain their brother's widow and her children. This becomes clear in the following citation by a secretary of a customary court, who is frequently addressed by destitute widows or their children:

Si un frère du défunt veut marier la veuve et elle accepte, ce frère doit aussi prendre en charge les enfants. C'est obligatoire. Mais souvent il déteste. Il ne prend pas en charge les enfants. Il sait déjà ce qu'il veut chez la femme là. Donc, s'il a beaucoup d'enfants lui-même, peut être il a déjà dix enfants quelque part, comment il va s'occuper encore des cinq enfants de la veuve ? Donc, il peut accepter verbalement de les prendre en charge, mais après il déteste. S'il trouve quelque chose, il donne à la veuve pour préparer à ses enfants. Il dit qu'il veille sur les enfants, hors c'est faux. C'est la veuve seule qui veille sur ses enfants. La belle-famille aussi, eux ils disent qu'ils n'ont pas encore assez pour supporter eux-mêmes.

Des fois les enfants mêmes viennent chez moi personnellement pour faire part de leur problème auprès de moi, qu'ils ne reçoivent rien. S'il le faut, le chef interpelle un de ses oncles que les enfants souffrent. Que, comme le défunt a laissé une maison, de récupérer au moins l'argent des loyers pour donner à manger aux enfants. Mais l'oncle là peut répondre que lui même il est chef de maison avec ses enfants en charge. Peut être l'oncle peut lui chercher du mal après, il va chercher à enlever la vie de cet enfant (Secr. Chefferie 1:41-42)

These facts show that the wide-spread stereotype of levirate as a “corporate safety net for widows and orphans”, which applied – however ambivalently – in the past (cf. Lachenmann 1994:284), does not apply any more (cf. Slater 1986:XVI). The only clear exception is if the levir is not married himself and has no children yet (for instance because he is sterile). In such cases, it is likely that he will well provide for the widow and her children, whom he will consider to be his “richness” and treat as if he himself had fathered them. Otherwise, the levirate may present a last resort to very poor widows in order to secure housing to themselves and their children, thus expressing rather their lack negotiating power than anything else. It is only through economic independence from their in-laws that widows gain the room for manoeuvre to determine their own as well as their children's lives.

²⁹² In neighbouring Ghana, in 1994, a widow won her case against a forced leviratic marriage in court, by citing the equality provisions of her country's constitution (Owen 1996:182).

5.2.3 Discrimination against widows in the inheritance of land and houses according to customary and Muslim norms

According to customary norms among most ethnic groups in Togo, the widow does not inherit from her husband, especially no land or houses (Secr. Chefferie 1:33, GF2D 1995:21, Kuwonu 1999:2, Froelich 1963:33). This underlines the above-mentioned fact that she married as a stranger into her husband's family to bear and raise children, and is expected to leave everything behind, in case she leaves her husband's family again.

Nowadays, women frequently work part-time on their husband's fields and part-time on fields that they were attributed by their husband for their own use. Traditionally, both of these options to access land were cast only in the form of user-rights, which could be withdrawn at any moment, especially if the husband dies. Therefore, women were only allowed to grow subsistence crops, i.e. had no right to plant cash crops, such as coffee, cacao, oil palms or hardwood, as these are perennials and could not be withdrawn so easily (Mensah-Amendah 2000c:9). But with the monetarisation of most aspects of societal life, access to cash – for instance through the cultivation and sale of cash-crops – is indispensable to secure a livelihood, and women are actively negotiating to get secure access to land, where they can plant cash crops (cf. chapter 3.1.2).

Sometimes widows are allowed by their in-laws to continue to work on their late husband's subsistence fields. If they can afford it, they rent additional land. But, apart from that, according to customary norms, widows are supposed to be maintained by their own brothers or by their grown-up children, especially their sons, who are entitled to inherit land and other material goods that were individually owned by the deceased (i.e. acquired through his own work, purchase or as a gift)²⁹³. As long as the heirs are minors, the succession will be administered and controlled by the head of the husband's family – usually his eldest brother –, or by another elder man (brother, cousin or uncle of the deceased) to be designated by the family council. In that case, he is supposed to care for the widow and her children, but can easily misuse his power (Mancraro 3:25). However, if a widow is either denied the right to return to her own family of origin or does not have any grown-up children, or if her children are poor themselves, she risks to become severely impoverished (Kossiwa 1:1-4, field notes GF2D Evaluation 2001).

If a widow quarrels with her in-laws about the inheritance, they will often try to intimidate or harm her by applying witchcraft. But widows who are self-confident, spiritually strong, and

²⁹³ For details on inheritance rights of descendants, see chapter 3.

supported by their own families, sometimes gain their cause and achieve at least a share of the house (Secr. Chefferie 1:34).

According to Muslim norms, the widow has the right to inherit a part of her husband's inheritance, although this part is discriminately limited to between one eighth and one third of the inheritance (WILDAF-Togo 2002/2003b:30, Kassindja 2000:105). However, in Muslim families, in which the widow maintains user rights to the husband's house or at least to one room in it, this does not mean that she gains any control over the house, in terms of property rights through inheritance. Even if the widow contributed financially to build or buy the house and had her name included in the property papers, she will be severely criticized if she sells it, if not hindered from doing so altogether, i.e. her property rights, confirmed by the state law, are socially turned around and reduced to only transitory user rights, i.e. she is expected to pass on her property to her children (Latif 2:17-19). Besides, the practices of most Muslim families in Togo are highly mixed in with customary norms. For instance, Zuwera's brother-in-law, who was Imam and director of a Koran school, claimed full control over his deceased brother's property, expelling her from his brother's house, which he gave to his own sister. The latter did not hesitate to accuse Zuwera of sorcery, in an effort to chase her away, as she didn't belong to the same ethnic group (Kassindja 2000:84-87).

This reduction of a widow's rights in houses to mere user rights, i.e. her exclusion from sales rights, applies likewise to non-Muslim widows, as became apparent in the following comment of the secretary of a customary court on a dispute, in which the widow wanted to sell her husband's second house. He made it clear that although the widow inherited the house from her husband, she has to preserve it for her children and grandchildren, everything else would be considered "a waste" (cf. ChefferieBel10May case III):

La veuve nous a dit qu'avant la mort de son mari, le mari a dit qu'elle n'a qu'à vendre la deuxième maison pour récupérer les dépenses qu'il a occasionné avec sa maladie et pour subvenir à ses besoins. Mais nous [la court coutumière], on n'a pas pris ça on compte, parce qu'on ne peut pas savoir si c'est vrai que le mari a dit ça. En plus, la maison est là pour elle et ses enfants et ses petits-fils aussi ! Si la veuve vend ça, c'est du gaspillage ! (Secr. Chefferie 1:38-39)

5.2.4 Et moi, la mère ? State law antagonizing mothers while privileging widows

The state law hasn't contributed much to change widow's exclusion from their husband's inheritance. Although the Togolese Family Code does attribute the spouses the right to inherit from each other, the legislator's request for the testator's renunciation of customary inheri-

tance (cf. chapter 3.1.4) is culturally perceived to be a hazardous venture, as it might provoke serious spiritual retributions, and is therefore hardly ever effected.²⁹⁴ Apart from that, most Togolese, including intellectuals, either do not know or pretend not to know about the details of the Family Code. This is why several women's NGOs are engaged in dispersing legal information to the population (cf. chapter 2.3.5 and 7.1).

Another reason why few Togolese renounce to custom in order to validate modern inheritance laws, may be that the legal division of the inheritance as well as the order of succession amounts to a real revolution from everyday social practices: According to the Family Code, if the deceased had children, they inherit 75%, the widowed spouse (if married at the registry office) getting 25%. If he had married several wives at the registry office, they share the 25% equally among each other. The parents and siblings of the deceased inherit only if the deceased left no descendants. In that case, they get 50%, the other half going to the widow or widows. When these stipulations were explained by the trainers from a women's rights organisation in Lomé to future paralegals, one female participant stood up and complained in an indignant way:

Moi, je suis la mère. Je perds mon fils. Moi, qui l'ai porté, l'ai allaité, me suis saignée pour qu'il fasse ses études et maintenant qu'il est mort aucun de ses biens, rien absolument ne me revient ! Tout ira à une autre femme. Et c'est une étrangère à tous mes sacrifices qui va en profiter ? Allez réviser votre loi, elle n'est pas juste. (cited by Mensah-Amendah 2002:77)

This reaction has to be understood noting the conflicting perspectives that customary and state law take on two aspects of social organisation: On the one hand, the privileging of the nuclear family by the state law – with the married couple at its centre – to the detriment of the lineage runs contrary to the patri-lineal organisation of society, where social and economic wealth is accumulated in the patri-lineage, to which in-marrying wives never gain full access. On the other hand, the statutory privileging of the descendants and the widowed spouse to the detriment of the parents of the deceased completely counteracts the traditional security system, according to which it is the children who provide for their parents during old age. However, this last aspect was considered by the legislators, who oblige descendants to maintain both their parents (and other ascendants) and their parents-in-laws, in case of need (art. 111, 112 CPF). I.e. the old mother who loses her son, can legally expect to be supported by both her grand-

²⁹⁴ In their lobbying for legal reforms (cf. chapter 7.4.1), Togolese women's rights NGOs included the reformulation of article 391 CPF. They demand that the stipulations on inheritance get automatically applied, except if the testator had declared his preference for customary inheritance norms in a testament or in the presence of a registry official. However, this reform is not yet achieved.

children and her widowed daughter-in-law. Nevertheless, this is a completely new set-up most people are not yet used to. This is another reason why most successions are bequeathed according to customary norms, which exclude the widow²⁹⁵.

Despite the blocking of legal improvements due to article 391 CPF, slight changes in state legal practices, even if tiny, are nevertheless observable in urban areas: At the Lomé state court, when asked to certify family council protocols that are designating the inheritance administrator, judges nevertheless ask the widows present at least whether they agree with the choice of the administrator (even if no renunciation of customary norms had taken place). Thereby they include in their practice elements from the Family Code which are theoretically outlawed by article 391 CPF, thus innovatively contributing to adapt their jurisdiction to the changing everyday social realities (TribunalLomé16May01).

5.2.5 NGO strategies to avert widow's exclusion from inheritance

L'expérience à la Maison de la Femme (CRIFF) est édifiante. Elle reçoit des femmes qui vivent quotidiennement des drames. Des veuves qui, dès l'instant où l'époux décède, sont dépossédées de tous les biens du ménage et se retrouvent à la rue sans aucun recours, puisque l'application de l'article 391 CPF rend quasiment impossible le recours à la loi moderne pour préserver les intérêts du ménage. La vie d'une multitude de femmes et d'enfants est alors dévastée puisqu'ils se retrouvent dans un dénuement quasi total. La situation s'est extrêmement aggravée au cours de cette dernière décennie à cause de l'impact du SIDA, qui fait que les femmes deviennent veuves pendant qu'elles sont encore très jeunes et qu'elles doivent prendre soin de leurs enfants. (Kuwonu 1999:7)

Faced with widows' destitution, such as described in the above citation, due to the continuing exclusion of widows from their husband's inheritance by both customary and state law (respectively with their continuing discrimination according to Muslim norms), women's rights NGOs apply several strategies:

Firstly, they lobby for a change of customary norms by questioning its justification in alleged traditions: They point out that the exclusion of widows from the use of their late husband's land is a recent custom, which became only fashionable with the increasing individualization and sale of formerly communitarian and ancestral land, in Lomé since 1830, for which men were accorded unique privileges. I.e. since the commodification of land, powerful male lineage and family heads increasingly tried and succeeded to bring former family land under their

²⁹⁵ According to customary norms, widows are excluded from the inheritance of land – in order not to alienate clan land – and from the inheritance of houses, except where the customs were strongly influenced by Islam, see above.

private control and sell it for their own benefit, excluding women (sisters as well as widowed mothers and widowed sister-in-laws) from access and control over it, by degrading their rights to mere and temporary user rights (cf. WILDAF-Togo 2002/2003a:19). By pointing out the evolution of customary norms during the past, these NGOs try to convince people that also nowadays out-dated customs can be changed. Secondly, they continuously inform the population about the importance of writing testaments or renouncing to custom, in order to make those inheritance regulations of the Family Code applicable, which are beneficial to widows. Thirdly, they lobby for the abolition of article 391 CPF so that widows' right to inherit from their husbands becomes the rule, not the exception. As the revision of the Family Code has not yet taken place, they fourthly started to turn to international human rights instruments: The African Charta accords husband and wife the right to inherit from each other (WILDAF-Togo 2002:8). Similarly, the CEDAW-convention, in its Chapter H, proclaims the same rights for both spouses concerning property as well as the acquisition, management, administration, use, and possession of goods. It requires member states to accord the same inheritance rights to husband and wife and the wife's access to land through inheritance (WILDAF 2002/2003b:29). Therefore, African women's rights organisations, networking under the roof of WILDAF, recommend to Togolese judges to block the application of article 391 CPF by referring to article 16 of the CEDAW, the content of which is directly integrated into the Togolese Constitution in its article 50, and accorded a superior status to the national laws through its articles 138 and 140. They also started to inform and train a selection of judges, magistrates, prosecutors, and lawyers in setting up this kind of argumentation in order to counteract discriminatory dispositions in the Togolese laws (WILDAF-Togo 2002/2003b:30, 36).

The quest of NGOs to improve widows' economic and social security has been gaining increasing international attention during the last decade through the spread of HIV/AIDS in Togo²⁹⁶. This disease is constantly increasing the number of widows (and widowers), even of young age, who henceforth have to provide for their children on their own, albeit being themselves in fragile health situations²⁹⁷. Therefore, widows' possibilities to access and control resources are even more crucial.

²⁹⁶ Whereas the first cases of HIV infection in Togo were recorded in 1987, in 2001 3% of the population were estimated to be infected, mostly adults between 15 and 49 years (UNAIDS/UNICEF/WHO 2002).

²⁹⁷ Whereas in 1990 about 1000 children lost one or both of their parents due to AIDS, in 2001 it were about 63.000 children (USAID/UNICEF/UNAIDS 2002).

5.3 Accessing widows' pensions and orphans' allowances

5.3.1 Jurisdictional and administrative undermining of state laws to the detriment of women

According to the *Ordonnance no. 39/79* of November 12th, 1973 on social security, widows of civil servants and private or state employees, who were married at the registry office and insured by their employer²⁹⁸, have a right to pensions from the *Caisse Nationale de Sécurité Sociale (CNSS)* or the *Caisse de Retraite du Togo (CRT)*. These pensions amount to 50% of the deceased husband's pension claims at the time of his death for the widow, and 10% for each child. The orphan's pension shall be paid to the person who is maintaining the children. In case the widow is not entitled to receive a widow's pension, this pension will be distributed amongst her minor children (Komlan 1999a:5, GF2D 1999c:120-122).

In order to access these pensions, a widow has to submit to the respective fund three different forms, her and her children's birth certificates, her marriage certificate, a certificate of non-divorce and non-remarriage, the birth and death certificates of her husband as well as his insurance papers (Ekue 2000:5, Hohoueto 1998:5). These administrative requirements constitute already a big hurdle for many women, who are illiterate and lack all or most of the required documents, as they are difficult to acquire due to the lack of training of most registry officials: They are often neither acquainted with the Family Code nor have a copy of it, work with registry forms which are misleading or contradictory to the law, are underpaid, lack motivation to fulfil their duties, and therefore are often difficult to contact, as they pursue other activities to make their living. Under these conditions parents often neglect to acquire even birth certificates for their children, especially for their daughters, as the birth certificate is necessary to enrol children in school, and as poor parents tend to privilege boys' over girls' schooling. The lack of these personal identity papers hinders many women not only from accessing their pensions, but also from using other civil and private services, such as schools, hospitals, family allocations, credits, etc. (field notes GF2D Evaluation 2001). This clearly shows that the administrative requirements to access a widow's pension are not appropriate for the everyday reality in Togo, with its poor administrative services.

²⁹⁸ In urban areas – especially in the capital Lomé –, this concerns a fair share of the widows, due to the high number of public officials working in ministries, the judiciary, schools, hospitals, post offices, security funds, insurances, banks etc.

Furthermore, the widow has to submit to the pension funds a letter by the head of her in-laws' family council²⁹⁹, joined by the protocol of the family council session³⁰⁰, during which she was authorized to receive the pensions. Here, the widow is treated like a minor and submitted to the goodwill of her in-laws in order to enjoy her rights. However, in most cases the in-laws' family council does not designate the widow but a brother, uncle, cousin, or grown-up son of the deceased to become the inheritance administrator and guardian of his minor children, thereby conforming to customary norms. This collides with the Family Code (art. 233, 238, 242, 259 CPF), which stipulates that husband and wife have equal rights to the custody of their children and that, in case of the death of one parent, the surviving parent automatically retains this custody³⁰¹. What becomes visible here, is that the translation of national laws into administrative decrees and ordinances is done in a way to maintain customary male privileges.

Before submitting the protocol to the pension funds, it has to be legalised at the town-hall and certified by court. Whereas the town-hall officials have to orient themselves to the administrative decree on social security, it should be the judge's role to countercheck, whether the state administration works in a lawful way. However, judges tend to turn a blind eye on this law infringement and regularly certify protocols which exclude the widow from the administration of the children's inheritance and her own pension as well as from the guardianship of her children. Once the protocol is legalised at the town-hall and certified by court, it is acknowledged by the pension funds, who then pay the widow's and orphan's pension to the designated administrator and guardian. This legal practice facilitates in-laws to misappropriate the pensions as well as the inheritance to the detriment of the children and their mother (GF2D 1995:22-23, Christophe 2:1, Mancraro 1:1, 3:8). The obligation for the widow to present the protocol of the family council session thus constitutes an effective instrument for the

²⁹⁹ The family council used to consist of the (male) heads of the nuclear families of one's extended family. They meet regularly or on occasion to discuss internal family affairs or conflicts arising with somebody outside the family. Decisions are taken by the head of the extended family together with the family elders, mostly old men and sometimes also old women, especially paternal aunts. Not-so-old women and unmarried men sometimes attend, but more as passive listeners (Adjamagbo 1986:287-291, cf. also Cavin 1998 :89-91 for similar practices in the Muslim city of Ouagadougou in Burkina Faso). However, it becomes more and more common that also women take actively part in the family councils, especially in urban areas.

³⁰⁰ See the form *Procès Verbal du Conseil de Famille* in the annexA2.

³⁰¹ Besides, according to the Family Code (art. 496 CPF) the widow and her adult children can choose the inheritance administrator themselves. However, this last article only applies if the deceased had renounced customary inheritance rules before his death (art. 391 CPF), which rarely occurs, as we have already discussed above. Nevertheless, if the widow and her adult children hold such an independent family council session, judges have the tendency to certify its protocol if the in-laws refused to hold a family council.

in-laws to prevent her from making other claims, such as on inheritance or on a say in her husband's burial (Mancraro 3:15-23). In fact, most widows prefer not to make any such claims in order not to put their pension at risk. Other widows do not hesitate to seek support from the chief, but are immediately put under pressure by their own families to withdraw their complaint (Secr. Chefferie 1:33-36).

It also happens often that in-laws refuse to hold any family council at all. In such a case, the only means for the widow to access her pension is to obtain a state court decision³⁰². But many widows are not aware of this possibility and feel trapped, as was aptly formulated by one the widow:

Quand ta belle-famille ne décide rien, toi seule tu n'as rien à faire, et puis tu es perdue comme ça. (Kossiwa 1 :3)

The pension funds nevertheless justify this practice by claiming it to be the best solution to handle cases of competing polygynous widows and their children (GF2D 1995:22-23). However, this does not legitimise the practice in general, as not all widows had a polygynous husband, and not all polygynous widows are unable to negotiate a fair agreement with their co-widows.

Even if we consider that corruption – at the level of the pension fund, the town-hall and the judges – might also play a role in this context (cf. Kohnert/ Moenikes 1996:15-16, Olivier de Sardan 1999), it nevertheless becomes obvious that the state law, how gender-balanced it may ever be formulated, becomes additionally undermined by a combination of male-biased administrative decrees and male-biased administrative and legal practices.

5.3.2 State law provoking conflicts between widows and their in-laws

Taking-up the rich case study of Dorothée once more, she knows that if she had been married at the registry office, and if her husband had renounced to custom, she would have had the right to inherit from him and to receive a widow's pension as well as an orphan's allowance on behalf of her minor daughter from the government (as Joseph was a state-employed teacher). Yet, she is ambivalent in her conclusions: On the one hand she regrets not having insisted on a civil wedding:

³⁰² Cf. art. 496 CPF (Adjamagbo 1986:209, 213, 253).

On n'a rien [sur papier], c'est ma bêtise que j'avais fait. Rien, rien. Moi, j'ai toute ma confiance en lui, je ne savais jamais jamais qu'il va penser à se marier [à une autre femme]. (Dorothee 1 :14)

On the other hand, she assumes that if she had done the civil wedding and now had claimed the inheritance or the pension, she would have had to face serious conflicts with her in-laws.

Si on fait le mariage [civil], comme il est décédé maintenant, s'il y a quelque chose a prendre chez le gouvernement, c'est moi qui le gouvernement connaît. Il ne connaît pas ses parents, c'est moi qu'on va appeler. Je peux aller prendre la chose là. Ils seront contre moi ! La belle-famille, oui ! Et comme on n'a pas fait aussi c'est mieux ! Oui, c'est mieux ! (Dorothee 2 :19)

For that reason, even in retrospective, Dorothee prefers not to have been married at the registry office. From her point of view, the rights accorded to women by state law can have a detrimental effect on women, because they drag them into serious conflicts with the patriarchal culture, represented and supported by their in-laws. This means that it is often women who carry the can of contradictions between the customary and the state legal system. On the other hand, this underlines once more that social changes (such as the improvement of individual women's rights against the claims of in-laws) cannot be imposed by law but have to be negotiated in everyday life (cf. also Lachenmann 1997a:403). Nevertheless, the existence of legal provisions protecting widows and their invocation by women's rights organisations are likely to influence such negotiations in the long run.

5.3.3 Controlling one's pension by strengthening ties to in-laws

Zenabou's³⁰³ forty-year-old son told me how surprised he was when, after the death of his father, his mother received her widowhood pension, but offered it to her brother-in-law, who refused to take it:

Je me rappelle encore, c'était vers 1978-79 à Sokodé, quand notre papa était décédé, on a payé à mes mamans [ma mère et ses co-épouses³⁰⁴] la pension de veuvage. Le frère aîné de mon papa était à la maison. Mes mamans étaient parties pour prendre la pension auprès de la caisse locale qui se trouve à la préfecture. Quand elles sont arrivées à la maison avec la pension, elles ont dit à mon oncle : « Vient prendre ce que tu veux avant que nous ne prenons ». Il s'est mis à pleurer. Il a dit qu'il ne prendra même pas un franc, plutôt c'est lui qui a l'obligation de leur donner. Mais comme lui il n'en a pas, il ne peut pas prendre ce que son petit frère a laissé, elles n'ont qu'à prendre tout pour elles-mêmes. (Latif 2 :4-5)

³⁰³ For Zenabou's biographical background, see annexA1.

³⁰⁴ In case of polygynous marriages, concluded at the registry office, the pension will be divided equally among the widows.

Asked about his explanation of his mother's behaviour, he replied that she had followed customary norms, according to which the in-laws take over all of the deceased's affairs, including to provide for the widow and her children, while his uncle had stuck to Muslim norms, which give the widow greater autonomy regarding her own and her children's lives:

C'est parce qu'il est fortement ancré dans l'islam. Ma maman, bien sûr, est issue d'une famille purement musulmane, mais elle se réfère toujours à la tradition. Elle a été à l'école, elle connaît, comme mon père. Les deux sont des lettrés. Mais elle dit qu'elle se considère toujours comme une étrangère dans la maison de mon père. Et comme mon père a ses frères vivants, elle ne sait pas comment les prendre. Alors qu'elle devait comprendre qu'en fait les frères de mon papa ont une attitude beaucoup plus islamique. C'est pourquoi ils laissent la liberté à la veuve. (Latif 1: 5-6)

His mother had taken all the hurdles to access her pension: She was literate and obviously well enough informed to fulfil the complicated bureaucratic requirements to access her pension³⁰⁵. Furthermore, her in-laws had decided in a family council meeting that she and her co-wife should receive their parts of the pension. We recall that, if they had refused to hold a family council, her pension would have been blocked. Alternatively, they could have held the family council but designated an administrator who could have accessed and misappropriated her pension (GF2D 1995:23-24, Ekué 2000:5, Secr. Chefferie 1:36-38). But this did not happen, as she was on good terms with her in-laws.

At first view, it might be surprising that Zenabou did not simply refer to the state legal provisions and – once she had accessed her pension – kept it to herself. If she assumed that customary norms, rather than the state law, apply to her case, she would be in line with many Togolese women who know about the existence of the state law but experience the prevalence of customary norms in their daily life (Mensah-Pierucci 1998:63-65). On the other hand, as was presented above, precisely the state decree on widows' pensions does itself refer to customary norms, in giving the in-laws the power to control the widow's pension. Zenabou, therefore, even from the perspective of the legislator, was quite reasonable in assuming the validity of customary norms concerning the question of who controls her pension.

At the beginning of this chapter we have seen that in-laws do not necessarily have good intentions towards their widowed daughter-in-law. Therefore, if Zenabou adhered to customary norms, she had good reasons to be deferential towards her in-laws and assume authority of her

³⁰⁵ Otherwise she must have had such informed persons to help her. This was still a long and insightful procedure (Dadjo et al. 2000:1), as nowadays she is heading a widow's association, which assists illiterate, "ignorant", and isolated widows to put their files together in order to access their pensions (Latif 2:9).

brothers-in-law over her pension, as it is a material good directly related to her marriage with the deceased.

Her brother-in-law, though, referred to Muslim norms, which in Togo include the absence of degrading ceremonies and the widow's right to inherit from her husband, whether or not they had children. The widow is consulted by the Imam about the moment of the opening of the succession for division. The in-laws have no claims on her after her husband's death. She maintains life-long user rights to her late husband's house and personal belongings, as well as a right for her children and herself to be provided for by her brother-in-laws (without having to accept a levirate), as long as she does not remarry. She thus cannot be "chased out" of the house (Latif 1:3, Alfa 3:9, Kassindja 2000:85, cf. also Cavin 1998:122). Therefore, Zenabou's brother-in-law thought that, as a Muslim, he should provide for the widow, and in any case should not take her pension away from her, or if he did so, then only in order to provide for her.

Probably Zenabou was aware that, although the relationship between the different normative systems is not fixed but negotiable, she is in a weaker position than her brother-in-law to negotiate the norms to be applied, as men are privileged in all three legal systems (i.e. in state law, customary and Islamic rules) although to different degrees. By offering the pension to her brother-in-law, she submitted to and thereby reconfirmed his authority and her dependency upon him. This moved him to tears and forced him to take a moral decision which was up to his status, i.e. she provoked him to show himself generous towards her, in order not to lose his face. She thereby not only got what she wanted, i.e. full control over her pension, but she also reinforced the family network, upon which she would have to rely in many other situations.

If she had claimed the pension for herself, she could have been judged as egoistic and put at risk the good relationship with her in-laws, which was crucial for her overall room for manoeuvre, as she continued to live in her husband's house. If her brother-in-law had taken the pension away from her, he would have taken the full responsibility to maintain her and her children, a responsibility he would not have been capable to fulfil, as the amount of the pension was not sufficient for that.

From this perspective, her offer of the pension to her in-laws is not to be interpreted as a symptom of insecurity, ignorance, and internalised oppression, but as a conscious and clever strategy within the process of negotiating which legal system to apply. Zenabou can be seen, not as a victim of a confusing and constraining legal pluralism, but as an informed and con-

scious actor, making choices to her own advantage. In this case, by making use of state security provisions, but at the same time affirming customary as well as Muslim obligations of her in-laws towards herself, she arranges for her security in two systems at a time (cf. Frey-Nakonz 1991:194).

5.3.4 NGOs trying to enhance widows' access to pensions

Women's rights organisations follow a multiple strategy on different levels in order to help widows to access and control their pensions.

Firstly, they assist widows in the administrative procedure to obtain their pension. In some areas, widows themselves joined together in widow's associations, to help each other with the complicated procedures to assemble all the documents required by the pension funds³⁰⁶ (Dadjo et al. 2000:1, Latif 2:9). Apart from that, several NGOs³⁰⁷ launched joint campaigns in 1997 and 2001 under the slogan "One woman, one identity", in order to help women acquire basic personal documents, such as birth and marriage certificates, necessary for demanding a pension. Similar initiatives were undertaken by district networks of paralegals (cf. chapter 7.1).

Secondly, as was already mentioned, NGOs offer to mediate in conflicts between a widow and her in-laws, an offer which is sometimes taken up by a widow and her in-laws (cf. CRIFF 6Sept01). They also inform widows about the legal possibilities to either hold a family council independent from their in-laws, or to request the court to convey such a family council and designate them as custodians of their children, and they help them to formulate the respective letters.

Thirdly, they lobby for a reform of the legal provisions on pensions in such a way, that even those widows, who had not been married at the registry office, can benefit from a pension³⁰⁸,

³⁰⁶ In neighbouring Burkina Faso such an *Association des veuves et orphelins* was founded in the 1970s. By 1990 it had over 1500 members. It aims at taking widows out of their isolation, supporting them to address state administrative services and courts, and lobbying for legal improvements (Bruchhaus et al. 1990:123-126).

³⁰⁷ In 1997 the *Comité pour la carte d'identité* comprised the NGOs FAMME, ECHOPPE, GF2D, CONGAT ICB-Bè, La Colombe, Care Togo, CUSO Togo (cf. their leaflet *Une femme, une identité* in the annexA4). In 2001 it was the MMFT-Coalition who launched a campaign to urge the administrative authorities to ease the procedures in order to facilitate women's access to identity cards (MMFT 2000).

³⁰⁸ Also Lachenmann (1997a:401) discussed the decrease of marriage institutionalisations in many developing countries and pointed out the problematic basing of formal security systems on the notion of

if a traditional authority testifies that they had lived a marital life with the deceased (LTDF 1998:16). They thereby try to promote the adaptation of state law to everyday reality, and diminish the gap between the people and the state.

Fourthly, they try to inform and convince judges that, if presented with a protocol which is denying the widow the control over her pension and the custody over her children, they should declare the choice of an inheritance administrator other than the widow to be illegal and refuse to legalise the protocol. Again, they should justify the non-application of article 391 with the CEDAW-convention, which is integrated into the Togolese Constitution and accorded superior status to national laws through articles 50, 138, and 140 of the Constitution (WILDAF-Togo 2002/2003b:36-37). So far, one such case became known, in which this strategy was fruitful: On April 18th, 2002 the state court in Lomé confirmed a widow's right to administrate her children's goods in order to enable her to come up for their maintenance and education, the responsibility of which she bore. The judgement referred to the right of the surviving spouse to exert the parental authority over her children as well as the administration of their goods, accorded by both the Family Code and CEDAW (Tribunal de 1ère Instance de Lomé 18/04/2002, file no. 009/2002).

5.4 Summary

Widowhood in Togo is marked by extreme power inequalities between widows and their in-laws, embodied in customary widowhood ceremonies, which are forced upon the widow and include isolation, humiliation, unhealthy living-conditions, manifold threats and intimidations. The set-up of the widowhood period frequently leads to debenture of the widow. In many cases, the ceremonies also serve to facilitate and justify her expulsion from the house, the taking away of her children, her exclusion from her husband's inheritance and the withholding of her pension.

These power inequalities are supported by both customary as well as state norms. But they are challenged in manifold ways by individual women who either try to pay their way out of the ceremonies, mobilise their family to refuse the ceremonies, or even leave the country. A still rare and innovative approach is to negotiate the conditions of widowhood prior to a marriage in a kind of marriage contract. Furthermore, women's religious associations initiate alternative widowhood ceremonies in church, whose existence already helps women to negotiate a

the nuclear family, which leads to an exclusion of those women, who were not officially married, from their husband's formal security systems.

better treatment. This shows – again - that it is women’s economic and social resources and cultural capital, which enhance their negotiating power.

NGOs try to negotiate reforms in both customary and state legal practices concerning widows. In the customary field these attempts are showing first fruitful results, as in one valley they were successful in convincing the chiefs and “queen mothers” to modify widowhood and inheritance practices to the benefit of women, resp. widows. However, structural changes, such as a revision of gender discriminatory laws and decrees and the regular training of officials and judges in non-discriminatory practices, need to back up these efforts in order to achieve sustainable improvements in the field of widows’ rights. These changes are ever more pressing as the spread of HIV/AIDS constantly increases the number of widows, who have to maintain their children on their own, albeit being themselves in fragile health situations.

Chapter 6 Continuity and change in the gendered construction of legal pluralism in everyday life

While chapter 2 introduced the normative and institutional side of the plural legal field, and chapters 3 to 5 explored negotiations in specific legal fields from women's perspectives, this chapter compiles women's experiences with the various legal forums with the aim of retracing the construction of legal pluralism as everyday life practice. It confronts the hierarchical order, in which the individual is expected to use the various legal forums, with the ways how forums and users themselves reconstruct them by juggling with the legal repertoire available. It focuses on people's creative trajectories through the plural legal field and analysis the structuration of this field according to gender and through the competition and cooperation between legal forums. It furthermore analysis women's access to customary, religious and state legal forums as well as how women's NGOs and networks try to improve that.

6.1 Socially approved and sanctioned procedures to settle a conflict

Depending on the normative system of reference, there are different socially approved procedures to settle a conflict in Togo, be it a matrimonial conflict, a conflict about inheritance, or any other family affair.

According to customary norms³⁰⁹, one should try first to settle the conflict within the family or between the families concerned. This applies to both rural and urban contexts. In case of conflicts between co-wives, the head of the family or lineage shall try to reprimand and conciliate them. In case of conflicts with her husband, the wife will first search support among her husband's relatives, especially his aunt, uncle, brother, or the lineage head, who might then talk to the husband privately. If the affair cannot be settled this way, the lineage head may call a meeting of lineage elders, the woman concerned and her husband. The amount of pressure a wife can exert on her husband in his family council depends on her economic power as well as on her reputation as a wife and mother. The woman may threaten to take the affair 'outdoors' by informing her parents.

If this does not help she might actually address her own family, especially her aunts and mother, who might then talk to the husband's family, often via the mediation of a third person. This should be a neutral outsider, such as a distant relative, the school headmaster, the priest or pastor. These talks can be rather informal or else take the shape of a more formalized

³⁰⁹ Cf. Secr. Chefferie 1:21, Marlène 1:6-7, Latif 1:4-5, Mancraro 2:16-17, 3:12, Baerends (1990:61-65), Rouveroy van Nieuwaal/ Rouveroy van Nieuwaal-Baerends (1986), Szwark (1981:61).

family council meeting under the guidance of the head of her patri-lineage (cf. Dorothée, Justine 1:25).

If no solution is found at the intra- or inter-lineage level³¹⁰, women can address themselves to the village-, ward-, or cantonal chief, who irregularly hold court-like meetings and respectively serve as appeal to their hierarchically inferior colleagues. In Lomé, they can go to the “customary courts” of the cantonal chiefs. These courts were officially abolished in 1978, but continue to function as a result of constant renegotiations between the chiefs and the government (Rouveroy van Nieuwaal 2000). Although the chiefs have no direct power to enforce their “judgements”, they nevertheless have several indirect means. Due to their moral and social influence, they can discredit the violator of norms. If they have good contacts with the district officer, the urban police or the rural military police (*gendarmérie*) they may induce them to take action and arrest the violator:

Les cours coutumières prennent des décisions que les gens sont libres d’accepter ou de refuser. Ils ne peuvent rien faire aux gens, ils ne peuvent pas aller les enfermer, ils n’ont aucun pouvoir coercitif. Mais ils ont un pouvoir moral, un statut social, qui fait que – surtout à l’intérieur du pays, dans les villages – tu as intérêt à respecter le chef si tu ne veux pas être discrédité. Le chef a peut-être de bonnes relations avec le préfet et avec la gendarmerie qui lui permettent des fois de faire arrêter les gens. Mais ce n’est jamais leur propre pouvoir. (Christophe 8 :2-3)

Afa-diviners and vodu-priests should only be involved in consultation with the chiefs. If the cantonal chief and his advisors fail to conciliate the conflicting parties, the chief (if he is inclined to do so) can take the case for another mediation effort to the district officer (*préfet*) or to the mayor (in towns), who meet weekly with the cantonal chiefs of their district or town (Rouveroy van Nieuwaal 1990). Like the customary courts, these district officers and mayors constitute alternative legal forums that are rooted in the colonial history and nowadays tolerated but not sanctioned by the state.

Finally, people have the option of addressing themselves directly to the police or *gendarmérie*, or to the state courts. These are organised in a strictly hierarchical way. For the state courts this hierarchy includes the ‘first level’ or district courts, the ‘second level’ or appeal court and the supreme court.

What becomes visible here is that there is no strict separation between the state judiciary and customary ways of conflict resolution, but that the interface is constituted by a variety of bro-

³¹⁰ In ethnic groups with a lively clan structure, such as the *Anufom* in Northern Togo, also the head of clan can be addressed. However, among the *Ewe* the original clan structure is hardly of relevance any more today (Meyer 1999b).

kers, such as chiefs, district officers, mayors etc., who negotiate between the conflicting parties, drawing on customary or state norms as appropriate.

This ideal procedure constructs a hierarchical chain of authority, which does not necessarily correspond to people's everyday legal practices, as we shall see below. But if somebody does not make any effort to settle a family conflict at the family level, if he or she does not try first to come to an understanding or compromise but addresses him- or herself directly to the chief or to state institutions – such as the district officer, the court, or the police –, this in itself is seen as an affront against the family (Foune Mahalmadane 2000). The latter often does not hesitate to sanction such provoking behaviour by shaming the person concerned and damaging his or her reputation, the redress being typically supported by the elders and the wider community. If the inheritance of land is concerned, people are even discouraged by threats of witchcraft from claiming their rights at all, whereby special emphasis is put on the respect of privileges according to seniority (cf. also Yawa 1:3, Dorothée 3:10):

Si tu veux parler des problèmes de terre, d'héritage là, même si tu es un homme, surtout nous les jeunes : [imitating an urging voice] *Ne dit pas, hein ! On va t'empoisonner, t'envoûter, il faut pas, hein ! Restes en vie, tu dois travailler !* (Anita 4 :17-22)

Social pressure towards peaceful conflict mediation also becomes visible in the fact that houses, which are subject of litigations, are generally avoided, often branded by graffiti, reading *Maison litigieuse, à ne pas vendre!* and very difficult to sell or rent out³¹¹ (Rouveroy van Nieuwaal/ Rouveroy van Nieuwaal-Baerends 1986:185-186).

At certain points, the respect of this order of procedure is inbuilt into the state law, whereby customary authorities at the family and chieftaincy level are interposed between people and state institutions: For example, according to the Family Law, a widow's access to her pension as well as to her minor children's inheritance are subject to her in-laws holding a family council and signing the respective *procès verbal*. If the widow tries to by-pass her in-laws by going directly to the pension fund or to court, her in-laws can easily – and often do so – punish her by refusing to hold the family council or to sign the proceedings, which are officially requested in order to access her pension and inheritance. This example shows how a forum, rooted in local customs, has been reinvented according to bureaucratic requirements. In a similar way, a link between the legal system at the village level and the state law is established, when for any “sale by contract” of land, the state law demands that the chief confirms the property right of the vendor before the bill of sale can be certified by the state authori-

³¹¹ See photo 3 in the annex A7.

ties³¹². Via such linking to customary institutions and ways of dealing with conflict, the state tries to exercise control over the customary legal field. Apart from these specific cases, the state law – since the reform of the judicial organisation in 1978³¹³ – does not interfere with customary legal procedures³¹⁴.

Apart from customary expectations as to the correct forums to address and the correct order to go about it, also religious norms play a role (cf. Kibwana 1996:257). For instance, Muslim women are expected to marry according to Muslim norms, allowing for polygyny, although their subsequent marriage at the registry office theoretically enables them to opt for monogamy (cf. chapter 4.1.4). Another example are Christian widows who would prefer to follow a widowhood ceremony in a catholic or presbyterian church, but are forced to undergo arduous customary ceremonies by fear of being haunted by the deceased husband and getting mad, or hindered by their in-laws from accessing their widow's pension, in case they refuse the ceremonies (cf. chapter 5.1.1 and 5.3.1).

6.2 Working one's way through the plural legal field

Despite actors maintaining the validity of the above mentioned rules for appropriate trajectories, they nevertheless actively and in a multitude of ways juggle with the repertoire of legal forums.

For instance, in conflict cases concerning slandering and brawls among neighbours or co-wives, many women address themselves to the chief. In a public hearing they are given the opportunity to denounce the accusations, justify themselves and eventually become indemnified for the costs of medical treatment. This often helps to silence the slandering³¹⁵. In towns of southern Togo women often involve directly the *vodu*-priest or the *afa*-diviner, without addressing the chief or the customary court. In these spiritual forums they can achieve immediate revenge, redress, or protection against witchcraft attacks (Chefferie 3.5.01, 10.5.01, June 2001). The degree to which Christian priests and pastors or Imams become involved in conflict mediations depends on the religiosity and religious contacts of the claimant.

³¹² The chief has also to be involved for the second type of land sales called "sale by confirmation judgement" (GF2Dc 1999:208-210), cf. chapter 3.1.2.

³¹³ Colonial interferences with customary law were discussed in chapter 2.2.

³¹⁴ The ways in which state courts treat cases of witchcraft accusation will be discussed below.

³¹⁵ Cf. Deffarge/ Troeller (1984:66) for the *Konkomba* of Northern Togo.

In areas where the district officer (or the mayor) is known to be gender sensitive, women do not hesitate to directly address them, especially in order to intervene in problems of domestic violence. The procedure is simple and free: They just solicit an audience with the respective authority and expose their problem. If they are lucky, the district officer calls in their husband or partner for a mediation, sometimes even keeping him under provisional supervision or obliging him to pay for the medical expenses caused by his violence. Reportedly, some district officers also intervene to prevent forced marriages of under-aged girls, providing for the housing and schooling of the girls concerned. These interventions exceed their official competences and are only based on their political and moral authority. However, the efficiency of this legal forum highly depends on the goodwill and interest of the respective administrative authority to address women's problems (UNICEF 2000:117).

Especially educated urban upper-class people hardly consider to take a case to the customary court, as they feel well equipped (in terms of money, information and contacts) to pursue their claim in state court. However, they as well involve state courts only as a last resort, after having tried for a long time to settle the issue at the family level. In the case of Anita in Lomé (see chapter 3.3.4), at an advanced stage of the conflict she threatened to sue her paternal relatives in court. But she never had to follow-up on this threat, as it had sufficed to intimidate her adversaries. Justine in the south-western Kloto-district (cf. chapter 4.3.4) threatened to sue her son-in-law in court for not caring adequately for her daughter. Although he didn't react to it, she didn't translate her threat into action, probably because she could mobilise her own resources to sustain her daughter and thus avoid an open conflict (Justine 2:46).

Other people do not have such scruples, like the case of a poor woman in Lomé who sued her neighbour in state court for compensation of medical expenses caused by fights between the two women. The fact that she addressed herself to the most formalized of all institutions, did not prevent her from trying to manipulate it: As her first suit in state court was successful, she started to forge further summons in the hope to extract more money from her neighbour, which however were all uncovered and rejected by the court. At the same time she refused to follow a summons by the customary court, where her neighbour wanted to settle the quarrels, probably because she knew that in this forum, which is oriented towards peaceful mediation, her continued claims would rather be interpreted as unwelcome provocation, bringing about more conflicts instead of resolving them (Chefferie 10.5.2001/V).

Furthermore, claimants do not refrain from mobilising influential friends who are in positions of authority in order to intervene in their favour, be it at state court or at customary court.

Such a case was observed at the customary court of Lomé, where, during the break of the trial, the brother-in-law of the accused woman used his mobile phone to call the prime minister. Although the chief's advisors (*notables*) pretended to ignore this intervention in their judgement and explicitly fined and reprimanded the accused lady, it is likely that she was exempted from paying the fine afterwards (Chefferie 3.5.2001/III). According to Olivier de Sardan (1999:40-41) this way of contacting friends who abuse their positions of authority in one's favour is a type of corruption, embedded into "the logics of the solidarity network".

If people have the right connections, they can – as a last resort – address themselves to the president of Togo, who – fitting in with his propaganda about being the "Allmighty Father of the New Togo", the "Beloved Guide", or simply *Papa Eyadéma* (Toulabor 1992: 113-125) – positioned himself as the powerful despotic centre of his autocratic government, standing above the rule of law. This strategy was also envisaged by Anita, whose friend is employed by the presidency, a connection she threatened to use in order to intimidate her uncle and aunt who were opposing her inheritance claims.

All of these institutions do have an official – mostly public – way of dealing with conflicts, but also an unofficial way, for instance by discussing the case in a more private room than the reception or court room or by redefining a village conflict as a family affair in order to exclude undesired audiences (cf. Justine 2:36, Rouveroy van Nieuwaal/ Rouveroy van Nieuwaal-Baerends 1986:184, Bierschenk et al. 2000). In order to successfully make use of state courts, it is crucial to know both their official and unofficial procedures³¹⁶. For instance, it is advantageous to personally know the civil servants concerned or have the means to "butter them up" with money or offering services in exchange, be able to claim family obligations or the repayment of debts or to mobilise some other position of power to put pressure on them (Tidjani Alou 2001:132-147). It is equally important to know whom to use as an intermediary or "middleman" (Pfaff-Czarnecka 1991) to bridge the perceived distance between oneself and the complex state judiciary, for instance by personally following up the treatment of the file (*sivre le dossier*, cf. Elwert 1987:257). Such intermediaries can be friends or employers with the respective knowledge, money or contacts, or somebody from the judicial network of legal

³¹⁶ "Official" I call the procedures written down and sanctioned by laws, decrees, statutes of organizations and NGOs etc. The "unofficial" ways work as well according to certain "rules of the game", although they are not written down. While the official procedures are taught in administration schools and universities, seminars and workshops, the unofficial rules are taught in practice. Also, unofficial ways are often based on the reference to the official procedures. The boundaries between official and unofficial ways are nevertheless often fluid – especially as most actors deal with both ways and can switch between them, depending on the respective circumstances, i.e. most actors are at the interface between official and unofficial ways, which can constitute parallel trajectories.

professionals (examining magistrates, prosecutors, judges, lawyers), the auxiliary court staff (clerks and secretaries of the court) and informal actors (jobless or underpaid clerks and interpreters, errand-boys, cleaning staff, gardeners) who exchange their “relational capital” (in the sense of Bourdieu 1983) – giving advice on whom to talk to etc. – against remunerations (Tidjani Alou 2001). Ironically, these middlemen exploit their powerful gatekeeper position at the interface between citizens and the state law

by initially increasing the existing distance and then by filling the self-created gap with their own services (Pfaff-Czarnecka 1991:198).

According to Benda-Beckmann, apart from the social, religious or state expectations as to which legal forum to address, the trajectory through legal forums is made according to the expectation of where to get one’s claim acknowledged or where to achieve the most desirable solution, because “different solutions can be expected from different forums” (1984:54). She specified that

disputants base their choice [of legal institutions] on what they hope the outcome of the dispute will be, however vague or ill-founded their expectations may be” (K. von Benda-Beckmann 1984:37).

She termed the opting for a legal forum out of personal preference and pragmatic considerations – while ignoring the approved hierarchies – “forum-shopping” (1984). She further carved out that the legal institutions derive their legitimacy from different legal orders (in her case from Minangkabau in Indonesia of indigenous *adat* versus the national – formerly colonial – legal system). Each of these operate on various levels³¹⁷, resulting in partly overlapping fields of jurisdiction and offering a choice in institutions and a considerable room for manoeuvre³¹⁸. As most conflicts involve several parties, this often leads to ample negotiations about the correct institution to use, mirrored in the definition of the dispute which is establishing the jurisdiction.

³¹⁷ The *adat* institutions as well as the mayor, village council, and officer for religious affairs operate on the local level, the police and sub-district officer on the sub-district level, state courts, public prosecutors and Islamic courts at the district level (F. von Benda-Beckmann 1994).

³¹⁸ A similar room for manoeuvre and respective “forum shopping” behaviour was analysed by Janzen for the health sector in the former Zaire, where a “medical pluralism” of Western and traditional African health systems exists. This includes a plurality of possible problem identifications (natural or non natural), specialists (nurses, medical doctors, diviners, healers, herbalists etc.), techniques of diagnosis and therapy (pills, injection, surgical procedures, plants, singing, advice, dream analysis, ritual bath, sacrifices, conflict litigation) and cultural logics. The ill person is guided through this therapy process by a support group, the “therapy managing group”, composed of kinsmen and experts (1978:127-156).

The term “shopping” evokes the image of a rather free choice of forums. What has to be added is whether there is a gatekeeper or guard at the entrance of the shop, who selects the clients allowed to go in and according to which criteria, as well as whether there aren’t other forces at work (such as publicity, rumours, reputations, decrees etc.) which discourage some people to approach this or that shop. Even K. von Benda-Beckmann admitted that the possibilities of shopping between legal forums can be restricted by certain aspects. For instance, in Minangkabau the existence of state courts serves to limit procedural manipulations at the village level (1984:37).

In the case of Togo, customary courts and chiefs are avoided in favour of state forums or spiritual forums if mediation is not desired, i.e. if it is either aspired to win the whole case without compromising and to get a high material compensation or to seek spiritual revenge. This demonstrates that both traditional and “modern” legal forums maintain their respective fields of power. The choice of forums furthermore depends on knowledge about the respective legal system and its advantages or disadvantages, know-how of the required codes in terms of language and procedure, as well as the accessibility of the forum regarding money, transport, and personal connections. All of these factors are related to aspects such as education and rural or urban living environment (cf. Rouveroy van Nieuwaal/ Rouveroy van Nieuwaal-Baerends 1986:191, A. Griffiths 1997). Moreover, these factors are gendered, as will be further explored below. But people’s choices only partly determine which forums actually get involved, the other important factor being the subsequent negotiations between the conflicting parties in the forums as well as between them and the forums.

6.3 The multifaceted use of the plural legal field by “custodians of tradition” to create new legitimacies

The institutions of lineage heads, chiefs, *vodu*-priests etc. underwent manifold transformations during colonial and post-colonial times, in which they managed to redefine and re-legitimise their positions over and over again.

Before colonial times most ethnic groups³¹⁹ in Togo were acephalous with local power being shared among several institutions, such as the earth priest, the rain maker, lineage elders,

³¹⁹ As an exception we have to name the *Mina* (or *Guin*), who towards the end of the 17th century established the Glidji kingdom in south-eastern Togo. As their power was founded on their economic success with the slave trade as well as on the need of people for protection from various wars, they lost their hegemony with the abolishment of the slave trade and the establishment of colonial power and

chiefs etc., however without any central organisation (Rouveroy van Nieuwaal 2000:173-174, cf. Sigrist 1967). The German and French colonizers instituted a hierarchy of administrative chiefs all over the country³²⁰ (consisting of chiefs of wards, village chiefs, cantonal and paramount chiefs) in order to better control the population, collect tax, recruit forced labour and soldiers, and provide registry services. As the colonisers claimed absolute power over their colonial subjects, the institution of chieftaincy as a prolonged arm of the colonial regime officially eliminated the traditional division of power at the local level, like in many other African colonies (cf. Bayart 1992). However, despite the colonial interference, people maintained their rules for designating and ceremonially enthroning traditional leaders, who were mostly chosen by the lineage elders among the capable men of the “royal” lineage, i.e. the lineage descending from the village founder. Often the colonial governments tried to gain the acceptance of the population by appointing these locally legitimated leaders as administrative chiefs. On the other hand, some chiefs took advantage of colonial and post-colonial innovations (such as the founding of administrative centres and the development of towns) and, collaborating with surveyors who acted on their own, used their traditional authority over land issues to sell urban plots to individuals on a large scale (Barbier 1986).

In southern Togo many chiefs converted to Christianity, while in central and northern parts of the country most traditional chiefs remained „animist“ besides newly emerging Muslim leaders (Froelich 1963:35-38, Rouveroy van Nieuwaal 2000:258). The chiefs’ conversion to Christianity was facilitated by the catholic and protestant churches allowing them to continue most of the ancestral cults, except what they condemned as “fetishism”, i.e. the supposed adoration of sacred objects that had to be replaced by oral representations (cf. Mancraro 2:6, 3:5-6, Meyer 1999a:156). This splitting off of parts of the symbolic representation of their religious beliefs in order to take over the Christian religion was and still is quite a complex and controversial exercise performed by chiefs, their advisors, Christian priests, pastors and preachers, and who are at the interface of these differing worlds of meaning³²¹ (cf. Aziablé-

peace, historical changes upon which the various villages – and within them the various lineages – regained a relative autonomy (Mignot 1985:229-231).

³²⁰ For instance, in 1910 the Germans appointed two cantonal chiefs in Lomé, one for the western part of town (Kodjoviakopé), one for the eastern part (Bé). Each cantonal chief had several sub-chiefs and, under these, several *chefs de quartier* under his supervision (Secr. Chefferie 1:1-4).

³²¹ For instance, in the Kloto district I met a chief’s advisor who was a baptised catholic and for many years had been actively doing catechist work. As traditional advisor his role was to maintain customary ceremonies, while as a catechist he was supposed to suppress them. This contradictory role became visible in his account of the new funeral practices in his area: While they maintained the tradition to interrogate the spirit of a deceased person in order to find out the causes of his or her death, they had changed the practice of reacting in the case that the spirit declared to be guilty of sorcery or crime. In-

Amuzuvi 2001:175-186). Such conversions are a strategy to maintain or reconstitute their legitimacy in the face of a new and hegemonic moral order.

Since the beginning of Eyadema's dictatorship in 1967, all chiefs (and in the Kloto district as well the queen mothers) chosen by the population are screened according to their RPT-loyalty and subordinated to the district officers, who officially designate them, subject to ratification by the Minister of the Interior (Rouveroy van Nieuwaal 2000:182-194). Recently, more and more emphasis is put on choosing young intellectuals as chiefs (and queen mothers), even if they are neither from the royal lineages nor share the villagers' everyday life, having established themselves in the city long time ago. They are expected to bridge the gap between village life and the state bureaucratic system and to acquire government money as well as NGO funds for village development. Thereby the traditional principle of seniority is further undermined and male elders are losing more and more power, which opens new paths to increase women's participation in local politics.

Through all these changes the chiefs lost much of their traditional legitimacy as mediators between the contemporaries and the ancestors and as authorised knowledge transmitters (*autorisierte Tradierer*, cf. Elwert 1987:246). But obviously they partly counterbalanced this loss by acquiring new legitimacies through religious conversion as well as political and economic know-how. They continue to act as conflict mediators and to interpret and sanction customary norms (Mignot 1985:286).³²²

In 1978, the cantonal chiefs gained back some of the authority they had lost to the judges – who are acknowledged as the experts of modern law –, by taking over the officially abolished customary courts³²³. Their public recognition of their continuing legal authority is underlined by the fact that actors bring all kinds of quarrels to these customary courts and the audiences are attended by whole families and large groups of spectators.

Some chiefs in the Kloto district, spearheaded by the queen mothers and in cooperation with women's rights NGOs, recently discovered new ways of enhancing their legitimacy, by acting not only as "custodians" of oppressive traditions, but – in issues of inheritance and widow-

stead of ordering to drag the cadaver through the village without burying him – with the aim of deterring others from committing crimes –, the chieftaincy now requests the family of the deceased to pay for expensive ceremonies to restore the socio-spiritual order, threatening to drag the cadaver otherwise. (Mancraro 2:8-9).

³²² This contested but ever newly reconfirmed status is mirrored by the fact that all the chiefs of the various hierarchical levels call themselves *chefs traditionnels* and are addressed like this by the state power and the population alike (Rouveroy 2000:173-194). Nevertheless, the term "neo-traditional authorities" would be more appropriate.

³²³ See photo 2 in the annex A7.

hood ceremonies – as promoters of an evolution of customary norms in favour of women, thereby reacquiring some of their power to define social change.

6.4 Legal forums juggling with the normative repertoire available

The language used in family councils indicates that they are strongly influenced by the legal culture of state courts, which are active in the country since colonial times:

Quand il y a bagarre et l'homme bat la femme, et la femme quitte son mari pour aller chez ses parents, bon, des fois l'homme vient chez la belle-famille pour dire ce qui se passe, et les deux familles se regroupent pour discuter de ce qu'il y a. Bon, pour la femme, qu'est-ce qu'ils *jugent*? Ils voient que la femme *a tort*, ils *amendent* un peu la femme et puis ils la font retourner. Si c'est l'homme qui *a tort*, on *amende* l'homme et puis ils se retrouvent. On renvoie la femme à la maison. (Justine 1 :25, italics by IK)

A similar observation can be made regarding the chiefs: They mostly apply customary norms and principles of their community when trying to mediate or arbitrate, the details depending also on their own religious orientation. But some take up ideas from the state law – be it that they were informed by the administration or by women's rights NGOs about the Family Code or, increasingly, that they themselves had worked for the public administration and acquired this knowledge. Others acquire the same knowledge but are either insecure how to apply it, due to the differing logics of customary and state law, or prefer to neither use it nor pass it on to their people, thus acting as “gatekeepers” of knowledge.

When the cantonal chiefs took over the colonially created “customary courts” in 1978, they created a kind of neo-customary court culture. They had to leave the state court infrastructure and reopened the court in the house of the chief. They maintain the procedures of the customary courts of 1961 (using even the same official letterhead³²⁴) and reconcile and judge according to their interpretation and construction of customary norms. This interpretation and construction is, on the one hand, inspired by current discourses on tradition, such as become visible in expressions referring, for instance, to the wife's subordinate status within marriage and to the exclusion of widow's from the inheritance of the family house:

Selon notre coutume, la femme doit obligatoirement obéir à son époux, c'est lui l'époux. (Secr. Chefferie 1:30)

La maison est pour la veuve, ses enfants, et ses petits enfants. Si la veuve veut vendre ça, c'est du gaspillage, c'est un problème de conscience. (Secr. Chefferie 1:38)

³²⁴ The letterhead of all proceedings and certificates says: *Ministère de l'Intérieur et de la Sécurité, Préfecture du Golfe, Tribunal Coutumier du Canton de Bé, Affaire Civile.*

On the other hand, their construction of customary norms is inspired by selected elements of state legal practices, such as when according the inheritance to the descendants in a gender-equal way, instead of to the uncles or sons only:

Actuellement il n'y a plus ça, que les grand frères et les oncles paternels vont hériter, non, non, il n'y a plus ça. Par la modernisation que nous vivons actuellement, la fille a droit. Si le garçon a deux chambres dans la maison, la fille aussi a deux chambres dans cette maison là. (Secr. Chefferie 1:24)

At the state court level, where the state law refers to customary norms, such as in article 391 of the Family Code (cf. chapter 2.2.6), it was observed that the judges mix in state norms, i.e. they partly ignore this article and respect some of the superseded provisions instead (cf. chapter 3.2.3).

6.5 Legal forums between cooperation and competition

In some situations the various forums of customary courts, state courts, state administration, the police, and religious authorities cooperate, in others they happen to compete with each other and try to enforce their own visions of the correct hierarchies. Thereby, they influence people's choices and thus impinge on their room for manoeuvre. Each forum has its own code about who will be listened to, which claims are admitted to be raised, and which way of addressing the forum and presenting one's claim is considered appropriate. These codes are differentiated according to gender.

For instance, if the chief and his advisors of a customary court manage to reconcile the litigants, they issue a *procès verbal de conciliation*³²⁵. At other times, they judge and fine the cases and issue a transcript of the proceedings. The litigants can take this transcript either to the state administrative services, such as the pension fund or the survey department, to the state court, for instance to appeal in cases of land disputes, or to the police or *gendarmerie*, in order to seek protection or revenge in cases of non-conciliation³²⁶. If the accused refuses several summons to appear before the customary court, the latter issues an authorization "to take the case to any other jurisdiction"³²⁷. This cooperation between the different legal forums is demonstrated in the following excerpt of an interview with the secretary of a customary court in Lomé:

³²⁵ Cf. customary court file 19.8.1999, 19.3.2001.

³²⁶ Cf. Secr. Chefferie 1:20, Chefferie 17.5.2001/IV, customary court files 21.12.1991, 24.7.1997, 17.6.1999.

³²⁷ Cf. customary court files of 22.9.1999, 20.7.2000, 2.10.2000.

- I.K. Donc, ça arrive que les tribunaux viennent vous demander un procès verbal ?
- Secr. Même la gendarmerie, le commissariat de police aussi, veulent voir le procès verbal et on doit faire ça pour les gens qui ont demandé. Ou bien, s'ils ne peuvent pas résoudre l'affaire, ils renvoient ça ici.
- I.K. Est-ce que vous aussi, vous envoyez des affaires là-bas ?
- Secr. Oui, beaucoup même. Eux ils envoient chez nous et nous envoyons chez eux.
- I.K. Vous envoyez aussi au tribunal ?
- Secr. Oui, eux aussi, ils n'ont qu'à traiter l'affaire à leur niveau. (Secr. Chefferie 1:8)

Contradicting this view of the customary court, the judges at state courts do not recognize any judgements of the officially abolished customary courts:

Souvent des clients viennent avec un "jugement" de la chefferie, avec lequel ils ne sont pas d'accord. Comme les chefs coutumiers n'appliquent pas la loi, ces « jugements » n'ont aucune valeur et nous sommes obligés de recommencer la procédure. Ici, c'est la loi moderne qu'on applique. (Tribunal 16.5.2001/I)

Nevertheless, state court judges do refer cases of witchcraft accusations and other "improbable" slandering, which do not enter into their legal frame, to the customary courts (cf. Tribunal 16.5.2001/I). Thereby, they recognize the customary court – even though officially abolished – as a legal institution with just another domain of responsibilities. Furthermore, they recognize the *vodu* belief system, to which the ambivalent witchcraft discourse belongs, as a pertinent moral order that guides people's actions. However, they do not go as far as eastern Cameroonian courts, who "bestow official legitimacy" on sorcerers by calling "witch-doctors" to prove that a person has applied witchcraft (Geschiere/ Fisiy 1994:327-329).

The customary courts do in fact try to settle such conflicts around witchcraft accusations:

Par exemple, une femme est partie chez un *bokono* pour faire un gri-gri pour que son mari l'aime de tout cœur, et le gri-gri elle a caché dans leur chambre. Quand le mari découvre, il a peur, parce qu'il ne sait pas exactement à quoi sert ce gri-gri là. Donc l'homme peut venir déposer la plainte contre son épouse chez nous. (Secr. Chefferie 1:12)

Only if no agreement is achieved, they authorize the claimant to see one of the *vodu*-priests within the area in order to take super-natural actions, be they reconciliatory or revenging. By insisting on this procedure, the customary courts try to prevent the case from escalating, as the involvement of *vodus* often leads to casualties and loss of human lives, i.e. the customary courts try to preserve a certain societal cohesion³²⁸. On the other hand, a competition between these two forums comes into play, whereby the customary court obviously tries to gain le-

³²⁸ Cf. Chefferie 3.5.2001/ III, 10.5.2001/II, 17.5.2001/III.

gitimacy by establishing state-like bureaucratic procedures, such as written protocols, and hierarchies of directive³²⁹.

What becomes visible here, is that chiefs can serve at the one hand as brokers who link the customary to the state legal system by establishing a kind of reference system, thereby accommodating traditional to modern legal concepts or at least mediating between the two. On the other hand, they can serve as gatekeepers between the two normative orders.

However, *vodu*-priests do not necessarily share this vision of hierarchy, but take on cases even without any prior consent by the customary court, as the following citation by the secretary of a customary court shows:

Par exemple, dans ce cas [he shows me a transcript of a court proceeding], la dame devait d'abord venir chez nous, on doit d'abord essayer de régler l'affaire à l'amiable. S'il n'y a pas de conciliation, on fait le procès verbal et elle peut aller au chef féticheur. Donc, si le chef féticheur ne reçoit pas ce procès verbal, lui aussi il ne peut pas autoriser à faire ces cérémonies là-bas. Sinon, après c'est un dégât sérieux qui va se produire, tu vois ? Mais, dans ce cas la dame est allée voir le prêtre *vodu* à notre insu. Le prêtre *vodu* là-bas aurait du demander au moins une autorisation de la part du chef. (Secr. Chefferie 1:8-9)

Chiefs equally try to position themselves above any Christian priests and pastors. In the following argument a chief's advisor criticizes a Pentecostal pastor who attempted to stop certain „animist“ ceremonies. His main critique is not the intention to change this practice as such, but the attempt to do so without prior consultation of the customary authorities:

Dans notre village il y a l'église catholique, l'église protestante, et l'assemblée de dieu – comment l'appelle-t-on – la pentecôte. Leurs pasteurs viennent de l'extérieur. Ils n'ont pas tellement de pouvoir. Mais ils veulent changer tout. Ils disent aux gens d'arrêter la coutume. Mais il faut se mettre d'accord avec le chef d'abord. Le nouveau prêtre se met devant la population pour prononcer que désormais on va changer ceci, cela. S'il le fait seul, sans avoir consulté le chef et toute la population d'abord, la population sera contre lui, ils vont lui faire du gri-gri, ils vont lui faire des attaques. (Manclaro 2:7-8)

According to him, for any external social intervention to be acceptable, it has to take place in agreement with the chief and in public. This citation shows how chiefs use custom (and their own power to define its correct performance or else to decide over eventual changes) in order to maintain their power and authority over people and resources – such as knowledge – ,

³²⁹ This coincides with Rouveroy van Nieuwaal's observation (1986:183, 190) that the fact that official documents, such as administrative certificates for land, have been established, is used by a chief to get rid of a delicate conflict (which, in his case study, would oppose him with the Imam) and refer the litigants to the state court structure.

against various self-appointed “civilizing” actors. Thereby they (re)construct themselves as medium of social change as well as its controller.

The various religious authorities do also compete with each other for adepts and their financial contributions as well as for power and authority over the population. For a long time this type of confrontation was dominated (among the *Ewe*) by protestant and catholic missionaries preaching against „animist“ religious practices, which were condemned as fetishism. This approach was then taken over by Pentecostal preachers who, being “obsessed with demonology [...], continuously dwell on the boundary between Christianity and ‘heathendom’” (Meyer 1999a:160³³⁰). In order to differentiate themselves from the catholic missionaries, Pentecostal preachers try to outdo them by being even “more Christian” and more strict in their rejection of customary belief.

These struggles continue, involving new religious groups as they become active within the area. The following extract from my field notes refers to an encounter with an American Baptist lay-woman, doing missionary work among the *Ewe*.

She asked whether I knew that the Islam decided to take over Togo. I denied. She said: “This is very difficult for us, but we hope to convince the people by telling them the truth about the bible. This is what I like about working in Togo: People really want to learn about the bible. Back home [in the US] nobody is interested in the bible. [...]” She further said that there are more and more sects all over the country which grow mainly “because the Togolese are so open-minded. People get lured into them by promises of becoming rich. Of course they soon find out that their promises are not held” (Mary 1:2).

All of these examples show that negotiations among the various legal forums as well as between claimants and legal forums structure the legal field, influencing people’s choices of legal trajectories.

6.6 Gendered access to customary and religious legal forums

Women are usually discouraged from claiming their rights against their husbands, uncles (or aunts) and in-laws. They are threatened that if they complain, they will get killed by witchcraft. This is especially virulent in quarrels about land (cf. chapter 3.1.3). It is mostly assumed that men are spiritually stronger than women and have more courage to address a sorcerer in order to intimidate or harm their adversaries (cf. *Aku* 1:7-8, *Dorothee* 3:10-11). This might be

³³⁰ Meyer refers to the *Peki-Ewe* in south-western Ghana. However, her account confirms my own observations from the *Kloto* area in south-eastern Togo, just across the Ghanaian border (cf. *Manclaro* 3:5-7).

explained by the stronger identity that men can build in a patri-lineal and patri-local society, as their life is marked by a continuity of social relations and spatial ties, while

[women have to] continually redefine their identity: as children through their father's family, as adult women through the family of the husband and in old age through their sons. (Reh/Ludwar-Ene 1995:9)

But it is admitted that under certain conditions – i.e. if they are spiritually very strong and self-conscious – women can dare to stand up and fight for their rights:

[Si toi, en tant que femme, tu veux te mêler dans les affaire de terrain] il faut être femme d'abord. Il faut que tu sais utiliser les coutumes. Avant que toi, une femme, tu te lèves contre moi, ton frère, d'avoir une maison ou un terrain, il faut que toi aussi tu t'es bien préparée spirituellement, que tu ne crains pas la mort, tu ne crains rien, tu as bien serré ta ceinture. Il faut que toi aussi tu es courageuse pour faire face à ce que ton frère aussi fait. (Secr. Chefferie 1:25-26, 43)

Pour qu'une femme puisse revendiquer toute seule, il faut qu'elle soit sûre d'elle même, qu'elle ne se considère pas comme ayant un statut d'infériorité, n'ayant pas de droits. C'est ce complexe d'infériorité qui empêche les femmes souvent à revendiquer leurs droits. (Marlène 1:10-11)

It also becomes clear from these citations that such spiritually and personally strong women are rather the exception, and that many a woman gets discouraged by the witchcraft discourse from claiming her rights. This tendency is even increasing when it comes to women's statutory rights (see below).

Secondly, in marital conflicts women get hardly any support, neither by the family council of their husband's lineage nor by the one of their own family of origin, both of which are dominated by men and often male-biased. The husband's family council might listen to the woman, but often they will nevertheless support their son and try to attribute the fault to the woman³³¹:

Une femme se plaint devant le chef de famille/lignage de son mari que son mari veut la répudier pour prendre une jeune femme comme troisième épouse. Les frères du mari sont solidaires avec lui. Le frère du mari prend la parole : « Tu dis que ton mari veut te répudier. Ce n'est pas toi qui l'a provoqué en refusant de préparer pour lui ? Laisse tomber ce litige. » (Rouveroy van Nieuwaal 1978)

While women address these forums, for instance, in order to protest against being repudiated by their husbands, men rarely use them, mainly because the patriarchal structure and the viri- or patri-local residential arrangements ensure that they are in a stronger position anyway. I.e.

³³¹ If the husband dies, this tense relationship between the wife and her in-laws often erupts into outright hatred and revenge against the widow, as was discussed in chapter 5.

if their wives run away to their parental family or elope with another man, the husbands can try – sometimes with the help of the wife’s parents – to convince or force her to come back. If he suspects her of committing adultery, he can simply repudiate her. Only if he is inclined to maintain his marriage, he might call her before his family council:

Mais c’est rare que l’homme fait venir sa femme devant son propre conseil de famille, sauf si on reproche vraiment un acte grave à la femme. Et la femme va subir des pressions dans sa propre famille, on ne lui permettra pas de refuser d’y aller. (Marlène 1:20-22)

It is assumed that, in former times, women got more strongly backed up by family councils. But since many men achieved economic independence from their patri-lineages – or even support them economically and thus turn them into dependents –, they experience less pressure from their relatives:

Il arrive souvent que l’homme renvoie sa femme. Même si la femme n’a rien fait de grave, s’il veut se débarrasser d’elle il dit : « Bon, à partir de maintenant, toi, va chez tes parents, vas chez tes parents ». Si l’homme renvoie sa femme, elle peut recourir au conseil de famille de sa famille d’origine. Ce conseil peut essayer de faire venir l’homme pour le questionner et l’amener à la raison. Dans le temps il y avait un peu de pression morale de la famille sur les hommes. Donc on pouvait amener un homme qui ne veut plus de sa femme à la reprendre chez lui. Mais maintenant, de plus en plus les hommes s’en foutent des conseils de familles. Souvent, si l’homme a un bon boulot, il ne se sent plus obligé à rendre compte de son comportement ni à sa propre famille ni à la belle famille. En plus, s’il les a choyé avec son argent, ils ont perdu toute autorité sur lui. (Marlène 1:20-22)

On the other hand, in recent years women take more and more often active part in family council sessions concerning inheritance, be it actively or as witnesses, for instance when signing the proceedings (Marlène 2:1). Consequently, there is a tendency that women at the family level are more frequently accorded responsibilities as inheritance administrators, family or even lineage heads and thus are in a better position to negotiate their rights. This is partly attributable to the interference of state norms, according to which the form for the *procès verbal du conseil de famille* requires the presence and signature of the widows and the grown-up children that are liable to inherit (cf. Secr. Chefferie 1:39), i.e. in this case the state deconstructs women’s legal minority in the customary law. But it may also be attributed to the increasing economic autonomy of some women with regard to their families (cf. chapters 3 and 4). In the long run, women’s increasing say in family councils might counteract men’s tendency to escape the control of these councils.

Thirdly, if a woman insists on claiming her right outside the family realm, thereby ignoring the procedures considered appropriate and calling male honour into question, she will be

shamed by her relatives and the community as being “recalcitrant” or egoistic and lacking appropriate female submissiveness. Furthermore, she will be punished by being subsequently excluded from any further negotiations:

La femme n’était pas docile envers la belle-famille. La mère avec les enfants sont allés à la préfecture et en justice pour dire qu’ils sont les responsables pour les biens de leur papa décédé. Ils sont partis là-bas pour faire les documents. Donc, ils ne sont pas passée par une tierce personne dans la famille du mari pour savoir quelle soit leur place [...] La femme a été récalcitrante d’abord. C’est pourquoi la famille l’a fait voir rien que les faits accomplis. (Mancraro 3:16, 18)

Quand j’ai dit que je veux voir le pièces justificatives d’abord, avant de payer, ma tante m’a insulté que c’est mon argent que je veux pas qu’on bouffe, que je suis égoïste... (Anita 2 :14)

If a woman still dares to sue her husband or in-laws in the customary court, her own relatives may put great pressure on her to withdraw her claim:

Si la belle-famille veut exclure la veuve de l’héritage et la veuve amène l’affaire ici à la chefferie, donc la famille de la veuve fait une réunion entre eux que la veuve ne doit pas traîner la famille de son mari devant le chef de canton, qu’elle n’a qu’à laisser ça, sinon elle va mourir, qu’elle n’a qu’à chercher du travail pour veiller sur ses enfants elle-même. Donc la veuve vient ici pour retirer l’affaire parce qu’elle ne veut pas qu’on la tue après. (Secr. Chefferie 1:34)

Fourthly, if a woman withstands this pressure and maintains her case in the customary court, she is likely to nevertheless encounter male-biased and sexist attitudes of the (all male) court personnel³³², i.e. the chief and his advisors (Manning 2000). As we have seen in chapter 2.1.2 and 2.1.3, it is very rare that women become village or cantonal chiefs³³³. Only in a few regions women can become active as socio-legal authorities on the customary level, such as the *Reines Meres* in the south-western Kloto district and the *Reines* in the Muslim town of Sokodé. However, in both cases they are only responsible for affairs involving women.

The following excerpt from a discussion between the secretary of a customary court and a women’s rights activist illustrate how customary norms are selectively applied by customary courts to the disadvantage of women, and how the male litigant evoked the sympathy of the male court personnel. The discussion refers to a typical case, in which a woman had claimed maintenance from her husband, who had left her and her children for another woman, without even paying the school fees for his daughter.

³³² Cf. photo 2 in annex A7 for an example of the bench of a customary court in Lomé.

³³³ In 1995 there was one woman cantonal chief in Langabou in the district of Blitta and in 2001 one woman became village chief in Agoé Nyivé near Lomé.

- Secr. Le mari a quitté sa femme parce qu'elle s'adonne aux choses de *vodu*. C'est pour ça qu'elle n'arrive même pas à obéir son mari. La fille a suspendu l'école, c'est pas que le papa n'arrive pas à subvenir à ses besoins, non ! C'est à cause du caractère de la maman.
- Activiste Donc le papa punit la maman par l'enfant ?
- Secr. Non non non, c'est pas ça.
- Activiste Mais vous n'avez pas relevé ça, vous n'avez pas dit ça. Vous vous êtes acharné sur la petite fille, vous l'avez bien insulté.
- Secr. Oui, mais on sait tout mais on ne peut pas tout dire.
- Activiste Le papa vit avec une autre femme avec d'autres enfants, alors qu'il ne s'occupe pas suffisamment des autres.
- Secr. : Si tu vois même le papa tel qu'il est, c'est un homme qui est patient, qui n'est pas difficile. Mais c'est à cause de la première femme qu'il est parti chercher l'autre femme. Sa première femme ne l'obéit plus. Et selon notre coutume, ou bien la coutume que nous vivons actuellement, elle doit obligatoirement obéir à son mari. (Secr. Chefferie 1:27-30)

The activist criticized that the court had in no way reprimanded the husband's neglect of his obligations towards his wife and children, but to the contrary, had reprimanded the woman for not abiding by the customary norm of obeying her husband. Upon further questioning, he admitted implicitly that the court had backed up the husband's immoral behaviour (of punishing his children for what he considers to be his wife's misbehaviour) against better judgement (*on sait tout mais on ne peut pas tout dire*), thereby prioritising the upholding of unequal gender relations against the protection of children's customary right to be maintained by their father.

During a discussion about another case, the secretary confirmed that women only get a fair treatment in the customary court, if they present their case in the appropriate deferential manner:

La femme là est têtue, elle ne veut pas respecter la court, donc on va la punir. (Secr. Chefferie 1:48-49)

But also men are confronted with gender-biased attitudes of the customary court. Thus, the husband of an accused lady was mocked at and shamed by the court, accused of lacking male authority over his wife, because he didn't succeed in bringing her to the trial:

Comment tu as un pénis et tu te comportes comme une femme !? (Chefferie 17.5.01/IV)

Analysing cases from the *Anufom* in northern Togo, Baerends (1990:65-66) confirmed that specific women's issues, such as the refusal of an arranged marriage, are not acknowledged as a subject to negotiation at the chief's traditional court. For instance, if a woman is forced by

her parents to marry a man of their choice and the conflict cannot be resolved at the inter-lineage level, she prefers to run away with a lover than to appear before the chief's court, because the latter act would be interpreted as an indication that she is willing to return to her husband³³⁴. He, however, may lodge a complaint against his wife's alleged lover at the chief's court, claiming for indemnification of marriage payments.

On the other hand, Baerends mentions that, since the establishment of a customary state court in the town of Mango (northern Togo) in 1965, women used this court in order to refuse arranged marriages. Although marriage arrangements corresponded to the custom, the judges (*juges de paix*) admitted their refusal and declared the marriages null and void, because they were considered inconsistent with the *ordre public*, as they lacked the women's consent. Men never used this court to refuse a marriage arranged for them, as they were given more opportunities to choose a wife themselves, being older when getting married for the first time and having often gone through considerable trouble to obtain a wife (Baerends 1990:67-68). The screening of the entries of one year in a register book of a customary court demonstrated that this forum, even nowadays, i.e. despite the retreat of the state, is used slightly more often by women than by men³³⁵.

Similar gender biases can be observed in religious legal forums: Women's rights NGOs criticize that, if a case of marital violence becomes known to church authorities, they neither report the case to the police, nor do seriously try to resolve the conflict. Instead, being preoccupied with maintaining the husband's authority as head of the family, they often delay a conflict resolution. In other cases they ask the woman to make sacrifices for the sake of God and the maintenance of her family home without reasoning the husband, justifying themselves with a male-biased interpretation of the bible, which they claim is demanding the wife's submission to her husband. This situation is maintained by the fact that positions of religious authority are hardly ever given to women, be it in Christian churches, in Muslim communities or in *vodu* cults. Women are also mostly absent from the decision-making bodies, elder councils, and financial committees of the various churches (WILDAF-Togo 2002/2003a:26-27, Rosenthal 1997:185).

³³⁴ A similar feature was observed in Lomé: If a woman comes to the customary court to complain about her marital problems, it is automatically assumed that she wants to rejoin her husband (Secr. Chefferie 1:16), i.e. a woman's wish for a separation from her husband is not receivable in customary courts.

³³⁵ Out of 100 cases treated by the customary court of Lomé-Bé in 2000, 55 were initiated by women as against 45 cases by men.

6.7 *Si tu n'as pas les bras longs, la loi ne peut pas t'aider* – Gendered access to and use of state legal forums and difficulties in enforcing statutory rights in everyday life

To enforce one's statutory rights in everyday life is generally very difficult, due to several reasons. The Togolese government does not inform the population about the legislation, except for occasional efforts by the Ministry of the Advancement of Women to diffuse information about the Family Code via the chiefs. Thereby, they ignore the chiefs' very ambivalent situation between the population and the state, which Rouveroy van Nieuwaal accurately characterised as the dilemma between double legitimacy and double loyalty (2000:79). As a consequence, chiefs who are addressed by this ministry often serve rather as "knowledge gate-keepers" than as "knowledge-transmitters", as they reject to be exploited by the government as pure conveyors. Instead they prefer to continue to be a source of legal knowledge on their own and thereby a guiding authority for their population. On the other hand, they might hesitate to diminish male privileges, such as the right to control women's (i.e. wives' and widows') sexuality and social contacts, or the right to exclude sisters, daughters, or wives from the inheritance (cf. chapters 3 to 5). Not surprisingly, state law and the complex judicial procedures are not well known among most women (cf. GF2D 1994:10-29, 1999b:44-46, Mensah-Pierucci 1998:63-65). Many rumours exist about the content of the state law, often distorting women's actual rights, such as was shown for civil marriage in chapter 4.1.4. Women who pass on these rumours have little occasion to check them against reality³³⁶. Consequently, women risk to miss out the deadlines to appeal against unsatisfying judgements, do not know whether first to go to the police or directly to the state court etc. (UNICEF 2000:111-113).

However, women's difficulties to enforce their statutory rights cannot be reduced to their lack of sufficient information. The state does not only neglect to inform its citizens, it does not provide for the enforcement of its laws either. As a consequence, even those who are informed, are hindered to exert their rights: The administrative infrastructure is very weak and services are inadequate. State courts are scarce and badly equipped. Contrary to decrees of 1978 and 1981 on the judicial organisation, not every district has a court yet. Only one appeal court is operational, instead of two intended by law. Contradicting the Constitution of 1992, the Administrative Court and the Auditor General's Office are not operational, while the recently installed Constitutional Court does not challenge governmental violations of the Constitution. In the existing court rooms, typewriters, copy machines and even paper are scarce.

³³⁶ This situation is typical for many African countries, cf. Dwyer (1982:93).

The judges lack means of transport for their investigations. There is an extreme shortage of judges and public prosecutors, due to scarce recruitment. The professional training of judicial personnel at the university and the *Ecole Nationale d'Administration* is insufficient. The court personnel is lacking up-to-date information, as the official law gazette is published irregularly and the court libraries, where existing, contain scarce and obsolete material. Judges and supplementary personnel are highly overloaded and underpaid, and are therefore likely to be corrupted (Kohnert/ Moenikes 1996:12-19).

Furthermore, state courts and most administrative services are situated only in towns, i.e. far away and difficult to reach for many people³³⁷, creating high costs of transport for litigants. They are situated not in residential areas but in administrative districts of town. The court room space is arranged in intimidating ways, the court staff wears formal dress (robes) and is socially removed due to their high education. Court procedures are long, expensive, and quite difficult to understand. The hearings take mostly place in the official administrative language French, which is only sufficiently mastered by people who have at least finished primary school. Interpreters further complicate the procedures. Moreover, many incomprehensible technical expressions are used. Speaking time in court is restricted, the magistrates being efficiency-oriented and pressed for time. State jurisdiction and administrative services rely heavily on written elements, such as forms to fill in for identity papers, pensions etc., proceedings of family council sessions to write and read, complaints to be filed and written evidences as proofs³³⁸. This removes the state legal system from the life-world of people – and especially women –, as the society is predominantly oral and literacy rates are very low, with strong gender discrepancies³³⁹ (GF2D 1999d:4-5, 1995:26, 36-40, Manning 2000, Foune Mahalmandane 2000).

Going to court involves a combination of intense mobilisation of social networks and personal contacts to lawyers – who are *habiles manipulateurs des rouages de la production normative*

³³⁷ In 1997 two thirds of the population were estimated to live in rural areas and one third in urban areas. The rural growth rate was 2,4% and the urban growth rate 4,4%, the difference being attributed to rural exodus (Ministère de la Planification et du Développement 1998: 3, 12).

³³⁸ These aspects are called “psychic costs” by Lowy (1977:24).

³³⁹ The literacy rate was about 55% in 2000 (PNUD 2000:196). The share of women without any school education was about 48% in 1998, that of men 23 % (Anipah et al. 1999:21). The desolate situation of school education in Togo, due to insufficient resources, wrong spending priorities, overcrowding of classrooms and lack of pedagogical material and infrastructure was further described by a World Bank Poverty Assessment: “The net primary enrolment rate is estimated to be 61% (1994-95 school year), student repetition rates have risen from 36% in 1990-91 to 46 % in 1993-94, and drop-out rates are 7.6% (1990-91). [...] Between 1984 and 1990, on average it took 16.3 years of schooling to produce a primary school graduate” (World Bank 1996:74-75).

(Adjamagbo 1986:192) –, to lower court personnel and the high ranks in court. The investment in time and money is unforeseeable, as the faster one wants a case to be treated, the more money has to be invested. Therefore, the judiciary is rather perceived as a hazardous and corrupt “jungle” with its own rules and traps³⁴⁰.

As was depicted above, referring to customary courts, also the access to state courts is differentiated according to gender. Great pressure is put on women by their families and in-laws, not to report their violent husbands to court:

Dans certains cas, les familles des deux cotés font pression sur la victime [de violence au foyer]. Sa propre famille peut ne pas être d'accord avec elle de saisir la justice, parce qu'on se dit que cela doit se régler en famille. Pourquoi avez-vous dépassé le cadre familial pour saisir les instances judiciaires ? Le fait même de saisir le tribunal, dans nos sociétés c n'est pas bien vu. Si vous voulez que cela se règle avec votre époux et que vous voulez rester encore en famille, vous devez d'abord aller retirer votre plainte. Certains hommes font pression sur les femmes de retirer la plainte avant que cela ne change au foyer. Et ça rejaillit sur les enfants qu'on ne supporte plus et tout ça pour dire à la femme que c'est parce que vous vous êtes plainte contre moi à la justice que j'ai maintenant tout laissé à votre charge, débrouillez-vous ! (Judge at civil court, family affairs department, in WILDAF-Togo 2000:30)

Si vous saisissez les tribunaux pour régler un cas, alors là, immédiatement, vous passez de victime à coupable par rapport à la belle famille. Une femme peut être molestée jusqu'au sang, si elle va au commissariat pour régler ce problème, la belle-famille se lève, fustige la victime en disant : tu veux tuer notre frère, parce qu'il t'a tapée. C'est quoi ? Tu es la première femme qu'on tape ? Le commissariat est perçu comme un lieu de non-retour, c'est-à-dire que vous avez franchi un seuil, il ne peut plus avoir d'entente. Même si le mari veut après reprendre sa femme, il a y la belle-famille qui s'oppose, qui joue des pieds et des mains pour que cette réconciliation n'ait pas lieu. C'est pourquoi il y a actuellement très peu de cas de violence fait4s aux femmes qui sont signalés au Tribunal Pénal de Lomé. Vous pouvez vérifier, il n'y en a que deux, et ces deux concernent de étrangères. Généralement la pression est très forte des deux cotés des familles pour retirer la plainte. On finit par laisser tomber la plainte. (NGO-activist, in WILDAF-Togo 2000:33)

However, the analysis of 144 state court files of the *Tribunal de 1er degree* in Lomé from 1991 to 1999 demonstrated that women do make use of the civil and commercial division of state courts, especially concerning the establishment of birth certificates, the recovery of debts, and the delegation of parental authority. They also initiate cases in the state courts to defend their land rights or to establish land titles, to obtain a divorce, or to make other claims, though to a much lesser degree. Yet no further statistical information was available to esti-

³⁴⁰ For details on the deficiencies of the Togolese judiciary, see US Department of State (2000), Kohnert/ Moenikes (1996:12-19). For similar observations regarding the corrupt judiciary in neighbouring Benin, and especially how citizens try to handle this “jungle” cf. Bako Arifari (2002:80-87) and Bierschenk (2000).

mate the gendered use of state courts, neither was it possible to undertake such an investigation.

Judges as gendered gatekeepers

On the other hand, offences against women are not necessarily taken seriously by judges at state courts, which constitutes one further aspect to discourage women from using this type of forum to seek justice. For instance, paralegal counsellors who reported cases of forced marriage, child marriage and abduction of women to the magistrates, experienced that – instead of reprimanding the perpetrators – the magistrates negotiated joint solutions with them (UNICEF 2000:100).³⁴¹

Togolese judges seem to be more sensitive to children's than to women's rights. Whereas the most heavy sentences are imposed on abusers of children, in a trial of rape of a woman, it was the Ministry of Public Affairs who dropped the charges against the perpetrator, because the victim had withdrawn her complaint after he had offered to pay her indemnifications (UNICEF 2000:106-107). In the following divorce case, introduced by the wife, the court agreed with the husband with a rather partial justification, based on a male-biased invention of tradition:

Selon la décision du Tribunal de Première Instance de Lomé rendue le 9 février 1982, les juges reconnaissent que le fait pour le mari de balancer au visage de sa femme une assiette pleine de sauce constitue des excès, mais ne peut être cause de divorce dans la coutume des parties. Par contre, le départ de la femme du domicile conjugal avant toute tentative de conciliation constitue un abandon de domicile conjugal recevable comme cause de divorce en vertu de la même coutume. Par conséquent le divorce a été prononcé aux torts exclusifs de la femme (UNICEF 2000 :108)

If men do get convicted and jailed for having committed crimes against women, they get easily free if they have the means to bribe their way out (Dovi 1:1). Although corruption might also offer exits to condemned women, they generally have less money for such undertakings.

³⁴¹ A different assessment has to be made with regard to the non-application of the law against female genital mutilation, which was passed in 1998: This *Loi n° 98-16 du 17 novembre 1998 portant interdiction des mutilations génitales féminines au Togo*, recognizes FGM, whether by traditional or modern methods, as a form of violence. Perpetrators and promoters shall be punished with imprisonment of 2 months to 5 years and a fine of 50.000 to 1.000.000 Francs CFA, or the double if it caused the death of the victim. Those, who failed to hinder or stop an excision by alerting the public authorities, will be punished by 1 to 12 months of imprisonment and 20.000 to 500.000 Francs CFA of fines, except for relatives of the perpetrator up to the 4th degree (Rép. Togolaise 1997). However, judges did not convict a single case yet. If cases (planned or executed) get reported, the courts as well as the social welfare offices (*Affaires Sociales*), the social service at the court (*Service social près du tribunal*), and the police, use the law only to put pressure on people to abstain from the practice. In fact, the most active and experienced women's rights NGOs in Togo were even against such a law, which they said came too early, as the population should first be massively informed and sensitized. Without such preparatory work, they feared, the application of the law would just lead to push the practice underground (personal communication with GF2D-activist in December 1998).

Another case was recorded, where a squandering but good-natured husband had asked a judge to issue a judiciary authorization for the bank to deduct a share of his salary and pay it to his wife, in order to ensure the upkeep of his family. However, the judge refused to execute this request, giving the impression of male complicity being at work here³⁴² (Latif 1:9).

Another example concerns the right of widows of salaried or state employed men to a widow's and orphan's pension from the *Caisse Nationale de Sécurité Sociale* or the *Caisse de Retraite du Togo*. Frequently, judges certify family counsel protocols, where, against the will of the widows or without including them, a relative of the deceased is designated as inheritance administrator and guardian of the minor children, although according to the law, the widow should become automatically the guardian of her children, and, together with the other legal inheritors, she can choose the inheritance administrator. The certified protocol, even if against the law, is acknowledged by the pension fund, who then pays the widow's and orphan's pension to the designated administrator and guardian. This disrespect of the law helps the in-laws to misappropriate the pensions as well as the inheritance to the detriment of the children and their mother (GF2D 1995:22-23). These practices are generally known to the population, however they only get published – and thereby brought to another level of discourse – by women's rights NGOs (cf. chapter 7.2.4).

Administrators as gendered gatekeepers

The following example shows how unreliability, corruption and male biases of state administrative personnel prevents women from exerting their rights: A married woman sued her husband, a state employee, for not contributing to the household expenses. The judge agreed with her claim and ordered the state to seize a fixed part of the husband's salary. However, once the courageous woman went to the cashier to receive the money, the latter – probably being bribed by the husband – refused to pay, and there was nothing the woman or the judge could do about (Christophe 3:1). It is important to note that this gender bias is not limited to male

³⁴² There are several women judges in state courts, even at the supreme court level, although they are sometimes selected according to party affiliation and conformism, and thus even biased against women's claims, as acknowledging them would imply to criticize the existing power structure. Otherwise, if they are suspected of lacking political loyalty, they are severely hindered from doing their work properly (Angélique 1:1). There is currently one woman elected president of the professional association of lawyers by her colleagues (Coalition des ONG 2001).

administrators alone, but is part of shared social values. Nevertheless, a growing number of female personnel enhances the chances to change gender values³⁴³.

The police as gendered gatekeeper

Often, there is no separation of judicial (judges) and executive (police) power, especially in rural areas. The police is equally unequipped, underpaid, corrupt, inefficient and sometimes even brutalized (cf. Kohnert/ Moenikes 1996:14-19). It enforces the right of who pays best, instead of searching for justice according to the state legal system (Rouveroy van Nieuwaal 2000:75-76, 163-171). It is known that the Togolese security forces are responsible for many human rights abuses while acting in their official capacity, and that such acts are regularly receiving impunity (OMCT 2002:4, US Department of State 2000:1, Amnesty International 1999a:2, 1999b:3-4, 24-25). Even in Lomé, if the police is called for help by ordinary citizens, they only react if the person demanding their help provides them with transport or pays them the fuel to move in their cars.

Furthermore, access to the police and gendarmerie is gendered: Cases were observed, where upon escalation of a conflict at the family level, men addressed themselves directly to the *gendarmerie* in order for them to come and scare the other conflict party, with the effect that the scared person brought charges against the former before the customary court (Chefferie 10.5.2001/III). Women are very reluctant to go to the police or gendarmerie³⁴⁴, even to report cases of violence (which is, by law, a punishable offence), out of shame, fear of not being taken seriously, and fear of revenge by the perpetrator. Observations during mediations at a counselling centre and a recent study on domestic violence in Lomé show that police officers often regard domestic violence against women as a family affair and send the reporting women back home, while they take violence among men seriously (CRIFF 4Apr01, WILDAF-Togo 2000:31):

Je vous raconte le cas d'une femme qui est venue ici [au centre d'écoute d'une ONG]. Elle a été victime de violence de la part de son partenaire. Elle s'est dirigée vers le commissariat. On lui a dit : c'est des affaires de ménage. Allez à la maison régler ça. Mais elle était battue. Quand elle était retournée chez elle le soir, son mari lui a brisé les doigts dans l'ornière de la porte (WILDAF-Togo 2000:37).

³⁴³ While a growing number of female administrators are working at the townhalls, district offices, security and pension fund, it is still very rare that women become district officers or mayors: In 1995 the mayor of Dapaong, Savannah Region, and during a couple of years the mayor of Lomé was a women.

³⁴⁴ Even in Lomé, between 1995 and 2000 only 30 cases of domestic violence declarations were registered with the police, whereas about 250 cases of other violence are registered every year. However, this very low number could be also due to the police officers' reluctance to register such cases (WILDAF-Togo 2000:31, 48).

They discourage reporting women by asking them repeatedly to come back later or to present witnesses or costly proofs, such as photos and medical certificates, by not taking any action against the perpetrators, not transmitting reported cases to court and not handing out a copy of the report to the reporting women – or only against bribes –, in order to prevent them from following up on the complaint (UNICEF 2000:94-97). It goes without saying that there are no women in the police force, gendarmerie, security forces and military.

The neglect in enforcement and legal information indicates that the government is generally neither interested in changing gender relations³⁴⁵, nor in turning its citizens into subjects. The latter aspect might be explained by the government fearing of being questioned, especially regarding to human rights, the state of law, transparency and accountability. This enables the government and public administration to regularly break its own laws without being held accountable. If people still go to court, it is because they have personal contacts – or the money required in order to create such contacts – that enhance the chances that their claims will be decided in their favour (cf. Anita 3:1-5, 4:22).

Dorothee reflects on her lack of “long arms”, i.e. relevant connections in the capital city as opposed to her rural background and corresponding isolation from the relevant legal knowledge and know-how, as causal for her inability to enforce her statutory rights (cf. also Anita 4:17-22, 3:1-2, 5):

[La loi] ça n’aide personne. Peut-être ceux qui ont les bras longs, ça peut les aider. Mais si toi tu es dans la ferme, ça ne peut pas t’aider. (Dorothee 2:21)

The overwhelming predominance of men in formal and specifically in public employment³⁴⁶ with their privileged access to state institutions is therefore an important element in the gendered access to support systems, and thus to the enjoyment of one’s rights.

³⁴⁵ Another indication for that is also the fact that only few ministerial posts were so far accorded to women, mostly the Ministry of Social Affairs, the Advancement of Women and Social Welfare, sometimes combined with the Ministry of Health (cf. GF2D 1995:56-63) yet frequently reshuffled, and generally under-resourced. Also the percentage of women in the National Assembly never exceeded 8% (cf. also chapter 2.3.1).

³⁴⁶ According to the Demographic and Health Survey of 1998, only about 2% of all “working women” (and 5% in urban areas) were in the formal sector (Anipah et al. 1999:23-25). In 1989 women represented 22% of the personnel employed by the state, but occupied only 11–12% of the higher qualified posts A1 and A2 (Rép. Togolaise 1997:7). More recent data on women in the public sector were only partially available: In the school year of 1998-1999 only 13% of all primary school teachers, 9% of all secondary school teachers, and 6% of all university teachers were women. In 2001 three out of twelve superior magistrates (i.e. judges), one out of nine mayors, and none of the 34 *préfets* and *sous-préfets* were women. Almost no women were employed in the army, police force, and gendarmerie, which constitute a big share of public employment (Rép. Togolaise 2001:39, 54-55, 61).

6.8 NGO legal counselling centres and paralegal advisors providing alternative legal forums for women

In order to improve women's access to and use of state legal forums, two of the women's rights NGOs introduced in chapter 2.3.5, namely GF2D and LTDF, engaged in creating legal counselling centres (*Centres d'écoute et de conseil juridique pour la femme*) and invested in the training of paralegal advisors on women's rights.

In the case of GF2D, the counselling centres are managed by women jurists and experienced women's rights activists and specialized to their needs. Here, women are listened to and their problems taken seriously. They are supported with information and advice in administrative and legal matters. If both parties of a conflict agree, mediations³⁴⁷ – mainly in family affairs – are organised. All of these services are offered for free. If desired and advisable, women are supported to take their case to court. This includes help to file a complaint, but also the contact with a female lawyer from a pool of NGO-members who will defend the case free of charge. The services are generally open also to men, but they use them to a much lesser degree³⁴⁸. So far, LTDF runs one such centre in Lomé, while GF2D created six. The latter are located in central Lomé, called *Maison de la femme* or *CRIFF*³⁴⁹ (created in 1994) and in the regional towns of Atakpamé and Kara (in 1998³⁵⁰), Sokodé and Bafilo (in 2000) and Kpalimé (in 2002). These counselling centres are very appreciated by the female population and try to respond to a high and steadily increasing demand. For instance, between 1994 and 2000 the CRIFF-centre in Lomé gave advice in over 800 cases (GF2D 2001b:6).

The strategies of mediators in the counselling centres of women's rights organisations vary between the NGOs. Some (like LTDF) stick to mediating on the basis of customary rules without clarifying how they define them. Others (such as GF2D) apply a more differentiated way: After having heard the case, they first inform their clients about their rights according to state law, in order to enable them to assess their chances to win the case if the mediation fails and they would want to go to court. If this chance is high, their position to negotiate during

³⁴⁷ Mediation is often welcomed by clients as a traditionally rooted, time- and cost-saving alternative to court proceedings. However, in case of violence against women mediation can hardly solve the problem as there is little scope for compromise. On the other hand, many men accept mediations if they learn that otherwise the woman can take the case to court (Afi 2:1)

³⁴⁸ For instance, between 1994 and 2000, 66 of the 719 cases received by the legal counselling centre of GF2D were men. Unfortunately, the capacities of such a relatively small NGO do not allow to trace whether the clients follow the advice received.

³⁴⁹ CRIFF stands for *Centre de Recherche, d'Information et de Formation pour la Femme (CRIFF)*. It serves at the same time as the office of GF2D.

³⁵⁰ However, the one in Kara had to be closed down again, due to political reasons, see chapter 7.1.2.

the subsequent mediation is strengthened. Otherwise, they know that they have no alternative to finding a compromise with the other conflict party. During the mediation itself, the mediator encourages both parties to present their view of the conflict history and of the desired solution and tries to help them to find a solution which is acceptable to both. Thereby both customary and state norms are taken into account, however the customary rather implicitly, i.e. without calling them as such, and the state law quite explicitly. For instance, in a quarrel between a widow and her brother-in-law, the mediator advised the brother-in-law not to accuse the widow of having killed her husband (an accusation which falls within the customary realm), encouraged him to hold a family council meeting in order to enable the widow to access the pensions for herself and her children, while informing them on the legal provisions for such a meeting (CRIFF13Sept01).

If a reconciliation is not possible, the NGO-mediators try not to influence the clients' decision on how to solve the problem, recommending rather to continue to look for a conciliatory solution, instead of inciting them to take the case to court. Nevertheless, they inform the client about the legal means available, the professionals who can assist, the necessary steps to take, and the possible consequences, such as going to see a doctor to issue a medical certificate, which will serve as proof at the court, making a declaration at the police, instituting proceedings to the state prosecutor or the examining magistrate, finding a lawyer etc. (own observations and GF2D 1999c:179, WILDAF/FEDDAF s.d.:44-62).

Furthermore, both NGOs train women as paralegals advisors³⁵¹ on women's rights, especially in the sphere of family law, legal counselling and conflict resolution (GF2D 1999c, Kipfer 1999).

Taking the case of GF2D, the paralegal trainees are selected according to the following criteria: They should come from the areas in which they are active, share the lifeworld of their "clients", i.e. speak the local language, be well acquainted with the local realities and ideally trusted and respected by their communities, due to their previous activities. These characteristics shall enable them to act as local 'brokers' (cf. Bierschenk et al. 2000, Lachenmann 2001b:105) for women's rights, i.e. as diffusers of knowledge and expertise on women's

³⁵¹ First developed by NGOs in Latin America and Asia, the paralegal approach was introduced in the 1980s to African NGOs by the *International Commission of Jurists (ICJ)* in Geneva. During the last 20 years the approach was taken up by NGOs, community based organisations, churches and barrister associations in numerous countries of the world and received manifold support by international organisations. In the last decade, the support to paralegals became coordinated by networks of women's rights NGOs in various continents, such as *Women in Law and Development Africa (WILDAF)*, *Women Living under Muslim Law (WLUML)* and the *Comite Latino Americano de Defesa dos Direitos da Mulher (CLADEM)* (Tsanga/ Olatokunbo 1999:9-11, ICJ 1997, CLADEM 1991).

statutory rights, by reducing social inhibitions for and reluctance from the rural and less educated population to approach them.

The training workshops comprise two weeks, one in the beginning, dealing with the roles of a paralegal, some exercises for gender sensitisation, the democratic foundations of the state, family law (marriage, descent, parental authority, divorce, inheritance), industrial law, and social insurance. Furthermore, this first workshop teaches legal counselling skills, communication and documentation techniques, with many practical exercises, such as role plays, sketches and field trips. The second workshop is held after the initial six months of paralegal practice. It serves to consolidate the knowledge of the first course, to clarify practical difficulties, and to introduce the topics of access to bank credits, the organisation of cooperatives, penal law (offence and crime, culpability, violence against women) and land law (GF2D 1999b:6, 1999c). The workshops are run by professional jurists (legal practitioners and university lecturers) or experienced rights activists.

After the workshops GF2D regularly provides its trainees with on-site supervision, didactic material (posters etc.), easy to understand information on legal changes and news about the paralegal movement.

After their training, the paralegal advisors include their new legal knowledge in their current activities of community work within other NGOs, farmer associations, credit groups, religious groups, unions etc. or in the context of their profession (as social worker, midwife, agricultural advisor etc.). Furthermore, they organise public debates and participatory educational programs (*causeries-débats*) in local languages on administrative procedures and legal issues of concern to their audiences in the villages and quarters of their district or town³⁵². Many paralegals use the medium of theatre sketches to incite active participation by the population and public discussions³⁵³. Thirdly, they assist people in the bureaucratic procedures to obtain certificates of birth, marriage or death as well as identity cards, pensions, family allowances, medical certificates. Fourthly, they receive women for personal counselling on legal problems, explain how the state law suggests to solve the problem, mediate between conflict parties or refer them to traditional or modern institutions of mediation (chiefs, district officers, NGO-counselling centres) in the search for a peaceful solution. If advisable, they orient them

³⁵² For instance, in 1999 the 230 *parajuristes* of GF2D organised and run 2166 sensitisation sessions (GF2D 2000: 9-42). These numbers are available because the paralegals establish simple activity plans and reports, and send them to the GF2D-office in Lomé, where they are systematically collected and evaluated.

³⁵³ To illustrate such a paralegal sketch, cf. photo 4 in annex A7.

to competent state services (such as the town-hall, police, court, lawyers, judges) or to NGOs, which can support them, as a last resort, to take their case to court.

The paralegals provide these services generally free of charge and get only support from the NGO to cover their transport and communication expenses. This is only possible because the paralegal trainees are also selected upon the criteria that they already have some kind of regular income. The sustained voluntary commitment of the paralegals is to be explained by several factors: The trainees highly estimate their new legal knowledge and experience, which helps them, first of all, to solve many problems in their own lives as well as in their families and communities. Secondly, their paralegal engagement immensely increases their status within their organisations and communities. Despite some difficulties, they become highly appreciated both by the population and by administrative authorities because of their knowledge and advisory services, and are taken as models by many other women³⁵⁴ (Mensah-Amendah 2001:6).

Compared to GF2D's paralegal approach, the work of LTDF lacks coherence: Most of its paralegal trainees (*assistantes juridiques*) are female civil servants. As they are frequently re-posted within the country, they are not always very familiar with the local realities and language of the area, in which they are supposed to do legal counselling. Only few of the training modules – i.e. the modules on the family law and industrial law, on counselling techniques and on means of legal redress – are directly relevant for their paralegal work. The other modules are either too difficult and abstract (about several international legal instruments), of little practical value (about the governmental women policy, which is not yet adopted) or superficial (an exchange on harmful traditional practices, discussing neither their legal implications nor the way the state law responds to them). The link and relevance of most modules for the paralegal work remain unexplained. The modules are taught without using many participatory techniques and little time is given for discussions and group work. Furthermore, their *assistantes juridiques* receive only scarce supervision (Kipfer 1998:2). In its legal counselling centre LTDF restricts itself to trying to solve women's problems within the "traditional" frame of mediation, i.e. they do not help women to go to court (Latif 1:5). Thereby they reinforce women's reluctance to use the formal legal system and miss out the chance to make the state legal system accountable to women's concerns. In line with this approach, they strongly include traditional authorities into the discourses on women's rights and law reform.

³⁵⁴ This will be analysed in more detail in chapter 7.1.1.

So far, GF2D trained about 350 *parajuristes* from all over the country and LTDF trained about 100 *assistantes juridiques* from selected regions. In 2000 the paralegal approach was taken up by WILDAF-Togo, a national network of women's NGOs that organised, with the support of WILDAF-West Africa, a training of trainers of paralegal advisors for all of their member NGOs, thereby responding to a high demand from the NGOs (WILDAF/FEDDAF 2000b, Miriam 1:1, Marlène 1:7). It is therefore very likely that many other Togolese NGOs start also to train paralegal advisors in the near future.

Both legal counselling centres and the increasing number of paralegal advisors constitute alternative forums for women to solve their legal problems. Thereby, they facilitate women's access to the customary and especially state legal and administrative system. As such they fulfil a mediating role: The decentralised location of counselling centres and the great geographical coverage with paralegals – GF2D tries to train at least ten *parajuristes* in each of the 34 districts – provide easy accessibility, also for the rural population who is normally disadvantaged regarding their access to state institutions. The advantage of the paralegal work, as compared to the legal counselling centres, consists of the higher degree of anonymity provided by the former: Especially in case of family problems, many women prefer to secretly meet a paralegal, instead of approaching a legal counselling centre, a step which can hardly be hidden from malicious eyes. Counselling centres are especially appreciated in urban areas, where customary structures of mediation are less prominent. Furthermore, they are neutral, whereas the family, which is the first level of conflict resolution, is always subjective and partial (Afi 2:1).

Chapter 7 *Nous vivons une révolution culturelle!* Women's rights NGOs creating new female spaces

So far, we introduced the development of NGOs under the one-party regime and of women's rights NGOs after the democratic transition (chapter 2.3.1 and 2.3.4). Furthermore, we dealt with specific issues within the legal fields of inheritance, marriage and widowhood from the perspective of individual women, highlighting their logics of action, their difficulties and successes as well as their trajectories regarding their discursive and institutional search to legitimate their claims. Thereby, the options provided by either NGO legal counselling centres or paralegal advisors were presented, as well as the importance these new forums can take for women in their everyday negotiations (chapters 3, 4 and 5). We then analysed the gendered access to legal forums and described NGO legal counselling centres and paralegal advisors as constituting new legal forums for women, who might use them either as alternative or as a bridge to the existing ones (chapter 6).

In this chapter, we will analyse the special application and further development of the paralegal approach by NGOs in Togo, and its strategic combination with other activities in an effort to overcome the structural difficulties that women face in the exercise of their rights. The difficulties tackled concern the gender order on all societal levels (the family, the community, traditional and state structures) as well as the repressive political regime. Furthermore, we will examine the modes in which international norms are brought into play in order to improve both traditional and state norms. Most examples will be drawn from the non-governmental organisations GF2D and WILDAF, introduced in chapter 2.3.5 and 2.3.6.

On a different analytical level, the focus of this chapter is the creation of new female spaces. Traditional female spaces in Africa, such as provided by parallel leadership structures, traditional forms of female protest, and a clear gender division of work and responsibilities (cf. female control over food, female ritual roles etc.) have been drastically reduced during colonization and post-colonial modernization and as a consequence of structural adjustment programmes (cf. Lachenmann 1996a, Zdunnek 1987). In the legal field a similar reduction of female social spaces occurred, for instance through the reduction of married women's choices to pursue economic gains outside the household; through the denigration of levirate, albeit its potential security functions for widows, without guaranteeing them access to a state pension independently from their in-laws' approval³⁵⁵ etc. New informal support systems, such as saving and credit clubs, associations of market women and of farmer women, religious women's

³⁵⁵ Cf. chapter 2.2.4 and chapters 3 to 5.

groups etc., have only partially been able to counterbalance this tendency. This chapter shall analyse how women's rights NGOs in Togo create new female spaces (cf. Lachenmann 2001a:29) for the articulation of women's concerns and perspectives, for knowledge exchange, and for political decision making. This will serve to carve out the transformative power of women's rights NGOs for gender relations and civil society-state relations in Togo.

7.1 Changing gender relations in everyday life

The regular monitoring and evaluation³⁵⁶ of the work of paralegal women, the evaluation study of paralegal services of 1999³⁵⁷, the discussions at the regional paralegal conferences in 2000, as well as my own case studies brought up encouraging results concerning changes in gender relations. These are discernable in the lives of women benefiting from paralegal services, in the wider population, as well as in the lives of paralegals themselves. However, these are not achieved without contestation and negotiation, which recently gave rise to a pilot training of male paralegals.

7.1.1 Enhancing women's power to negotiate with husbands, state services and employers

Among the population, the knowledge about the existence of paralegal services is steadily increasing. Within the paralegals' fields of action the familiarity of the population with the state law is growing, especially among women – who are the main clients of paralegals – but also among men. Through the paralegals' legal information events, through the personal legal advice and assistance in bureaucratic procedures they offer³⁵⁸, people become more aware of women's rights in general as well as of the problems associated with forced marriage, the non-schooling of girls, female genital mutilation and other forms of violence against women

³⁵⁶ In the case of GF2D, apart from the communication between the NGO and the paralegals via quarterly activity plans and reports, the monitoring and evaluation of paralegals consists of yearly trips of a team from GF2D to the paralegals. The paralegals are asked to organise a participatory legal workshop with a target group of their choice, which is held in the presence of the supervisors. After this workshop the supervisors discuss their observations on the methods and contents with the paralegals as well as the paralegals' overall activities, successes and difficulties, and finally provide them with topical information on GF2D's activities, upcoming trainings and conferences, and distribute new information materials. This is completed by a visit to the local administrative, traditional and judicial authorities.

³⁵⁷ The evaluation study covered 52 paralegal women (i.e. one fifth of all paralegals), 22 husbands of paralegals, 88 administrative, religious, traditional and judiciary authorities as well as 134 women and 123 men from the population, i.e. potential beneficiaries (GF2D 1999b:7-9).

³⁵⁸ For an outline of paralegal training and activities, see chapter 2.3.5.

(GF2D 1999b:43-44). The paralegal work thereby contributes to create a societal debate on gender inequalities at the local level.

Women and men seek advice and mediations from the paralegals mainly in matters of civil marriage, access to pensions, maintenance claims after divorce, inheritance, administration of children's inheritance, divorce, the initiation of micro projects and the participation in elections (GF2D 1999b:25-28). The legal information and advice contribute to strengthen women's self-confidence and negotiating power, because it provides them with knowledge about administrative procedures and with arguments to legitimate their claims. The following statements testify that communication between husband and wife improved, i.e. women feel empowered to talk to their husband about family matters and thus question his sole decision-making power³⁵⁹. Some women even report that as a consequence of the paralegal's intervention they are treated with more respect by their husbands, household resources are more equally distributed etc.:

[Depuis la médiation] mon mari est devenu plus respectueux, tout le monde mange à sa faim.³⁶⁰

Maintenant nous discutons plus, mon mari et moi. Quand il y a malentendu, nous nous appelons tôt le matin pour en parler et régler les problèmes de la famille en famille.

Après avoir bénéficié de l'aide de la parajuriste, je me sens en sécurité dans mon foyer parce que sachant que le mariage civil me protège. De même, mon conjoint a aussi compris que le mariage civil ne pouvait que l'arranger.

Maintenant je comprends que l'homme ne doit plus s'estimer supérieur à la femme ou la priver du droit à la parole.

Those women who received advice from paralegals develop more confidence in statutory law and state legal and administrative services, although they continue to prefer an amicable settling of conflicts, i.e. they are not immediately freed from the social pressure discouraging them from taking cases to court or from turning to other modes of sanctioning. Nonetheless, due to the semi-professional support by the paralegals, they are less isolated in situations of conflict and less estranged from "the state". The paralegals thus serve as intermediaries, helping women to increase their knowledge of state law, bureaucratic know-how and influence, self-confidence as well as economic power, in order to get their issues treated in the official way without falling into corruption traps. As a consequence of the paralegal advice and in-

³⁵⁹ According to Kabeer (1995:227-228), this is an important step in the self-empowerment of women.

³⁶⁰ This citation, as well as all of the following citations in this sub-chapter (except where explicitly mentioned) are taken from GF2D (1999b:12-13 and 30-37).

formation, they also feel more self-confident to claim their rights at their work place and to deal with the state administration and jurisdiction without male help, i.e. they gain considerably in autonomy. Apart from that, they demand an equitable treatment in court (GF2D 1999b:33, 2001:23):

Je peux régler mes problèmes sans être accompagnée. Désormais, quand j'ai un problème, je sais à quel service m'adresser.

Je pensais qu'une femme devait toujours se faire accompagner par un homme ou par son mari lorsqu'elle devait s'adresser aux autorités. Je suis maintenant convaincue que la femme peut et a le droit de mener toute seule les démarches pour toucher ou pour se faire entendre par les autorités.

Je ne suis pas encore allée dans un service judiciaire, mais je me sens désormais capable d'y aller si j'avais un problème qui m'obligerait à y aller.

Seule la loi peut aujourd'hui nous départager, donner raison à quelqu'un et condamner un autre dans une situation conflictuelle.

Avant de rencontrer la parajuriste, il m'était difficile de réclamer mes droits chez mon employeur, les congés par exemple. Maintenant, je peux le faire sans peur.

La femme doit avoir le courage. Elle ne doit pas avoir peur pour se rendre dans les services administratifs et solliciter leurs prestations qui sont à la portée de tout le monde. On ne doit pas se laisser faire ni se laisser brimer. On ne doit pas chercher l'appui d'une personne influente pour conduire ses affaires.

Je veux que la justice soit impartiale dans le règlement des conflits de famille, ne pas tricher la femme.

This demonstrates, once more, the strategic role that various aspects of legal information and advice play for women's self-confidence, autonomy, and negotiation power to change gender relations if combined with other factors, such as personal and qualified legal support.

7.1.2 Changing the lives of paralegals

The paralegals interviewed repeatedly stressed how much they appreciated the paralegal and other training provided by NGOs as a possibility to learn and widen their horizons, acquire experience and competence, and gain prestige. Not the least, paralegal knowledge is perceived as a strategic resource, a valuable good in exchange relations that also opens chances for a career:

Ils t'envoient à des formations pour que tu sois compétente. Donc, j'ai beaucoup appris avec ma première ONG. Après, nous avons suivi la formation au GF2D et nous sommes devenus des parajuristes. Donc, en plus de la formation en santé, nous avons ajouté la formation en droit. Et nous avons évolué ainsi. [...] Et toujours j'ai travaillé avec ma

première ONG parce que je trouve qu'ils sont très intéressants, on a beaucoup de choses à apprendre chez eux. Ils sont ouverts aussi. [...] En ce qui concerne ma formation comme parajuriste, tous les thèmes de droit étaient une découverte pour moi. J'étais ébahie : Mais il y a tout ça là qui existe alors que nous sommes encore dans l'ombre !? Nous en avons tellement besoin, il vous faut un minimum de connaissances sur tous les thèmes de droit et de la politique. (Benida 1:6-12)

Mes frères et sœurs appuient ma façon de vivre. Au départ ils disaient : Mais tu cours, tu cherches quoi ? Mais maintenant ils ont trouvé que quand je parle, ce qui sort c'est de l'expérience, et ils ont commencé à m'apprécier. Ils disent : Il faut que tu réussisses dans ce que tu fais. (Benida 3:24)

Through their new knowledge and experience, many paralegals gained in self-confidence and negotiation power towards their husbands, for instance, concerning the latter's financial responsibilities within the household, but also towards other people, even in positions of authority or in public (GF2D 1999b:29, 31):

A présent, j'ai un contact facile avec les gens car ma formation de parajuriste m'a éduquée.³⁶¹

Aujourd'hui dans un groupe ou dans une réunion, devant même les autorités, je prends la parole pour donner mon avis sans frustration, car je sais que je peux répondre aux questions qui me seront posées.

This empowerment through the paralegal work can be additionally explained by the following factors: The paralegals gain self-esteem through the experience of contributing to solve family problems of their clients and helping women with manifold administrative and legal concerns, for instance to claim inheritance, to access pensions and family allocations etc.:

La parajuriste m'a vraiment aidé à ne plus avoir des problèmes avec mon mari à propos de ma coépouse. Mon mari m'avait relégué au second plan. La parajuriste m'a soulagé par ses conseils et a promis d'arranger une rencontre avec mon mari pour résoudre le problème.

La parajuriste m'a aidé dans toutes les démarches pour hériter de mon mari décédé.

This means that not only the acquisition of knowledge but mainly its application within one's social, professional and family environment increases women's social position.

The paralegals earn the respect of other women, who model their behaviour on the paralegals' example. In some cases, their mere presence helps to diminish denigrations of women within the paralegals' vicinity. Furthermore, they are respected by public personalities, such as pastors and mayors, and frequently asked for their advice :

³⁶¹The following citations stem again from GF2D (1999b:12-13 and 30-37).

Je suis tellement reconnue, je suis sollicitée par les femmes du marché, je suis sollicitée dans les églises, dans la ville. Même les autorités comme le maire me sollicitent pour discuter des cas de litige et des problèmes de famille.

Beaucoup de sectes se créent maintenant comme des champignons. Et ça entraîne les populations analphabètes. Tout ce que tu leur dis, ils ne comprennent rien, c'est le pasteur qui est leur dieu. C'est ce que le pasteur dit qu'ils peuvent entendre. Mais, si le pasteur t'introduit, ils sont en mesure de t'entendre. Les religions commencent à m'inviter [en tant que parajuriste] à leur parler des thèmes de droit et de santé. Je dis : Moi, je ne suis pas religieuse. Ils disent : On veut juste votre message (Benida 3 :26)

On nous considère plus maintenant, on a plus de confiance en nous, nous sommes devenues des exemples. Mon entourage me respecte beaucoup et écoute tout ce que j'ai à dire.

Il n'y a plus de brimades car on sait que je suis dans les parages, on ne parle plus mal des femmes et on ne fait plus de n'importe quoi [envers elles].

On the other hand, this public recognition also forces the paralegals to carefully balance their implicit role as a model for the self-confidence and autonomy of women who know their rights and speak up in public with prevalent conservative gender expectations, in order not to provoke public, and especially male, contempt. Furthermore, they have to respect the paralegal ethical code, which expects them to be humble, conscientious, impartial, fair, trustworthy, sociable, ready to help, critical, full of integrity and guided by the spirit of voluntariness (GF2D 1999c:165-167).

The work of paralegals is often recognized in their professional environment, where they tend to be taken more serious, due to their increased qualification and public responsibility:

Au boulot, [depuis que je suis devenue parajuriste] ma participation est plus sollicitée qu'avant, surtout dans la prise de certaines décisions. Je suis très responsabilisée au service et mon employeur me fait beaucoup confiance.

Moreover, the paralegals are mostly appreciated by the administrative and traditional authorities, because they help them in their task as custodians of peace and public order:

J'apprécie beaucoup le travail des parajuristes, parce que je tiens à ce que la population apprend qu'il y a des lois. Ça me facilite le travail. Connaître la loi est plus important que la richesse même. (village chief, Ountivou, 20.9.01)

Les parajuristes nous saisissent pour donner plus de poids à leurs réunions de sensibilisation. Des fois le préfet même a participé. Les parajuristes sont très importants pour aider la population à devenir des citoyens. (deputy district officer, Elavagnon)

However, this is a rather ambivalent aspect, as it can equally imply the maintenance of the unequal gender order. But the fact that in many districts paralegals became members of the

follow-up committees to the Fourth World Conference of Women in Beijing (1995), testifies to their public recognition as representatives of women's interests.

In cases where the administrative authorities or the population reject the paralegals, this is often due to the fact that they estimate GF2D to be a political organisation, the paralegals to be party activists and their information campaigns to be political meetings (GF2D 1999b:17, 42). For instance, in Kara, the hometown and stronghold of the president of the republic, a paralegal activist was harassed by the police, the district officer, and the judge, forced to burn her training and information material and to shut down the newly opened legal counselling centre (Angélique 1:1). However, she received support from GF2D, who preferred to transfer the set conference of the paralegals of the Kara Region to Lomé, instead of following a request from the authorities to hand them out the list of paralegal participants (field notes GF2D Forum 2001).

While the administrative authorities accuse GF2D to be an oppositional organisation, the population sometimes suspects them to be supporting the RPT:

Quelques fois, les femmes se fâchent et quand on arrive, elles disent : « Les femmes politiciennes là, vous arrivez encore ! Nous avons travaillé pour vous dans ce pays là, au RPT, et maintenant vous nous embêtez. » C'est comme ça qu'on nous insulte. Mais quand nous commençons à faire nos causeries, elles disent : Ah, on ne savait pas. Mais ce n'est pas pareil, vous êtes venues avec d'autres messages qui nous intéressent tant ! Est-ce que vous pouvez revenir encore ? (Benida 1:6)

This shows that GF2D suffers from the bad reputation of the UNFT, i.e. the former women's wing of RPT, which was and still is claiming to fight for women's issue, while in reality it is mainly supporting the suppressive regime³⁶². Indeed, sometimes women suspect GF2D to misuse them, whether for the regime or for the political opposition. This is not surprising, as the instrumentalisation of women's organisations for party politics is a widespread problem (cf. also Lachenmann 1996a:243).

GF2D actively tries to dissolve such suspicions by claiming in a determined way neutrality in party politics³⁶³. They focus on women's everyday legal problems and practices, thereby furthering "popular modes of political action" (cf. Bayart 1979:256-265) instead of engaging in national political rhetoric. They work across all political parties and societal groups, taking care to never openly confront the regime and to respect the political hierarchies.

³⁶² Cf. chapter 2.3.1.

³⁶³ Cf. also their statutes (GF2D 1992).

For instance, in the first years of their paralegal training programme, GF2D always asked the district officers, who tend to be strictly nominated according to their RPT-loyalty, to suggest training candidates. This way, many wives of RPT-members were trained, are still active and do qualified work as paralegals. This was a strategic way of GF2D to enter the young but highly politicised civil society through the back door, i.e. they managed to beat the regime with its own weapons. Furthermore, GF2D informs about laws as if they were regularly applied and respected by the state, leaving the discovery (and the learning experience) of the gap between the written frame and the lived reality up to each individual participant. Thereby they try to protect themselves from being accused of political instigation. Nevertheless, they systematically address women's participation in political decision making at all levels of society.

With the continuation of the paralegal program GF2D selected more and more candidates from a big variety of political parties and societal groups by following suggestions of traditional, religious, and local authorities, NGOs, unions, university etc. As after their training the paralegals become active in their social groups of origin, this broad-based selection of trainees served to introduce women's rights and the desired changes in gender relations as a transversal topic to society.

On the other hand, paralegals also have to learn how to protect themselves from becoming exploited by their clients. The following citation is from a paralegal who had helped a widow to access her husband's inheritance and now continues to be solicited by her for all her economic problems as well:

Au début, [moi et ma collègue parajuriste] on a souvent fait des consultations juridiques, mais ça nous a donné beaucoup de problèmes. Après les femmes veulent que tu leurs résous tous les problèmes. Il y a le cas d'une veuve. On lui a aidé pour toutes les démarches pour la succession. Maintenant elle vient toujours et elle veut qu'on leur trouve tout. Le weekend dernier elle est encore venue chez moi avec ses quatre enfants. Ils restent jusqu'au soir. On leur donne à manger. On ne peut pas refuser non plus. (Enyonam 1:2)

This is not a problem specific to paralegals, but concerns social workers, pastors and other "professional helpers" as well, who have to dissociate themselves from overwhelming needs and demands in order to sustain their own energy and resources.

7.1.2.1 Paralegals enlarging their room for manoeuvre by juggling with the legal repertoire

Je suis mariée, j'ai deux enfants. Le premier garçon a un autre père, le deuxième aussi a un autre père. Donc, je suis avec le deuxième homme mais nous ne sommes pas mariés. (Benida 2 :1)

The case of Benida³⁶⁴ is presented here to show another empowerment aspect of the paralegal approach: Through their life experience, their paralegal training and their paralegal activities paralegals become experts in juggling with the legal repertoire of customary, religious and state law. This case highlights that

“law [...] is dependent on the power of individuals to construct a discourse that will effectively represent their claims.” (A. Griffiths 2001b:119)

As the introductory citation reveals, Benida is not married at the registry office. She established a “half-marital” relationship with a married Muslim man that works according to rules they privately negotiated: She does not claim his financial contribution, time or legal commitment, to which a civil marriage would entitle her. He does not claim her availability, submissiveness, cooking services, economic dependence on him (i.e. his right to control her income) or her conversion from Catholicism to Islam, to which a customary, Muslim, or civil marriage would entitle him. But he is reliable and financially supports her activist work.

Pour mon mari, pour celui que j'appelle mon mari, je ne sais pas si c'est parce que nous ne sommes pas ensemble, qu'il me laisse. Il est content quand je fais mes activités d'association, parce qu'il n'est pas libre pour venir chez moi. Moi aussi, je ne le gêne pas s'il n'a pas de temps pour moi. Et il est content pour ça. [...] Si je lui demande de me donner de l'argent pour le foyer il ne me donne pas. Mais si je dis « c'est l'association qui en a besoin », il dit : « viens prendre ». Cela veut dire qu'il veut que je réussisse dans ce que je fais. [...] Il est musulmane, je suis catholique. Chez certains c'est important. Mais lui, il n'a rien dit, et moi aussi je n'en dis rien. (Benida 2 :5-7)

This relationship fulfils the minimum requirements to be recognized as a marriage in society, as they have a sexual relationship and he is the father of one of her children, yet without fulfilling the formal requirements of any normative system, be it customary, state law, Christian or Muslim³⁶⁵.

Benida combines her personal desire to have a partner and a father to her children with her wish to remain unmarried in order to have freedom of mobility, time, social contacts and paid

³⁶⁴ For Benida's biographical background, see annexA1.

³⁶⁵ In Togo, neither for a Muslim nor for a Christian marriage it is binding to do the civil marriage at the registry office. But only the civil marriage is recognized by the state law and provides some protection in case of widowhood or divorce (art. 76 CPF, cf. Exploit 30Mrz01).

work. This freedom helps her to combine her job, her family life and her paralegal activism for women's rights, i.e. to realize her desired life-style in self-determination. By constructing this marital set-up, she refers mainly to customary norms and partly to state law, while it is not excluded that she is also inspired by international concepts of gender equality.

Je veux vivre comme ça avec mes enfants. Je suis même plus à l'aise. Ça me permet de faire mes activités d'association. Je ne fais pas la cuisine, donc je ne prépare pas à midi ni le soir. Je vois mon mari à peine une fois par semaine ou bien après deux semaines. Ça me permet de me promener librement. Sinon, si je devais revenir à l'heure pour faire manger le mari, je ne pourrais pas faire tous ce que je fais pour mon association, je ne pourrais pas. Ça me libère plutôt. [...] Les hommes togolais sont très exigeants, on ne te laisse pas la liberté. Tu sors, on te dit : « D'où viens-tu ? Tu dois être à la maison, tu ne dois pas sortir. » (Benida 2 :4-5)

Also her partner wishes not to “disturb” his own marriage with his Muslim wife, although according to customary, Muslim, and state law (in case he married his first wife under the option of polygyny) a polygynous marriage would be possible. But, on the one hand, he would need his first wife's consent, and on the other hand, he would engage in further financial obligations by officially marrying a second wife.

Faire le mariage? Oh, c'est un problème délicat qu'il faut que j'entretienne doucement avec lui. [...] Quand je lui pose la question, il n'est pas concret dans sa réponse. Je ne le gêne pas. (Benida 2 :1)

Benida compromises between this preference to remain unmarried and society's expectation that a woman be married:

Chez nous, si tu n'es pas mariée, les gens t'insultent. Les gens trouvent que le mariage c'est quelque chose qu'il faut forcément faire dans ta vie avant de mourir. Et faire des enfants, c'est important. « Tu es mariée ? » « Oui, je suis mariée avec des enfants. » Là, tu peux vivre tranquillement. Mais quand tu dis que tu n'est pas mariée et tu n'a pas d'enfant on te dit : « Ah, toi tu es venue inutile dans ce monde. » Maintenant, moi aussi j'arrive à enlever ça de ma tête. (Benida 2 :3-4)

She further has to reconcile her un-bound lifestyle with her co-activists' expectation that she should do the civil marriage, in order to become a convincing model on women's rights. In fact, during her associational activities, she tries to convince her gender-mixed audiences about the advantages of a civil marriage³⁶⁶. Moreover, the expectation of her co-activists joins her own self-image as a modern, educated, urban middle-class woman. On the other hand, she has to attenuate her transgression of Catholic norms, as in Catholic eyes living in a marital union without being married is “living in sin”. She does so by respecting at least another catholic

³⁶⁶ See also chapter 4.1.4.

norm – constructing a kind of substitute – in that she does not pressurize her partner for a divorce.

However, concerning the question of polygyny, her attitude is ambivalent: Her religious morals and her convictions as a women's rights activist tell her to refuse polygyny and even convince others "to do away with" it. This also corresponds to the resentment³⁶⁷ against polygyny that is typically encountered among urban elite and middle class women (cf. Baerends 1994:32). But, for her personal life, she nevertheless considers polygyny as an option:

Je ne vis pas ensemble avec lui parce qu'il est marié, il a une femme chez lui à la maison. [...] Je ne le force pas à me marier, parce que je ne suis pas la première. C'est moi qui est venue gêner l'autre. Tu sais, chez nous, le monsieur s'est marié, on peut se marier à lui, on a cette habitude, c'est l'ignorance ! Il faut maintenant mobiliser nos jeunes à ne plus se marier aux hommes déjà mariés. Tu vois bien que le monsieur est marié, tu vas t'ajouter ? C'est mauvais ! [...] S'il me proposerait un mariage polygame j'accepterais, parce que je ne veux plus trouver un autre homme, je veux rester. Donc, s'il me propose, j'accepte. S'il ne me propose pas, je reste et nous gardons notre relation comme ça, je préfère. (Benida 2 :1-3)

She cannot help sacrificing the formal economic and legal security that would come along with a civil marriage, as this would provide her with a right to his household contribution, to an eventual widow's pension and a chance – however weak – to inherit from him, in case of his death. Equally, she cannot access the economic and social security that she might get through the customary bridewealth or the Muslim *mahr* in case of a customary or Muslim marriage.

Benida's strategy to enlarge her room for manoeuvre is to not institutionalise her marriage in any formal way. This shows at the same time the degree of potential limitation of women's room for manoeuvre going along with marriage. Although the fact of not being married at the registry office is against her image as a paralegal for women's rights, she justifies it by playing the different legal systems against each other: She can't marry him, neither at the registry office nor in church, because they would have to opt for polygyny, or he would have to divorce from his first wife, both of which would be against her Catholic religion. She doesn't want to marry him customarily, because this would restrict her mobility, her time disposal, her freedom to work and her social contacts. She compensates the loss of formal security by ne-

³⁶⁷ This resentment might be due to the greater competition for the husband's scarce resources who faces more difficulties to maintain several wives in an urban environment with the higher living costs (Baerends 1994:32) as well as to the loosening of advantageous reciprocal obligations, and the greater influence of Christian and Western norms in town.

gotiating a kind of informal contract with her “husband”, a contract that is built on mutual trust and corresponds better to her own priorities.

In order to live this “non-marital marital relation”, she has to dispose of certain resources in terms of personal qualities. For instance, she has to handle the gossiping environment:

Les gens me posent des questions : « Mais toi là, ton homme, qu’est-ce qu’il en dit quand tu fais toutes tes activités et tu n’es pas à la maison ? » Je leurs réponds : « Il comprend, il a compris. » C’est ce que je leur dis. (Benida 2 :5-6)

She also knows how to silence her co-activists’ critique by a kind of delaying of norm conformity, promising them that, yes, she will marry at the registry office, sooner or later.

La fois passée au centre d’écoute on m’avait posé ce problème : « Mais tu es parajuriste, tu es très importante dans le groupe et tu n’as pas fait le mariage civil. Comment tu arrives à discuter du mariage civil avec les gens ? » J’étais vraiment gênée et je leur ai dit que j’attends qu’on fasse le mariage. (Benida 2 :1)

She can live with the contradictions between her activist work and her personal situation, because she is aware that even the state law is at some points biased against women³⁶⁸, and she knows that the women’s rights NGOs actively lobby for a revision of the Family Code.

Her resources are her knowledge about the pros and cons of the different legal systems, her economic self-sufficiency that allows her to be independent of a husband’s economic support, and her personal strength, which enables her to live with critiques from all sides, i.e. from the neighbourhood and her relatives, from her co-activists, and from the catholic community. Among her resources we have furthermore to count the social recognition she gets through her job and her voluntary paralegal work, as she is well esteemed by her colleagues, by her pupils, and by the women “at the grassroots” she talks with, as well as the emotional support that she gets from her children, from her partner, and through her religious anchoring.

Benida is skilfully protecting herself from the traps coming along with the various legal systems, so that she becomes free to negotiate an informal contract according to her own and her partner’s priorities. Thereby, she benefits from and builds up multiple aspects of power, such as what can be termed “power from within” (Rowlands 1997:13), like self-confidence and eloquence, used in order to silence critiques, diplomatic skills to present her claims within different people’s thought-frames, knowledge about the legal repertoire and socially acceptable means to comply to or bypass it, literacy skills and knowledge about administrative and legal

³⁶⁸ For instance, the husband is considered head of the family (*chef de famille*), he can forbid his wife to work etc. (cf. chapter 2.2.6 and 4.2.1).

procedures and services. The second aspect of power has been termed “power with” (Rowlands op. cit.) and includes, in Benida’s case, moral and material support and recognition from her family, her partner, her colleagues and co-activists. The third aspect relevant here can be termed “formative power” and includes the possibility to take action herself, to have room for manoeuvre, i.e. to have and make choices.

These various aspects of power are not strictly separable but rather flow into each other (in the sense of Foucault 1980:98). They have to be activated or enacted by the women themselves and are linked to structural power, i.e. to resources, practices and norms ruling resource allocation etc. (cf. Kabeer 1999, Elson 1995:295) which themselves are objects of negotiation. For instance, economic independence enables Benida to be unassailable by economic sanctions. Last but not least, this fluid power can be used to challenge the “power [of others] over” oneself, for instance by stimulating moral behaviour in her partner, an aspect also called “generative power” (Hartsock 1985).

7.1.2.2 *Je ne veux pas te piétiner, ne me piétines pas non plus!* The personal is political – Struggles of a paralegal within her own family and community

It is rather rare in Togo that women are accorded a customary leadership office³⁶⁹. Not surprisingly, also in the “modern” non-governmental sphere women are often relegated to the second place. Women, who become active in public as paralegal advisors therefore have to start their paralegal work within their own personal sphere. While contributing to improve other women’s legal situation, they have to carve out room for manoeuvre within their own marriage, family, and community as well as towards traditional and state authorities. On the other hand, it is exactly the paralegals’ “performance” in the “political sphere” of the family, which makes them convincing in public political contexts.

As opposed to the previous case of Benida, who did not institutionalise her marriage, Sophie, the subject of the following case, did marry and thus had to negotiate her room for manoeuvre to combine her family life with her professional and paralegal activities within this institutionalised frame. As we will see, she did so in quite a successful way. She thus represents an-

³⁶⁹ Even in regions where such offices do exist, women have to confront male resistance in order to assume these responsibilities. This was observed in south-western Togo, where a woman was chosen and enthroned as speaker of the “queen mother” (cf. chapter 2.1.3). This obliged her to move back to her village, a move which her husband, an official in the nearby town of Kpalimé, strongly opposed. As she did not obey him (fearing spiritual sanctions in case she would break her new commitment to the village community that was sanctioned by the ancestors) her husband separated from her (Justine 2).

other case of a strong paralegal woman. Probably, the average paralegal is not as outspoken and self-confident as Sophie or Benida, but the cases nevertheless demonstrate that even such strong women have to invest a lot of energy (and discursive excellence) to be able to engage in civil society and political activities. Furthermore, these cases permit us to discern the crucial points for gender negotiation, which also less powerful women have to address (although maybe with less success), as well as their specific logic of action.

A remarkable career

Already during her apprenticeship Sophie entered the tailor's guild³⁷⁰. Soon she was elected to represent the guild in one of the national union federations. Within the latter she committed herself to the management of the federation's canteen and helped to set up a health fund (*mutuelle de santé*) of which she became the treasurer. It was the federation who suggested her as a paralegal training candidate to GF2D. After the paralegal course she formed a credit and saving association with some of her colleagues, organised legal information campaigns and offered individual legal counselling for her own and other guilds. Furthermore, she gave talks and presentations on women's rights, which were broadcasted by the national TV as well as by various private radio stations. Through these activities she became further known and appreciated. She was elected vice-president of the federation's women's commission and later became a delegate of her federation for the setting up of a trade corporation. In the context of her posts and activities she participated in various international training courses and conferences in Europe and Africa (Sophie 1:2-3). However, her enormous paralegal and unionist engagement did not remain uncontested within her family and community.

Pressure and quarrels with her husband and the gossiping neighbourhood

The common marital expectation for a woman is to stay at home, dedicate herself to the household and children, cook for her husband, keep him informed about all her endeavours and ask him for permission every time she goes out³⁷¹. This restriction of a married woman's freedom of movement serves to limit her possibilities of engaging in relationships with outsiders in order to control her sexuality and reproductive capacity (cf. Baerends 1994:30). This

³⁷⁰ Although there exist many "syndicates" in Togo, *Syndicat des couturiers*, *Syndicat des chauffeurs* for example, they are not unions in the classic sense. Either they include both the workers and their employers (such as in the case of the tailors) and are more comparable to a professional guild or, if they only include the workers, they have hardly any rights to negotiate their working conditions and pay with their employers or the government. They are regrouped in various federations, such as the *Confédération Syndicale des Travailleurs du Togo*, the *Confédération Nationale des Travailleurs du Togo* etc. (CSTT26Jan01).

³⁷¹ See chapter 4.2, cf. also Benida 2:5.

gendered marital norm is persisting, although the everyday realities of men and women have been changing for a long time. Despite increased work migration, especially of men but more recently also of women, and women's manifold engagement in informal trade and as teachers, nurses, secretaries etc. in the formal sector, it is tried to keep up the image of male control over women:

Au village, quand une femme n'a pas son mari à coté d'elle, par exemple parce qu'il est fonctionnaire et affecté ailleurs, elle est vue autrement. On pense automatiquement que peut-être elle sort avec un autre en caché. Il y a tout ce ton là sur elle. Au village ils pensent qu'une femme doit toujours être sous le contrôle de son mari et si le mari n'est pas là alors il faut quelqu'un de la famille. Si ton mari n'est pas là, il faut que tu restes avec ton beau-frère ou ton beau-père qui te dit tout. Quand tu veux sortir de la maison, il faut lui demander la permission. Quand tu rentres, il faut aller le saluer et dire : Je suis rentrée. Quand un enfant est malade, il faut aller le voir d'abord, avant d'amener l'enfant au dispensaire, et quand vous rentrez il faut faire des contes rendus et tout. Alors qu'en ville ce n'est pas comme ça. (Sophie 1 :10)

We can read from Sophie's account that this male control is diminishing in urban contexts. Nevertheless, although living in Lomé, she had a tough time negotiating her right to independent movement. When she got to know her later husband, she immediately tried to set up her rules of the game in order to be able to continue her associational activities by asking him to respect her time-table. At first, he refused to accept this, either trying to limit her activities and boss her around or stopping to see her in an attempt to put her under pressure to conform to his expectations. But she remained unimpressed.

Later, when they were married and had children, she even expanded her professional and activist life. Contrary to common marital norms, she neither stayed at home nor asked her husband for any permission to go out, but took care to fulfil all other marital duties: She told her husband her time-schedule and phoned him, in case she would return late. She prepared the evening meal, to be heated up by her children in case she could not be at home at her husband's arrival, due to some activity or meeting. Thereby she confirmed his right to be constantly informed about her whereabouts and her time-spending, yet without allowing him to interfere.

Her husband expressed his opposition to her associational activities by not talking to her and refusing to eat her food – a serious marital offence –, or shouting at her. She insisted that she had the same right to pursue her activities as he had to go about his job. He tried to legitimise his objection to her independence by citing the gossiping neighbourhood. Feeling confirmed in her endeavours by her increasing qualification, public recognition and her career in civil

society, she made no compromises and with time even managed to convince him of the usefulness of her activities:

Quand j'ai commencé à aller aux réunions, je reviens à la maison, je lui dis bonsoir, il ne répond pas. S'il est là, je lui dis : « Je m'en vais à la réunion à tel lieu. » Qu'il réponde ou qu'il ne réponde pas, moi je m'en vais. Quelques fois, quand je reviens je fais la cuisine, mais il boude que c'est trop tard, lui il ne veut pas manger. Je reste à table, je mange bien, je dépose le reste à la cuisine. Je me lave et je me couche.

Un jour, il a commencé à crier : « Toi tu es très méchante, tu reviens et tu ne cherches même pas à savoir ce que j'ai mangé ! » Je réponds : « Moi, j'ai fait à manger, c'est toi qui ne veux pas manger. Tu veux que je te porte sur les jambes comme un bébé ? Si tu crois que ta façon de bouder mes réunions vont faire que je vais rester à la maison, si tu savais ce que j'apprends là-bas, c'est toi qui va me pousser à y aller. Monsieur, quel est ton problème ? » Il dit : « Tout le temps tu n'es plus à la maison. Toi aussi, tu peux dire, aujourd'hui tu es fatiguée, tu ne peux pas aller à la réunion, tu restes à la maison au moins une fois par semaine sans parler de ta réunion. » Je lui dis : « Est-ce que toi tu restes à la maison sans aller au boulot ? Quand tu vas au boulot et tu reviens tard, est-ce que je te dis que c'est maintenant que tu es là, que c'est tard ? »

Il me dit que les gens parlent : « Ta femme ne reste jamais sur place, elle voyage tout le temps, elle sort avec les hommes, elle est tout le temps dans le groupe d'hommes. » J'ai dit : « Ah, tu veux écouter les gens maintenant ? Mais si tu veux avoir une femme statue chez toi qui ne bougera jamais, tu t'es trompé de chemin, ce n'est pas moi. Si tu veux me mettre dans ces murs là, je serai malade, je me sentirai inutile, je ne peux pas. Si tu ne veux pas apprendre, moi je m'en vais, hein ? Etre célibataire aussi ne me gêne pas, moi. » Je ne vais pas rester dans un mariage où on va me marcher sur les pieds.

Alors, il n'a rien dit, et petit à petit il a changé. Quand je reviens, il demande comment s'est passée la réunion et je lui racontes. Si on a des documents qu'on nous a distribué, je les lui donne à lire ou bien je commence à lire à haute voix. Et comme ça je l'ai intéressé à ce que je fais. Finalement il a pris goût, il ne disait plus rien. (Sophie 1:24-25)

Apart from becoming an important model for other women, there are even some men who are impressed by her outspoken and active way and send, sometimes in a rather patronizing way, their wives to her seminars to learn from her. Furthermore, Sophie tried to pass her experience and ideas of a gender balanced society on to her children: She taught her son all the household activities. He is proud about her and sometimes brings his school mates to assist when she holds a meeting. She educated her daughter to speak up and ask questions. This marks a serious shift in gendered practices of education: In Togo children are mostly educated to be obedient and respectful towards their parents and everybody of senior age, which includes not to ask questions, not to be curious, to listen and obey instead of talking etc. This applies even more strictly to girls than to boys. Furthermore, girls are educated to respect men in general (of any age), to be deferential towards their fathers, brothers, husbands, brother-in-laws etc., and internalise the popular sayings of:

La femme n'a pas droit à la parole. La femme n'a pas voix au chapitre.

Women are thus generally rather discouraged from accumulating knowledge and becoming self-reliant.

Sophie's struggles within her family and vicinity for her own freedom of movement and disposal over her time reflect the societal structures, with its restrictions on women's room for manoeuvre.

7.1.3 *Certains maris nous accusent d'insuffler la révolte à leurs femmes* – Letting men into the paralegal field?

Dans l'exercice de leurs tâches, les femmes parajuristes ont été confrontées, dans beaucoup de cas, au refus de certains hommes de prendre en considération les propos d' »une femme », de recevoir la parajuriste ou de permettre à leurs femmes de fréquenter les parajuristes. (Mensah-Amendah 2001:6)

Apart from the successes described in the three foregoing sub-chapters, the evaluation study of GF2D showed also that the paralegal work is regularly confronted with the resistance of men: Some women are refused by their husbands to attend the meetings with paralegals. Most likely their husbands feel threatened by the idea that women meet up with each other and acquire knowledge enabling them to challenge male privileges. Many women do receive legal advice, but are unable to follow the recommendations out of fear of their husband's reaction³⁷². Men themselves mostly refuse to take advice from paralegals and accuse them to stir up conflicts within the family, reflecting their fear to suddenly be confronted with their wives' opinion or even dissent. Some husbands actively disturb the public meetings organised by paralegals. Even in the legal counselling centres it happens that the husband of a client threatens the counselling personnel, if their advice is against his interests. Other husbands welcome the structure as a chance to get legal information, enabling them to become "correct" and "modern" citizens and helping them to settle family conflicts (Marlène 1:5, Christophe 5:1, GF2D 2001:26).

A minority of paralegals³⁷³, such as in the above described case of Sophie, is also confronted with resistance from their own husbands or their in-laws, accusing them of neglecting the household (and implicitly the care for their husbands) and acting in public in a way improper

³⁷² This was the case for 19 of the 134 women interviewed for the evaluation study (GF2D 1999b:32).

³⁷³ According to the evaluation study, for which one fifth of the 260 paralegals active at that time were interviewed, one sixth of the paralegals were confronted with such resistance within their own household, while the great majority of husbands supported their wife's paralegal engagement (GF2D 1999b:29).

for a woman, whose place should be at home. This mirrors their husbands' fear to lose control over them, i.e. over their labour force, outside relations and sexuality. These paralegals are therefore under constant pressure to justify themselves and negotiate their own rooms for manoeuvre. Typically enough, in the impact study most of the husbands of paralegals interviewed agreed that the paralegal work is very important, but would prefer if other women than their own wives would play that role (GF2D 1999b:18-21, 29).

Another problem is that situations of competition between local traditional authorities and paralegals can arise, when the former feel threatened by the legal and conflict resolution training of mostly relatively young and educated female community members and fear that they undermine their power and male superiority. Such situations require considerable personal strength of the paralegals. Also, if traditional male authorities are present during awareness raising sessions, many women don't dare to speak up. Some paralegals try to avoid such conflicts by cooperating explicitly with traditional authorities, involving them in the planning of their activities, or referring cases to them³⁷⁴.

The evidence of frequent male resistance to the paralegal work provoked lengthy discussions within GF2D who had, for many years, trained solely women as paralegals. This had been a conscious decision, based on the conviction that legal knowledge is the precondition to exert one's rights. If women are to be empowered, it therefore have to be women who get knowledgeable about their rights in order to serve as models to the wider female population (Mensah-Amendah 2001:2,7). Moreover, GF2D wanted to avoid that men occupy just another – and, in this case, a strategic and new – female sphere of knowledge expertise, public influence and decision making (cf. Lachenmann 1996a:238, 1991b). Nevertheless, the above mentioned evaluation results, the positive experiences with male paralegals from other African countries, such as Namibia and Senegal, as well as donor recommendations³⁷⁵ contributed to change the opinion within the NGO. The idea spread that women's rights would only gain ground, if both men and women become aware of them, that gender relations would only start to change if both men and women work in this direction, and that male paralegals are needed to serve as models to other men³⁷⁶. In 2000, it was decided to test the experience of also training men as paralegals on women's rights. This activity was financially supported by the sector project

³⁷⁴ Tovieku (38&39/2001:7), Mensah-Amendah (2001:7), GF2D (1999b:42).

³⁷⁵ The active and critical analysis of such donor expectations by GF2D places this NGO beyond the horizon of many other African NGOs, who are more donor driven in the formulation of their objectives, priorities, and approaches (cf. Neubert 1995:153, 164).

³⁷⁶ Cf. my field notes of the GF2D Training of male paralegals 2001:18-19, 22.

“Strengthening women’s rights”³⁷⁷ of the German agency for development cooperation (GTZ).

The first training of male paralegals took place in 2001 with 28 participants. In order to avoid that men take over the female paralegal field of action as well as the resources, competences and prestige attached to it, the male trainees (social workers, primary school teachers, leaders of farmers’, youth, manual workers’ and saving associations, village registry aids and radio reporters) were selected by consulting already active female paralegals, who agreed to include them in their team work after the training. It was also decided to train a few traditional authorities (chiefs and chiefs’ secretaries) in order to counteract the type of competition with the paralegals, mentioned above. Secondly, it was decided to keep-up a female majority within the new gender-mixed teams by continuing to train mainly women as paralegals, but including about one fourth to one third of men among the training participants. Such gender-mixed trainings can serve as a forum to learn and practice new modes of communicating and dealing with conflicts between men and women, i.e. counter women’s socialisation not to speak up in the presence of men.

The training covered the same topics and exercises as for the female paralegals³⁷⁸. Special emphasis was given, though, to the gender module in order to convince the participants of the reasons for and the importance of their contribution to the paralegal work:

Encouraged to reflect the cultural construction of their male identity during their childhood and youth, they cited the following experiences: being spurred on by their parents to train their physical strength, to conquer girls and to abstain from housework in order to become acceptable men; beating up girls of their class who had better school marks, in order to impose their leading position as males (thus learning gender specific violence); they were privileged with regard to their sisters regarding the possibility to attend school, were put in charge of the house and the sisters and younger brothers during the parents’ absence, were educated to take the decisions for their own lives and their families, called “the inheritor” and later accorded the inheritance of their fathers, and thus prepared to become the head of the family³⁷⁹.

³⁷⁷ This sector project aims both “at changes in legislation for the benefit of women and to ensure that women’s rights are put into practice” by supporting innovative approaches of local and international NGOs in more than 30 partner countries (GTZ 2001a:3). It is partly a consequence of the German government having signed the Beijing platform of action in 1995, which calls for making women’s rights a reality, and condemns violence against women as a violation of human dignity (Schaefer 1999:301).

³⁷⁸ See chapter 2.3.5.

³⁷⁹ Cf. field notes from GF2D Training of male paralegals 2001:2-9.

This reflection was continued by collecting *ewe* proverbs, revealing and questioning their gender stereotypical character³⁸⁰, such as:

Nusu be vide mule-o. (There is no small man).

Nusu e nye ahoete, nyonu oyone be ahoefa. (The man is the supporting pillar of the house, while the woman is its peace. I.e. the man contributes to expand the lineage with his children who will take his name, while the woman is responsible for harmony within the family).

Nusu eny ta. (The man is the head of the household).

Koklo no me ku na ato-o. (The chicken does not sing cock-a-doodle-doo. I.e. the wife has no right to talk in public).

Subsequently they reflected upon the division of labour between men and women and the ways how women's work is devalued by being neither remunerated nor taken into statistical account, being attributed to the private sphere, which is accorded less importance and prestige than the male public sphere. They discussed the importance of legal and social equality between men and women for a sustainable development and insisted on the importance that women become participants, beneficiaries and decision-makers of development. They learned to differentiate between practical and strategic needs. Finally, they were told about international efforts to strengthen gender equality through the UDHR, CEDAW, the UN conferences etc.³⁸¹

The feedback from the male trainees themselves to the paralegal workshop was very positive. Similar to their female colleagues, they appreciated their increased legal knowledge and admitted that the training had opened their eyes concerning gender relations:

La formation de parajuriste non seulement m'a ouvert les yeux sur le droit, mais aussi me permettra de vulgariser le droit, surtout celui de la femme. [...]. (Male paralegal, quoted in C. Akakpo et al. 2001a:14)

Personne n'a fait le choix de son sexe, et pour cela il ne peut y avoir distinction dans le genre humain. Nous sommes tous des êtres qui se complètent car aujourd'hui la femme a fait des preuves sur tous les plans. Comme l'expliquerait le mot *ewe demawu* littéralement, l'un ne dépasse pas l'autre. (Male paralegal, quoted in C. Akakpo et al. 2001a:14)

³⁸⁰ However, this reflection went not as far as to search for or create new proverbs that transport counter-images (such as witnessed in Zimbabwe by Schaefer 1998b:184).

³⁸¹ Field notes of GF2D Training of male paralegals 2001:11-20.

However, one participant understood his new paralegal role as to free women from their “ignorance”³⁸², a knightly task from which he expected moral prestige:

Je pense que la femme a été longtemps maintenue dans l’ignorance et qu’il est inadmissible de nos jours de vouloir la maintenir dans cette ignorance. C’est dire que défendre aujourd’hui les droits de la femme, c’est un comportement positif et noble. (Male paralegal, quoted in C. Akakpo et al. 2001a:14)

This patronizing statement rather repeats the common ascription of the problem to women and overlooks the need that men as well have to change their attitudes and behaviour for gender relations to change. Furthermore, several paralegals still struggle with the concept of gender equality. For instance, they construct a rather ambivalent argument, admitting equality only in the legal field but otherwise emphasizing the differences and complementarity between women and men, in line with the equity approach:

Moi, je ne parlerai pas d’égalité des sexes mais plutôt de complémentarité. Aujourd’hui les hommes et les femmes ont les mêmes droits, ce n’est que sur ce plan qu’on peut parler d’égalité. [...] L’égalité des sexes n’est pas à encourager. Il faut enseigner la complémentarité des sexes dans le genre humain (Male paralegals, quoted in C. Akakpo et al. 2001a:14)

Such statements fail to recognize the socially constructed and problematic power inequalities in gender relations that are commonly justified with allegedly natural differences. Furthermore, they show that the relevance of law for gender relations in everyday life has not yet become sufficiently clarified. Nevertheless, it is most likely that this initial paralegal training, combined with the coming field experience and further training and supervision, will stimulate a reflection on and change of gender relations among the male paralegals in the long run.

The first evaluation trip showed positive results: The trained men demonstrated a high degree of initiative and commitment, the female paralegals reacted positively to the arrival of male colleagues and integrated them well into the existing teams³⁸³, and other men (such as the quarter chiefs of the town of Kpalimé) demanded to receive paralegal training as well³⁸⁴:

C’était très utile de former des hommes comme parajuristes; ça aide à apaiser les gens qui avaient pensé qu’on met les femmes contre eux ! (female paralegal in Kpalimé, 18.9.2001)

³⁸² The recurrent problem of the construction of ignorance in the context of improving women’s rights will be discussed in this sub-chapter further below.

³⁸³ For instance, the mixed teams were very creative in staging sketches that questioned the prevalent gender order and suggested innovative ways to handle problems, such as forced marriage of under-age girls (cf. photo 4 in annex A7).

³⁸⁴ Cf. field notes Kpalimé 19.9.2001.

Si vous formez des hommes ça nous facilite le travail. Des fois nous avons de longues marches à pied pour arriver dans les villages et fermes voisins. C'est dangereux pour une femme seule. Aussi les gens nous écoutent mieux, si nous sommes avec des hommes. (female paralegal in Amlamé, 19.9.2001)

S'il vous plait, dans notre zone aussi il faut former des hommes, surtout pour parler des droits successoraux des femmes. Parce que les hommes ne veulent pas que leurs filles touchent le terrain. (female paralegal in Kuma-Adamé, 18.9.2001)

Avant, les hommes ne nous écoutaient pas. Ils pensaient que nous parlons pour les femmes et contre les hommes. Maintenant ils nous acceptent. (female paralegal in Atakpamé, 20.9.2001)

According to the female paralegals, the gender-mixed teams allowed to better approach male "target groups" and gender-mixed audiences, as men better accept to be informed by men, especially concerning sensitive issues, such as the forced marriage of young girls or women's inheritance rights.

Radio being the most important medium of mass communication in Togo, the training of radio-reporters had an enormous impact: Already experienced in communicating information and inviting the audience to participate, they were eager to acquire legal knowledge in order to discuss popular social topics in a more grounded way. Among the trainees was a reporter from *Nana FM*, a private radio station, located at the centre of the *Grand Marché* in Lomé. This station is very popular, due to its live transmission of football games in the local language *Mina*, and often broadcasts programs critical of the regime. The programmes of this paralegal reporter had the effect of motivating several listeners to come together and organise a citizen's association to extend their legal knowledge and provide neighbourly help in everyday legal conflicts. With the mushrooming of private radio stations throughout the country in the context of the recent relaxation in governmental media control³⁸⁵, more and more paralegals started to animate radio programmes and thus reach a far greater audience (GF2D 2001a:28).

³⁸⁵ This "relaxation" made it possible for private radio stations to exist at all. However, the new Press and Communication Code (of 2002) restricted the constitutionally guaranteed freedom of expression again, imposing a 5-year term of imprisonment and high fines for any journalist found guilty of defaming military or government officials. This new law serves the government to justify its repeated harassments and intimidations of print media journalists through threats, detentions, and criminal libel prosecution. In January 2003 the police also raided *Nana FM* and confiscated the transmitter and amplifier. Although the equipment was returned 12 hours later, the station had to vacate its premises (US Department of State 2004:5-6).

7.1.4 Walking the tightrope between countering and reproducing gendered systems of ignorance

As became evident in the foregoing chapters, the legal knowledge of most men and women in Togo is embedded in the “logic of practice” (Bourdieu 1990), i.e. of practical relevance, tied to specific situations, contexts, experiences and locally authorised knowledge-carriers, and as such situated in time and space. However, the state law and state legal system are ascribed superior value over everyday knowledge, as it is presented and believed to be fixed in its written form, cast in a highly complex language, comprehensible and applicable only by legal experts with a long academic training and high social status – reason why it has to be translated and explained by experts to ordinary people – and sanctioned by powerful institutions. Furthermore, state legal knowledge is seen as a unity, which can be generated, isolated, accumulated, transferred and distributed like a product (cf. Desai 2001:73-75).

Due to the gender order of Togolese society – mirrored for instance in gendered literacy rates, gendered access to public offices, to legal forums (cf. chapter 6.6 and 6.7) –, it is easier for men to inform themselves and acquire knowledge about the state law and state legal system than for women. Therefore, women in Togo are often said to be ignorant of state law and merely knowledgeable in customary rights, while knowledge about the state legal system is indirectly characterised as being male, rational and modern – i.e. legal pluralism is constructed along a gender dichotomy. On the other hand, women’s legal knowledge is morally devalued as being static (i.e. passive), backward and a “mere obstacle to rational progress”, while male legal knowledge is represented as dynamic, progressive, and even as freeing women from inhumane patriarchal tradition (cf. chapter 2.2.6). In relation to the hegemonic state legal knowledge, women are thus constructed as being ignorant.

Several women’s rights NGOs in Togo are aware of the traps coming along with this discourse on women’s ignorance. They actively try to counter the development of a typical expert behaviour among the paralegals in a clear desire to bridge the allegedly separate spheres of everyday knowledge and state legal knowledge: For instance, they encourage the paralegals to research local problems, to connect these to the relevant provisions of the state law, translate the latter into simple language and use these cases from everyday life to explain the law in local languages to their audiences. However, the paralegal trainings observed were rather inadequate in this respect and did hardly enable the paralegals to do such splits. On the other hand, the paralegals were trained to do mediations, thereby taking up local ways of problem

solving, and to orient people – if necessary – to state court judges, private lawyers or NGO-lawyers³⁸⁶.

Furthermore, the NGOs share their knowledge and experience with as many people as possible, by organising information campaigns and legal counselling centres free of charge, by training leaders of association, traditional leaders, radio-journalists, party members and registry officers on women's rights, publishing women's rights in easy language and translating legal texts into local languages. Finally, they support the paralegal's autonomy by providing them with autodidactic material, facilitating a collaboration among paralegals on the district level, and organising regional and national paralegal conferences. All these activities serve to incite public discourse on gender relations and counter the gendered ascription of knowledge and ignorance by creating a thick web of knowledge. Within this web information flows in all directions and across conventional dichotomies of traditional versus modern, statutory versus customary, or male versus female spheres, i.e. it is avoided to erect new knowledge barriers.

Nevertheless, the NGOs can neither fully escape the dynamics coming from the hegemonic knowledge system of the state law, which the paralegal trainers internalised during their own juristic education, nor the influence of the prevalent discourse of donor organisations, who tend to “back the same horse” of women's ignorance. As a consequence they sometimes depreciate the knowledge and legal concerns of the population and the paralegals. During a workshop organised by a paralegal in the context of a monitoring trip by the NGO, I observed two such incidents: The participating village women listened quietly and rather bored to the paralegal's presentation on the importance to send girls to school. Only in the end they raised their very own concern: They wished to ban videos, because they consider the violent films that are projected by a few owners of video recorders in the village to be harmful to their children, making them disinterested, lazy and aggressive. They wondered whether the chief or the police could be mobilised to proclaim such a ban. However, instead of discussing this problem and possible responses in the light of both the customary and the state legal and administrative framework, neither the paralegals nor the NGO-supervisor took up this local legal concern, which had emerged from the women's everyday life. Probably it didn't fit into their scheme of “the legal provisions from the family law and civil rights to be taught to the population”. Furthermore, the NGO-supervisor criticized the paralegal's choice of topic for her presentation (girls' education), without asking her how this choice was motivated:

³⁸⁶ Cf. GF2Dc (1999:165, 171, 179), WILDAF/FEDDAF (s.d.:48-57), WILDAF-Togo (2000:48, 71-72).

Mais vous n'avez pas parlé du droit [...] Il faut divulguer la loi qui gère ce pays.
(field notes GF2D Evaluation 2003)

Apart from embarrassing the paralegal in front of her audience, the paralegal's knowledge, her topical priorities as well as the legal concern of the audience were declared to be irrelevant. Thereby, law and the state as the origin of law were further distanced from the lifeworld of the paralegal and the population, while the knowledge of the NGO-supervisor was implicitly represented as being of superior relevance. As a consequence, the village women were left to bridge the gap between their own lifeworld and the state law by themselves, while the paralegal – who is supposed to serve as a mediator and “broker” (Bierschenk et al. 2000) at this interface between the different logics of action, perspectives, and knowledge contexts of the village women and the women's rights NGO – was frustrated with the practical difficulties of her task.

While these incidents were rather the exception during the various monitoring trips I attended, indications for the persistence of a construction of legal ignorance also popped up repeatedly during my interviews with paralegal advisors:

Some paralegals tend to overlook or devalue women's knowledge and lifeworlds in a moralising, paternalistic way, ascribing ignorance to them in order to legitimise their paralegal work and their “grassroots” approach. At the same time, this discourse serves to construct themselves as knowledgeable experts and elevate them above their audiences, who are depicted as dependent on their expertise in order to become enlightened:

On ne va pas passer par les intellectuels, on va passer par la base qui est analphabète. Parce que c'est l'analphabétisme, c'est l'ignorance qui fait que les enfants meurent. Les femmes qui ne connaissent pas leurs droits font du n'importe quoi. [...] Au lieu de rester sur les médias, crier en français et autre, il faut aller à la base en vernaculaire pour discuter avec les femmes pour un changement de comportement. (Benida 1:9, 3:32)

Le mariage, les Togolais n'en savent rien. Ne parlons pas de la base. Même les gens qui vont se marier [à l'état civil] ne savent pas qu'il faut choisir entre la polygamie et la monogamie. [...] Quand on parle de la politique, nous confondons tout. La fois passée à la sensibilisation j'avais posé la question de savoir c'est quoi la politique ? Une dame a dit : « La politique c'est que les hommes se battent entre eux. » Ils ne comprennent rien, même les lettrés. (Benida 2:2)

La dernière fois on m'a invité à une secte. J'ai parlé du mariage à plus de 400 femmes après leur culte. J'ai dit : Ce que vous faites comme mariage ici c'est zéro. Il faut toujours faire celui à la mairie pour tout couvrir ! (Benida 3:25)

Such a construction of women's legal ignorance is only possible by referring to law only as state law, thereby ignoring the other legal systems – especially customary and religious norms

– that are relevant in women’s everyday lives and in which they are quite knowledgeable, and avoiding the specific challenges posed by legal pluralism. Furthermore, focusing on women’s lack of knowledge avoids to criticise other structural problems that hinder women’s access to the state legal system, thereby perpetuating gender discrimination and the lack of a rule of law as well as of state accountability towards its citizens.

Finally, the persistence of this discourse on women’s legal ignorance is not astonishing in a context, where most governmental and NGO activities are geared towards the acquisition of external donor funds, thus relying on the capability to constantly present the work within a conventional social engineering and developmentalist language and thought frame (cf. also Neubert 1995:150). Nevertheless, the following sub-chapters might demonstrate the holistic approach of several NGOs, which – via the active creation of new female spaces and the opening up towards traditional leaders and customary law – give hope to finally overcome such systems of ignorance.

7.2 Strengthening and engendering civil society: *L’état nous laisse très peu d’espace de manoeuvre, mais ce petit espace nous l’utilisons à cent pourcent*

GF2D avoids to broadcast its political concepts in order not to provoke the regime. It consistently labels its activities as focusing on women and on everyday life, playing on the fact that the government (and the male establishment) feels less threatened by “women’s issues” (cf. Lachenmann 1996a:233, 1997b:198). However, GF2D firmly sticks to its objective³⁸⁷ which combines the empowerment of women with the quest for political participation and the creation of a public sphere as a base for democracy. Although, through its counselling centres and paralegals, GF2D provides important services in the legal domain, it clearly goes beyond mere welfare-oriented service provision. In its everyday program work, GF2D reserves itself to wanting to enhance the respect of the Togolese constitution and civil rights (in the sense of citizen’s rights, political and social rights). As such, GF2D contributes to create a civil society, conceived as a “countervailing power” to the authoritarian state (Schade 2002:44), or to be understood as

³⁸⁷ Cf. chapter 2.3.5.

“a societal utopia of a public sphere, of societal control of power and the permanent negotiation of societal arrangements with the state” (Lachenmann 1997b:189, translated by I.K.³⁸⁸).

A first indicator for GF2D’s commitment to its objective consists of its own internal democratic structure, including the respect of its statutes, the regular holding of a general assembly with free elections of its board members and president as well as the presentation of the treasurer’s report, the transparent advertisement of vacancies and recruitment of its staff members etc. GF2D thus trains its members in democratic structures and serves as a model to other NGOs.

The following paragraphs will present further aspects of GF2D’s work to strengthen and engender civil society, including the introduction of women’s rights to the agenda of other NGOs and associations, thereby strengthening and “upgrading” them; the enforcement of the rights to freedom of speech, press, peaceful assembly and association, providing female spaces for expression and communication; and finally the promotion of female spaces for political participation on local and national levels.

7.2.1 Bringing women’s rights to the agenda of associations and NGOs

The paralegal trainees are preferably selected among those women (and recently also men), who are already socially active and recognized in their communities, in NGOs or associations of all kinds, which also constitute the primary audiences of their paralegal work. This implies that the information on women’s rights and citizen’s rights is passed on to a great variety of civil society organisations, allowing to create synergies.

For example, the paralegal Sophie who is an active member of the women’s commission of the *Confédération Syndicale des Travailleurs du Togo* brought women’s rights to the forefront of the work of this commission among its member unions and professional associations of seamstresses, hair dressers, midwives, resellers of construction material, fishmongers etc. (CSTT26Jan01). Another example is from Sotoboua (Central Region), where the president of a rotating saving and credit association (*Femmes Unies pour le Développement de leur Milieu*³⁸⁹) was trained as a paralegal and now advises its members on women’s rights.

³⁸⁸ The German original reads: [Vielmehr ist Zivilgesellschaft eine] „gesellschaftliche Utopie der Öffentlichkeit, der gesellschaftlichen Kontrolle der Herrschaft und des permanenten Aushandelns von Gestaltungsmöglichkeiten mit dem Staat“ (Lachenmann 1997b:189).

³⁸⁹ This association organised a tontine with weekly contributions going to one of its members in turns. They also save money on a monthly base, which they use to buy cereals during the harvest season,

Other paralegals apply their legal knowledge to their work with religious women's or youth groups, literacy NGOs, farmers' cooperatives and also with other women's rights NGOs. One paralegal used her paralegal qualification to revitalise and reorient the NGO ALAFIA, which had become rather inactive, into a very active, grassroots-oriented NGO that is combining the issues of women's health and women's rights. This renewed NGO has become outstanding for its innovative approaches to address new charismatic churches in the outskirts of Lomé and reactivate traditional modes to change customary law in the countryside (Benida 1:6, 15-16³⁹⁰).

7.2.2 Forming, institutionalising and “up-grading” women's groups

The paralegal training of GF2D also includes a module on the access to credits and the creation of cooperatives (GF2D 1999c). Because many women turned out not to be interested in learning about women's rights, if their pressing economic problems were not addressed at the same time, several paralegals formed small groups of ten to fifteen women, organised literacy classes for them, trained them in bookkeeping and cooperative management, helped them to obtain a field from the village chief for joint cultivation, or to save money and obtain micro-credits for petty trade and other income-generating activities (food stalls, processing of manioc, production of palm oil, pig-husbandry, sheep-breeding etc.). For instance, in Bafilo (Kara Region) 46 women's groups with 781 members from 14 villages were assembled by a paralegal into the *Fédération des Groupements Féminins d'Assoli-Sud*, that serves as saving and credit association. It is at the weekly savings day that the paralegal teaches the women's groups about other legal aspects. Also in Atakpamé (Plateaux Region) a traditional *tontine* was developed by a paralegal into a credit organisation for women's associations (*Od-jougbo*)³⁹¹.

On the one hand, the participating women were enabled to sustain their families, – especially during the agricultural pre-harvest period (*soudure*) when their husbands cannot contribute to the household budget –, to pay the school fees for their children (especially their daughters) and to earn their own money for personal expenses. This economic independence from their husbands increased their self-esteem and empowered them to better negotiate their rights

stock it, and sell it cheaply to their members during the sowing season, when prices elsewhere are high. Furthermore, they collect money when one of their members gets sick or has a bereavement in her family (Mensah-Amendah 1999:3).

³⁹⁰ Cf. chapter 5.1.7.

³⁹¹ Sophie 1:1, Mensah-Amendah (1998a:3-7, 2001:6).

within their personal sphere. In some cases the husbands explicitly welcomed the fact that their wives had started their own business (Ekue 2001:11). On the other hand, some groups reinvested their profits to accumulate larger sums of capital and become eligible for bigger credits, which they use to trade in food staples at a larger scale; other groups used their profits to constitute a cashbox on their own, from which they can get cheaper credits. Thereby they „upgrade“ their business and slowly become independent from the micro-credit schemes with their high interest rates³⁹².

7.2.3 Paralegals acting as conscious citizens

In their training course the paralegals learn basics about family law, penal law, land law etc., but also about the democratic foundations of the state, as laid down in the Constitution of 1992, including the separation of powers, electoral law, citizen's rights, judicial organisation, jurisdictional competence, and the civil register (GF2D 1999c). Apart from serving them in their advisory work, this knowledge enables them, first of all, to claim their own citizen's rights, for instance to acquire an identity card, take part in elections, or file a complaint to court:

La formation m'a donné une multitude d'informations juridiques qui me permettront de mieux assumer mon rôle de citoyen et d'être un partenaire dans la société en matière de vulgarisation du droit. (male paralegal, quoted in C. Akakpo et al. 2001a:14)

At the same time, this knowledge empowers the paralegal women (and recently also men) to demand and seize opportunities of a decentralisation of state power – if such opportunities will be made available in Togo, i.e. if governmental rhetoric and legislation³⁹³ will ever materialise into a visible devolution of power. It also has the potential of laying the base for a critical consciousness among paralegals about the formal democratic outline of the state and the undemocratic everyday realities, a precondition for overcoming the authoritarian mode of governance in Togo. However, this political aspect of the paralegal work is always downplayed by the NGO, as it would endanger both the paralegals and the NGO work.

³⁹² Ekué (2001:11), Mensah-Amendah (2000b:3-9), GF2D (2001a:23).

³⁹³ Cf. the *Loi no. 98-226 du 11 février 1998 portant décentralisation* (Kponton-Akpabie 2001:15) which so far is not put into practice. In 2004 development experts from UNDP and EU started to prepare a decentralisation programme.

7.2.4 The creation of female spaces for political and legal discourse and interaction through journals, conferences and paralegal district networks

The activities of paralegals seem, at first view, to have just an auxiliary role, mediating between state and (especially the female) population and creating rather narrow female spaces. However, at a second view, the systematic build-up of an extensive network of paralegals who are acquiring more and more experience, who are continuously backed-up by qualified supervision and reinforced by complementary training as well as by the creation of forums of exchange – such as the bi-monthly journal *Femme Autrement*, the regional and national paralegal conferences, and the district networks (see below) –, has the potential of turning these “interstices” (Chazan 1989, quoted by Lachenmann 1996a:233) of political power into broader female spaces and thus contribute to restructure the society.

- The journal Femme Autrement

In 1994, GF2D brought the bi-monthly journal *Femme Autrement*³⁹⁴ into being. Its title is programmatic as it calls to see women differently, namely as having rights and not only obligations. Via short presentations, interviews, comics and advice to readers’ questions it informs about legal topics, such as what is a supreme court, a lawyer, a bank, taxes, a national human rights commission, how to get an identity card, details of the penal code and of the family law (civil marriage and divorce, access to pensions, parental authority, child custody, inheritance, children’s rights etc.). This serves to strengthen awareness and information about women’s rights among the public and reinforces the knowledge of paralegals, who are the primary readers of the journal. However, the journal never comments on government politics.

The journal is distributed for free to the legal counselling centres and paralegals, who shall sell it for 50 Francs CFA (now 100 Francs CFA³⁹⁵) to their audiences and keep the money to cover some of their expenses. This system of distribution ensures that the journal is available even in remote areas. On the other hand, it means that its production depends entirely on donor contributions, who thereby contribute indirectly to finance the paralegal services. GF2D nevertheless managed to publish over 40 issues so far, increasing the number of copies from 3000 to 6000 (fieldnotes GF2D-Forum 2001). This exceeds the number of copies of most daily and weekly papers in Togo, including the governmental daily *Togo Presse* (Zodzi/Perrin 2000).

³⁹⁴ See manifold references to articles from *Femme Autrement* in this dissertation, cf. bibliography.

³⁹⁵ In 2003 100 Francs CFA corresponded to 0,15 Euro.

Giving women's perspectives a public voice, the journal focuses on societal questions of gender relations, for example marital budgets, the position of daughters-in-law, youth pregnancies, sexual harassment, girls' schooling, forced and early marriage, repudiation, violence against women, masculinity, child traffic, sexuality and reproductive health, but it also discusses topics like ethnicity or intergenerational communication.

By portraying women from Togo and other African countries in political and societal leadership positions and presenting achievements for women's rights, the journal conveys a non-discriminatory image of women, presents models of female leadership and inspires a sense of sisterhood, i.e. an identification among women via their common legal struggles beyond national boundaries. This serves to strengthen women's self-confidence and to encourage them to take part in political and societal decision making.

The presentations of individual Togolese paralegals (mostly through interviews), of their work, their difficulties and their success stories, provide a link, both among paralegals as well as between paralegals and the population³⁹⁶. The journal also strengthens the link between paralegals and GF2D by informing about the various activities and the associational life of the NGO, such as board elections, new staff, trainings, conferences, campaigns, publications and joint activities with other NGOs within WILDAF. Although paralegals and other readers are invited to contribute articles, reports, and letters to the journal, so far most of the articles are compiled by the editorial team of GF2D. However, the journal has the potential of becoming the mouthpiece of the growing women's rights movement in Togo.

By providing an important source of politically relevant information with a gender perspective and an alternative to the heavily politicised daily and weekly journals, which are constantly harassed by the government, *Femme Autrement* contributes furthermore to enforce the right to freedom of press.

- Paralegal conferences

After having trained 240 paralegals from rural and urban areas all over the country, GF2D organised five regional and one national conference³⁹⁷ of paralegals in the years 2000 and 2001. These served the paralegals to get to know each other better and to discuss their experiences of women's most pressing legal problems as well as the main difficulties, successes and strategies of their own advisory work. They suggested measures to improve their work, such

³⁹⁶ The audience of the journal includes not only literate women (and men) but also illiterate ones, as the articles are used and explained by the paralegals during their information campaigns.

³⁹⁷ For the national forum of paralegal advisors see photo 9 in the annex A7.

as to target more often also the male population in their activities, a more intense supervision and complementary training by GF2D, the training of male paralegals, the introduction of badges distinguishing them as trained paralegals, the opening of more legal counselling centres and the creation of rural radio stations. A further step towards their professionalisation was the development of a “statute of the paralegal” to enhance their legitimacy in the eyes of the population and public authorities – especially male adversaries –, and the formation of paralegal networks at the district level. They formulated recommendations to the state to disseminate and popularise the Family Code, to improve schooling and vocational training for girls, to enhance women’s access to credits, and to enhance transportation infrastructure in remote areas. Most of all, by organising and participating in these conferences, GF2D and the paralegals claim and strengthen the constitutional right to freedom of assembly, which – together with public space – is a precondition for the functioning of a civil society (Anheier et al. 2000:74, cited in Schade 2002:33).

- Paralegal district networks

The paralegal district networks (*réseaux préfectoraux de parajuristes*) are meant to facilitate team work and cooperation among paralegals for joint legal campaigns, exchange of information as well as the outreach to remote areas. They shall also enable the paralegals to exert more pressure on administrative and legal services, for instance when demanding to handle or resolve a certain case. For instance, the paralegals of the Ogou district near Atakpamé organised a joint campaign against under-age and forced marriage, which constitutes a pressing problem in that area (field notes Ountivo 20.9.2001); the paralegals of the Kloto district around Kpalimé jointly collected demands for identity papers and submitted them to the registry officials as well as some to the judge of the state court in Kpalimé for a retrospective issuing (*jugement supplétif*) of birth certificates or missing documents³⁹⁸ (Benida 2). Some paralegals use their district network also as a saving and consumer association in order to recover the expenses for transport and communication, caused by their voluntary advisory work (GF2D 2001a).

These three activities (conferences, district networks, journal) increased the participants’ identification with the paralegal approach. The experience of being confronted with similar problems within their families as well as in their paralegal work, of covering a wide societal spectrum among themselves, and of being able to formulate common claims towards GF2D as

³⁹⁸ Such activities to inform women about identity papers and support them in their acquisition are also undertaken by other women’s rights NGOs in Togo.

well as towards the government enhanced their self-confidence. Moreover, this experience is likely to increase their consciousness about the political dimension of their work for the change of societal gender relations. The described activities also serve to improve their standing towards state and customary legal authorities and the society in general, so that they are taken more serious (GF2D-Forum 2001). Finally, these activities provide new public spaces for women to discuss their needs, develop their own visions for social change – including of the gender order in institutions and societal structures – and formulate their claims, i.e. for women’s political expression as well as for democratic communication – a central concern of the idea of civil society (cf. Habermas 1992:443) which was also explicitly formulated at the Beijing world conference of women in 1995 (cf. Lachenmann 2004:322-323, 1995b:6-7).

7.2.5 *Homme ou femme, la vie de la nation, c’est mon affaire* – Promoting women’s participation in political decision-making

In order to tackle more specifically women’s participation in political decision-making, GF2D published an illustrated booklet (titled *Homme ou femme, la vie de la nation, c’est mon affaire*) and a series of posters³⁹⁹, both media dealing with civil, political and citizen’s rights as well as the procedures of democratic elections (GF2D 1997).

In their preface and introduction, the editors specify that to attain a democratic state of law, envisaged in Togo since the 1990s, all citizens have to participate in the management of the public sphere. Therefore, they need to be informed about their rights and obligations, which are protected by the Togolese Constitution and by the international human rights treaties that Togo has ratified. Such knowledge would also protect them from running into conflict with the state and being abused by the power holders. However, women are so far mostly excluded, neither asked their opinion nor given a chance to express their voice. Hardly any women are heads of families, village development committee members, traditional chiefs, mayors, district officers, deputies to the national assembly, or represented in any other institutions where decisions for the people are taken – and only few women and men find this to be an abnormal situation. They rather take women’s exclusion for granted and accept the resulting injustices. Therefore, this civil education project aimed especially at training women about citizenship, raising their interest for the public sphere and their engagement to take over public responsibilities. It also addressed men, who as well need information and whose solidarity is regarded necessary to promote women (GF2D 1997:4-6).

³⁹⁹ For the posters see photo 10 in annex A7.

The booklet explains, among other things, that political communication – for instance via elections or during campaigning – is supposed to be peaceful communication, for which only legal methods are allowed (GF2D 1997: 68-70, 96-98). It thus teaches basics about civil society and its interaction with the state.

This booklet was then used to train 265 *animateurs et animatrices d'éducation civique* in preparation for the presidential elections of 1998. The work of these men and women was subsequently accompanied and evaluated. Unfortunately but not surprisingly, this activity was misunderstood by the government as a political campaign of the opposition. Several paralegals and civil educators were called to the gendarmerie and intimidated. But the evaluation results from the field were very positive and the trainees contributed to considerably increase the participation of the population in the elections. This notwithstanding, the president declared himself to be the winner of the elections, which were neither free nor democratic. Therefore, GF2D is determined to continue with such approaches, while at the same time trying to better protect the paralegals, especially of the more problematic districts (GF2D 2001b:5, field notes GF2D Forum 2001).

7.2.6 The political is private: Promoting women's decision making at the family and community level and linking gender to democracy

With the same purpose of increasing female political decision making, but with a focus on the community and family level, GF2D held other types of training workshops: Since 1999 they qualify social workers and paralegal advisors to sensitize local development committees (CVD⁴⁰⁰) on the participation of women in political decision making. GF2D thereby goes far beyond African discourses at the international NGO forum in Huairou (1995) which focused on women's participation in political parties and at the governmental level, without addressing the local level (Lachenmann 1995b:19).

The project started again from the observation that women are mostly excluded from local level politics, be it from the traditional leadership (chiefs and their advisors) or from village development committees. They are not associated when discussing development priorities and planning projects in cooperation with administrative and political authorities or with donors,

⁴⁰⁰ These *Comités Villageois de Développement* are community structures, composed of elected village representatives. They are supposed to elaborate community development projects in association with the public authorities and donor organisations (Komlan 1999b:3). However, their composition is often manipulated by the RPT, reason why they often lack legitimacy in the population and are not always operational.

but once decisions have been taken, they are called to invest their time and energy to execute the projects. However, as they had not been consulted before, women do not identify themselves with the activities, which often run counter to their own priorities, and many of the projects fail to achieve their objectives. This exclusion of women starts already at the family level, and is upheld by biases, stereotypes and discriminatory attitudes against women (Koman 1999b:3).

The training module therefore discusses the constitutional foundation of the rights of both men and women to free association, free opinion, participation in the public community life as well as the right to work, and their confirmation by international and African human rights treaties. This introduction concludes:

Comme on peut le constater, les libertés d'association, d'expression et de participation à la vie publique ne relèvent pas du bon vouloir des autorités du village, de la préfecture, de la région ou même du pays. Ce sont des droits, des prérogatives reconnus aux hommes et aux femmes sur le plan du monde entier. L'exercice de ces droits, en particulier par les femmes, n'est pas soumis au bon vouloir des hommes (frères, maris, oncles ou autres parents). (GF2D 1999a:4)

It goes on to present the national laws regarding the equal rights of husband and wife to manage the family life and educate their children. Then, it deals specifically with women's right to elect their representatives to the local development committees and to become active committee members, and specifies the importance that women also occupy positions of responsibility and decision making power within the committees:

Cette représentation [des femmes au sein des CVD] doit également être de qualité pour que les femmes n'aillent pas faire de la figuration aux côtés des hommes. Il s'agit pour les femmes ne pas d'être membres des CVD pour la forme, mais d'apporter leur contribution, leurs expériences et leurs capacités à la construction du village. Il s'agit d'être partenaires avec les hommes au niveau des prises de décisions pour s'assurer que les préoccupations propres aux femmes sont prises en compte. (GF2D 1999a:7)

Finally, it discusses the difficulties for women CVD members to actively participate, lying in the discriminatory "habitus" of both men and women, and touches upon measures to counteract these:

Ce sont parfois les heures de réunions qui ne tiennent pas compte de la disponibilité des femmes. Il peut s'agir des attitudes des hommes présents à la réunion intimidant les femmes ouvertement ou de manière voilée. Souvent on « oublie » de donner la parole aux femmes ou alors on parle en leur nom, ce qui les contraint à souscrire, malgré elles, aux idées avancées par les hommes. Il faut avoir à l'idée que les femmes, du fait de la tradition, ne sont pas habituées à exposer leurs idées publiquement en présence des hommes. Il faut donc les encourager, pas d'une manière paternaliste mais tout simplement en utilisant des techniques de communication. (GF2D 1999a:8)

Thereby two messages are conveyed: Firstly, that the villagers themselves (both men and women) have the right to decide upon their community development, which includes the negotiation of diverging interests and priorities within the community. This right cannot be replaced by the designation of committee members by the government (which often takes place). Secondly, that women have also the right to manage family life, including the education of children, budget contributions, decisions concerning their own life and that of their husband, in partnership with him. This counters the prevalent concept of women's inferiority in relation to their husbands, mirrored in the *Ewe* proverb:

Eta me no anyi eklo do na kuku o. (One cannot let a hat be worn by the knee, as long as the head is there, i.e. as long as a man is present a woman has nothing to say.)

The double strength and transformative capacity of this approach lies, on the one hand, in linking women's political participation at the family level with their participation at communal and society levels – i.e. opposing the western imported ideology of a separation of an allegedly male public sphere from an allegedly female private sphere (Baerends 1994:16). On the other hand, it establishes the link between gender equality and democracy.

The trained social workers and paralegals from the first training workshop sensitized, for their part, the CVD-members of 135 villages in the Lacs and Vo districts in south-eastern Togo (GF2D 2001b:6). As the feedback from both the trainees and the committees was very positive, the activity was subsequently repeated in many other districts⁴⁰¹. However, as changes in gender attitudes take time, a sustainable impact can only be expected if the training workshops are repeated or other impulses in the same direction are continuously given.

7.3 Making traditional authorities and state structures accountable to women's rights

7.3.1 Initiating new societal dynamics by training male and female traditional leaders on women's rights

Nous vivons une révolution culturelle. Il ne s'agit pas de dire que nous copions les blancs. Le monde évolue et nous n'avons plus le même regard sur les choses. Ceci est un phénomène mondial. Nous devons savoir que la tradition est dynamique et évolutive. Il nous appartient d'harmoniser les choses. (Mensah-Amendah 2001:6)

⁴⁰¹ As compared to the above mentioned difficulties of training *animateurs* on citizen's rights and election procedures and the failure of sensitising women political party members, the training of CVDs seems to have raised less suspicion, probably because the village level is accorded less attention by the RPT power holders. Furthermore, the CVD-members often lack orientation in their task and are grateful for any training at all.

Est-ce parce qu'une coutume est africaine qu'il faut, par conservatisme, par chauvinisme, la garder ? Une coutume peut être conservée, si aujourd'hui nous la considérons comme bonne et positive, si elle nous fait du bien. Dans le cas contraire il faut avoir [...] le courage de la rejeter. Il ne s'agit pas d'idéaliser le passé ni d'idolâtrer la tradition. Le passé était le présent de nos ancêtres qui ont trouvé des solutions aux problèmes auxquels ils étaient confrontés. Ils nous faut nous aussi, maintenant, trouver des solutions aux problèmes de notre monde, de notre temps, qui ne sont plus les leurs. La tradition n'est pas statique mais dynamique et évolutive. C'est d'ailleurs la condition de sa survie. (C. Akakpo et al. 1999a:1)

These programmatic statements of Togolese women's rights activists point to a recent change in attitudes within many African women's rights organisations: For a long time, they tried to downplay or completely ignore traditional or customary law as well as the respective legal institutions – which are perceived as both extremely male-biased and retrograde⁴⁰² –, and focused on improving and enforcing the state law and “modern” institutions alone. At best, they informed traditional leaders on women's rights within the state law. In Togo, such information seminars for traditional chiefs were organised, for instance, by the NGO *La Colombe*. Recently, however, the NGOs GF2D and ALAFIA started to approach traditional leaders as important change agents who can reform the traditional law towards more gender equality. This turn was based on the realization that traditional law remains a reference point to most parts of the population that has to be taken at least as serious as the state law.⁴⁰³

GF2D trained a „queen mother“ (in 1999) as well as a cantonal chief and several chief's secretaries (in 2001) as paralegals on women's rights. In the Kloto district this unfolded a completely new dynamic:

These new paralegals were not only able to quite efficiently use their new knowledge to help individual clients seeking legal advice, as they had already long-term relations with judges, the state prosecutor, the district officer, gendarmerie, priests and pastors in their villages and district (field notes Kpalimé 17.9.2001). But, in 2003, they organized a big ceremony to officially authorize the ongoing process of questioning local gendered norms of inheritance and widowhood to the benefit of women (cf. chapter 5.1.7). By taking customary norms in the

⁴⁰² This attitude was in line with the international feminist and women's NGO movement. The NGO-forum in Huairou/Beijing, preceding and accompanying the Beijing conference in 1995, was marked by an “undifferentiated, virtually sensation-seeking rejection of tradition, which was depicted as discriminating women” (Lachenmann 1995b:11, translated by I.K.) in line with the rejection of any collective rights, which were immediately perceived as questioning individual women's rights as human rights (Lachenmann 1995b:13).

⁴⁰³ This new openness towards including traditional norms in the work for women's rights is shared by other actors throughout West Africa, as became visible during debates at the international conference on *Women's access to legal services in Sub-Saharan Africa*, held in Lomé in November 2000 (www.wildaf-ao.org).

original dynamic sense as “living law”, i.e. as flexible and evolving norms, they opened opportunities to change the frequently claimed role of tradition from hindering into serving women’s rights (cf. Schaefer 1999:303, 306). Furthermore, the ceremony itself served as another “contestation ground” (Pfaff-Czarnecka 2002:119) to question the gender division of power within the chieftaincy: It was not the chief but the queen mother who – through her engagement in two capital-based NGOs – acquired the money to finance this big event and raised the attention of the district administration and the traditional leaders of district, who sent representatives to attend the event, in which, however, the chieftaincy as such was confirmed as ordering power at the local societal level⁴⁰⁴.

The training of traditional leaders as paralegals encouraged, furthermore, the paralegal “queen mother” to use her traditional status and paralegal experience to create a “queen mothers” association, called *Association des Reines Mères du Kloto*, which includes the 34 “queen mothers” of her district (Nyony Fia 1:3). This is the first female association based on neo-traditional legitimacy in Togo⁴⁰⁵. Its creation might have been inspired by the *Queenmothers’ Association* of Ghana, which was founded in 1994 (Ch. Mueller 2002: 123-128, 138). Similar to this sister organisation across the national border, the foundation of the “queen mothers’ association” in Togo was motivated – among other things – by the desire to end the exclusion of the female traditional leaders from major village and national politics as well as from governmental resources, i.e. to end their limitation to female social affairs at the village level by the male chiefs⁴⁰⁶. According to one of the advisors of a „queen mother“, the chiefs used to include their female counterparts only when there was community work to do, for instance to clean the cemetery or prepare a festivity. But if the chiefs were invited to RPT-meetings, where often money is distributed (in order to motivate the chiefs to engage in political propa-

⁴⁰⁴ On the other hand, one has to bear in mind that in Togo traditional leaders are enthroned by following partly traditional lines of succession, partly political loyalty to the highly undemocratic and centralized regime of president Eyadema. As such they often lack both social and democratic legitimacy. It remains to be questioned whether the strengthening of their authority through such a ceremony is helpful in the ongoing struggle for democracy and decentralization in Togo.

⁴⁰⁵ It will also remain the only association of this type, as the institution of „queen mother“ only exists in this district of Togo, whereas the Queenmothers’ Association in Ghana covers all but the northern regions and districts (Ch. Mueller 2002:139). Associations of (male) chiefs have existed for a long time in Togo, although not covering the whole country. However, they were mostly created by the regime in order to enhance its control over the chiefs and be able to better use them for political campaigns. Examples are the *Regroupement des Chefs du Kloto*, *Regroupement des Chefs du Nord Togo*, *Regroupement des Chefs de la Kozah* (Christophe 8:2).

⁴⁰⁶ However, as the traditional chiefs in Togo were much more suppressed, both by the colonizers and after independence, than their Ghanaian colleagues (cf. Rouveroy van Nieuwaal 2000:44-45), also the female traditional leaders never achieved a standing and importance in Togo similar to the Ghanaian „queen mothers“.

ganda for the president and his party), they excluded the women. They also used to hide information obtained in such meetings, for instance on new women's rights in the Family Code, from the female leaders, thus conserving male privileges (Justine 1:10).

The first activity of this association was to harmonize the unwritten customary norms for "appropriate behaviour of women" in their villages, as a base for the „queen mothers“ judgments of transgressions. By this formalisation they created a kind of shared expert knowledge among themselves, likely to add legitimacy and weight to their judgments in women's affairs as well as to their role as important mediators at the village level.

Then, the association organised a training of their members in income-generating activities, book-keeping and statutory women's rights. For that purpose, the „queen mother“ made use of her paralegal knowledge and connections to other paralegals and women's rights NGOs. The participating „queen mothers“ are expected to transfer the acquired knowledge to the women of their villages to empower them in the economic and socio-legal field (Nyonufia 1:3, 8, Benida 2). It remains to be seen, whether they use their new knowledge to enhance their status by either passing it on to the women in their village, or by monopolising it in an effort to reinforce their expert status⁴⁰⁷. These training activities are likely to change the interest of the „queen mothers“ from "female issues" to questions of gender relations. It might also enable them to enlarge women's room for manoeuvre within local traditional law, by initiating further changes in the latter, like the ones concerning daughter's inheritance and widowhood ceremonies presented in chapter 5.1.7.

As to its political impact, it is to be expected that the foundation of this formal association improves the position of women from the local traditional leadership in negotiating with the male chiefs at the village and cantonal level, as well as with politicians at the national level. For instance, the association wrote a letter to the deputy of their district in the national assembly, asking him to spend more money on women's priorities in local development⁴⁰⁸ (Justine 1:5-6, 33). Moreover, through its paralegal president the association provides a bridge to other women's NGOs, such as GF2D and ALAFIA, i.e. to civil society and thus to a different level of information and knowledge flows, as well as to donor organisations and develop-

⁴⁰⁷ One „queen mother“'s speaker told me that, a couple of months ago, all the „queen mothers“ of the Klouto area founded an association. She got the wind of that meeting but was only informed by her „queen mother“ after the meeting had already taken place, with the excuse that there had not been enough money to pay for the transport of all of the „queen mother“'s speakers. She suspected the real motives to be to exclude the speakers from the possible social and economic benefits of such an organization. But she reacted in the expected submissive way towards her „queen mother“ and pretended complete ignorance of the matter: *Alors moi, je me tais, je ne dis rien, je l'écoute seulement.*

⁴⁰⁸ So far, he had mainly sponsored a professional football pitch in one of the villages (Justine 1:7).

ment aid⁴⁰⁹. The coming years will show in how far this association will be able to use its strategic position between traditional leadership, civil society and the state to improve the enforcement of women's rights in everyday life.

One interesting step has already occurred: In 2003 the paralegal „queen mother“ has been appointed member of the municipal council of Kpalimé. Her appointment might be owed to three factors: Firstly, that she is known and respected by the population, due to her activities as paralegal and president of the „queen mother“'s association. Secondly that, in 2000, the prime minister had promised to the two thousand women, demonstrating in Lomé in the context of the World March of Women, to increase the number of women in district and municipal councils (cf. chapter 2.3.6). Thirdly, she might entertain good connections to the RPT. Although the municipal council is not legitimated by democratic elections, the appointment of the „queen mother“ is still an achievement for women's participation in political decision making.

7.3.2 Constituting a public eye on state legal and administrative practices without becoming co-opted by the state

In order to be able to efficiently help the advice seeking women, the paralegals try to build up and nurture good contacts with both traditional and state authorities. By regularly referring cases to them and keeping an eye on how they are dealt with, they make the authorities more aware of women's concerns and more used to deal with women's legal interests without deflecting from the law.

At the same time, the paralegals can rely on a parallel reference system, which is connecting them to their colleagues in counselling centres and to the NGO (GF2D) with its web of cooperative lawyers, its well established contacts to several judges, police officers, medical doctors, registry assistants and many other legal and administrative services, as well as its good reputation among international donor organisations. This whole network permits the legal counselling centres to find for most cases amicable solutions or, at least, ones that allow the woman to make maximum use of the law without paying too much money⁴¹⁰.

This reference system protects the paralegals from becoming co-opted and exploited by the state and having to compromise with problems of administrative delay, corrupt middlemen

⁴⁰⁹ Similar efforts of networking and fund raising were observed for the Ghanaian *Queenmothers' Association* by Ch. Mueller (2002: 138-141)

⁴¹⁰ Cf. Sophie 1:3, Christophe 1:1-2, GF2D (1999b:18, 2001b:6).

etc. It enables them to do independent advocacy for women's rights and thus to contribute to build up a female public sphere.

7.3.3 Capacity building among registry assistants to ensure women's access to identity papers as a basis for their social, economic, political and citizen's rights

A notre retour de la formation comme parajuristes, [nous nous sommes rendus compte] qu'il y avait dans les familles de sérieux problèmes à cause de la non-conformité des actes d'état civil : Des enfants de même père ont des noms différents sur leur acte de naissance. Cela engendre d'énormes difficultés lorsqu'on veut établir des certificats de nationalité, lorsque les veuves constituent des dossiers pour percevoir les pensions de veuvage ou pour les enfants qui devraient bénéficier de pension d'orphelins. Les femmes finissent par se décourager devant autant de problèmes. (paralegal from Kara, interviewed by Komlan 1996:7)

This citation points to a simple but serious structural problem for women's rights in Togo: In many urban and rural areas of Togo, the registry assistants (*agents d'état civil*) are not trained, have neither the legal texts nor adequate forms to correctly do their job, and are not remunerated in any adequate way. Therefore they charge extra fees for their services, which turns them unaffordable. These difficulties hinder the population, and especially women, to obtain correct identity cards – or any identity papers at all⁴¹¹ –, such as birth certificates, necessary in order to benefit from state services such as schooling, family allocations or pensions, to lawfully pass the border or to obtain polling cards and thus become politically active⁴¹².

In 1996, the paralegals of the northern town of Kara took the initiative, with the help of the president of the state court of Kara, to organise a training of the local registry assistants, who are responsible to register births and deaths and to celebrate civil marriages. The positive feedback from the trainees, as well as the awareness of the strategic role of correct registry services for all other domains of women's rights, inspired GF2D to organise, in 2003, a similar training workshops for the 191 registry aids of the Savannah and Central Regions, among whom are only few women.

The workshops were based on GF2D-training modules about marriage, descent, inheritance, birth and death certificates, the registry system as well as information and communication techniques, and included many practical exercises. The trainers worked out improved registry

⁴¹¹ Reportedly, nine out of ten women in Togo do not possess an identity card. For the numerous tradeswomen who engage in cross-border trade this means that they are forced to bribe their way across the borders (MMFT 2000). Further difficulties for women, resulting from the lack of observation of the law during marriages at the registry offices, were evoked in chapter 4.1.

⁴¹² Cf. Dadjo et al. (2000:1), Centre d'Ecoute d'Atakpamé (2000:2).

forms (respectively registry booklets), which were discussed and tested by the trainees. The latter were equipped with the text of the Family Code (CPF), with easy-to-understand reference sheets and wall posters depicting the correct registry procedures. Preceding the training, the district officers, mayors, and responsible officials from the department of social affairs were invited to a preparatory workshop. Conscious of the poor performance in the registry offices, they fully supported the initiative. Some district officers from the *Région des Savannes* in northern Togo admitted that even they themselves had never “celebrated” a marriage in due form, i.e. in the presence of both spouses. They had thought that their task was just to deliver a paper, that is the marriage certificate, but they had never understood the legal scope of their work (Christophe 7:1-6).

In 2004, GF2D plans to visit the trained registry assistants and evaluate their activity. Its impact will also be directly recognizable by paralegals, as they are helping many women to acquire identity papers. After the evaluation trips, the responsible ministries (of planning, the interior, health, women’s advancement) and departments (of statistics etc.), the district officers and mayors of the two regions, as well as other women’s rights NGOs and donor organisations (such as UNICEF⁴¹³) will be invited for a final seminar. This will serve to share the experience and evaluation results, and especially, to discuss the necessary improvements in the training and supervision policy and practice at ministerial, district and municipal levels. It will also be an occasion to explain again the significance of a functioning registry system for statutory rights to become a reality for the bulk of the population, not least for women, in a nation state. It is hoped that the reflection, stimulated by these activities, will contribute to improve the internal (horizontal as well as vertical) communication of the administration and make the state structures more accountable to women’s rights (Christophe 7:6-9).

7.3.4 Training judicial and extra-judicial stakeholders on gender, women’s rights and the application of international human rights standards

Many women’s rights NGOs in Togo are fully aware of the great need to supplement their legal information and advisory work by initiating structural changes on a larger scale. The need for such changes is especially seen as to discriminatory bureaucratic, administrative and legal practices of certain male key actors in society, who are daily confronted with conflicts, in

⁴¹³ UNICEF recently also engaged in training registry assistants, but only on how to issue birth certificates and without explaining the legal importance of that simple bureaucratic act (Christophe 7:8-9).

which women's rights are violated, and who would have the moral or executive power to efficiently protect women from such abuses.⁴¹⁴

Therefore, in 2002, WILDAF-Togo, with the support of WILDAF-West Africa⁴¹⁵, launched a large-scale "capacity building programme for judicial and extra-judicial stakeholders for the effective implementation of women's rights". It consisted of two awareness-raising workshop of three days each, one for 35 traditional and religious authorities and one for 30 medical doctors; furthermore, of two training workshops of five days each, one for 30 officers of the police and gendarmerie and another one for 36 judges and 27 lawyers. The trainees came from all districts of the country. For each group specific training objectives – adapted to their respective needs – were formulated, specific contents taught, and the training impact was separately ascertained. They will be presented in the following paragraphs separately for each group, referring to the evaluation study of Komlan (2003a:5-38)⁴¹⁶:

The traditional and religious authorities were sensitized to enhance the status of women in places of worship and customary courts, encourage the population to marry at the registry office, propagate men's roles and responsibilities in the family and do impartial mediations of family conflicts. The evaluation showed that the trainees had most frequently to handle problems of inheritance, marital conflicts, violence against women and witchcraft accusations. It brought up several concrete examples of very innovative decisions and judgements to better protect women's rights: In a village in the Maritime Region, the chief included for the first time two women as advisors, responsible for marital affairs and "female issues", in his normally male-only court. Furthermore, his court condemned a husband who repudiated his wife in order to marry another woman. In a village in the northern Kara Region, a husband was warned by the customary court of spiritual sanctions if he did not end his extra-marital affair. In a case of domestic violence, a man was condemned to pay compensation to his wife and to publicly present his excuses to her. Also, a new norm was passed to dissuade, with efficient penalties, the abduction of girls. A woman was allowed to inherit commercial land from her mother, whereas previously in that area women had only been accorded user rights to land.

⁴¹⁴ GF2D, for instance, demands an inter-ministerial working group to end discriminatory (and corrupt) administrative practices (GF2D 1995:45).

⁴¹⁵ WILDAF-West Africa supported similar training workshops in six other West African countries. Taken together, 1890 traditional rulers, 1850 medical doctors, 1040 police officers and 1590 judges and lawyers were sensitized, making a total of about 6300 stakeholders, who are now expected to integrate women's rights in the performance of their daily duties (WILDAF-West Africa 2003:4).

⁴¹⁶ This evaluation took place in November 2003, i.e. over 12 month after the training workshops. It consisted of the analysis of traditional and state court decisions, lawyers' files, medical certificates and police reports. This was followed by 50 semi-structured interviews with training participants, i.e. 10 per professional category (Komlan 2003a:3-4).

These decisions were generally approved by the communities concerned. Asked for the basis for these judgements, the chiefs referred to customary law, state law and international human rights.

The medical doctors were sensitized to systematically issue medical certificates to women victims of violence, objectively assess the duration of the victim's inability to work, professionally attend to such women, prescribe them a medical and psychological follow-up for a period of one month to two years, and constitute a medical file for each of them. In the year after the training, the practitioners regularly received cases of violence, especially of rape of minor girls, mostly committed by a neighbour or relative, in some cases by a teacher. The evaluation showed that the practitioners now attend to these women in a more professional way.

The officers of the police and gendarmerie were trained on gender issues in conflict resolution, the systematic registry of cases reported by women, the stricter application of law and legal procedures in their work, the request of medical help to evaluate the damages of the victim, and the immediate transferral of their protocols to the judicial authorities, independently of the complainants' position. It is this last point, which seems not to be put into practice the way desired by the trainers. Even after the training, the policemen prefer to intimidate the perpetrator of the violence (through temporary detention, release upon reimbursement of the victim's medical expenses) to reporting the case to court – especially if the victim is against it. The latter is often the case, if she depends on the perpetrator's income or is otherwise afraid of family retributions if she dares to sue a relative in court.

The lawyers and judges (both of civil and penal courts) were sensitized in gender issues, in the need to rigorously and without delay apply the law to protect women's rights (instead of deflecting it to protect male privileges), and – in case of discriminatory laws – to circumvent them by referring to international human rights conventions, such as CEDAW⁴¹⁷; in cases of violence, to pay attention to the police protocols, to evaluate the victim's damage, to systematically pay a caution to the victim to enable her to receive medical treatment; in divorce cases, to take women's contribution to the household expenses into account.

⁴¹⁷ For instance, in the case of daughters' exclusion from inheritance on the base of custom (cf. chapter 3), it is possible to refer to CEDAW in order to show that this exclusion harms the principle of equality, and that therefore the art. 391 CPF shall not be applied. As a consequence, the subsequent chapter of the CPF on inheritance, which provides for equality among descendants (art. 413 CPF), is validated (Christophe 8:5).

The evaluation demonstrated for several cases of violence against women and of claims for child maintenance against ex-husbands, that – as a consequence of the training – these cases are treated with more care and following more rigorously the law. In one case, the judge accorded to the wife of a mentally sick man the right of disposal over his bank accounts up to a certain amount, thereby following the law, instead of according it to the man’s uncle, which used to be the common court practice. In a second case, the judge contested a division of an inheritance on the grounds that it did not respect international norms of gender equality among inheritors. In a third case, the judge accorded the administration of an inheritance to the widow.⁴¹⁸

But the evaluation highlighted also cases, in which the trainees had not yet applied their new expertise: For instance, one judge refused the compensation claim of a divorcing woman against her husband, who had forced her, years ago, to give up her profession of a seamstress in order to accompany him in his professional life as a pastor. Through this obligation she had become economically dependent on him and found herself now, with the divorce, in a fragile economic situation. Another judge accorded the wife of a mentally sick man provisional guardianship over her children, albeit the law would give her automatically the right to assume full guardianship. It was also observed that in cases of violence against women judges often agree to drop criminal proceedings against the perpetrator, if he or his family agree to pay a compensation to the victim. This way the victim is financially compensated, while in case of criminal proceedings she would never see any money from him. Also in other cases, judges are not only called in to solve conflicts in court, but also to act as powerful mediators outside the court.

Concerning the lawyers, they were mostly solicited by women for cases of violence and inheritance disputes, but rarely for other family law cases. This is explained by their high fees. Lawyers are also restrained to accept claims from women who are not married at the registry office, as they are more difficult to defend. The evaluation showed that lawyers are still more hesitant to refer to international human rights in order to protect women against discriminatory national law.

Although this was just a first step, which needs and will certainly be repeated, the project was a success. First of all, the fact that these different stakeholders were trained at the same time on similar issues promises to produce synergies: For instance, in cases of violence against women, policemen will more systematically demand medical certificates, medical doctors

⁴¹⁸ Other positive changes in court practices were already mentioned in chapter 5.3.4.

will take the habit of issuing them, judges and lawyers will take them more serious when defending or judging the women's cases etc. Secondly, since the training some judges refer to international norms in their judgements in order to circumvent discriminatory national law. This is capable of calling in even a new era in legal practices concerning women's rights in Togo, especially women's inheritance rights, because the first judgements, which refuted the exclusion of women from rural inheritance by referring to CEDAW, have been confirmed by the Court of Appeal, thereby establishing historical precedents (Christophe 8:6).

7.4 Lobbying for law reforms on the national and international level

7.4.1 *Les femmes veulent monter sur les hommes* – The revision of the Family Code in the clutches of politics

The Togolese Family Code (CPF) of 1980 was a great achievement for women's rights at the time. Nevertheless, it contains many provisions that pay tribute to customary norms, but either never corresponded or do not correspond any more to everyday needs and realities in Togo. Furthermore, they were contradicted by the principle of gender equality anchored in the new Constitution of 1992 as well as in several international human rights conventions, ratified by the Togolese government.

The demands for a revision of the Family Code probably go back to when it was adopted in 1980. However, they were formulated more and more vigorously in public, especially since the so-called "democratic transition" of 1990 to 1993. For instance, in 1995 GF2D published a "white paper" on women in Togo, listing a whole series of discriminatory laws and practices, pointing to the fact that they violate the constitutional principle of equality, and explicitly demanding the revision of the Family Code (GF2D 1995:10-35, 44-45). In 1996, the paralegal trainees of the *Ligue Togolaise des Droits de la Femme (LTDF)*⁴¹⁹ formulated the recommendation to revise discriminatory legislation, especially concerning women's access to inheritance and credit as well as their protection from degrading widowhood ceremonies, forced marriage and female genital mutilation (LTDF 1996).

In 1997 the Ministry for the Advancement of Women and Social Affairs drafted a *National Policy for the Advancement of Women*. This document recognizes the need to eliminate legal discriminations against women in order to enforce the constitutional principle of equality, and to harmonise national law with international treaties and conventions. Consequently, the im-

⁴¹⁹ For more information on that NGO, see chapter 2.3.5.

provement of women's legal status is explicitly stated as objective and the revision of the national legislation is foreseen as appropriate measure (Rép. Togolaise 1997:37-40). However, the government did not follow the technical expertise of this ministry and postponed the adoption of this policy document innumerable times "til kingdom come".

Subsequently, initiative was taken by LTDF. In 1998, this pro-government NGO organised a conference with 50 participants – among them ministerial officials, district officers, mayors, traditional chiefs, members of women's NGOs and lawyers. During three days they discussed and confirmed, improved, or rejected a series of suggestions – elaborated by a team of experts – to revise 24 discriminatory articles of the Family Code of 1980⁴²⁰, the Social Security Decree of 1973⁴²¹ and the Law on Nationality of 1978⁴²². For instance, the participants decided to reject the possibility of the husband to forbid his wife to work outside the household, if he estimates this to be against the interest of the family (art. 109 CPF). They were also in favour of changing the famous article 391 CPF, by making the choice for customary inheritance the exception, to be explicitly stated by the testator, instead of the rule. However, they were not in favour of changing article 101 CPF to withdraw from the husband the privileges of being automatically the *chef de famille* (LTDF 1998:12-16).

After this conference, the Ministry declared its intention to submit in the near future a draft bill, titled *Loi portant toutes les discriminations à l'égard des femmes*. It also organised workshops with their regional and district departments to inform them about CEDAW and convince them to support the revision of the Family Code. Furthermore, with financial support from the World Bank it carried out a study on court decisions in Togo concerning women⁴²³, in order to substantiate their demand for a revision⁴²⁴.

As this political declaration of intent did not bear any visible fruits, a group of women's NGOs brought the topic up in 2000, this time within the context of the World March of Women. Again, the government reacted positively, promising to revise at least the stipulations on inheritance and widowhood of the Family Code.

⁴²⁰ Art. 43, 53, 58, 101, 109, 138, 142, 242, 243, 246, 249, 251, 271, 349, 391 and 397 of the CPF (LTDF 1998:12-14).

⁴²¹ Art. 27, 29, 41, 52 of the social Security Decree and art. 27 of the *Loi 91-II du 28 Mai 1991* on pensions of public officials (LTDF 1998:13, 15-16).

⁴²² Art. 3, 4, 23 of the Law on Nationality (LTDF 1998:15).

⁴²³ This study took several judges by surprise who had to admit that – as nobody had ever been interested in their work – they had never kept a systematic register, but will do so from now on (Latif 5:1).

⁴²⁴ Cf. Latif 3:2, 5:1, Tchagnao/ Hohoueto (2000), Kipfer (1999:2).

Finally in 2001, after many years of joint NGO and donor pressure, the government put the reform of the Family Code on its agenda and created a *Comité de révision du Code des Personnes et de la Famille*, to be launched on the 8th of March 2001 as Togolese highlight of the International Women's Day. The composition of this committee had been set up by the Ministry for the Advancement of Women and included about 25 governmental and non-governmental experts in the domain of women's rights (from women's NGOs, unions, religious organisations etc.) as well as some parliamentarians (Miriam 1:1). These experts had been selected according to technical criteria and without taking account of their party affiliation. This mirrored the stance of the Ministry that the revision of the Family Code is not a question of political orientation but based on a broad societal consensus.

However, one day before the official appointment of this committee, the male group of close supporters of president Eyadema intervened and told him: *Les femmes veulent monter sur les hommes*. What transpires from this formulation is clearly the fear of men to lose their gender privileges. Unfortunately, it was combined here with a fierce fight against the political opposition who is demanding the rule of law, i.e. the gender question was instrumentalised by party politics, which resulted in blocking legal change. This warning was allegedly enough to make the president put the whole initiative to an immediate halt. He insisted on removing the "oppositional elements" from the commission. After reorganisation the commission finally consisted of four members only, i.e. one lawyer from the Ministry of the Advancement of Women, one lawyer from the Ministry of Justice and Human Rights, one law professor from Lomé university, and one female judge, who had newly been appointed to a family court (Afi 2:1, Latif 1:6). Of these four persons, only the first one is recognized as being well-versed in the problematic of women's rights. Non of the NGO experts were included. Instead of using the suggestions, which had been worked out by many experts and NGOs during the foregoing years, this commission elaborated a questionnaire, which they addressed to district officers, chiefs, judges, and various NGOs. However, the latter estimated this questionnaire to be inadequate and complained furthermore that it did not provide for them to contribute their manifold experience in the domain. Whatever came out of it, since then, nothing was heard any more of the revision. The project seems to have disappeared in bureaucratic drawers (Christophe 3:3, 8:9).

Although this was a bitter disappointment for the NGOs, the Ministry officials, and international human rights organisations, it gave rise to new lobbying and networking activities:

In 2002, when commenting on the third Togolese report to the UN Human Rights Committee, the World Organisation against Torture criticized again the discriminatory provisions in the Family Code, such as the ones giving the husband the authority to determine his wife's residence (art. 16), impede his wife from taking a separate profession (art. 109), be the head of the household (art. 101) and manage common property of the spouses (art. 359), as well as articles 42, 51, 52 on polygyny, article 391 on inheritance, and article 397 on widowhood ceremonies (OMCT 2002:6).

In 2004 Togolese NGO-activists created a *Conseil Consultatif des Femmes du Togo* in the form of an expert group, composed mainly of representatives of women's rights NGOs and networks, such as GF2D, WILDAF, MMFT and only two representatives from the Ministry for the Advancement of Women. The idea behind this council is to create an almost independent institution that regularly comments on all sorts of government policies from women's perspectives and lobbies for any kind of women's concern towards the government and within society. Originally, also WILDAF-Togo had envisaged to do such work, but had given up on it soon, as the RPT – who is represented via several pro-government NGOs within WILDAF-Togo – tried to dominate this activity (Christophe 8:10-12).

The creation of this consultative council demonstrates once more the determination of women's rights NGOs in Togo, the great creativity and flexibility they develop for that purpose, as well as the manifold hurdles they have to overcome, in order to tear policy making out of the (male) "RPT kitchen" into a public political debate. Their ultimate goal is to put women's rights on the political agenda, make the political system responsive to women's concerns and create a civil society control of political power.

However, the failure to push through a gender-aware revision of national laws – despite manifold attempts and international donor support – shows clearly the limits of negotiating women's rights set by the weak power position of civil society in Togo as towards the government, as well as by the weak position of the ministry for the advancement of women's within the government.

7.4.2 The achievement of a Protocol on women's rights to the African Charta on Human and People's Rights

The African Charta does confirm gender equality and obliges states to

ensure the elimination of every discrimination against women [and] the protection of the rights of the woman and the child as stipulated in international declarations and conventions. (article 18/3 African Charta)

However, by referring in its *Preamble* to "African values" for the interpretation of human rights, it institutes a cultural relativist position, which opens the way to many kinds of restrictions on women's human rights. To counteract such restrictions, WILDAF-West Africa (based in Lomé) took the initiative, in 1995, to lobby for an additional protocol on women's rights.

This protocol shall, amongst other things, oblige governments to

commit themselves to modify the social and cultural patterns of conduct of men and women [...] with a view to achieving the elimination of harmful cultural and traditional practices (article 2/2 Protocol on women's rights to the African Charter, African Union 2003)

to ensure women's rights within marriage, women's inheritance rights as daughters and widows, women's access to land, health services including of reproductive health, and to protect the rights of the widow (African Union 2003). WILDAF points out the importance to explicitly protect women's rights within marriage, as it perceives marriage to be the preferred place of submitting women to violence, to economic deprivations and restrictions of movement (WILDAF/FEDDAF 2000a:5).

After getting the support of the International Commission of Jurists (ICJ, based in Geneva) and the African Commission on Human Rights (hereafter referred to as African Commission) in 1995, WILDAF-West Africa initiated a campaign which should take eight years: It started with the elaboration of a draft protocol and its discussion and refinement in national NGO-conferences with 260 West African women's organisations. The most contested topics were polygyny, the woman's right to pass her name on to her child, to inherit from her husband, and to get child custody⁴²⁵. In 1999, the third draft of the protocol was adopted by the African

⁴²⁵ According to Lachenmann (1995b:14) – who observed similar contestations in Senegal and at the NGO-conference in Huairou/Beijing –, these discussions are typical for the gap between intellectual women and women from local associations in Africa.

Commission for transmission to the OAU. Thereafter, a group of NGOs⁴²⁶ together with the African Commission engaged in Africa-wide lobbying activities: Their aim was to influence the designation of national experts, to win the African Ministers for the Advancement of Women and the various ambassadors to the OAU for the protocol, to convince parliamentarians, governments, religious and traditional leaders, get support from representatives of regional and international organisations⁴²⁷ and inform the populations. For that purpose, WILDAF-West Africa published a lobbying guideline for the protocol (WILDAF/FEDDAF 2000a) and trained manifold NGOs in advocacy work. Furthermore, the NGOs established a regional follow-up committee, which participated as observer in subsequent meetings of the African Commission in 2002. This was followed by two meetings of government experts and of the OAU-Council of Foreign Ministers to study and finalise the draft protocol for submission to the Summit of Heads of State and Governments. Again, the NGO follow-up committee participated to watch that the protocol was not substantially emptied.

Finally, in July 2003, the Protocol was adopted by the Assembly of the African Union in Maputo. Since then, only five countries (Gambia, Ghana, Libya, Tanzania and Zimbabwe) – out of fifteen needed for the protocol to become binding international law – have ratified it⁴²⁸.

Once enacted, this protocol will certainly become a very important reference for the struggle of African NGOs to improve and enforce national laws (Christophe 8:7-8), such as the above described revision of the Family Code in Togo. NGO-network representatives insist on the fact, that the apparent similarity between the additional protocol to the African Charta and CEDAW will not be a superfluous repetition, because African heads of state and societal leaders tend to take the African Charta more serious than any universal treaty – at least rhetorically –, because it is “flown from their own pen” and not “*le truc des blancs*”, i.e. not imposed by hegemonic Western powers (Marlène 1:1). Notwithstanding this unique value of the African Charta for Africans, the additional protocol nevertheless emphasizes that women’s rights as human rights “have been recognized and guaranteed in all international human rights instruments”, thereby reaffirming their universality.

⁴²⁶ Such as the Independent Lawyer’s Union of Mali, the InterAfrican Union on Human Rights, the Sub-Regional Council on harmful traditional practices as well as WILDAF.

⁴²⁷ ECOWAS, Arab Institute for Human Rights, SADC, Centre of the Arab Woman, EU, UNIFEM, UNHCR, UNFPA, UNDP.

⁴²⁸ Cf. Adjamagbo-Johnson et al. (2001b:6-8, 2003:7-8), Kuwonu (2000:3-10).

Chapter 8 Conclusions and outlook

Building on empirical research with narrative, semi-structured and biographic interviews as well as observation and participation in a variety of court sessions, NGO-mediations and other relevant events, this study described and analysed the negotiation of women's rights in everyday life as well as by women's rights NGOs at the interface of various socio-legal structures and practices within the authoritarian state of Togo. This study intends to contribute to the theoretical understanding of the interrelation between legal agency in everyday life and legal pluralism in Africa, including its gender dimensions, and on the important role of women's rights organisations in this reflexive process. At the same time it is hoped that the knowledge thus created will be useful to NGOs, governments and donor organisations to further refine their approaches to strengthen women's rights and enlarge female social spaces. This final chapter shall summarize the main reflections, draw some conclusions and finish with an outlook on the increasing relevance of "glocal" interdependencies for negotiating women's rights.

8.1 The reproduction of the gender order through normative orders and legal forums

The room for manoeuvre of Togolese women to negotiate their rights within the pluralist legal field under the authoritarian regime is very limited. From early childhood on, women are socialized into a gender order that assigns them an inferior position towards men in almost all areas of life. This unequal gender order is permanently reproduced as a power structure in the everyday action field of rights.

The gender order is constructed, on the one hand, by the various normative orders that co-exist in Togo: Customary norms – in their contemporary interpretation – reduce women's legal agency, exclude women from the inheritance of land and houses, limit their rights to economic independence and reproductive health during marriage, and deprive them of dignity as well as economic and social security during widowhood, to cite some of the examples discussed in this dissertation. These norms are embedded in the animist world of meaning, and have been influenced by Christian, respectively Muslim norms, leading to partial improvements of women's rights, such as regarding inheritance and widowhood. The new statutory law ruled women's rights in rather contradictory ways: The Family Code of 1980 partly institutes gender equality (concerning legal capacity, consent to marriage, parental authority, divorce etc.), partly maintains colonial discrimination against women (in that the husband

automatically becomes the head of family with manifold privileges) and partly confirms customary norms, for instance concerning the exclusion of women from inheritance. This law also accords widows the human right to dignity, while at the same time confirming customary authority over this issue. More contradictions are added by administrative decrees and state jurisdiction. Furthermore, due to current gender inequalities in everyday relations as well as in manifold societal and state structures, the state law's emphasis on individual rights can bare the risk of reducing women's legal room for manoeuvre: For instance, in a customary marriage a woman exerts legal agency, though often mediated by a male relative, whereas a civil marriage reduces the family's influence and makes the wife economically dependent on her husband, so that she may – in practice – be unable to make use of her statutory marital rights.

Not only the normative orders, but also the access to the great variety of legal forums for seeking justice is gendered: The socially approved way of proceeding through legal forums are different for men and women. Women experience strong social pressure – sometimes reinforced by threats of witchcraft – to deter them from making claims outside the family realm, i.e. in traditional or state courts. As most legal forums are dominated by men, it is them who control the flow of information within these forums. Furthermore, also informal mediators are more difficult to access for women than for men. As a consequence, also the unofficial rules to make claims are gendered: Some women's affairs are not receivable in customary courts, or only if the concerned woman behaves deferentially towards the male court personnel. Police-men downplay cases of domestic violence as family affairs, contrary to state legal provisions. Court and administrative practices frequently discriminate against women. The gendered access to legal forums was partly even confirmed by state law, where for certain issues the enforcement of women's statutory rights is in a customary way made dependent on the goodwill of their husband or in-laws. Some of these parameters are changing slowly with the increasing individualization through the taking up of salaried jobs, though in ambivalent ways: Women gain room for manoeuvre in some situations, such as the administration of inheritance, while losing room in others, for instance when they need the support of their husband's family council against being repudiated.

8.2 *With tight belts and long arms: Resources for negotiating women's rights*

The analyses of inheritance, marriage and widowhood negotiations has shown that the degree to which individual women assume legal agency to make claims within this complex male-biased legal field and within the clientelist, corrupt and authoritarian state of Togo depends on

their access to and skilful use of various resources, such as self-confidence, communicative skills, economic independence, legal knowledge, a support network and contacts to influential people. These resources are not to be seen isolated but as mutually interdependent. For instance, economic independence and social support as well as knowledge contribute to self-confidence and personal strength. Self-confidence and communicative skills improve women's access to legal knowledge as well as their capacity to mobilise social support and make contacts to influential people. Moreover, it is especially the combined use of several – at best all – of these resources that considerably enhances women's negotiation power.

Self-confidence – in the local imagery *to have tightened one's belt*, to be fearless i.e. psychologically and spiritually strong, and ready to fight with stamina – is the base for voicing confrontational claims, breaking societal expectations and taboos, and withstanding social pressure of all kinds, such as psychological, spiritual, economic or physical intimidations.

Communicative skills (i.e. to know how to apply the local rules for communication, be eloquent and quick-witted, know which information to pass on and when to keep silent etc.) are useful in order to escape or provoke tensions, acquire knowledge, gain supporters to one's claim by presenting it in a way corresponding to their moral expectations, and intimidate adversaries.

Knowledge about the various normative orders and legal forums as well as about the informal “rules of the game” or “codes of conduct” within legal forums is crucial in order to reassure oneself of one's rights, to know which persons and forums to contact for support, which other resources to mobilize, and how to behave and argue correctly in order to convince the respective forums of the legitimacy of one's claim.

Economic independence, for instance an income under the woman's control, a salaried job – especially in the public sector –, or access to land, houses, credits etc., provides one form of economic security. This helps women strongly to make claims against their own relatives (in inheritance conflicts), their husband (in marital conflicts) or their in-laws (in conflicts around widow's inheritance, widow's pensions, and child custody).

For those who are economically dependent, a social network beyond the family is important in order to get moral support and thus increase one's self-confidence, and to compensate for the eventual loss of a woman's economic support from her family, husband or in-laws through the conflict. Women therefore search alliances within the extended family, neighbourhood, church, among friends and colleagues. Additionally they found women's groups, such as ro-

tating saving and credit associations, cooperatives, widows' associations etc. to create the necessary support.

As a consequence of corrupt, clientelist and male-biased legal practices, women's chances to claim their statutory rights considerably improve, if they have contacts to influential people (*to have long arms*). They therefore engage in building up social capital, if necessary by offering services or making presents to officials.

Thus, it is predominantly the urban, educated, better-off women with a strong social security network that are able to efficiently negotiate their rights and do so in quite creative ways. However, they serve as a reference to other women, thus strengthening their self-confidence and legal knowledge. Furthermore, well-organised women's rights NGOs with their experience, knowledge and own networks provide alternative ways – even in rural areas – to access the state legal system, spread their knowledge and experience and constitute a public eye on administrative and legal services, respectively their personnel, thus providing some protection to women from unjust practices.

8.3 Modes of negotiating women's rights

Those women who have the above listed resources at their disposal, use them in creative ways and thus assume legal agency, albeit arduous and with insecure success:

Where possible, they draw up their own trajectories through legal forums in order to get their claims acknowledged, at certain moments coming up to social expectations, at others ignoring them and disrespecting hierarchies, refusing to follow the summons of one legal authority while addressing another one, playing the various legal forums – with their often opposing interests – against each other, trying to manipulate them via the interference of influential friends (building on relations that have been nurtured and entertained beforehand), opting for more or less institutionalised legal models, switching between official and unofficial procedures and middlemen etc., thus pragmatically engaging in processes of “forum shopping” and “idiom shopping”.

Thereby, they either combine arguments from different normative orders to cumulate legitimacy while silencing uncomfortable views or play various norms against each other in order to negotiate a solution in accordance with their own interests. They refer to the normative orders in manifold versions and interpretations – for instance redefining the customary legal

principle of seniority privileges in terms of generation and gender –, integrating seemingly contradictory worlds of meaning.

In order to mobilise supporters to their claim or put pressure on their negotiation partners respectively adversaries, they assume new economic and social responsibilities, offer or withdraw services or material support, sometimes sacrificing their own economic and social security. They refuse to pay respect or fulfil the rules of courtesy and politeness, for instance by not greeting, refraining from cooking, not visiting without invitation, not answering when addressed or talking aggressively back, refusing any conciliatory communication, or they gossip and publicly criticize the other. They refuse to participate in certain ceremonies or use them (e.g. funerals, bridewealth ceremonies, widowhood ceremonies) for contesting the power of their adversaries. They postpone marriage, run away or definitely move out of the marital or parental home. To intimidate the other, they boast with their legal knowledge and know-how about state legal procedures, their spiritual strength and their good contacts to influential people in the public sphere – even if sometimes exaggerating to some extent – and do not hesitate to actually make use of these resources by going to court or including powerful key persons.

8.4 Women's ambivalent stance towards legal pluralism

On the one hand, the persistence of socially accepted customary and religious norms (concerning inheritance and family rights) besides the state law diminishes the power of the latter with its partial improvements for women's rights. Therefore, women's rights NGOs in Togo for a long time tried to diminish the acceptance of customary and religious norms by either keeping silent about them or discussing them only in a negative way. However, this approach was unsatisfactory as customary and religious norms remained valued or changed only sluggishly, thus questioning the very necessity and legitimacy of state interference in these legal fields. It is only recently that women's rights NGOs started to take customary authorities seriously by not only instructing them on the state law, but inciting them to reform customary norms to the benefit of women, with quite encouraging results.

On the other hand, it is precisely the fragile hegemony of the state law that allows those women having the above mentioned resources at their disposal to negotiate their rights in the above described way. However, as most legal forums are strongly male dominated and male-biased in their practices – plus eventually support each other in a kind of male solidarity –, there is little legal security for women and they are often unable to use the room for negotiation, apparently offered by legal pluralism, and achieve *de facto* improvements of their legal

situation. This is changing with the new legal forums offered for women by non-governmental women's rights organisations and their intense lobbying and training activities on all levels (see below).

Finally, the fact that the state law is neither well known nor unquestioned in society facilitates women's rights NGOs to refer to international human rights conventions in order to circumvent discriminatory state law provisions. The fragile hegemony of the state law, initially seen by NGOs as an obstacle to women's rights, is thus turned into an advantage.

8.5 Women's rights NGOs creating new female spaces in overlapping private and public spheres

Women's rights NGOs question societal power relations, especially of gender, in the politics of the family and community as well as in the relationship between civil society and the state. They engage in interaction at the various interfaces between women and all kinds of legal forums. They influence existing legal forums and actors (such as state legal and administrative services, traditional and state courts, the police, district officers, private lawyers as well as traditional authorities) by training them in gender-sensitive practices. They establish new forums, like mediations provided by paralegal advisors and in counselling centres, specialised on women's legal concerns. Thereby, they improve women's access to and use of legal forums, as well as the cooperation between the various forums, and thus the efficiency of the pluralist legal system.

While the reference to tradition is used by conservative forces to block any changes in the power structure, women's rights NGOs recently started to break up this linkage and reconstruct the flexibility of traditional law (in the fields of inheritance and widowhood) in order to promote a democratisation of gender relations. By providing legal services in towns of the interior as well as in rural areas, they try to counteract also the common developmentalist capital city bias.

By linking different forms of symbolic ordering and representation and breaking with the common technocratic, top-down approaches of social engineering by governmental and development organisations, they "acquire the capacity to bridge the systemic and sector divisions in [...] society" and overcome "authoritarian patterns of interaction between the state and the population as well as the dominant clientelist structures (Lachenmann 1994:62, respectively 1997:193). Furthermore, by creating the structures for women's debates and exchanges through journals, radio-programmes, conferences and networks, they constitute new

public spaces which try out and practice a new gender order and raise women's political consciousness, thus strengthening civil society. Togolese women's rights NGOs are therefore dynamic change agents not only in the field of women's rights, but also concerning the struggle for democracy.

That their action – albeit political – is only occasionally repressed by the military regime is quite astonishing, given that otherwise public discussions about politics and development concepts are still risky and rather muffled. This might be explained by the fact that women and women's NGOs are neither taken serious nor perceived as a real threat to those in power. Moreover, the regime might behave relatively tolerant towards critical women's rights NGOs in an attempt – however smiled at – to demonstrate its alleged democratic face and respect of human rights towards the international donor community. In this context the intense networking of these NGOs with similar NGOs on an African scale as well as with manifold international development actors contributes to make them widely visible and certainly provides a further protection.

8.6 Challenges for women's rights NGOs in Togo

The future will show, how these women's rights NGOs with their courageous approaches that break with societal as well as political taboos, face the manifold challenges:

Within their paralegal approach, they train and assist female paralegal advisors to question prevalent gender norms and male-biased legal practices, while advising them not to provoke male contempt; to offer legal mediation services or support mediations by other legal forums, while carefully observing the limits of this conciliatory approach, for instance in the case of violence against women; to utilize juristic expert knowledge, while bridging between the different logics of action of women's lifeworlds and the state law; to cooperate with administrative and traditional authorities without becoming co-opted by either of them.

They inform women on their statutory rights, while having to avoid the trap of ascribing women's legal problems to their ignorance. They train men as paralegal advisors on women's rights in order to address also the male population, however without letting them take over this new female sphere of knowledge expertise. They try to encourage the population and traditional leaders to change the traditional gender order in collaboration with the civil society in order to improve the enforcement of women's rights in everyday life, without sweepingly devaluing traditional rights.

They want to remain autonomous in their objectives and empowerment approaches, despite their dependency on the political support and material contributions of donor organisations. Finally, they try to remain a driving force for women's rights and democracy, without becoming either hassled by the oppressive state or instrumentalised by party politics.

8.7 Strengthening women's rights – strategic considerations for development

This dissertation has demonstrated that it is important to counteract systems of ignorance that devalue women's legal knowledge as static (i.e. passive), backward (i.e. limited to customary rights) and a "mere obstacle to rational progress", while representing male legal knowledge as dynamic, progressive, and even as freeing women from inhumane patriarchal tradition. Some of the NGOs analyzed in this study are edifying in this regard: They train paralegal advisors from urban and rural areas all over the country to inform women and men on women's rights and the state legal system in general, offer gender-neutral conflict mediations, but also improve women's access to the state legal and administrative forums, respectively serve as mediators between everyday legal knowledge and state legal knowledge. Although they insist on the paralegal expertise to remain a predominantly female domain, they started to form gender-mixed paralegal teams. Moreover, they share their knowledge through journals, radio-programmes and internet pages, organize conferences as well as training seminars on women's rights, and link up with individual women of very diverse socio-economic backgrounds, local women's groups, national and international NGOs and NGO-networks as well as multi-lateral donor organisations. Thereby, they increase women's communicative and networking skills, thus breaking down the isolation of especially poor and rural women; they create new knowledge stocks, open new knowledge flows and thus extend the structural base for their own existence.

Furthermore, a law revision is of crucial importance, however without reiterating inappropriate and biased dichotomies by demanding sweepingly the removal of all references to "discriminatory traditional norms" from the "modern pro-women state law". Instead, it should be carefully reflected on laws that better correspond to cultural values and people's needs, however in a gender-sensitive way, i.e. establishing gender equality without opening new trenches among women of different family status or between the generations. For instance the statutory inheritance model of the Togolese Family Code – which includes daughters and widows in the inheritance – should be made the rule instead of the exception, however only after bal-

ancing the security interests of the widows and children of the deceased with those of his parents, especially his mother.

But it is not enough to change the statute books. This has to be accompanied by a regular training of officials (of register offices, pension funds, land survey departments etc.), lawyers and judges in gender-neutral practices and by systematically monitoring them.

At the same time, the new approaches of some NGOs, to neither uncritically court nor to ostracize traditional authorities, but to train them as paralegal advisors and motivate them to change male-biased traditional norms in a customarily acceptable way, should be extended to other geographical areas and other traditional norms that had so far been taboo. In this context it is crucial not to devalue their knowledge and experiences, but to accept them as experts on social order in their own right and discuss with them on an equal eye level, respecting their priorities. This requires to put people's ownership of change before any external development objectives and solutions. It is furthermore important, to train men and women, as this allows them in turn to address and reach the whole population. It proved to be helpful to concentrate on dynamic and literate chiefs resp. "queen mothers", who are eager to expand their expertise in order to become better accepted by their communities as change agents who act in favour of the population.

Finally, especially in a country with weak democratic structures like Togo, it is important to support networking among women's rights NGOs as well as between them and other stakeholders within the country and on an international level, in order to strengthen civil society and protect the NGOs against encroachments by the regime.

8.8 The increasing relevance of "glocal" interdependencies for negotiating women's rights

The plural legal field continues to undergo constant changes, as new legal actors, new legal orders and new legal discourses come into play. This study has shown that international human rights standards, such as the UDHR and CEDAW, do increasingly play a role in the negotiation of women's rights in Togo. This localization is reflected less directly in women's individual legal negotiations than in the negotiations between civil society, the government, and the international arena. For instance, NGOs take up the human right to dignity in order to question both local widowhood ceremonies and their protection by the state law; they refer to the human rights principle of gender equality that is inscribed in the new Togolese Constitution to demand its translation into national legislation regarding inheritance. As this lobbying

is not rewarded with short-term success, they use CEDAW to circumvent the discriminatory national inheritance laws. However, increased information on human rights does contribute to incite discussions on rights in general – including civic rights and women’s rights – and thus to raise awareness of individual rights, which directly impinges on women’s individual legal negotiations.

On the other hand, local legal practices – regarding women’s inheritance of land, bridewealth, or widowhood – are no longer limited in their scope. Through increased mobility, global communication and global discourses on human rights – the last aspect driven, to a large extent, by women’s rights NGOs –, they do have repercussions on a global scale. They influence national, regional and international legislation (either to limit or protect the local practices) and are the focus of national and international debates and conferences. For instance African NGOs lobbied successfully for an additional protocol on women’s rights to the African Charta to oblige governments to reprimand harmful traditional practices.

However, these two processes (local practices influencing national, regional and international legislation and vice versa) are not only simultaneous, but they are directly linked to each other: For instance, the escape of a young woman from genital mutilation in Togo (planned and prepared by her paternal aunt upon her forced marriage) and her flight to the US, where she was granted asylum only after 16 months of preventive detention and an enormous NGO-lobbying campaign for her release, influenced immigration policies and legislations in the US, and later also in Europe. These in turn were used to pressure the Togolese government to ban FGM in Togo itself. Now Togolese NGOs can take up the new law against FGM as well as the ever increasing international discourse on women’s human rights to acquire new international donor funds, sensitize the population and encourage their leaders to change this local legal practice. This type of “glocal”⁴²⁹ legal agency is becoming more and more frequent through ongoing processes of globalisation and localisation⁴³⁰. It is desirable that future research shall be done with a gender perspective on glocal legal agency as everyday practice and the power shifts involved. Such research would possibly analyze the negotiations taking place during “encounters at the interface” (Long 1989, 1992) between actors or legal forums, respectively their logics of action and legal knowledge systems, at the various levels of glocal legal processes.

⁴²⁹ The term „glocalization“ was coined by Robertson (1992) and applied to concepts of cultural globalization.

⁴³⁰ Cf. also K. van Benda-Beckmann on “Localising transnational law” in a public lecture in Bonn on Nov. 6th 2000.

A n n e x

A1 Biographical background of women from case studies

Aku, in her late thirties, comes from a farmers family in the impoverished *Ewe-Ouatchi* area around Vogan in the southeast of Togo. Her father grew oil palms and coconut palms. She grew up in the household of her maternal aunt, who never sent her to school but whose children she guarded while the aunt went to sell manioc flour at the market. When she became seriously ill, she was sent to serve four months in a *vodu* convent. Upon her return her aunt married her off against her will. As her husband could not provide for her and her six surviving children, she migrated to Lomé to work as a *portefaix* (or *coltineuse*, cf. World Bank 1996:37), selling vegetables at the central market. Here she lives in provisional shacks with about 60 other women and children, who work at the market.

Anita, in her beginning forties, is descending on the paternal side from the urban commercial bourgeoisie of the *Mina*, known for their economic success, political strength, Christian religiosity, and independent-mindedness, and on the maternal side from the traditional leaders of the *Ewe*. She is the first of four children of her parents. Her father later married a second wife from Ghana with whom he had five more children. As is typical, this polygynous marriage set-up was quite conflict-laden, due to jealousy and competition between the two wives. Later, her father separated from his second wife who moved back to Ghana. Anita grew up in the family house in the centre of Lomé, which was inhabited by her father and her uncle with their families. As Anita's father was a successful tradesman, he managed to provide his children with a good formal education, which enabled Anita's siblings to establish themselves in wealthier countries abroad, and Anita to get a relatively well paid administrative job in Lomé. Anita has no children and never got married, therefore continued to live in her father's house until recently, when she acquired a house on her own. The latter is not a luxurious villa, but still well equipped.

Benida is the fifth of twelve children of a farmer's family from an *Ewe* village 125 km northwest of Lomé. Early on she was sent to more prosperous relatives in Lomé, where she could go to school while taking over heavy household chores. Nevertheless, she managed to finish secondary school and now works as a secondary school teacher in Lomé. She is Catholic, has two children by different men, without being married. She has been very active in various NGOs. A couple of years ago she has been trained in women's rights and nowadays runs a small NGO herself, doing information campaigns on reproductive health and women's rights among apprentices of tailoring and hairdressing and followers of new churches in the suburbs of Lomé and in the countryside.

Cathérine, in her late forties, is of *Mina* origin. Her father was an engineer and customarily married three wives. These marriages were later on registered at the registry office. Her mother, his second wife, is illiterate. Both parents are catholic. She grew up in Aného and Lomé. Her father put a lot of emphasis on the school education of his manifold children, sons and daughters alike, paying private tutors and even supporting university studies of the most talented ones. After finishing her degree in bilingual studies, she started to work in a family planning association, while at the same time organising a bakery business. After 20 years she quit this job as her strengthened catholic faith and commitment to a charismatic movement had brought her into conflict with the propagation of contraception. She is divorced and has two children.

Dorotheé, a woman in her early fifties, comes from a farmer's family in the small town of Tsevié, situated in the predominantly *Ewe* area 30 km north of Lomé. Of her mother's nine children six died very young. Due to the family's poor economic situation Dorotheé had to

leave school after her primary school degree in order to help her mother in the fieldwork and sale of the field produce. Like so many other young women from the countryside, Dorothée tried to escape the hardship of farm labour and came to Lomé, where she found herself work as a housemaid. It was her greatest desire to achieve a better economic situation which would enable her to support her mother and, if she should have children, to send them to school and give them a better future. She was customarily married to a teacher and has one daughter. Her husband separated from her in order to marry another woman. A couple of years later her husband died in a car accident.

Justine, in her late thirties, grew up in a relatively prosperous *Ewe*-village, situated in the fertile foothills of the Atakora mountains in south-western Togo. She is the youngest of 11 children of her father, who had customarily married three women. One of these wives died very early; the other one separated from Justine's father and married somebody else. The children of both women were raised by Justine's father and mother. Justine finished secondary school and started a professional training, which she broke off when she got pregnant and moved to the father of her child, a primary school teacher. Although this marriage was never institutionalised, she lived with this husband for eleven years, before "running-away" back to her father. After some time she married again, this time a school director. When she took up a customary leadership office, which obliged her to move back to her village, her husband divorced from her. Recently she married again, this time becoming the fourth wife of a prosperous lawyer from Lomé. She has four children. She is trained as a seamstress, but lives on her farm work and increasingly on her trade of food staples between the villages of her home area and Lomé.

Kossiwa is around seventy years old. From an *Ewe* farmers' family in the southwest of Togo, she never went to school and has been doing farm work all her life, growing subsistence crops as well as cocoa for sale. She was customarily married, but her husband died ten years ago. Since then, she has poor access to land and depends completely on the meagre support from the six (out of eleven) surviving children.

Sophie's parents were farmers from an *Ewe* village in southern Togo. They sent her to an uncle to be raised and go to school. Being the eldest child in her uncle's household, she was given many responsibilities to care for her younger cousins. As her uncle was a catechist of the protestant church, they moved several times within Togo, from north to south, from towns to very small villages, from more Christian to predominantly Muslim milieus etc. Thereby Sophie gained insights into very different life-worlds. Her openness to learn was further promoted by her uncle sending her to the church choir and encouraging her assistance in church services. According to her, this was where she learnt to speak in public. As she was very active in church, helping in celebrations etc., she was chosen to become member of a church association to do gospel work in Lomé. This public recognition contributed further to build-up her self-confidence. Professionally, she became a typist as her family could not afford to send her to high school. To this she added an apprenticeship as a seamstress by taking evening courses. With her husband, who works as a craftsman, she has two children. With her associational and unionist activities she made an impressive NGO-career.

Zenabou belongs to the *Kotokoli* ethnic group of Togo's Central Region and was brought up in Sokodé, the regional capital and Islamic centre of Togo. She was raised as a Muslim, went to secondary school, and engaged in trade. She became the first of two wives of an intellectual from Sokodé. They had eight children, who support her since her husband died about 15 years ago.

A 2 Form for the protocol of the family council session to designate an inheritance administrator

REGION MARITIME
VILLE DE LOME

REPUBLIQUE TOGOLAISE
Union-Paix-Solidarité

PROCES-VERBAL DU CONSEIL DE FAMILLE

L'an mil neuf cent _____ et le _____
à _____ heures en la demeure de Monsieur _____
à _____, rue _____, quartier _____, s'est tenue une
Réunion du Conseil de FAMILLE conformément à la Coutume, en vue de procéder à la
désignation d'un Administrateur des biens et Tuteur des enfants de feu : _____
de son vivant : _____
à _____.

SONT PRESENTS :

_____ 1-	_____ ans	_____
_____ 2	_____ ans	_____
_____ 3	_____ ans	_____
_____ 4	_____ ans	_____
_____ 5	_____ ans	_____
_____ 6	_____ ans	_____
_____ 7	_____ ans	_____

Lesquels ci-dessus après délibération et échange de vues d'un
commun accord, ont désigné à l'unanimité le nommé : _____
_____ , âgé de _____ ans
demeurant et domicilié à _____, comme Administrateur des
biens de feu : _____

Monsieur _____
désigné Administrateur des biens et Tuteur des enfants de feu ;
_____ a déclaré accepter la
tâche qui va lui être confiée et a promis de la remplir
fidèlement-.-/-

Fait à LOME, le _____

L'ADMINISTRATEUR DES BIENS
désigné

LE PRESIDENT DU CONSEIL

Vu par Nous : _____
pour la Certification Matérielle de la signature des comparants présentés plus
haut ./-

LOME, le _____

A3 Form to establish the legal heirs

CERTIFICAT D'HEREDITE

L'an mil neuf cent _____ et le _____
à _____ heures devant Nous : _____
assisté de M. _____, Interprète assermenté.
ont comparu :

SIGNATURE	NOI' & PRENOI'S	AGE	PROFESSION	DOMICILE
_____	1 _____	ans _____	_____	à _____
_____	2 _____	ans _____	_____	à _____
_____	3 _____	ans _____	_____	à _____
_____	4 _____	ans _____	_____	à _____
_____	5 _____	ans _____	_____	à _____
_____	6 _____	ans _____	_____	à _____
_____	7 _____	ans _____	_____	à _____

Les Membres lesquels ont déclaré et attesté connaître parfaitement : _____ de son vivant : _____
à _____, né à _____
en _____ fils de _____
et de _____ et décédé à _____
le _____ suivant ACTE DE DECES N° _____
du _____ de l'Etat-Civil de _____

Que le défunt n'a laissé pour seuls héritiers ses enfants qui sont les suivants :

DE SON UNION AVEC LA DAME :

DE SON UNION AVEC LA DAME :

1 _____	né en _____	à _____
2 _____	né en _____	à _____
3 _____	né en _____	à _____
4 _____	né en _____	à _____
5 _____	né en _____	à _____
6 _____	né en _____	à _____

1 _____	né en _____	à _____
2 _____	né en _____	à _____
3 _____	né en _____	à _____
4 _____	né en _____	à _____
5 _____	né en _____	à _____
6 _____	né en _____	à _____

DE SON UNION AVEC LA DAME :

DE SON UNION AVEC LA DAME :

1 _____	né en _____	à _____
2 _____	né en _____	à _____
3 _____	né en _____	à _____
4 _____	né en _____	à _____
5 _____	né en _____	à _____
6 _____	né en _____	à _____

1 _____	né en _____	à _____
2 _____	né en _____	à _____
3 _____	né en _____	à _____
4 _____	né en _____	à _____
5 _____	né en _____	à _____
6 _____	né en _____	à _____

Que le Chef de la Collectivité désigné par la Famille et chargé de l'Administration des biens et tuteur des enfants laissés par le défunt est bien le sieur :

En foi de quoi nous avons délivré le présent CERTIFICAT les jours mois et années dessus pour servir et valoir ce que de droit pour la seule affirmation de la comparution des susnommés et à la réalité de leur déclaration. /-

A4 NGO Leaflet on how to establish an identity card

UNE FEMME, UNE IDENTITE



UNE FEMME, UNE IDENTITE

Liste des membres du Comité pour la carte d'identité:

FAMME
 ECHOPPE
 GF2D
 CONGAT ICB-Bè
 LA COLOMBE
 CARE TOGO
 CUSO TOGO
 Comité de suivi de Beijing (FONGTO)

En partenariat avec le Centre international
 des droits de la personne
 et du développement démocratique
 (CIDPDD)

UNE FEMME, UNE IDENTITE

Voici les étapes à suivre pour l'obtention de la
 carte nationale d'identité togolaise...



Novembre 1997

UNE FEMME, UNE IDENTITE

PROCÉDURES D'OBTENTION DE LA CARTE NATIONALE D'IDENTITÉ

1ère étape

Pièces nécessaires:
A - EXTRAIT DE NAISSANCE

Procédures:
 -Déclaration dans les 30 jours qui suivent la naissance
 -Demande de copie certifiée conforme

Lieu d'obtention:
 -Etat civil

B - JUGEMENT SUPPLETIF
 (tenant lieu d'acte de naissance)

Procédures:
 -Demander l'autorisation du Ministre de la Justice
 (lettre au Ministre timbrée)
 -Lettre manuscrite timbrée à présenter au
 Président du Tribunal
 -Avoir 3 témoins majeurs et parents
 -Imprimé à remplir

Lieu d'obtention:
 -Tribunal de Lomé ou de l'intérieur

2ème étape

Pièces nécessaires:
ATTESTATION D'ORIGINE (du père)

Procédures:
 -Rencontrer le Chef avec une demande

Lieu d'obtention:
 -Canton
 -Village
 -Commune, quartier

3ème étape

Pièces nécessaires:
CERTIFICAT D'ORIGINE

Procédures:
 -Se présenter au Service de la Préfecture muni de
 l'attestation d'origine (original et copie), de l'extrait de
 naissance ou du jugement supplétif (original et copie)
 -Demande timbrée adressée au préfet
 -Il y aura enquête (Gendarmerie, police)

Lieu d'obtention:
 -Préfecture

4ème étape

Pièces nécessaires:
CERTIFICAT DE NATIONALITE

Procédures:

-Se présenter avec une lettre timbrée et l'extrait de
 naissance ou jugement supplétif (original et copie) et
 acheminer par les soins de la préfecture, le certificat
 d'origine (avec tout le dossier de la préfecture),
 le certificat de mariage s'il y a lieu
 (valable pour la femme étrangère
 ayant épousé un Togolais)

Lieu d'obtention:
 -Ministère de la Justice à Lomé

5ème étape

Pièces nécessaires:
CARTE NATIONALE D'IDENTITE

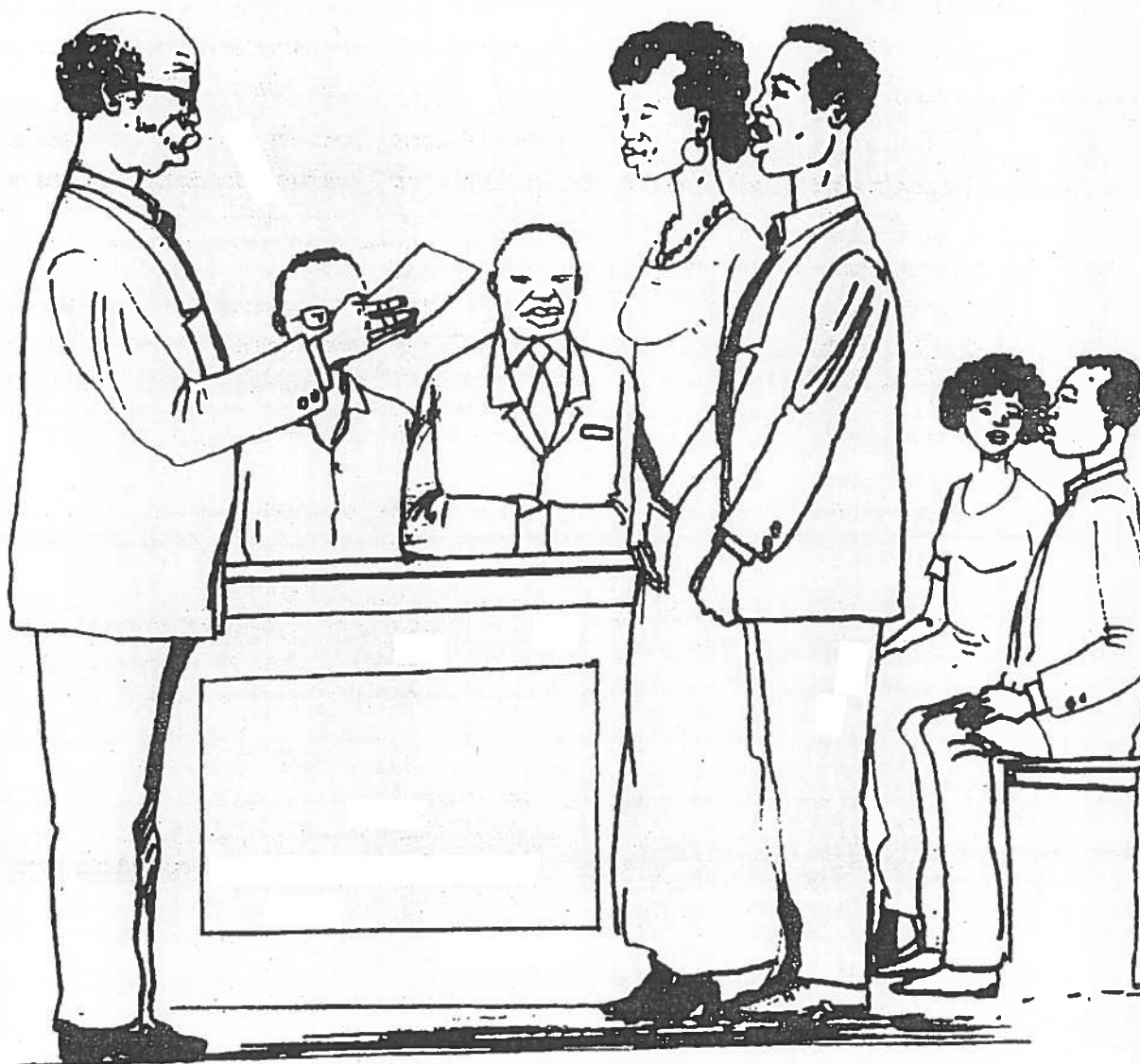
Procédures:
 -Originaux et photocopies légalisées de l'acte de
 naissance ou du jugement supplétif
 -Originaux et photocopies légalisées
 du certificat de nationalité
 -Originaux et photocopies légalisées
 du certificat de mariage (si applicable)
 -Diplôme ou attestation (s'il y a lieu)
 -Photos d'identité
 -Timbres

Lieu d'obtention:
 -Commissariat de police sur toute l'étendue du terri

N.B.: Veuillez noter que des frais existent pour cha
 des étapes (frais de greffe, droits de justice, cant
 préfecture, frais de déplacement, timbres, légalisati

NÉCESSITÉ DU MARIAGE CIVIL

MAIRIE



Seul le mariage civil est légal. Et tout mariage, pour être valable, doit être célébré par l'officier de l'Etat-Civil ou le chef traditionnel investi du pouvoir d'officier d'Etat-Civil.

J'AI TOUT PERDU !



A7 Photos

2

The bench of a customary court in Lomé. Four *notables* (advisors to the chief) serving as mediators and judges, the clerk keeping a record of the proceedings, the chief not participating, but being represented by his sceptre and a painting on the wall. May 2001.



3

"Maison litigieuse, à ne pas vendre"-graffiti branding a house that is disputed among inheritors. Lomé, 2001.



4

The father of a schoolgirl bargaining with a rich man from the city about the bridewealth for his daughter. Sketch presented by paralegal advisors to sensitise the population against the forced marriage of underage girls. Elavagnon, Région des Plateaux, Togo, September 2001.



5



The Fiokpo campaign. A “queen mother” and a teacher who are trained as paralegal advisors raising awareness among the male and female population on women’s family rights and civil rights, using taped sketches, posters and a blackboard on which they write down the rights in *Ewe*. Sewenokopé, March 2001.

6



The Fiokpo ceremony. Chiefs and their advisors attending a ceremony to abolish customary widowhood ceremonies and the exclusion of women from inheritance. Kpadapé, May 2003. (Photo: ALAFIA)

7



The Fiokpo ceremony. Chiefs' advisors sacrificing palm-wine and he-goats to the ancestors to obtain their approval to change inheritance and widowhood norms. The event is filmed and tape-recorded by NGO-members. Kpadapé, May 2003. (Photo: ALAFIA)

8



The Fiokpo ceremony. Women in festive outfit performing song and dance to celebrate the event. (Photo: ALAFIA)

9



First national forum of paralegal advisors with 60 delegates from all districts of the country. Lomé, January 2001

10



Homme ou femme, la vie de la nation c'est mon affaire. Campaign with illustrated posters in French, *Ewe* and *Kabye* to sensitise the population – and especially women – on their civil rights and the electoral process. Kpalimé, 1998.

11



The *World March of Women* in Togo linking their claim for women's human and civil rights to the demand for a participation of women in politics and for an increase in development funds. Lomé 2000. (Photo: Elisabeth Blanchet, in: Horn 2000:25)

A8 List of Interviews

Data Code (Name ⁴³¹ or Title + Number)	Sex (f/m)	Date, Place and Type of Data	Occupation or Profession	Social Position
Afi 1	f	14.1.2001, Lomé, field notes	staff of women's rights org.	women's rights activist
Afi 2		5.4.2001, Lomé, field notes		
Afi 3		12.4.2001, Lomé, field notes		
Afi 4		17.4.2001, Lomé, field notes		
Afi 5		27.2.2003, Lomé, field notes		
Aku 1	f	22.4.2001, Lomé, interview	vegetable hawker at the <i>Grand Marché</i>	
Alfa1	m	8.7.2002, Bielefeld, interview	apprentice	from family of Muslim leaders in Sokodé
Alfa2		10.7.2002, Bielefeld, interview		
Amadou 1	m	20.2.2003, Lomé, field notes	university professor	member of Muslim association
Angélique1	f	12.1.2001, Lomé, field notes	judge	active member of women's rights organisation
Anita1	f	10.1.2001, Lomé, interview	secretary	eldest child (<i>l'aînée</i>)
Anita2		25.1.2001, Lomé, interview		
Anita3		30.3.-2.4.2001, Lomé, interviews and field notes		
Anita4		22.4.2001, Lomé, biographical interview		
Anita5		12.-29.8.2001, Lomé, field notes		
Anita6		5.3.2002, Lomé, field notes		
Anita7		17.10.2002, e-mail		
Benida1	f	20.3.2001, Lomé, biographical interview	high-school teacher	NGO president <i>parajuriste</i>
Benida 2		26.2.2003, Lomé, field notes		
Benida 3		11.12.2003, telephone interview		
Cathérine 1	f	11.-19.8.2001, Lomé, Field notes		NGO manager
Cathérine 2		21.-23.8.2001, Atakpamé, interviews and field notes		
Christophe 1	m	11.1.2001, Lomé, field notes	jurist	staff of local woman's rights organisation
Christophe 2		15.5.2001, Lomé, interview		
Christophe 3		20.8.-20.9.2001, Lomé and Kpalimé, field notes		
Christophe 4		1.12.2002, Berlin, field notes		
Christophe 5		19.2.2003, Lomé, field notes		
Christophe 6		10.12.2003, telephone interview		
Christophe 7		11.12.2003, telephone interview		

⁴³¹ All names are fictive in order to anonymise the interviewees.

Data Code (Name or Title + Number)	Sex (f/m)	Date, Place and Type of Data	Occupation or Profes- sion	Social Position
Dorothee 1	f	14.2.2001, Lomé, biographical interview	housemaid and nanny	
Dorothee 2		21.2.2001, Lomé, interview		
Dorothee 3		20.4.2001, Lomé, interview		
Dorothee 4		24.8.2001, Lomé, field notes		
Dovi 1	f	29.4.-7.5. + 1.-8.9.2001, Fiokpo valley, field notes	farmer	
Enyonam1	f	20.3.2001, Lomé, interview	teacher	women's rights activ- ist <i>parajuriste</i>
Jean 1	m	30.4.-9.5.2001, Kpalimé, interview and field notes	young un- employed	youth NGO activist
Jean 2		7.9.2001, Fiokpo valley, field notes		
Justine 1	f	29.4.-2.5.2001, Fiokpo valley, inter- view and field notes	farmer + trader in food crops	speaker of the queen mother in her village <i>(nyonu tsiami)</i>
Justine 2		6.-8.5.2001, Fiokpo valley, field notes		
Justine 3		22.5.-10.6.2001, Fiokpo valley, field notes		
Justine 4		18.8.-27.9.2001, Fiokpo valley, field notes		
Kossiwa 1	f	29.4.2001, Fiokpo valley, interview	farmer	
Latif1	m	8.2.2001, Lomé, field notes	gvt. official (jurist)	
Latif 2		9.4.2001, Lomé, field notes		
Latif 3		24.4.2001, Lomé, field notes		
Latif 4		25.4.2001, Lomé, field notes		
Latif 5		13.8.2001, Lomé, interview		
Mancraro 1	m	8.5.2001, Fiokpo valley, field notes	farmer	<i>mancraro</i> , advisor to the chief + representa- tive of the village founder
Mancraro 2		23.5.2001, Fiokpo valley, interview		
Mancraro 3		27.5.2001, Fiokpo valley, interview		
Marlène 1	f	11.4.2001, Lomé, interview	jurist	president of regional women's rights or- ganisation
Marlène 2		24.4.2001, Lomé, interview		
Martine 1	f	27.4.-6.6.2001, Kpalimé, field notes	retired social worker	
Martine 2		30.5.2001, Kpalimé, biographical inter- view		
Martine 3		11.8.-19.9.2001, Kpalimé, field notes		
Mary 1	f	5.9.2001, Fiokpo valley	Baptist mis- sionary from the US	

Data Code (Name or Title + Number)	Sex (f/m)	Date, Place and Type of Data	Occupation or Profes- sion	Social Position
Miriam 1	f	9.3.2001, Lomé, field notes	jurist	staff of regional woman's rights NGO
Nadine 1	f	14.8.2001, Lomé, field notes	gvt. official, school in- spector	president of two women's NGOs
NyonuFia 1	f	15.4.-7.6.2001, Fiokpo valley, field notes	secondary school teacher	"queen mother" <i>parajuriste</i>
Secr. Chef- ferie 1	m	3.5.2001, Lomé, interview	secretary at customary court	
Sophie 1	f	19.3.2001, Lomé, biographical inter- view	seamstress	union activist, <i>parajuriste</i>
Togbui 1	m	18.9.2001, Kpalimé, field notes	farmer	cantonal chief
Yawa 1	f	22.4.2001, Lomé, interview	porter at the <i>Grand Marché</i>	

A 9 List of legal counselling sessions, mediations, court sessions, NGO-workshops and other events attended

Data Code	Date, Place	Type of Event	Type of Data	Language	Topic
ALAFIA 8Mrs01	8.3.2001 Lomé- Djid- jolé	NGO aware- ness raising on women's rights	Field notes	Ewe with French translation	Marriage, STD/AIDS, girls' schooling
ALAFIA10Mrs01	10.3.2001 Sewenokopé (Préf. Klouto)	NGO aware- ness raising on women's rights	Field notes	Ewe with French translation	education, task sharing, marriage inheritance, wid- owhood, identity papers, civic rights
ALAFIA 5Apr01	5.4.2001 Lomé	NGO aware- ness raising in religious group	Field notes	Ewe with French translation	STD/AIDS
Chefferie 3May01	3.5.2001 Lomé	Customary court 3 cases	Field notes	Ewe/Mina with French translation	vodu, fight betw. daughters; division of legal + spiritual responsibilities;
Chefferie 10May01	10.5.2001 Lomé	Customary court 6 cases	Field notes	Ewe/Mina with French translation	vodu, inheritance, widowhood, pen- sions, mainte- nance, fake summons

Data Code	Date, Place	Type of Event	Type of Data	Language	Topic
Chefferie 17May01	17.5.2001 Lomé	Customary court 4 cases	Field notes	Ewe/Mina with French translation	inheritance, widowhood, levirat, vodu
Chefferie June 2001	1.+5.6.2001 Lomé-Bé	Study of register book customary court	statistic of register book (100 cases)	French	
Conseil Jur 12Feb01	12.2.2001 Lomé	NGO Legal counselling	Field notes	Mina with French translation	maintenance marriage divorce health
Conseil Jur 29Mrs01a	29.3.2001 Lomé	NGO Legal counselling	Field notes	French	violence work permission visa migration witchcraft
Conseil Jur 29Mrs01b	29.3.2001 Lomé	NGO Legal counselling	Field notes	French	sexual harrassment maintenance
Conseil Jur 30Mrs01	30.3.2001 Lomé	NGO Legal counselling	Field notes	Mina with French translation	work + sexual exploitation prostitution repudiation
CRIFF13March01	13.3.2001 Lomé	Study of NGO records	Statistic of legal counselling 1.1.94 – 30.6.2000	French	
CRIFF19Apr01	19.4.2001 Lomé	NGO Mediation	Field notes	Ewe/Mina with French explanation	faithfulness household expenses girls education inheritance
CRIFF20Aug01	20.8.2001 Lomé	NGO Mediation	Field notes	Ewe/Mina with French explanation	monogamous marriage excluding 2 nd wife
CRIFF6Sept01	6.9.2001 Lomé	NGO Mediation	Field notes	Ewe/Mina with French explanation	livirate violence
CRIFF13Sept01	13.9.2001 Lomé	NGO Mediation	Field notes	Ewe/Mina with French explanation	widowhood ceremonies pensions family council
CSTT 26Jan01	26.1.2001 Lomé	Awareness raising on women's rights by Women's Commission of feder. of trade unions	Field notes	Ewe/Mina and French	Functioning of cooperatives and ROSCAS/ <i>tontines</i> , international networking among unions on women's rights

Data Code	Date, Place	Type of Event	Type of Data	Language	Topic
DRS-Workshop 12Jun01	12.6.2001 Lomé	Training of Community Health Service Providers by DRS—Lomé Commune	Field notes	French	Presentation and discussion on usability of new documentary film on FGM in West Africa (<i>Ainsi la vie</i> by Edda Brandes, Svenja Cussler)
ENSEA 1997	23. – 27.6.1997	West-African Workshop on gender analyses of population issues	Travel report	French	Gender aspects in health, law, education, trade, economy, agriculture and population issues
FAMME 11Apr01	11.4.2001 Lomé	Mobile NGO awareness raising among <i>portefaix</i>	Field notes	Ewe with French translation	literacy classes, hygiene, prostitution NGO
GF2D-Assemblée Générale 1999	18.4.1999 Lomé	NGO General Assembly	Field notes	French	
GF2D-Workshop 1999	19. – 23.4.1999 Lomé	Training of women paralegals	Field notes	French	
GF2D-Forum 2001	16. – 19.1.2001 Lomé	National conference of women paralegals from all districts	Field notes, forum documentation	French	paralegal statutes, plan of action, results of regional conferences, paralegal district networks
GF2D Political Training Workshop 2001	26.2.- 1.3.2001 Lomé	NGO Training of women party members	Field notes, training material	French	legal aspects, procedures to stand for election, strategies of women in politics
GF2D Training of male paralegals 2001	19.- 23.3.2001 Lomé	NGO Training of male paralegals	Field notes, taped training sessions, training material	French	women's rights, civic rights, paralegal status, working methods etc.
GF2D Evaluation 2001	18.- 27.9.2001 Région des Plateaux and Lomé	Evaluation of pilot project of training male paralegals	Field notes	French	
GF2D Evaluation 2003	25.2.2003 Techekpo-Dedekpoe + Tchekpo-Deve	Monitoring + evaluation of the paralegals in the Maritime Region	Field notes	Ewe with French explanations	content + methods of paralegal work

Data Code	Date, Place	Type of Event	Type of Data	Language	Topic
GTZ-UNIFEM Dec 02	2.-4.12.2002 Berlin	International Conference	Field notes, conference documentation	English, French, German	Violence against women, FGM, widowhood, inheritance, trafficking
Kloto Funeral 28Apr01	28.4.2001 village in the Kloto district	Funeral for a <i>mancraro</i>	Field notes	Ewe with French explanations	
Kloto Funeral 4-9Sept01	4.-9.9.2001 village in the Kloto district	Funeral of an old man and head of a large family	Field notes	Ewe with French explanations	
LTDF-Workshop 1998	13.-16.10.1998 Kpalimé	Training of paralegals	Field notes Travel report	French	
LTDF-Symposium 1998	6.-8.1.1998	Revision of discriminatory laws	Field notes and report	French	Family law, social security law, nationality law, violence against women
Planète Plus	19.9.2001 Kpalimé	Radio program moderated by paralegal advisors	Field notes, tape	French	children's rights, family planning
Tribunal 15May01	15.5.2001 Lomé	State court	Field notes	Kotokoli, Ewe with French explanation	inheritance, family council protocols, birth certificates
Tribunal Feb 2003	Feb. 2003 Lomé	Study of 46 state court files	Field notes	French	
WAO 15-17 Sept1998	15.-17.9.1998 Togoville	Sub-Regional NGO-seminar against child traffic	Field notes and report	French	Child traffic in West Africa

Glossary

<i>Aboflan</i>	Togolese jurisdiction of 1969-1972 about the inheritance of land, famous because it limited women's right to inherit land to urban parcels
<i>adat</i>	local law in Minangkabau, Indonesia
<i>Adjigo</i>	ethnic group in south-eastern Togo
<i>adze</i> (Mina)	witchcraft
<i>adzeto</i> (Mina)	sorcerer
<i>afa</i> -oracle (Ewe)	interpretive framework concerning the individual, composed of legends, totemic groupings, and songs, containing fundamental principles regarding personhood and personal law. It is based on 256 signs, "which appear when the sacred palm nuts are manipulated or when the diving beads are cast during a divination session. [...] Each of the 256 life signs is associated with a number of songs, stories, <i>vodus</i> , plants, and animals [...] employed by the diviner to interpret a given situation or problem." (Rosenthal 1998:157-160).
<i>ahoka</i> (Ewe)	widowhood string
<i>ahokpé</i> (Ewe)	widowhood stone
<i>ahonono</i> (Mina)	widowhood
<i>ahowowo</i> (Ewe)	widowhood
<i>Aizo</i>	ethnic group in south-west Benin
<i>Akwamu</i>	an <i>Akan</i> state
<i>amadato</i> (Ewe)	healer
<i>Anlo-Ewe</i>	sub-group of the <i>Ewe</i> living in south-eastern Ghana
<i>Anufom</i>	ethnic group in northern Togo
<i>apatam</i>	a shady roof or awning, thatched with palm leaves or covered with a huge plastic canopy, mounted for public or private events to protect the participants from sunshine and rain
<i>apeto</i> (Ewe)	male head of family or household
<i>asigame</i> (Ewe)	central market (<i>grand marché</i>)
<i>asafoche</i> (Ewe)	"defense minister" on the village level
<i>asaforere</i> (Ewe)	"army commander" on the village level
<i>Asantel Ashanti</i>	ethnic group in Southern Ghana
<i>assimilés</i>	French colonial administrative category for Africans who renounced their customs, subordinating themselves completely to French law and leading a "western life style"
<i>asu ahun ka</i> (Ewe)	break the widowhood
<i>Ayizo</i>	ethnic group in southern Benin
<i>Baatombu</i>	ethnic group in northern Benin
<i>Bassar</i>	ethnic group of northern Togo
<i>bokono</i> (Ewe)	<i>afa</i> -diviner

<i>Bulsa</i>	ethnic group in northern Ghana
<i>dadagã</i> (Ewe)	big sister, elder sister
<i>deva</i> (Mina)	the one coming from outside, i.e. the woman marrying into a patri-lineage
<i>duto</i> (Ewe)	village owner
<i>eboto</i> (Ewe)	charm maker
<i>Ewe</i>	ethnic group and their language in southern Togo and southern Ghana
<i>fia</i> (Ewe)	chief
<i>fofogã</i> (Ewe)	big brother, elder brother
<i>Fon</i>	ethnic group (and language) in southern Benin
<i>fome</i> (Ewe)	patri-lineage
<i>fomegã</i> (Ewe)	head of a patri-lineage
<i>gaduto</i> (Mina)	the one who “eats money”, i.e. lives wastefully
<i>Gourma</i>	ethnic group of northern Togo and adjacent countries
<i>Gorovodu</i>	one of the <i>vodu</i> orders in southern Togo
<i>Guin</i>	<i>Mina</i>
<i>habobowo</i> (Ewe)	bible reading group
<i>Hausa</i>	ethnic group in West Africa
<i>Houdou</i>	ethnic group in Togo
<i>hunno</i> (Ewe, Mina)	<i>vodu</i> -priest in southern Togo
<i>indigénat</i>	French colonial decree, regulating the treatment of indigenous persons in the West African colonies
<i>irokó</i>	tropical hardwood tree
<i>Karomom</i>	Muslim counsellors among the <i>Anufom</i> in the 18th century
<i>Kotokoli</i>	ethnic group of central Togo, belonging to the Kabye/Tem cluster
<i>Kabye</i>	ethnic group in northern Togo, belonging to the Kabye/Tem cluster
<i>Kokomba</i>	ethnic group in northern Togo
<i>Kpelle</i>	ethnic group in Sierra Leone
<i>kpenyá</i>	female leader in rural areas among the <i>Kotokoli</i>
<i>Lamba</i>	ethnic group in northern Togo
<i>male ouro</i>	chief of Muslim quarters among the <i>Kotokoli</i>
<i>Mamproussi</i>	ethnic group of northern Togo and adjacent countries
<i>mangaziya</i>	female mediator among the <i>Kotokoli</i>
<i>mancraro</i> (Ewe)	descendant and representative of the village founder and main authority in land issues on the village level
<i>Mandingue</i>	ethnic group in West Africa
<i>Mina</i>	ethnic group living in Lomé and along the Togolese coast, coming originally from coastal Ghana
<i>Mossi</i>	ethnic group of northern Togo and adjacent countries
<i>myefo</i>	descendant of the village founder and main authority in land issues among the <i>Anufom</i>

<i>nana benz</i> (Mina)	women cloth traders in West Africa, who are so successful that they can afford to drive luxury cars
<i>naná nyo</i>	reported by one interviewee for the <i>Kotokoli</i> as hierarchically organised Muslim women's leader under the Imams
<i>notable</i>	advisor to the chief
<i>nusu tsiami</i> (Ewe)	speaker of the chief
<i>nyonu fia</i> [pl. <i>nyonu fiawo</i>] (Ewe)	“queen mother”
<i>nyonu tsiami</i> (Ewe)	speaker of the “queen mother”
<i>Ouro Eso</i>	paramount chief among the <i>Kotokoli</i>
<i>Ouro Kubonu</i>	cantonal chief among the <i>Kotokoli</i>
<i>Ouro Kumo</i>	village chief among the <i>Kotokoli</i>
<i>parajuriste</i>	paralegal advisor, legal educator
<i>Peki-Ewe</i>	sub-group of the Ewe in south-western Ghana
<i>polygyny</i>	marriage of one man to several women
<i>portefaix</i>	load carriers
<i>préfecture</i>	district administration
<i>préfet</i>	district officer
<i>Shona</i>	ethnic group in Zimbabwe
<i>tassi</i> [pl. <i>tassiwo</i>] (Ewe)	paternal aunt
<i>Tchamba</i>	ethnic group in central-northern Togo
<i>togbe</i> (Ewe)	land and houses attached to the lineage
<i>togbui</i> (Ewe)	ancestor, respectful form of addressing a chief
<i>tontine</i>	rotating saving and credit association (“merry-go-round-association”)
<i>Tori</i>	ethnic group in south-west Benin
<i>trokosi</i> (Ewe)	‘bride of the God’, <i>vodu</i> servant
<i>vodu</i> (Ewe)	this term is used here for three related concepts: the spirits or divinities worshipped, the underlying religion, as well as the spirit hosts during possession ceremonies, however without distinguishing the different aspects by capital and small initial letters (cf. Rosenthal 1998:1, 21, 61)
<i>vodussi</i> (Ewe)	initiates into a <i>vodu</i> -cult
<i>yovo</i> (Ewe)	term for white, used to designate non-Africans and persons with fair skin
<i>yoxo</i> (Mina)	ancestral shrine
<i>zemidjan</i> (Fon)	moped taxi
<i>zoto</i> (Ewe)	sorcerer
<i>zo vō</i> (Mina)	black magic

Abbreviations

African Charta	African Charta of Human and Peoples' Rights
African Commission	African Commission on Human Rights
AIDS	Acquired immunodeficiency syndrome
ALAFIA	Association des Femmes pour la Santé
ANCT	Association Nationale des Chefs Traditionnels
AOF	Afrique Occidentale Française (French West Africa)
APER	Association pour la Promotion et l'Éducation des femmes Rural
APR-JFM	Association pour la Promotion et la Réinsertion des Jeunes Filles-Mères
ARPT	Association des Revendeuses Professionnelles de Tissues
art.	article
ATBEF	Association Togolaise pour le Bien-Etre Familial
AVE	Association Villages Entreprises
CADEPROT	Centre Africain pour la Démocratie, les droits de l'homme et la Protection des détenus
CASS	Centre for Applied Social Sciences (Windhoek, Namibia)
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
cf.	confer
CI-AF	Comité Inter-Africain de lutte contre les pratiques néfastes à la santé de la mère et de l'enfant
CLADEM	Comite Latino Americano de Defesa dos Direitos da Mulher
CNSS	Caisse Nationale de Sécurité Sociale
CNTT	Confédération Nationale des Travailleurs du Togo
CPF	Code des Personnes et de la Famille
CSTT	Confédération Syndicale des Travailleurs du Togo
CVD	Comité Villageois de Développement
CONGAT	Confédération des Organisations Non-Gouvernementales au Togo
Conseil Jur	Conseil Juridique
CRIFF	Centre de Recherche, d'Information et de Formation pour la Femme
CUSO	Canadian University Services Overseas
CRT	Caisse de Retraite du Togo
DGCF	Direction Générale de la Condition Féminine
DHS	Demographic and Health Survey
DRS	Direction Régionale de la Santé
DTG	Deutsche Togogesellschaft
ECOWAS	Economic Community of West African States
EEPT	Église Evangélique Presbytérienne du Togo
e.g.	for example
ENSEA	École Nationale Supérieure de Statistique et d'Économie Appliquée (Abidjan/Yvory Coast)

EPWDA	Eastern Province Women Development Association (Zambia)
ESAF	Enhanced Structural Adjustment Facility
EU	European Union
FAMME	Forces en Action pour le Mieux-être de la Mère et de l'Enfant
FDA	Femme, Développement et Avenir
FED	Femmes, Enfants et Développement
FGM	Female Genital Mutilation
FIAN	FoodFirst Information and Action Network
FONGTO	Fédération des Organisations Non-Gouvernementales au Togo
Francs CFA	Francs de la Communauté Financière Africaine (in 2003 100 Francs CFA corresponded to 0,15 Euro)
FTACU	Fédération Togolaise des Associations et Clubs UNESCO
FUCEC	Fédération des Unions Coopératives d'Épargne et de Crédit du Togo
GF2D	Groupe de réflexion et d'action Femme, Démocratie et Développement
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit GmbH
HIV	Human immunodeficiency virus
ICJ	International Commission of Jurists
ILO	International Labour Organisation
IMF	International Monetary Fund
IPPF	International Planned Parenthood Federation
IPS	Inter Press Service
JRPT	Jeunesse du RPT
LTDF	Ligue Togolaise des Droits de la Femme
MMFT	Marche Mondiale des Femmes du Togo
NEDA	Netherlands Development Assistance
NGO	Non Governmental Organisation
Norddt. Mission	Norddeutsche Mission
OAU	Organisation of African Unity
OMCT	Organisation Mondiale Contre la Torture
ONG	Organisation Non Gouvernementale
PNUD	Programme des Nations Unies pour le Développement
RADI	Réseau Africain pour le Développement Intégré
Rép.	République
RPT	Rassemblement du Peuple Togolais
SADC	Southern African Development Community
SAP	Structural Adjustment Programme
SOAS	School of Oriental and African Studies
STD	Sexually Transmitted Diseases
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCCPR	United Nations International Covenant on Civil and Political Rights
UNCTT	Union Nationale des Chefs Traditionnels du Togo

UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UNFT	Union Nationale des Femmes Togolaises
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
WAO-Afrique	Action to Stop Child Exploitation
WILDAF/FEDDAF	Women, Law & Development in Africa/Femmes, Démocratie & Développement en Afrique
WLUML	Women Living under Muslim Law
WLSA	Women and Law in Southern Africa Research Project

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⁴³² References from Togolese and West African print and internet journals are listed separately at the end of this bibliography.

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