



# ACCESS TO JUSTICE ASSESSMENT TOOL

**MALI**  
JANUARY 2012



**ABA** RULE OF LAW INITIATIVE



# **ACCESS TO JUSTICE ASSESSMENT**

FOR

# **MALI**

**January 2012**

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## Preface

Access to justice is the ability of citizens to seek and obtain remedies through formal or informal justice institutions, and in conformity with international human rights standards. The ABA Rule of Law Initiative (ABA ROLI) recognizes how essential accessing justice is to communities and individuals, especially the poor and the marginalized. The Access to Justice Assessment Tool (AJAT) is a research methodology developed by ABA ROLI to assess to what extent communities and individuals are able to use justice institutions to solve common justice problems. Because the AJAT was designed to be implemented by local civil society organizations, the AJAT has a dual purpose: to produce credible, objective evidence about a community's justice problems and to build local capacity to conduct quality research that a community can use to strengthen itself.

The AJAT breaks access to justice down into a number of components, the Elements of Access to Justice, each of which impacts a citizen's ability to use justice institutions to solve their justice problems. An assessment considers whether each element is present, evaluating both the formal justice system—institutions established by the state to apply and enforce laws—and the informal justice system—institutions that, although not sanctioned by the state, play a role in addressing justice issues. Where obstacles to access to justice are identified, an assessment proposes recommendations as to how they might be dealt with.

## Methodology

This report is the product of a partnership between ABA ROLI and *L'Association des Juristes Maliennes* (AJM). AJM undertook the majority of the research in this report, using a research plan based upon the AJAT and developed during working groups with ABA ROLI. AJM also analyzed the data collected and provided a summary of that research to ABA ROLI, who then drafted and edited this report. The final report was reviewed by experts and key stakeholders in Mali and, after a final edit, was published in English and French. While ABA ROLI is immensely grateful to AJM for their assistance in drafting this report, its contents are exclusively the responsibility of ABA ROLI.

The findings in this report are based on qualitative research methodologies, and are intended to present an informative analysis of access to justice in Mali. Data for this report was collected through semi-structured interviews. Most interviews were conducted between January 2011 and March 2011, although further research was conducted throughout 2011. Research was conducted primarily in Bamako and Mopti. Close to 200 people were interviewed, including magistrates, lawyers, prosecutors, law enforcement agents, execution officers, notaries, government officials, law professors, civil society representatives, journalists, mayors, imams, priests and heads of family. A number of beneficiaries of legal services were also interviewed, and their testimony, with fictional names added, greatly enriches this report. Records of individuals interviewed, whose names are kept confidential and whose time and assistance are highly appreciated, are on file with AJM and ABA ROLI. Prior to, and during, the assessment process, a review of key legislation and secondary sources was also conducted.

The use of a qualitative methodology has some limitations. The requisite small sample size is more likely to yield information on individual experiences and perceptions than generalizable findings on institutional impacts. The research team strongly believes that use of mixed-methods research, including a comprehensive mixed-methods evaluation, would help to gain a more accurate picture of access to justice in Mali.

## Acknowledgements

ABA ROLI's Access to Justice Advisor, Jennifer Tsai, led the development of the AJAT, with assistance from Legal Analyst Jim Wormington. An expert working group provided input and critical comments on the draft methodology. Members of the expert working group included



Persida Rueda Acosta, Philippines Chief Public Attorney; Juan Carlos Botero, Interim Executive Director and Director of the Rule of Law Index at the World Justice Project; Stephen Golub, legal empowerment expert and law professor; Martin Gramatikov, a lecturer at Tilburg University and a member of the Measuring Access to Justice Project; Simeon Koroma, Executive Director of a Sierra Leonean paralegal services program, Timap for Justice; Zaza Namoradze, Director of the Budapest office of the Open Society Justice Initiative; and Annette Pearson, an international development consultant and expert on Colombia's National Community Justice Houses. ABA ROLI extends sincere thanks to these individuals for their invaluable contributions to the development of the AJAT.

Fatimata Doumbia Dembélé, the president of AJM, coordinated this project for AJM. Me. Kadidia Sangaré-Coulibaly, lawyer and president of Mali's National Human Rights Commission, and Me. Fatimata Dicko-Zouboye, president of the Chamber of Notaries, were AJM's key researchers. Other AJM members who conducted research for this report include: Me. Kadidia Traoré, lawyer; Mrs. Ba Aminata Traoré, magistrate; Me. Diamouténé Aminata Traoré, lawyer; Me. Saran Keita-Diakité, lawyer; Me. Fatoumata Kouma-Fofana, notary; Mrs. Bouaré Bintou Founè, jurist; and Mrs. Coulibaly Siga Keita, jurist.

ABA ROLI's Legal Analyst, Jim Wormington, worked on the implementation of the AJAT in Mali, with support from ABA ROLI Country Director, Me. Amadou Tiéoulé Diarra. Program Manager Hadja Tall and Program Associate Diane Albrecht also provided essential support. Access to Justice Advisor, Jennifer Tsai, provided expert advice throughout the research process and commentary on draft reports.

## Executive Summary

Access to justice requires that all citizens are able to use justice institutions to find solutions to common justice problems. If law is to contribute to human development, it must guarantee access to justice; without it, the rights and duties it enshrines – and the protections they provide – are meaningless. Access to justice has been a priority for the Malian government since 2000, when it began a Ten-Year Program for Reform of the Justice Sector (PRODEJ). Over a decade later, the government continues to be firmly committed to access to justice and is in the middle of a reform program for 2010-2014 (PRODEJ 2010-2014) that includes, “improved accessibility of justice” as a key component.

Access to justice is especially important for women, because it is a vital tool with which to fight discrimination and protect the rights of the most vulnerable. Mali’s National Gender Policy (PNG-Mali) recognizes that a key part of efforts to improve the position of women is, “the consolidation of Mali’s democracy and the rule of law through equality of access and full enjoyment of the fundamental rights of women and men.” This report, which is the product of a partnership between ABA ROLI and *L’Association des Juristes Maliennes*, a professional association of women magistrates, lawyers and other legal professionals, considers how successful justice sector reform in Mali has been in providing women with access to justice. To do so, the report breaks down access to justice into a number of components, the Elements of Access to Justice, each of which is essential if women are to be able and willing to use justice institutions. For each element, the report considers the extent to which reforms in Mali have enabled women to obtain that element of access to justice, and considers what future measures might be necessary to address outstanding obstacles to access to justice. Although the report discusses access to justice for women in Mali in general, it uses three case studies – domestic violence, divorce and unfair inheritance – to illustrate its analysis.

### Elements of Access to Justice

#### **1. *Legal Framework: Laws and regulations establish citizens’ rights and duties, and provide citizens with mechanisms to solve their justice problems.***

Mali’s legal framework provides women with many important rights, as illustrated by the legal framework that applies to domestic violence and divorce. Although Malian law does not specifically criminalize gender-based violence, perpetrators can be prosecuted for a number of related crimes. A divorce can be obtained on the basis of consent (which must include agreement as to the custody of children and distribution of property), as a result of a breakdown in marital relations or in case of fault by a partner. When a woman obtains an order for divorce, she has a number of rights, including to alimony, to damages to reflect the material or emotional harm caused by the dissolution of the marriage, and to her share of the marital property, which will depend on how the property was held during the marriage. Custody of children is awarded to the spouse in whose favor the divorce is granted, unless it is determined that another disposition is in a child’s best interests.

The recent adoption of a new Family Code, however, marks a missed opportunity to further protect the rights of women, a fact illustrated by the Code’s provisions on inheritance. The Code provides, for the first time in Mali, a legal framework that regulates inheritance (previously inheritance was governed exclusively by the customs and traditions of the deceased), and which gives males and females equal rights. However, the Code offers each citizen the option to decide whether his estate will be distributed according to this legal framework or according to religious or traditional principles, which frequently discriminate against female beneficiaries. Furthermore, as a result of amendments to the Code triggered by protests from Islamic groups, where a deceased has not made it clear how he or she wishes his or her estate to be distributed, courts have significant discretion to continue to apply traditional or religious principles.

Mali's legal framework provides citizens with a number of mechanisms to solve justice problems. For criminal matters, such as domestic violence, it is the prerogative of the state to prosecute offenses, but victims can be joined as a civil party to the proceedings and can obtain damages from a convicted perpetrator. In civil cases, such as divorce or disputed inheritance, an aggrieved party has the right to petition a court for damages or another appropriate remedy. Outside of the formal justice system, there are several informal institutions, including family, religious and local government authorities, which are involved in settling legal conflicts. Although most of these authorities operate outside of the law, the legal framework grants certain local government actors (neighborhood, village and fraction heads) the right to mediate civil and commercial cases.

**2. *Legal Knowledge: Citizens are aware of their rights and duties, and the mechanisms available to solve their justice problems.***

Efforts to build legal knowledge amongst women are hindered by low literacy and education rates (in 2009, Mali's literacy rate was 27.7%, and 19.8% for women). The state's efforts to promote legal awareness are primarily conducted by the Ministry of Justice and the Office for the Promotion of Women of the Ministry for the Promotion of Women, Children and the Family, both of which have raising rights awareness amongst women as key policy goals. In the past, however, government efforts have been criticized for a lack of coordination amongst the ministries, and civil society organizations, involved. The adoption, in November 2010, of the PNG-Mali, which includes a focus on rights awareness, provides an opportunity to increase communication and collaboration amongst key ministries and civil society actors.

Civil society organizations play a vital role in raising legal knowledge, particularly through community events and radio campaigns, the media most accessible to disadvantaged women. However, there is concern that awareness campaigns too often focus on Bamako and other urban areas, and do not always reach the grassroots level, particularly in rural areas. It has therefore been suggested that the "field of operation" of awareness campaigns should be expanded, and should focus on improving legal knowledge at the neighborhood and village level, for example through the use of community-based paralegals.

**3. *Legal Advice and Representation: Citizens can access the legal advice and representation necessary to solve their justice problems.***

Mali has fewer than 300 lawyers, the vast majority of whom are located in the capital, Bamako. In spite of the dearth of lawyers, the law provides indigent litigants with the right to be assisted by a lawyer in civil and criminal cases. According to a 2001 law, a legal aid system is supposed to be administered by Legal Assistance Offices (*Bureaux d'Assistance Judiciaire*) attached to each court or tribunal. However, since the enactment of this law, Legal Assistance Offices have only been established in a few courts. In any case, to obtain legal assistance, a litigant has to produce a long list of official documents, a difficult task for much of the country's largely illiterate population. In criminal cases, lawyers who represent indigent accused before the Court of Assizes do receive a small commission, but complain that the fee paid is largely symbolic. The government has also enacted legislation creating Offices for Reception and Orientation (*Bureau d'Accueil et d'Orientation*) and Centers for Access to Rights and Justice (*Centre d'Accès au Droit et à la Justice*), which aim to advise litigants on their basic rights and refer them to institutions or actors that can help them solve justice problems. These structures, which are also supposed to be established at each court, have yet to be installed.

The Malian government recognizes the importance of access to advice and representation for access to justice. PRODEJ 2010-2014 provides for the establishment of Legal Assistance Offices attached to each court, as well as for the installation of Offices for Reception and Orientation and Centers for Access to Rights and Justice. It will, however, take time for these reforms to be implemented, and, in the interim, the work of civil society organizations, particularly legal clinics, will remain a vital source of advice and representation for disadvantaged women. Furthermore,

the success of Legal Assistance Offices depends on the willingness of litigants to travel to courts and tribunals to seek out their services. In reality, courts and tribunals remain remote from many communities, particularly rural areas. For this reason, the implementation of a legal aid system should be combined with initiatives, for example paralegal networks, which provide legal advice and representation at a community level and can, where necessary, refer litigants to Legal Assistance Offices.

**4. Access to a Justice Institution: Justice institutions exist, whether formal or informal, that are affordable and accessible, and process cases in a timely manner.**

There are a number of significant obstacles to access to formal courts and tribunals. Because there is usually only a single first instance court (a *Tribunal de Première Instance* or *Justice de Paix de Compétence Étendue*) for each circle, many litigants, especially in rural areas, must travel tens and sometimes hundreds of miles to reach a court. Furthermore, a majority of both civil and criminal cases are not definitively resolved at first instance, and require one or more hearings before the Court of Appeal or the Court of Assizes. Mali currently has only three Courts of Appeal and some litigants have to travel more than 500 miles to reach them. The cost of filing legal claims, both from official fees and from corruption, is also a significant obstacle to access to justice in a country in which more than half the population lives on less than USD 1.25 a day. The legal aid system, which excuses indigent litigants from paying court fees, depends on the implementation of Legal Assistance Offices, which have yet to be installed in most jurisdictions. While there are no reliable statistics on the average duration of civil or criminal cases in Mali, the slow pace of litigation – cases can take years to resolve – also dissuades many litigants from filing legal claims. Women face particular obstacles to access to courts. For example, social stigmas mean that taking a family conflict to court is seen as a “declaration of war” that threatens the unity of the family and the broader community. Social factors also negatively impact the attitude of justice sectors actors towards women’s rights cases.

The Malian government, through PRODEJ 2010-2014, is working to address many of these obstacles to access to courts and tribunals. For example, the planned construction of new Courts of Appeal in Sikasso, Ségou and Gao will bring appellate courts closer to many litigants, while the establishment of Legal Assistance Offices will allow indigent litigants to obtain relief from court fees. However, while these reforms are vital, courts and tribunals will remain remote from many communities even once reforms are implemented. As a result, the majority of justice problems are likely to continue to be heard by informal authorities, such as family elders, *griots*, religious leaders and local government officials, with litigation viewed only as a last resort.

**5. Fair Procedure: Justice institutions, whether formal or informal, ensure that citizens have an opportunity to present their case and that disputes are adjudicated impartially and without improper influence. Where cases are resolved by mediation, citizens make voluntary and informed decisions to settle.**

Malian courts and tribunals give litigants in both criminal and civil proceedings an adequate opportunity to present evidence and arguments in support of their case. However, the justice dispensed by courts and tribunals is undermined by corruption and undue influence. The meager salaries paid to justice sector actors may well be an important cause of corruption. However, justice sector actors also point out that corruption is problem of culture and, “there will never be a definitive solution without changing culture.” This culture persists in a context in which few acts of corruption are criminally prosecuted or result in professional sanction. The High Judicial Council, which is responsible for disciplining magistrates, is criticized for lacking the transparency needed for proper oversight by civil society (the Council’s decisions are not made public and disciplinary proceedings can only be brought by the minister of justice). The government is considering revising the composition and procedure of the High Judicial Council to increase transparency.

Informal justice authorities tend to use mediation to resolve conflicts. However, the status of women in Mali affects their ability to negotiate on an equal footing with other parties, especially in

family cases. In addition, there is a certain social pressure that requires the parties to accept solutions proposed by informal authorities. As a result, the outcome of mediation can reflect the traditional, family and religious principles to which informal actors refer to resolve disputes. Those principles do not always adequately respect the legal rights of women. It is therefore important to explore ways to engage with informal authorities so that their decisions are more respectful of legal rights, especially women's rights, while preserving the characteristics of informal authorities that make them accessible to litigants.

**6. *Enforceable Decision: Justice Institutions are able to enforce their decisions, including through the use of sanctions.***

The decisions of courts and tribunals are enforced by an execution officer (called a *huissier*). In the event of difficulty executing a judgment, the execution officer can request the intervention of law enforcement officers and can even file a complaint against the debtor in court. However, absent cooperation from the losing party, there are a number of obstacles to the enforcement of the decisions of formal courts. For example, there are significant costs associated with enforcement, such as the fees paid to execution officers (usually 10% of the amount recovered) and, should their involvement be necessary, to law enforcement agents. Corruption and undue influence also prevent the enforcement of decisions against powerful actors. Within the informal system, there is a certain moral pressure on the parties to respect settlements reached before family, religious or local government actors. However, because informal authorities lack coercive force to require the parties to comply with settlements, agreements are often not respected, and the same disputes surface.

## Introduction

Access to justice requires that all citizens are able to use justice institutions to find solutions to common justice problems. If law is to contribute to human development, it must guarantee access to justice; without it, the rights and duties it enshrines— and the protections they provide — are meaningless. In 2000, the Malian government and its international partners initiated a Ten-Year Program for Reform of the Justice Sector (*Programme Décennal de Développement de la Justice* [hereinafter PRODEJ]) to, “strengthen the rule of law, guarantee social peace and promote the development of Mali.”<sup>1</sup> PRODEJ recognizes the importance of access to justice, which it describes as, “a fundamental right that determines the exercise of all other rights.”<sup>2</sup> Some 12 years later, the Malian government continues to be firmly committed to justice reform. In 2009, it adopted an operating plan for PRODEJ for 2010-2014 [hereinafter PRODEJ 2010-2014], which includes “improved accessibility of justice” as a key component.<sup>3</sup>

Access to justice in Mali is especially important for women, because it is a vital tool with which to fight discrimination and protect the rights of the most vulnerable. Mali’s National Gender Policy [hereinafter PNG-Mali] recognizes that a key part of efforts to improve the status of women is, “the consolidation of Mali’s democracy and the rule of law through equality of access and full enjoyment of the fundamental rights of women and men.”<sup>4</sup> This report, which is the product of a partnership between ABA ROLI and *L’Association des Juristes Maliennes* [hereinafter AJM], a professional association of women magistrates, lawyers and other legal professionals, considers how successful justice sector reform in Mali has been in providing women with access to justice.

This report breaks down access to justice into a number of components, the Elements of Access to Justice, each of which is essential if citizens are to be able and willing to use justice institutions. For each element, the report considers the extent to which reforms in Mali have enabled women to obtain that element of access to justice, and considers what future measures might be necessary to address outstanding obstacles to access to justice. The Elements of Access to Justice are described in the table below.

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<sup>1</sup> TEN-YEAR PROGRAM FOR REFORM OF THE JUSTICE SECTOR, THE OBJECTIVES OF THE REFORM, *available at* [http://www.justicemali.org/index.php?option=com\\_content&view=article&id=87&Itemid=66](http://www.justicemali.org/index.php?option=com_content&view=article&id=87&Itemid=66)

<sup>2</sup> *Id.*

<sup>3</sup> TEN-YEAR PROGRAM FOR REFORM OF THE JUSTICE SECTOR, OPERATING PLAN 2010-2014 at 5 [hereinafter PRODEJ 2010-2014]

<sup>4</sup> MINISTRY FOR THE PROMOTION OF WOMEN, CHILDREN AND THE FAMILY, NATIONAL GENDER POLICY at 62 (2010) [hereinafter PNG-MALI]

<b>The Elements of Access to Justice</b>	
<i>Legal Framework</i>	Laws and regulations establish citizens' rights and duties, and provide citizens with mechanisms to solve their justice problems.
<i>Legal Knowledge</i>	Citizens are aware of their rights and duties, and the mechanisms available to solve their justice problems.
<i>Legal Advice and Representation</i>	Citizens can access the legal advice and representation necessary to solve their justice problems.
<i>Access to a Justice Institution</i>	Justice institutions exist, whether formal or informal, that are affordable and accessible, and process cases in a timely manner.
<i>Fair Procedure</i>	Justice institutions, whether formal or informal, ensure that citizens have an opportunity to present their case and disputes are adjudicated impartially and without improper influence. Where cases are resolved by mediation, citizens make voluntary and informed decisions to settle.
<i>Enforceable Decision</i>	Justice Institutions are able to enforce their decisions, including through the use of sanctions.

Reading this table, you will note that the final three elements of access to justice discuss both the formal justice system – institutions established by the state to apply and enforce laws – and the informal justice system – institutions that, although not sanctioned by the state, play a role in resolving disputes between citizens. Because, in many countries, including Mali, informal institutions play a vital role in settling disputes, an analysis of access to justice would not be complete without a discussion of the extent to which informal institutions permit citizens to enforce their legal rights.

## Mali Background

### Historical Context

Mali, which is located in central West Africa, has an area of 480,000 square miles and a population estimated at around 14,500,000. Mali borders seven countries: Algeria to the north, Ivory Coast and Guinea to the southwest, Burkina Faso and Niger to the east, and Senegal and Mauritania to the west.

Mali's population is composed of many different ethnicities, with the main ethnic groups Bambara, Peuls, Sarakolés, Sonraïs, Tuareg, Maur, Senufo, Bobo and Dogon. Although French is the country's official language, the majority of the population speaks Bambara and each ethnic group also has its own language. More than three quarters of the population practice Islam (mainly Sunni Islam), with the rest of the country divided among Christians (Catholics and Protestants) and a small number of animists.

Mali, which while a French colony was known as French Sudan, became independent on September 22, 1960, following a brief federation with Senegal. Modibo Keita, the new country's first president, soon imposed a system of one-party, socialist rule. In 1968, Keita was deposed by a group of military officers directed by Lieutenant Moussa Traoré, who established a dictatorship. In 1991, following a sustained period of civil unrest, the Traoré regime was overthrown in a military coup d'état led by Lieutenant Colonel Amadou Toumani Touré. After period of transition, Alpha Oumar Konaré was installed as president, and led the country for two five-year terms. He was replaced as president by Touré, whose tenure in turn ends in 2012.

Despite two decades of political stability, Mali is one of the world's least developed countries. In the latest United Nations Development Program [hereinafter UNDP] Human Development Index, Mali ranks 175 out of 187 countries.<sup>5</sup> Women are most affected by this lack of development: according to a 2007 study, 70% of women have an income below the minimum salary (CFA 27,000 – around USD 60)<sup>6</sup> versus 30% of men.<sup>7</sup>

### Legal and Political Context

#### *National Political Institutions*

Three institutions share power in Mali: the executive, the legislature and the judiciary. Executive power is exercised by the president of the republic, who is elected for a term of five years. The president appoints the prime minister and, upon the prime minister's proposal, the other members of government. This government, headed by the prime minister, then determines and directs state policy. The National Assembly exercises legislative power, and its members (*deputés*) are elected by universal suffrage for five-year terms. The National Assembly enacts Mali's laws, which govern a list of subjects defined by the Constitution, including the fundamental rights granted to citizens, the nature of crimes and misdemeanors, the status and capacity of individuals, marriage and inheritance.<sup>8</sup> After the National Assembly adopts a law, the president must promulgate it within fifteen days and, upon promulgation, the law comes into force. However, the president may also ask the National Assembly to reconsider a law, or some of its contents, during a second reading. Malian laws are either organic or ordinary. Ordinary laws are enacted by a simple majority of the National Assembly, while organic laws require an absolute majority. Organic laws also cannot be promulgated until the Constitutional Court declares them

<sup>5</sup> UNITED NATIONS DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT 2011 at 129 (2011)

<sup>6</sup> In this report, West African CFA francs are converted to United States dollars at the average rate of conversion at the time when interviews were conducted (USD 1.00 = CFA 447.5).

<sup>7</sup> PNG-MALI at 31.

<sup>8</sup> CONSTITUTION OF THE REPUBLIC OF MALI art. 70 (*adopted* Jan 12, 1992) [hereinafter CONST.]

compatible with the Constitution.<sup>9</sup> Matters outside of the domain of law are regulatory in nature, and may be regulated by the president and his government by decree.

### **Local Government Institutions**

Mali has embraced the concept of decentralization: the effort to delegate political and financial powers from the central government to local actors. Mali has eight regions (Kayes, Koulikoro, Sikasso, Ségou, Mopti, Gao, Tombouctou and Kidal), as well as the district of Bamako, which has a special status. Each region is composed of circles (*cercles*), which are in turn composed of communes (urban communes for urban areas and rural communes for rural). Each commune has a final subdivision, which is called the neighborhood (*quartier*) in urban communes and the village or fraction in rural communes (villages are found in communes with a sedentary population, fractions in nomadic communities). Regions are governed by a regional council, which is composed of representatives elected by each circle council. Circle councils are elected by secret ballot by communal councils, which are elected by the commune's population and are headed by a mayor. Neighborhoods, villages and fractions are administered by a neighborhood, village or fraction head (*chef de quartier/village/fraction*). Village or fraction heads are chosen by a village or fraction council, which is elected by the local population. Neighborhood heads are appointed by the commune council. The special district of Bamako is divided into six communes, each directed by an elected mayor. Bamako's communes are divided into quarters.

Each level of decentralization – regions, circles and communes – is a financially autonomous entity, able to formulate and implements its own policy. However, at each level, there is also a representative of the central government charged with ensuring consistency and harmony between state initiatives and those of the decentralized institutions (for circles, this person is called a prefect (*préfet*) and for communes a sub-prefect (*sous-préfet*)).

### **Judicial Institutions**

The **Constitutional Court** oversees the constitutionality of laws and is the guarantor of fundamental rights and public liberties. It also has jurisdiction over conflicts among state institutions, and questions relating to presidential and legislative elections and referendums.<sup>10</sup> The Constitutional Court has nine members (*conseillers*) who serve seven-year terms, which can be renewed only once. The president appoints three of the Court's members (at least two must be jurists); three are appointed by the president of the National Assembly (at least two jurists); and three are magistrates designated by their peers.<sup>11</sup>

The **Supreme Court** is the highest court for administrative and judicial matters. The Supreme Court's judicial section reviews the legality of court decisions, and determines whether Malian laws have been properly interpreted and applied. The judicial section is divided into five chambers: two civil and one criminal, social and commercial. Each chamber must sit in panels of at least three magistrates.

The **Court of Appeal** reviews the decisions of first instance courts (*Tribunaux de Première Instance* and *Justices de Paix à Compétence Étendue*). The Court of Appeal usually sits in panels of three judges, who reconsider both the factual and legal basis for the first instance decision. The Court of Appeal is also the home of the **Court of Assizes** (*Cour d'Assises*), a criminal court and the only court with jurisdiction over felonies. The Court of Assizes decides cases in panels composed of three magistrates of the Court of Appeal and a jury of four citizens. Panels vote by simple majority.

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<sup>9</sup> CONST. art. 70

<sup>10</sup> *Id.* art. 86.

<sup>11</sup> *Id.* art. 91

**Tribunaux de Première Instance** (literally, tribunals of first instance [hereinafter TPI]) hear first instance civil cases as well as appeals for cases whose value is below a certain amount. They also adjudicate criminal offenses that are classified as misdemeanors (*délits*). A single judge usually adjudicates cases in TPI, but he or she is assisted by a prosecutor (*procureur*) and an examining magistrate (*juge d'instruction*). **Justices de Paix à Compétence Étendue** [hereinafter JPCE] have the same jurisdiction as TPI. However, JPCE are staffed by a single judge, who plays the role of judge, prosecutor and examining magistrate.

Mali has a number of specialized courts, including a Labor Tribunal (*Tribunal du Travail*), Commercial Courts (*Tribunaux de Commerce*), Children's Courts (*Tribunaux pour Enfants*) and Administrative Courts (*Tribunaux Administratifs*).



## Key Populations and Justice Problems

Women in Mali suffer from a range of rights violations and the obstacles they face in obtaining access to justice are different in each case. A woman seeking to prosecute a perpetrator of gender-based violence faces different challenges to one trying to enforce a contract to purchase land. For this reason, this report chooses to use three particular cases – domestic violence, divorce and unfair inheritance – as a test for access to justice in Mali. It assesses the particular challenges that women face in obtaining access to justice in these cases, and seeks to use this analysis to draw lessons for access to justice for women in Mali more generally. Below, we give a short definition of each case, as well as a real-life example of the pain that it can cause.

**Domestic Violence:** A woman or girl is physically, sexually or psychologically abused by a spouse or partner, or by other family members. The report does not discuss efforts to obtain justice against perpetrators of female genital mutilation.

*“My husband is an uncontrollably violent alcoholic. One day, after he had allowed me to visit my sister, the road from Koulikoro was blocked because an official delegation was going through. When I came home late, I was turned away, so I took refuge at the home of my husband’s brother....He had to let me go after a while because my husband was on drugs and came to beat me. That’s when I went to my parents.” Awa, interviewee.*

**Divorce:** A woman is deciding whether to seek a divorce. She worries that, should she do so, or should her husband decide to divorce her, she will be unable to support herself and will be denied access to her children.

*“I was in a situation that was getting worse every day. I had been married for four years, and I put up with many years of suffering, hunger, indifference and abuse from my husband and his family. I have just been divorced. The court said both my husband and I were at fault for the divorce. I do not understand this, because at the hearing I thought I had told the court of the suffering and ordeals I put up with in my home. I think that roles were reversed in court, and I can’t understand how I could have lost this case after so much suffering.” Kady, interviewee.*

**Unfair Inheritance:** A woman seeks a fair share of the inheritance of a family member, and does not wish her share to be reduced simply by virtue of her gender.

*“I can give you the example of a woman whom I helped bring a complaint to court. I even have her number on my cell phone. This woman lost her husband and, although she was entitled to her own share of the inheritance, her husband’s brother – who by tradition was named head of the family after his brother’s death – took all the family property. I even had to give her money so she could travel to the court.” Judge, interviewee.*



## Mali: Elements of Access to Justice

### Element I. Legal Framework

***Laws and regulations establish citizens' rights and duties, and provide citizens mechanisms to solve their justice problems.***

#### Conclusion

Mali's legal framework provides women with many important rights, as illustrated by the legal framework that applies to domestic violence and divorce. Although Malian law does not specifically criminalize gender-based violence, perpetrators can be prosecuted for a number of related crimes. A divorce can be obtained on the basis of consent (which must include agreement as to the custody of children and distribution of property), as a result of a breakdown in marital relations or in case of fault by a spouse. When a woman obtains an order for divorce, she has a number of rights, including to alimony, to damages to reflect the material or emotional harm caused by the dissolution of the marriage, and to her share of the marital property. Custody of children is also awarded to the spouse in whose favor the divorce is granted, unless it is determined that another disposition is in a child's best interests.

The recent adoption of a new Family Code, however, marks a missed opportunity to further protect the rights of women, a fact illustrated by the Code's provisions on inheritance. Prior to the adoption of the Code, Mali had no legal framework governing inheritance. Estates were distributed according to the traditional and religious principles of the parties, which can discriminate against female beneficiaries. The Code provides, for the first time in Mali, a legal framework that regulates inheritance, and which gives males and females equal rights. However, the Code offers each citizen the option to decide whether his or her estate will be distributed according to this legal framework or according to religious or traditional doctrine. Furthermore, as a result of amendments to the Code triggered by protests from Islamic groups, where a deceased has not made it clear how he or she wishes his or her estate to be distributed, courts have significant discretion to continue to apply traditional or religious principles.

Mali's legal framework provides citizens with a number of mechanisms to solve justice problems. For criminal matters, such as domestic violence, it is the prerogative of the state to prosecute crimes, but victims can be joined as a civil party to the proceedings and obtain damages from a convicted perpetrator. If the state fails to properly investigate or prosecute a crime, a victim can also initiate a prosecution. In civil cases, such as divorce or disputed inheritance, an aggrieved party has the right to petition a court for damages or another appropriate remedy. Outside of the formal justice system, there are several informal institutions – family, religious and local government authorities – involved in settling legal conflicts. Although most of these authorities operate outside of the law, the legal framework grants certain local government actors (heads of neighborhoods, villages and fractions) the right to mediate civil and commercial cases.

#### Analysis

The legal framework describes the laws and regulations that citizens rely upon to protect their rights. It defines the content and scope of rights, and offers citizens the possibility of initiating legal proceedings to solve justice problems. A comprehensive legal framework is an essential starting point for access to justice: if the law does not grant rights to vulnerable citizens, and the ability to enforce them, they have no protection against abuses by more powerful actors.

## **Rights and Duties**

We begin our analysis of the legal framework by considering the rights and duties that the law accords to Malian women. It would be impossible here to undertake a comprehensive analysis of all the rights and duties conferred by law. We therefore limit ourselves to a discussion of our three women's rights case studies – domestic violence, divorce and unfair inheritance – and consider the rights that women have in each case. We hope that this analysis provides some insight on the extent to which Mali's legal framework protects women's rights.

Mali has no specific provisions prohibiting violence against women. Victims of gender-based violence, such as domestic violence, must instead hope perpetrators are prosecuted for other violent offenses. Pertinent offenses, beginning with the most serious, include homicide<sup>12</sup>; rape<sup>13</sup>; indecent assault<sup>14</sup>; battery<sup>15</sup> and threats<sup>16</sup>. Abuse by a spouse also constitutes valid grounds for divorce, although, upon receiving such a request, judges have been known to grant a divorce in favor of the victim's husband, considering the victim's participation in proceedings against her husband to be a ground for divorce.

The legal framework that applies to divorce and inheritance has just emerged from a period of uncertainty. In 1996, in order to ensure better legal protections for women in family matters, the government began consultations on a new Family Code. This process culminated, in August 2009, in the adoption of a new Family Code by the National Assembly. The new Code was welcomed by civil society groups, who applauded the positive impact it would have on women's rights (for example, the code raised the minimum age for marriage for women from 15 to 18 years and eliminated the obligation that a wife obey her husband).<sup>17</sup>

The 2009 Family Code never came into force. Its adoption by the National Assembly triggered protests by those who believed that its provisions were contrary to Islamic values. As a result, President Touré decided, "for the sake of peace and social harmony," not to promulgate the new law, but to return it to the National Assembly for a second reading.<sup>18</sup> The National Assembly established a commission, composed of députés and representatives of Mali's High Islamic Council, to agree on amendments to the legislation. The amendments, which are discussed in detail below as they relate to divorce and inheritance, removed several of the positive aspects of the 2009 law (for example, the minimum age for marriage for women was only raised to 16 years, versus 18 for men, and a wife's obligation to obey her husband was maintained).<sup>19</sup> The amended code was adopted by the National Assembly on December 2, 2011 and promulgated by President Touré on January 16, 2012.

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<sup>12</sup> LAW CREATING CRIMINAL CODE arts.199-202 (Law No. 01-79, Aug. 20, 2001) [hereinafter CRIM. CODE].

<sup>13</sup> *Id.* art. 226

<sup>14</sup> *Id.* art. 225

<sup>15</sup> *Id.* art. 207-208

<sup>16</sup> *Id.* art. 222

<sup>17</sup> PROPOSED LAW CREATING CODE OF PERSONS AND THE FAMILY, PRIOR TO AMENDMENT arts. 282 (legal age for marriage); 311 (obedience) [hereinafter FIRST VERSION FAMILY CODE]

<sup>18</sup> Speech of President Amadou Toumani Touré on Occasion of Sending Family Code for Second Reading (Aug. 27, 2009) in COMMISSION FOR CONSTITUTIONAL LAW, NATIONAL ASSEMBLY, REPORT ON PROPOSED LEGISLATION CREATING FAMILY CODE (Dec. 2011) [hereinafter LAW COMMISSION REPORT]

<sup>19</sup> LAW CREATING CODE OF PERSONS AND THE FAMILY art. 282 (legal age for marriage); art. 311 (obedience) (Law No. 09-38/ANRM, Aug. 3, 2009) [hereinafter FINAL FAMILY CODE]

The rights that relate to marriage – and divorce – in Mali must be discussed in light of the new Family Code. Marriages in Mali can be either religious or civil.<sup>20</sup> A civil marriage is celebrated before a state official, in accordance with formalities required by law.<sup>21</sup> A religious marriage is celebrated before a religious leader, such as an imam or priest. Until the adoption and promulgation of the new Code, a religious marriage had no legal significance and granted no legal rights to spouses. The dissolution of religious marriages, including divorce, was therefore largely administered by religious leaders. The new Family Code provides legal recognition to religious marriages (at least those celebrated after the Code's entry into force) and gives the parties to a religious marriage exactly the same rights and duties as in a civil marriage.<sup>22</sup> The decision to give legal status to religious marriages was an amendment to the 2009 version of the Code, and was a response to the significant number of religious marriages entered into in Mali.<sup>23</sup>

The new Family Code provides three different grounds for divorce: mutual consent, a breakdown in marital relations, and fault of a spouse. A consensual divorce must include agreement as to the distribution of marital property and custody of children.<sup>24</sup> A divorce can be obtained on the basis of a breakdown in marital relations when the couple has lived separately for three years, or when either spouse is unable to perform his or her conjugal duties.<sup>25</sup> An action for divorce for fault of a spouse is a civil action, brought under the provisions of the Civil Procedure Code.<sup>26</sup> After the plaintiff has filed his or her action, the court is required to attempt to reconcile the parties.<sup>27</sup> If the case proceeds to trial, a divorce can be obtained on the basis of: adultery; verbal or physical abuse or serious insults that make marital life impossible; a serious criminal sentence; alcoholism or drug addiction; or a failure to fulfill a substantial promise.<sup>28</sup> A woman may also file for divorce when her husband refuses to provide for her essential needs (food, clothing, lodging) and for her medical care.<sup>29</sup> The Family Code does not contain a more specific definition of each of these grounds, and sometimes courts adopt interpretations that are unfavorable to the woman. For example, husbands are sometimes permitted to rely on minor disagreements to justify a divorce on the basis of verbal or physical abuse or serious insult.

There are several consequences of a divorce ordered by a court (instead of one obtained by consent of the parties). Custody of minor children is awarded to the spouse in whose favor the divorce is granted, unless the interests of the children require that custody be awarded to the other spouse or to a third party.<sup>30</sup> A wife who obtains a divorce against her husband has the right to alimony for a period of, at most, five years.<sup>31</sup> The judge may also award a spouse who has obtained a divorce on the basis of fault damages for the material or emotional harm caused by dissolution of the marriage. The costs of a divorce action are the responsibility of the spouse against whom the divorce is pronounced, and shared fault entails sharing of costs.<sup>32</sup> The

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<sup>20</sup> Note that, whether the marriage is civil or religious, Malian law permits polygamous marriages. When a marriage is celebrated, the spouses choose a monogamous or polygamous matrimonial regime. The parties are bound by this choice, unless a monogamous husband decides, with the express consent of his wife, to change the regime to polygamy. FINAL FAMILY CODE, art. 302.

<sup>21</sup> *Id.* arts. 291-300

<sup>22</sup> *Id.* arts. 300-1-300-6

<sup>23</sup> LAW COMMISSION REPORT at 5/6

<sup>24</sup> FINAL FAMILY CODE art. 335

<sup>25</sup> *Id.* arts. 320, 343. If, however, a spouse establishes that divorce would have exceptionally severe material and emotional consequences, either for that spouse, due to his or her age and the length of the marriage, or for children, the judge rejects the petition. *Id.* art. 346

<sup>26</sup> *Id.* art. 323

<sup>27</sup> *Id.* art. 349

<sup>28</sup> *Id.* art. 347

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* art. 364

<sup>31</sup> *Id.* art. 363

<sup>32</sup> *Id.* art. 327

distribution of property depends on the matrimonial regime (*régime matrimonial*), the legal framework that governs how marital property is held. The new Family Code provides for three different regimes: separate ownership of property; joint ownership of property; and joint ownership of property acquired during the marriage.<sup>33</sup> The matrimonial regime is separate ownership of property in all marriages except where the parties to a monogamous opt for another regime by contract.<sup>34</sup> The Code also permits the parties to a monogamous marriage to create their own rules for the distribution of property.<sup>35</sup>

Prior to the adoption of the new Family Code, Mali had no legal framework governing inheritance. Estates were distributed according to the traditional and religious principles of the parties and courts hearing inheritance cases were assisted by assessors (*assesseurs*) familiar with traditional and religious doctrine.<sup>36</sup> Although the content of religious and traditional doctrines varies significantly depending on the region and parties involved, rules on the distribution of inheritance frequently discriminate against women. The new Family Code fills a gap in Mali's legal framework by describing rules that stipulate how estates should be distributed, and which do not discriminate against female beneficiaries (for example, in the absence of a surviving spouse, the children of the deceased or their descendants inherit "without distinction as to sex.")<sup>37</sup> However, the Code offers each person the option to choose whether his or her estate will be distributed according to these new rules or according to religious or traditional principles. The Code's rules therefore do not apply to a person, who has "indicated in writing or before witnesses his wish that his estate be devolved otherwise."<sup>38</sup> Furthermore, the new Code states that its rules will also not apply to a person whose religion or tradition is, "established in writing, by testimony, by his conduct or by common knowledge".<sup>39</sup> This is a significant change from the 2009 version of the Code, which required an explicit choice from the deceased that religious or traditional principles be applied, and gives traditional and religious doctrine, "the same standing" as the Code's legal framework, so that they no longer "appear exceptional or secondary."<sup>40</sup> As a result, the new Code's legal framework, while welcome, offers only partial protection to female inheritors, and, unless a deceased indicated explicitly how he or she wishes his or her property to be distributed, courts have significant discretion to continue to apply traditional and religious principles that can discriminate against women.

### ***Mechanisms to Solve Justice Problems***

The mechanisms used to solve justice problems in Mali differ depending on whether criminal or civil laws are involved. Two types of actions result from the commission of a criminal offense, such as an act of domestic violence, a public action (*l'action publique*) and a civil action (*l'action civile*).<sup>41</sup> The public action is the action brought by the state to maintain public order. A civil action is brought by a person who has suffered harm as a result of an offense, and seeks damages corresponding to the harm caused. When a public action is initiated, a victim with the right to a civil action can be joined as a civil party (*partie civile*) and then has the right to participate in proceedings. A civil action can also be brought separately from the public action, when it is dealt with as a civil case, but is deferred until the public action has been definitively adjudicated.<sup>42</sup>

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<sup>33</sup> FINAL FAMILY CODE art. 380

<sup>34</sup> *Id.* art. 383

<sup>35</sup> *Id.* art. 380

<sup>36</sup> A practice authorized by law. LAW REORGANIZING THE JUSTICE SYSTEM art. 17 (Law No. 88/39/AN/RM, Apr. 5 1988).

<sup>37</sup> FINAL FAMILY CODE art. 770

<sup>38</sup> *Id.* art. 748

<sup>39</sup> *Id.*

<sup>40</sup> LAW COMMISSION REPORT at 10

<sup>41</sup> LAW CREATING CRIMINAL PROCEDURE CODE art. 6 (Law No. 01-080, Aug. 8, 2001) [hereinafter CRIM. PROC. CODE]

<sup>42</sup> *Id.*

A public action is normally initiated when a law enforcement agent (*Officier de Police Judiciaire*) or a prosecuting magistrate (*procureur*) learns of the commission of an offense, for example through a complaint from the victim. The law enforcement agent, under the supervision of prosecutor, uses his powers of investigation to gather evidence and identify the alleged perpetrators. The prosecutor then decides whether the matter be discontinued or transferred to the competent judge. There are three categories of offenses in Mali. The most serious offenses are crimes (*crimes*), followed by misdemeanors (*délits*) and finally minor infractions (*contraventions*).<sup>43</sup> For offenses that the prosecutor believes are crimes, he or she must transfer the case to an examining magistrate (*juge d'instruction*), an independent magistrate charged with completing the investigation of the offense. Referral to an examining magistrate is optional for misdemeanors and minor infractions and the prosecutor can transfer these cases directly to court for trial (misdemeanors are tried in TPI or in JPCE; minor infractions in police courts (*Tribunaux de Simple Police*)). A victim can also initiate a public action either by bringing a complaint directly the competent court or, for crimes, by filing a complaint with an examining magistrate.<sup>44</sup>

When a case comes before an examining magistrate, he or she uses his or her extensive powers of investigation to finalize the inquiry into the offense. After the investigation is complete, the case is either discontinued or, if the magistrate believes there is enough evidence to justify a conviction, transferred to the appropriate court. Crimes are transferred to the indictments chamber (*chambre d'accusation*) of the Court of Appeal. The indictments chamber, which consists of three magistrates, reexamines the case to ensure that the offense is properly classified as a crime and that evidence exists in support of the alleged facts. If it is satisfied that a crime exists, it refers case to the Court of Assizes for trial. The trial court, whether the Court of Assizes or a TPI or JCPE, reconsiders the evidence for a final time, with all evidence produced publicly. A single judge in the TPI and JCPE decides the case. In the Court of Assizes, a panel composed of three magistrates and a jury of four citizens decides the case by simple majority. The decisions of the TPI and JCPE can be appealed to the Court of Appeal, which reexamines both the factual and legal basis for the decision. The sole avenue of redress for a decision of the Court of Assizes is to the Supreme Court.

For civil matters, such as a claim for divorce or for inheritance, it is up to an aggrieved citizen to bring a case to enforce his or her legal rights. The party who brings a complaint is called the plaintiff (*demandeur*) and the opposing party is called the defendant (*défendeur*). The plaintiff begins the action by serving a subpoena on his opponent, a notice through which he or she summons his or her adversary to appear in court and which describes the arguments on which the claim is founded. After the complaint is filed, an investigating magistrate examines the case file to ensure that all necessary documents and evidence have been assembled for the matter to be properly adjudicated (this phase is called the *mise en état*).<sup>45</sup> The judge responsible for the *mise en état* may also attempt to reconcile the parties and, if this is successful, a settlement is recorded in a court order.<sup>46</sup> If the case is to proceed to trial, the investigating judge transfers it to court and, at this point, the parties cannot submit further evidence in support of their claims. Decisions in civil cases are, for cases involving multiple judges, decided by majority vote. Judgments, including reasons for the decision, must be pronounced within three months of the

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<sup>43</sup> The distinction between crimes, misdemeanors and minor infractions depends on the penalty the offense entails. Offenses punishable by death, life imprisonment, or imprisonment of five to eight years are crimes.. Offenses punishable by imprisonment of one to ten days or by a fine of CFA 300 (USD 0.70) to CFA 18,000 (USD 40) are minor infractions. All other offenses are misdemeanors. CRIM. CODE arts. 2, 4, 10.

<sup>44</sup> CRIM. PROC. CODE art. 3, 380 (direct citation); 62 (examining magistrate).

<sup>45</sup> This phase is mandatory in the majority of cases. DECREE CREATING CODE OF CODE OF CIVIL, COMMERCIAL AND SOCIAL PROCEDURE art. 134 (Decree No. 99-254/PRM, Sept. 15, 1999, as amended Decree No. 09-220/PRM, May 11, 2009) [hereinafter CIV. PROC. CODE].

<sup>46</sup> CIV. PROC. CODE art. 3



court hearing.<sup>47</sup> Decisions of a TPI or JPCE in civil cases are appealed to the Court of Appeal. The appeal is, in effect, a complete review of the first instance judgment, including all legal and factual issues, and the parties may invoke new arguments, produce new documents or present new evidence to justify the grounds of their appeal.

Outside of the formal justice system, there are several informal authorities, including family, religious and local government actors, which are involved in settling legal conflicts. These authorities are discussed in more detail below (Elements 4, 5 and 6). Although most informal authorities operate outside of the law, the legal framework grants certain local government actors (neighborhood, village and fraction heads) the right to mediate civil and commercial cases.<sup>48</sup> The law does not provide any further detail on how this mediation should occur, nor what oversight should be provided to such authorities.

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<sup>47</sup> *Id.* art. 458, 463

<sup>48</sup> LAW CREATING UNITS OF LOCAL GOVERNMENT art. 68 (Law No. 95/034/AN/RM, Apr. 12, 1995); LAW RELATING TO THE CREATION AND ADMINISTRATION OF VILLAGES, FRACTIONS AND NEIGHBORHOODS art. 15 (Law No. 06-023, Jun. 28, 2006).

## Element II. Legal Knowledge

***Citizens are aware of their rights and duties, and the mechanisms available to solve their justice problems.***

### Conclusion

Efforts to build legal knowledge amongst women in Mali are hindered by low literacy and education rates. The state's efforts to promote legal awareness are primarily conducted by the Ministry of Justice and the Office for the Promotion of Women of the Ministry for the Promotion of Women, Children and the Family, both of which have raising rights awareness amongst women as key policy goals. In the past, however, government efforts have been criticized for a lack of coordination amongst the ministries, and civil society organizations, involved. The adoption, in November 2010, of the PNG-Mali, which includes a component on rights awareness, provides an opportunity to increase communication and collaboration amongst key ministries and civil society actors.

Civil society organizations play a vital role in raising legal knowledge, particularly through community events and radio campaigns, the media most accessible to disadvantaged women. However, there is concern that awareness campaigns too often focus on Bamako and other urban areas, and do not always reach the grassroots level, particularly in rural areas. It has therefore been suggested that the "field of operation" of awareness campaigns should be expanded, so as to focus on improving legal knowledge at the neighborhood and village level, for example through the use of community-based paralegals.

### Analysis

*"I am illiterate and I don't know anything about law. I am in a religious marriage, so I don't have any documents to let me enjoy the rights marriage affords me... if I had had the chance to have a marriage certificate, my husband would have been punished for his violence against me."*  
Kadi, interviewee.

Mali's government has an obligation to ensure that vulnerable women know their rights and the mechanisms through which they can assert them.<sup>49</sup> In this section of the report, we take a critical look at the efforts of state and civil society organizations [hereinafter CSOs] to raise women's awareness of their rights and duties. However, before we begin this analysis, we should acknowledge that Mali's low literacy and education rates pose a particular challenge to efforts to raise legal awareness. In 2009, the literacy rate for citizens over age 15 was 27.7% and 19.8% for women.<sup>50</sup> The relatively low level of female literacy reflects similar figures for education: although 65.0% of girls are enrolled in basic primary education (7-12 years), this figure drops to 36.9% for basic secondary education (13-15 years), compared to 50.9% for men.<sup>51</sup>

<sup>49</sup> For example, the protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (known as the Maputo Protocol) requires that Mali take all appropriate measures to ensure, "the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitize everyone to the rights of women." PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA (Jul. 11, 2003, ratified Jan. 13, 2005)

<sup>50</sup> NATIONAL INSTITUTE OF STATISTICS, FOURTH CENSUS OF POPULATION AND HOUSING, SYNOPTIC TABLE OF INDICATORS, FINAL RESULTS (2011) [hereinafter CENSUS 2011]

<sup>51</sup> *Id.*

### **State Efforts to Increase Legal Knowledge**

New laws and regulations in Mali are published in the Official Journal.<sup>52</sup> The Journal is published in French each week by the general secretariat of the government, which also sells copies of the journal from its head office in Bamako. It is difficult to get copies of the Official Journal in the regions. Although the Official Journal is not available online, the web site of the general secretariat used to publish new laws, orders and decrees, but has not been regularly updated since 2001.<sup>53</sup> A few other web sites publish Malian laws and decrees, but these are also not frequently updated.<sup>54</sup> In any case, a very small percentage of the population uses the internet.<sup>55</sup>

The state's efforts to promote legal awareness amongst women are centered at two key ministries, the Ministry of Justice and the Ministry for the Promotion of Women, Children and the Family (*Ministère de la Promotion de la Femme, de l'Enfant et de la Famille* [hereinafter MPFEF]). The Ministry of Justice has a committee dedicated to gender issues (*Comité Aiseur pour les Questions de Genre*), which is responsible for increasing the number of women working in the justice sector and improving the services offered to female litigants. In December 2008, this committee adopted a policy aiming to promote equality between men and women in the justice sector, one of the objectives of which was to raise women's awareness of their rights and duties and of legal proceedings and services.<sup>56</sup> Raising women's legal awareness is also a goal of PRODEJ 2010-2014.<sup>57</sup> Pursuant to these policies, the Ministry of Justice conducts activities to increase awareness of women's rights, including seminars and workshops, often in cooperation with non-governmental organizations [hereinafter NGOs] and international donors.

The MPFEF's Office for the Promotion of Women (*Direction Nationale de Promotion de la Femme* [hereinafter DNPf]) is the body charged with, "the development and implementation of national policy for the advancement of women, as well as the coordination and control of that policy."<sup>58</sup> The national policy for advancement of women is currently encapsulated by the PNG-Mali, which includes as a stated goal, "making as many women and men as possible aware of their rights and duties, of legal texts and of legal proceedings."<sup>59</sup> An action plan to implement the PNG-Mali has been developed for 2011-2013 [hereinafter PNG-Mali Action Plan 2011-2013], which includes a focus on legal awareness.<sup>60</sup> The DNPf implements a number of activities to achieve these goals, for example awareness events to celebrate International Women's Day or the International Day

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<sup>52</sup> CONST. art. 73

<sup>53</sup> GENERAL SECRETARIAT OF GOVERNMENT, OFFICIAL JOURNAL, LAWS *available at* <http://www.sgg.gov.ml/?p=L&ok=1>

<sup>54</sup> For example, the official site of PRODEJ has a list of laws and texts, but is not often updated. See [http://www.justicemali.org/index.php?option=com\\_content&view=article&id=102&Itemid=56](http://www.justicemali.org/index.php?option=com_content&view=article&id=102&Itemid=56).

<sup>55</sup> The International Telecommunications Union estimated that in 2008, 1 in 100 persons were internet users. INTERNATIONAL TELECOMMUNICATIONS UNION, INFORMATION SOCIETY STATISTICAL PROFILES 2009, AFRICA at 62 (2009).

<sup>56</sup> FATIMATA DICKO-ZOUBOYE AND KADIDIA SANGARÉ-COULIBALY, GENDER AND SECURITY IN MALI, TAKING STOCK AND NEW PERSPECTIVES at 20 (Geneva Centre for the Democratic Control of Armed Forces and Programme de Gouvernance Partagée de la Sécurité et de la Paix 2011)

<sup>57</sup> PRODEJ 2010-2014 at 68

<sup>58</sup> ORDER CREATING OFFICE FOR THE PROMOTION OF WOMEN art. 2 (Order No. 99-009/P-RM, Apr. 1, 1999)

<sup>59</sup> PNG-MALI at 62

<sup>60</sup> ACTION PLAN FOR NATIONAL GENDER POLICY 2011-2013, MINISTRY FOR THE PROMOTION OF WOMEN, CHILDREN AND THE FAMILY at 23 [hereinafter PNG-MALI ACTION PLAN 2011-2013]

for the Elimination of Violence against Women.<sup>61</sup> It also establishes resources discussing women's rights.<sup>62</sup>

The principal criticism leveled at awareness campaigns implemented by state actors is that there is insufficient coordination amongst the ministries involved, as well as a lack of coordination with NGOs. This creates a risk that programs cover the same ground or that a significant part of the population is neglected. More broadly, the PNG-Mali observes that in the past, the effort to advance women's rights has too often been perceived as the exclusive domain of the MPFEF, rather than as a something requiring a policy of national scope.<sup>63</sup> A key demand of civil society is therefore to see more communication among the key actors involved in raising women's legal knowledge.

The PNG-Mali does create a series of mechanisms to implement Mali's gender policy and to promote greater cooperation amongst the MPFEF, other ministries, including the Ministry of Justice, and civil society. The PNG-Mali provides for coordination mechanisms at a national level (for example, a Superior Council (*Conseil Supérieur*) for the PNG-Mali, chaired by the prime minister), as well as at the regional level (for example, regional councils, chaired by the region's governor).<sup>64</sup> The MPFEF remains the principal agency responsible for the implementation of the PNG-Mali, and is vice-chairman of each coordination mechanism. However, each body also includes representatives from key ministries and civil society. Such mechanisms, if effective, could play a vital role in coordinating efforts to raise rights awareness at both a national and local level. However, although the PNG-Mali was adopted in November 2010, its coordination mechanisms had been not been put in place as of October 2011.

### **Civil Society Efforts to Increase Legal Knowledge**

CSOs play a vital role in raising legal awareness amongst women in Mali. Organizations like AJM, DEME-SO, Women in Law and Development in Africa [hereinafter WILDAF], Association for Progress and Defense of Rights of Women (*L'Association pour le Progrès et la Défense des Droits des Femmes* [hereinafter APDF]), Malian Association for Human Rights (*L'Association Malienne des Droits de l'Homme* [hereinafter AMDH]), Coordination of Women's Rights Associations and NGOs for Mali (*La Coordination des Associations et ONG Féminines du Mali* [hereinafter CAFO]) and the Working Group on Rights and Citizenship of Women (*Le Groupe Pivot/Droits et Citoyenneté de Femmes* [hereinafter GP/DCF]) implement a range of legal awareness programs, either through media campaigns, discussed in greater detail below, or through the activities of agents on the ground. For example, AJM, since its creation in 1988, has involved 16,800 women in community discussions on women's rights (topics discussed include spouses' rights and duties, divorce, inheritance and violence against women). Each discussion, which uses local languages, provides participants with information on the basic legal principles that apply to the topics covered, and then takes the form of question and answer sessions in which the concerns of the audience are addressed. Other organizations use different techniques. For example, GP/DCF has organized large-scale group marriages in which around one hundred couples participate (the couples may already be married, but may not have registered that marriage).<sup>65</sup> For the participants, this event ensures they have legal protection in the case of the

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<sup>61</sup> The DPNF's recent activities are documented on the web site of the MPFEF, <http://www.mpfef.gov.ml/dnpf.html>.

<sup>62</sup> Several examples of these documents are collected on the web site of the MPFEF, <http://www.mpfef.gov.ml/publications.html>.

<sup>63</sup> PNG-MALI at 50

<sup>64</sup> *Id.* at 79-80

<sup>65</sup> FATIMA MAIGA, CIVIC EDUCATION IN MALI: AN OVERVIEW at 27 (Aga Khan Development Network-Mali 2007) [hereinafter CIVIC EDUCATION IN MALI]

death of their spouse (or a divorce); for those simply observing, it is a high-impact technique to raise awareness of the importance of a legally recognized marriage.<sup>66</sup>

The role of the media in raising legal awareness is inevitably affected by Mali's media environment. Although Mali has several daily and weekly newspapers, their circulation is fairly limited, and a 2009 study found that only 5% of women and 11% of men read a newspaper at least once a week.<sup>67</sup> Because of this, television and, especially, radio are the principal means of mass communication: the same study found that 70% of women and 79% of men listen to the radio at least once a week, versus 43% and 55% who watch television.<sup>68</sup> Mali has public radio stations, broadcast by the Office of Radio and Television Broadcasting for Mali (*L'Office de Radiodiffusion et de Télévision du Mali* [hereinafter ORTM]), as well as more than 200 private or community stations. The ORTM stations, two of which have national coverage and others regional, are mainly broadcast in French, while private or community stations, which mainly cover a specific geographic area, often use local languages. Radio stations play an important role in public awareness campaigns conducted by civil society. However, their involvement usually comes at the request of a partner CSO, and radio stations are usually compensated for broadcasting a particular event or discussion. As observed in a 2007 study, media are therefore, "instruments rather than initiators and developers of citizenship education concepts and programs."<sup>69</sup>

Civil society campaigns are undoubtedly a vital part of efforts to raise women's legal knowledge in Mali. However, one concern expressed during our research was that awareness campaigns are too often focused on Bamako and other urban areas, and do not always reach the grassroots level, particularly in rural areas. For example, it is more difficult for media campaigns to penetrate rural populations: a 2006 study found that 31% of women and 20% of men in rural areas are not exposed to any media, versus 12% of women and 5% of men in urban areas.<sup>70</sup> It has therefore been suggested that the "field of operation" of awareness campaigns should be expanded, and civil society should focus on improving legal knowledge at the neighborhood and village level. A promising initiative in this regard concerns the use of paralegals, citizens who have no formal legal qualifications but are trained in basic legal principles, and who organize meetings or events to increase legal awareness within their community.

The concept of paralegals is not new to Mali. A National Network for the Piloting of a Paralegal Training Curriculum (*Cadre National de Pilotage du Curriculum de la Formation du Parajuriste* [hereinafter CNPCP]), was founded in 2006. The CNPCP brought together a number of organizations that had previously worked with paralegals and aimed to foster a uniform vision for the training and operation of paralegal networks.<sup>71</sup> It successfully created a national curriculum for paralegal trainings, with standardized content (the curriculum contains nine modules, including on access to justice and women's rights). Using this curriculum, the organizations in the CNPCP trained paralegals in a number of communities, with all regions of the country covered except Gao and Kidal (AJM, for example, trained 20 paralegals in the Timbuktu region). Trainings, which can last up to 20 days, are longer and more detailed than a conventional rights awareness session, because they give paralegals, "essential knowledge that will enable them to transmit the law in a language and style accessible to the public."<sup>72</sup> The work of the CNPCP demonstrates

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<sup>66</sup> CIVIC EDUCATION IN MALI at 27

<sup>67</sup> DEPARTMENT FOR PLANNING AND STATISTICS, MINISTRY OF HEALTH ET AL, INVESTIGATION INTO HEALTH AND DEMOGRAPHICS 2006 (2007) at 38 [hereinafter EDSM-IV]

<sup>68</sup> *Id.*

<sup>69</sup> CIVIC EDUCATION IN MALI at 17

<sup>70</sup> EDSM-IV at 38

<sup>71</sup> The member organizations are AJM, DEME-SO, WILDAF, APDF and CAFO. INTERNATIONAL CENTER FOR JUDICIAL COOPERATION, NATIONAL CURRICULUM FOR PARALEGAL TRAINING IN MALI at 8 (2006) [hereinafter NATIONAL PARALEGAL CURRICULUM]

<sup>72</sup> *Id.* at 11

that paralegals can have a significant impact on raising legal awareness at a community level.<sup>73</sup> Because paralegals work within their own communities, they have the trust of their fellow citizens and know how to explain the law in words (and language) that the community will understand.<sup>74</sup> They also understand the justice problems that the community faces and can work to convince people that legal knowledge is vital to protect basic rights.<sup>75</sup> Finally, because paralegals trained by the CNPCP work on a volunteer basis (and have another full-time job), they are a cost effective way with which to improve legal awareness.

## Recommendations

In order to maximize the impact of legal awareness campaigns, state and civil society actors should ensure that programs are coordinated and avoid duplication. The mechanisms created to implement the PNG-Mali provide space for coordination between the MPFEF, the Ministry of Justice and civil society actors, and should be implemented as soon as possible. The MPFEF and CSOs should also ensure that efforts to increase legal awareness penetrate rural areas. One useful technique in this regard might be the use of paralegals, such as those trained by the CNPCP, to conduct legal awareness techniques at a community level (note that existing paralegal training curriculums will require updating as a result of recent changes to the law, particularly the new Family Code). The media should also be encouraged to take a more proactive role in legal awareness campaigns, rather than simply waiting for instruction (and funding) from civil society groups.

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<sup>73</sup> Léandro Varison, *Rights at the Heart of the Village*, in YEARBOOK OF ANTHROPOLOGY AND LAW 2010 at 89, 101/102 (Legal Anthropology Laboratory of Paris ed., Karthala 2011) [hereinafter RIGHTS AT THE HEART OF THE VILLAGE]

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

### Element III. Advice and Representation

***Citizens can access the legal advice and representation necessary to solve their justice problems.***

#### Conclusion

Mali has fewer than 300 lawyers, the vast majority of whom are located in the capital, Bamako. In spite of the dearth of lawyers, the law provides indigent litigants with the right to be assisted by a lawyer in civil and criminal cases. According to a 2001 law, the legal aid system is supposed to be administered by Legal Assistance Offices attached to each court or tribunal. However, since the enactment of this law, Legal Assistance Offices have only been established in a few courts. In any case, to obtain legal assistance, a litigant has to produce a long list of official documents, a difficult task for much of the country's largely illiterate population. In criminal cases, lawyers who represent indigent accused before the Court of Assizes do receive a small commission, but complain that the fee paid is largely symbolic. The government has also enacted legislation creating Offices for Reception and Orientation and Centers for Access to Rights and Justice, which aim to advise litigants on their basic rights and refer them to institutions or actors that can help them to solve justice problems. These structures, which are also supposed to be established at each court, have yet to be installed.

The Malian government recognizes the importance of access to advice and representation for access to justice. PRODEJ 2010-2014 provides for the establishment of Legal Assistance Offices attached to each court, as well as for the installation of Offices for Reception and Orientation and Centers for Access to Rights and Justice. It will, however, take time for these reforms to be implemented, and, in the interim, the work of CSOs, particularly legal clinics, will remain a vital source of advice and representation for disadvantaged women. Furthermore, the success of Legal Assistance Offices depends on the willingness of litigants to travel to courts and tribunals to seek out their services. In reality, courts and tribunals remain remote from many communities, particularly rural areas. For this reason, the implementation of a legal aid system should be combined with initiatives, for example paralegal networks, which provide legal advice and representation at a community level and can, where necessary, refer litigants to Legal Assistance Offices.

#### Analysis

*"We have been trained as paralegals. We educate women and refer them to a legal clinic where they are informed about their right to appear in court to exercise their rights and have the assistance of counsel."* Mariam, interviewee.

Malian women who know their basic rights and duties are unlikely to be able to navigate the judicial system on their own. They need someone to explain the steps necessary to file a claim and, in the event of litigation, to defend their interests in court. Even where a case is decided by informal authorities, the assistance of someone trained in basic legal principles can help litigants to protect their legal rights. There are three principal sources of legal advice and representation in Mali: lawyers, jurists and paralegals. A lawyer is a member of the Malian bar, and has the exclusive right to argue cases before courts and tribunals.<sup>76</sup> To enter the profession, a lawyer must obtain a master's degree in law, must pass the competitive bar examination and complete a

<sup>76</sup> LAW CREATING AND ORGANIZING THE PROFESSION OF LAWYER art. 11 (Law No. 94-042/AN-RM, Oct. 13, 1994) [hereinafter LAW ON PROFESSION OF LAWYER]

two-year internship.<sup>77</sup> A jurist has the same academic background as a lawyer (a master's degree in law) but, having not passed the bar exam, cannot be sworn in as a lawyer. Jurists can conduct legal consultations, mediate cases and file complaints in court, but, since they are not members of the bar, cannot plead cases in court. However, a party can authorize a jurist (or any person) to represent him in court, an authorization called a mandate (*mandat*).<sup>78</sup> A mandate gives the proxy the right to act, "in the name of", or, "in place of", the party. A paralegal has no formal legal qualifications, but is trained in basic legal principles. As discussed above (Element 2), paralegals conduct awareness activities within their community and can also be an important source of advice and representation to their fellow citizens.

### **Access to Lawyers**

Mali has fewer than 300 lawyers to serve a population of over 14 million. The vast majority of the country's lawyers are located in the capital, Bamako, with very few in the interior. Mopti, for example, a region with a population of over two million, has fewer than ten lawyers. Lawyers in Mali do not specialize and deal with all types of cases. Their fees are not fixed, and are, "set freely by the lawyer and his client in compliance with the rules and customs of the profession."<sup>79</sup> Although lawyers do sometimes agree to take cases at a reduced rate for clients who cannot afford their usual fees, many Malian women cannot afford the services of a lawyer.

Despite the dearth of lawyers, Mali has, since 1961, had legislation providing indigent litigants with the right to legal aid.<sup>80</sup> The current legal aid system is detailed in a 2001 Law on Legal Assistance and a decree dealing with the implementation of this law was issued in 2006.<sup>81</sup> The law gives indigent litigants the right to the assistance of a lawyer in civil and criminal cases (including civil parties in criminal cases).<sup>82</sup> The right to legal aid extends to proceedings necessary to enforce a judgment, as well litigation before appellate courts.<sup>83</sup> The legal aid system is supposed to be administered by Legal Assistance Offices attached to each TPI and JCPE.<sup>84</sup> Within each Legal Assistance Office, decisions to grant legal aid are made by a committee, which includes representatives of both central and local government (the committee is chaired by a government representative, and includes the local mayor (or his representative) and the neighborhood, village or fraction head amongst its members).<sup>85</sup> To obtain legal aid, a litigant must demonstrate to the committee that he has inadequate resources to assert his or her legal rights before a court.<sup>86</sup> The committee cannot deliberate unless three of its members are present, and decisions are made by majority.<sup>87</sup> The committee's decisions are not subject to appeal.<sup>88</sup>

The legal aid system created by the 2001 Law on Legal Assistance is, however, not yet fully operational. Legal Assistance Offices have only been established in first instance courts in the Kayes region, and even the few Offices that are established do not yet pay lawyers to provide free legal assistance to indigent litigants (they pay only the legal fees associated with bringing a

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<sup>77</sup> LAW ON PROFESSION OF LAWYER Chapter II

<sup>78</sup> *Id.* art. 11

<sup>79</sup> *Id.* art. 75

<sup>80</sup> LAW ON LEGAL ASSISTANCE (Law No. 61-103/AN-RM, Aug. 18, 1961)

<sup>81</sup> LAW ON LEGAL ASSISTANCE (Law No. 01-082/AN-RM, Aug. 24, 2001) [hereinafter LAW ON LEGAL ASSISTANCE]; DECREE FIXING THE METHODS OF APPLICATION OF THE LAW ON LEGAL ASSISTANCE (Decree No. 06-426/P-RM, Oct. 6, 2006) [hereinafter DECREE ON APPLICATION OF LEGAL ASSISTANCE].

<sup>82</sup> LAW ON LEGAL ASSISTANCE arts. 2, 8; DECREE ON APPLICATION OF LEGAL ASSISTANCE art. 14.

<sup>83</sup> LAW ON LEGAL ASSISTANCE arts. 6, 9

<sup>84</sup> *Id.* art. 11.

<sup>85</sup> DECREE ON APPLICATION OF LEGAL ASSISTANCE art. 2

<sup>86</sup> LAW ON LEGAL ASSISTANCE art. 2, 5

<sup>87</sup> DECREE ON APPLICATION OF LEGAL ASSISTANCE arts. 7 and 8

<sup>88</sup> *Id.* art. 10

claim (see Element 4)). Only in criminal cases before the Court of Assizes are lawyers paid a fee for providing free legal representation to accused, but lawyers complain that the amount paid (CFA 50,000 (about USD 111) per hearing) is more symbolic than compensatory. The government, as part of PRODEJ 2010-2014, does intend to establish Legal Assistance Offices at each Court of Appeal, TPI and JCPE, and estimates that this will cost CFA 138 million (about USD 308,000).<sup>89</sup> However, there are concerns that, even once these Offices are implemented, problems with the Law on Legal Assistance will make it difficult for litigants to obtain legal aid. For example, the law does not define precisely the criteria that a person must satisfy to have the right to legal aid (other than stating that it applies to litigants who have “inadequate resources” to pursue a legal claim), creating a risk that the law is applied inconsistently. Litigants must also provide a long list of documents to support a request for legal aid, including tax returns and details of family accounts.<sup>90</sup> Given the level of literacy and education in Mali, it will be difficult for many people to produce these documents. Finally, there are fears that, because a request for legal aid requires a litigant to appear before a committee of government and local government actors, litigants will find the application process intimidating and will be discouraged from pursuing applications.

To fill gaps created by the absence of state-funded legal aid, there are a number of women's rights organizations that have established legal clinics to serve disadvantaged women. For example, AJM operates a legal clinic in Bamako to provide legal assistance to indigent women. Clients arriving at the clinic are met by a jurist, who conducts an initial consultation and then refers the client to a lawyer (or other legal professional, such as an execution officer, depending on the client's needs). AJM's members work on a *pro bono* basis or receive a small fee for their work, depending on the availability of funds. Since its creation in 1988, AJM, which also has a presence in Mopti, Kayes, Gao and Timbuktu, has dealt with 4,895 cases in this way. Other organizations, such as WILDAF, APDF, and DEME-SO also offer legal aid services following a similar model. DEME-SO, for example, operates a legal clinic at the TPI in commune 3 in Bamako.

### **Access to Jurists and Paralegals**

Even if Mali were to have a fully functional legal aid system, vulnerable women would still benefit from assistance from jurists and paralegals. A well-trained jurist or paralegal can provide a client with initial advice on a justice problem and then, if necessary, refer the client to a lawyer to help resolve the problem (as occurs in AJM's clinic). With the client's agreement, jurists and paralegals can also attempt to resolve justice problems themselves, for example through negotiation or mediation. In the last decade, as a supplement to Legal Assistance Offices, the Malian government has created two structures that aim to advise litigants on their basic rights and refer them to institutions that can help solve justice problems. The first, Offices for Reception and Orientation (*Bureaux d'Accueil et d'Orientation* [hereinafter BAO]), were created in 2003 to implement a 1998 law that aimed to promote access to public services.<sup>91</sup> BAO are supposed to be established at all structures providing public services, including courts and tribunals, and aim to provide an entry point for individuals using public services, providing them with practical information and referring them to the person or body that can help them.<sup>92</sup> Since 2003, a number of pilot BAO have been established (for example, at the headquarters of the customs office and in

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<sup>89</sup> PRODEJ 2010-2014 at 40. It is not clear whether this amount includes the funds needed to just establish the offices, or also run them for a certain period.

<sup>90</sup> DECREE ON APPLICATION OF LEGAL ASSISTANCE art 13

<sup>91</sup> LAW GOVERNING THE RELATIONS BETWEEN THE ADMINISTRATION AND USERS OF PUBLIC SERVICES (Law No. 98-012, Jan 19, 1998); DECREE FIXING THE METHODS OF APPLICATION OF THE LAW GOVERNING THE RELATIONS BETWEEN THE ADMINISTRATION AND USERS OF PUBLIC SERVICES (Decree No. 03-580/P-RM, Dec. 30, 2003) [hereinafter DECREE ON USE OF PUBLIC SERVICES].

<sup>92</sup> DECREE ON USE OF PUBLIC SERVICES arts. 3, 22

town halls in certain communes).<sup>93</sup> However, BAO are yet to be established in most courts and tribunals, although the Ministry of Justice, as part of PRODEJ 2010-2014, aims to begin installing them.<sup>94</sup> The second group of structures are called Centers for Access to Rights and Justice (*Centres d'Accès au Droit et à la Justice* [hereinafter CADJ]). CADJ, which were created by a 2010 law, aim to inform citizens about their rights and legal proceedings and refer them to the courts and justice sector actors that can help them to exercise their rights.<sup>95</sup> CADJs are supposed to be established at each TPI and JCPE, but have yet to be installed. Again, the construction of CADJ is part of PRODEJ 2010-2014.<sup>96</sup>

Mali also has a number of civil society-led initiatives that provide litigants with access to assistance from jurists and paralegals. This includes the legal clinics discussed above, as well as the work of paralegals trained by the CNPCP and others organizations, who are an important source of legal advice and assistance within their communities. The positive impact that paralegals can have on the way that justice problems are resolved at a community level is discussed in more detail below (Element 5).

## Recommendations

The Malian government recognizes the importance of advice and representation for access to justice for vulnerable women: one of PNG-Mali's objectives is to "expand referral and legal advice and legal aid services."<sup>97</sup> In this regard, the establishment of a functioning, state-funded legal aid system is vital to guarantee access to legal representation. However, the Malian government may wish to consider simplifying the procedure that a person must follow to obtain legal aid, so as to make it accessible to even poorly educated litigants. Furthermore, a state-funded legal aid system will require a cadre of lawyers available and willing to litigate legal aid cases, including in the country's interior. This might mean raising the fees paid to lawyers in legal aid cases, something that the government is considering.<sup>98</sup> More importantly, it will also require efforts to encourage lawyers and other legal professionals to establish practices outside of Bamako. The government has begun this process, and has proposed offering small grants to encourage lawyers to establish offices in the regions.<sup>99</sup> Mali's bar association has also designed an initiative to promote legal practice in the interior.<sup>100</sup> This project, called AVOCASSO, aims to provide fully equipped office space to young lawyers in Bamako and in the interior. Young lawyers will be able to work for free (or for a symbolic fee) from these locations but in exchange will have certain duties to the bar and will, "provide various legal services for the benefit of the local community."<sup>101</sup>

The establishment of a fully functioning legal aid system in Mali is a medium or long-term project. In the interim, the work of CSOs, particularly legal clinics, will remain a vital source of advice and representation for disadvantaged women and should be supported. Furthermore, all three state institutions that are to provide legal advice and representation (Legal Assistance Offices, BAO and CADJ) are to be attached to courts and tribunals. Their success in improving access to justice will therefore depend on the willingness of litigants to travel to court to seek out their

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<sup>93</sup> Demba Coulibaly, *Administration: Welcome Centers are Gradually Installed*, L'ESSOR (Jan. 14, 2011)

<sup>94</sup> PRODEJ 2010-2014 at 38

<sup>95</sup> LAW CREATING CENTERS FOR ACCESS TO RIGHTS AND JUSTICE (Law No. 10-030, Jul. 12, 2010); DECREE FIXING ORGANIZATION AND METHODS OF FUNCTIONING OF CENTERS FOR ACCESS TO RIGHTS AND JUSTICE (Decree No. 10-393/PRM, Jul. 26, 2010).

<sup>96</sup> PRODEJ 2010-2014 at 38

<sup>97</sup> PNG-MALI at 71

<sup>98</sup> PRODEJ 2010-2014 at 48

<sup>99</sup> *Id.* at 62

<sup>100</sup> Press Release, Malian Bar Association, *An Ambition for the Malian Bar, "The Courage to Dare; The Strength to Succeed"*, (2011) at 13 [hereinafter AN AMBITION FOR THE MALIAN BAR]

<sup>101</sup> *Id.* at 13



services. Unfortunately, courts and tribunals remain remote from many communities (see Element 4 below). For this reason, it is vital to combine the installation of Legal Assistance Offices, BAO and CADJ with initiatives, such as paralegal networks, that bring legal assistance to the community level. Community-level actors can both solve simple justice problems that do not require litigation and, where litigation is required, can convince litigants to utilize the assistance provided by state institutions (and help them to access it).

## Element IV. Access to a Justice Institution

***Justice institutions exist, both formal and informal, that are affordable and accessible, and process cases in a timely manner.***

### Conclusion

There are a number of significant obstacles to access to formal courts and tribunals. Because there is usually only a single first instance court (a TPI or JPCE) for each circle, many litigants, especially in rural areas, must travel tens and sometimes hundreds of miles to reach a court. Furthermore, a majority of both civil and criminal cases are not definitively resolved at first instance, and require one or more hearings before the Court of Appeal or the Court of Assizes. Mali currently has only three Courts of Appeal and some litigants have to travel more than 500 miles to reach them. The cost of filing legal claims, both from official fees and from corruption, is also a significant obstacle to access to justice in a country in which more than half the population lives on less than USD 1.25 a day. The legal aid system, which excuses indigent litigants from paying court fees, depends on the implementation of Legal Assistance Offices, which have yet to be installed in most jurisdictions. While there are no reliable statistics on the average duration of civil or criminal cases in Mali, the slow pace of litigation – cases can take years to resolve – also dissuades many litigants from filing legal claims. Women face particular obstacles to access to courts. For example, social stigmas mean that taking a family conflict to court is seen as a “declaration of war” that threatens the unity of the family and the broader community. Social factors also negatively impact the attitude of justice sectors actors towards women’s rights cases.

The Malian government, through PRODEJ 2010-2014, is working to address many of these obstacles. For example, the planned construction of new Courts of Appeal in Sikasso, Ségou and Gao will bring appellate courts closer to many litigants, while the establishment of Legal Assistance Offices will allow indigent litigants to obtain relief from court fees. However, while these reforms are vital, courts and tribunals will remain remote from many communities even once reforms are implemented. As a result, the majority of justice problems are likely to continue to be heard by informal authorities, such as family elders, *griots*, religious leaders and local government officials, with litigation viewed only as a last resort.

### Analysis

*“Women just accept problems of domestic violence, divorce or inheritance. Instead of going to court, they use informal and traditional systems to settle problems within their family...they often go along with the traditional way of dealing with the problem.”* Religious leader, interviewee.

In this section of the report, we examine whether Malian women have access justice institutions, whether formal or informal. We begin by analyzing formal justice institutions, and consider the obstacles that Malian women must overcome to bring a complaint before courts and tribunals, including the distance they have to travel, the costs of litigation, the slow pace of justice, and the effect of social stigmas. We then introduce the informal justice authorities that operate in Mali, and compare their accessibility to that of formal justice.

## Access to Formal Justice Institutions

### Proximity

The courts that are located closest to Malians, whether a TPI or a JPCE, are generally found in the capital of each circle. There is a TPI in each of the six communes of Bamako, as well as in the capital of each administrative region (with the exception of Kidal). There is also a TPI in the capital of three circles (Kita, Kati and Koutiala) that have particularly large populations. Circles that do not have a TPI have a JPCE (there are also JPCE in five communes). Although the size of Mali's circles varies significantly, the majority are between 1500 and 15,000 square miles.<sup>102</sup> Many litigants, especially in rural areas, must therefore travel tens and sometimes hundreds of miles to reach the nearest first instance court. This is a particular obstacle to access to justice for women, who are often unable to travel long distances as a result of family obligations, particular childcare, or financial constraints.

In addition, although all cases must first pass through TPI and JPCE, it is unlikely that first instance courts will definitively resolve a dispute. In civil cases, litigants always have the right (often exercised) to appeal to the Court of Appeal, who will review both the factual and legal basis for the first instance decision. For criminal matters, decisions of TPI or JPCE concerning misdemeanors can be appealed to the Court of Appeal. Felonies, once investigated by an examining magistrate at a TPI or JP, have to be transferred to the indictments chamber of the Court of Appeal and then to the Court of Assizes (which is itself a special session of the Court of Appeal). When analyzing the proximity of justice, it is therefore important to take into account the fact that many cases require one or more hearings at the Court of Appeal. Mali has only three Courts of Appeal: the Court of Appeal of Mopti, which has jurisdiction for the regions of Kidal, Gao, Timbuktu and Mopti; that of Kayes, which has jurisdiction for the region of Kayes; and finally the Court of Appeal of Bamako, which has jurisdiction for Sikasso, Ségou, Koulikoro and the district of Bamako. A litigant from Ségou who wants to file a complaint at the Court of Appeal of Bamako would have to travel over 150 miles; for a litigant from Kidal who wants to bring a case to the Court of Appeal of Mopti, the journey would be over 500 miles.

The government of Mali recognizes that the distance that litigants must travel to court is a significant obstacle to access to justice. Legislation was enacted in 2011 that revises Mali's *carte judiciaire* (literally, the justice map), which describes the distribution and structure of jurisdictions in Mali.<sup>103</sup> The new *carte judiciaire* provides for the creation of three new Courts of Appeal for the regions of Sikasso, Ségou and Gao, which will greatly reduce the distance that litigants from those regions will have to travel to appeal decisions and participate in the Court of Assizes. The reforms also eliminate TPI, replacing them with *Tribunaux de Grande Instance* [hereinafter TGI] that, unlike TPI, will decide cases in panels of three judges.<sup>104</sup> JPCE are also eliminated and replaced by *Tribunaux d'Instance* [hereinafter TI], which, unlike JPCE, will have separate magistrates acting as judge, examining magistrate and prosecutor.

The government estimates the cost of implementing this revised *carte judiciaire* as more than CFA 18 billion (about USD 40 million).<sup>105</sup> Given this price tag, some doubt the state's ability to

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<sup>102</sup> To give an example of the variations in size: the circle of Timbuktu, the largest in the country and one of the most sparsely populated, has an area of over 130,000 square miles and a population of 127,328, including 72,699 in rural areas; a small circle like Diré is just over 1,000 square miles with a population of 109,661, including 89,324 in rural areas. CENSUS 2011 at 4.

<sup>103</sup> LAW REORGANIZING THE JUSTICE SECTOR (Law No. 2011-037, Jul. 15, 2011); LAW CREATING JURISDICTIONS (Law No. 2011-038, Jul. 15, 2011); DECREE FIXING THE JURISDICTION OF COURTS AND DETERMINING THE ORGANIZATION OF PROSECUTORS IN TRIBUNAUX DE GRANDE INSTANCE (Decree No. 2011-580/P-RM, Sep. 13, 2011).

<sup>104</sup> The reforms also create a new TGI in Kidal, which replaces a JPCE.

<sup>105</sup> PRODEJ 2010-2014 at 40

implement reform, and argue that Mali, “won't have Courts of Appeal in all its regions five years from now.” Furthermore, by simply replacing TPI and JPCE with TGI and TI, the revised *carte judiciaire* does not alter the fact that most circles will contain only a single first instance court. Some experts would have instead preferred that new first instance courts be established in each commune, so as to bring courts closer to litigants (although this would no doubt have significantly increased the cost of reforms). The government instead envisages the organization of mobile courts – temporary court sessions organized in a location distant from the permanent seat of the tribunal – to, “bring justice to litigants.”<sup>106</sup> PRODEJ 2010-2014 targets the organization of 60 mobile court hearings, involving 10 TPI.<sup>107</sup>

### Costs

The costs of filing a case are a major obstacle to access to justice in a country where 51.43% of the population lives on less than USD 1.25 a day.<sup>108</sup> Bringing a civil case involves a number of costs, including a fee to file the complaint and a payment to an execution officer to serve the opposing party. In addition to these legitimate costs, parties must also frequently pay unofficial charges, such as the sum that clerks sometimes request to ensure that a case file is brought before the court. A party also has to keep in mind that, should he or she lose, he or she may be required to pay the costs incurred by the court and an opponent. In criminal cases, although the public action is usually brought by the state, a civil party who initiates the public action must pay the clerk a deposit to cover the costs of the proceedings.<sup>109</sup> If the accused is acquitted, the party that initiated the public action may also be required to pay further costs, and even to pay damages to the accused.<sup>110</sup>

Malian law does provide a mechanism to mitigate the cost of filing a legal claim. Persons deemed eligible for legal aid (see Element 3) are exempt from paying court fees (this includes the fees that a civil party must pay in criminal cases if he or she initiates the public action).<sup>111</sup> These costs are paid by the state, unless the losing party is sentenced to pay costs, in which case it must reimburse the state.<sup>112</sup> However, since the Legal Assistance Offices that are supposed to administer legal aid do not exist in many of Mali's courts and tribunals, the legal aid system has thus far had little impact on mitigating the costs of justice.

### Delay

There are no reliable statistics on the average duration of civil or criminal cases in Mali. However, a number of interviewees described the slow pace of litigation as a significant obstacle to access to justice. Malian law places few limits on how long courts and tribunals take to decide cases or to complete particular stages of litigation (an exception would be the three-month maximum for a civil court to issue a judgment following trial). Litigation in Mali can therefore take many years, even in fairly simple cases. Interviewees identified many reasons for delays: the difficulty of serving parties who have no fixed address; the failure of clerks to schedule cases for hearings; the difficulty that magistrates face in collecting the evidence necessary to decide a case; and the time taken by courts to draft judgments. We should also note that many magistrates complain about the effect that a lack of proper facilities, and particularly of computer equipment, has on their work. The Malian government does recognize the problems created by the slow pace of

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<sup>106</sup> PRODEJ 2010-2014 at 39

<sup>107</sup> *Id.*

<sup>108</sup> UNDP, MALI, COUNTRY PROFILE: HUMAN DEVELOPMENT INDICATORS, *available at* <http://hdrstats.undp.org/fr/pays/profils/MLI.html>

<sup>109</sup> CRIM. PROC. CODE art. 63

<sup>110</sup> *Id.* art. 64

<sup>111</sup> LAW ON LEGAL ASSISTANCE art. 21; CRIM. PROC. CODE art. 63.

<sup>112</sup> LAW ON LEGAL ASSISTANCE art. 29.

justice: PRODEJ 2010-2014 targets, “the diligent processing of cases by courts and tribunals”<sup>113</sup>, and aims to improve the institutional capacity and human resources of courts and tribunals, including by providing them with proper information technology.<sup>114</sup>

### *Social Factors*

Potential litigants in Mali must overcome the social stigma that strongly discourages women from taking complaints to formal courts. According to tradition, a woman’s responsibility in the case of a family dispute is to preserve the integrity of the marriage, the family and the community. Initiating litigation is viewed as a, “declaration of war”, which threatens the unity of the family and of the broader community. Social factors also impact the attitude of justice sector actors towards women’s rights cases. Victims of domestic violence, for example, complain that law enforcement officers are sometimes indifferent to their complaints, because they consider domestic violence as, “normal.” Instead of investigating allegations, law enforcement officers therefore sometimes try to reconcile the parties and pressure the victim to reach an amicable solution with her family. Attitudes towards women’s rights would perhaps be improved were there to be more women in positions of power within law enforcement and the justice sector. According to the PNG-Mali, only 46 magistrates in Mali are women (out of a total of 418), as well as 24 lawyers.<sup>115</sup> Increasing these numbers would improve the services offered to vulnerable women because, as one litigant observed, “women are more sensitive to women’s problems.”

### ***Access to Informal Justice Institutions***

It is very difficult to generalize about the organization and functioning of informal justice authorities in Mali. Their nature depends on the region, ethnicity, religion and family of the parties involved. In general, however, there are four categories of actors who are involved in resolving justice problems at a community level: family elders, religious leaders, traditional communicators and local government actors, particularly neighborhood, village and fraction heads. Because the family is the basic building block of Malian society, it is the first level for resolving disputes, especially those with a close connection to the family. Conflicts are mediated at the initiative of the head of the family, who is normally the eldest male in the extended family, or upon the request of another family member. Religious institutions, although primarily houses of worship, are also a space in which to resolve disputes between members of the congregation. When a conflict occurs, the parties are called before a committee of elders – responsible for overseeing the institution’s activities in the community – and the committee attempts to mediate the dispute. Traditional communicators, called *griots*, are individuals invested by tradition and custom with the responsibility of recording and communicating the tradition and history of a family or community. Although the role of griots varies within each family or community, griots can also be involved in mediating conflicts. Finally, neighborhood, village and fraction heads are given authority by law to mediate civil or commercial disputes among citizens.<sup>116</sup> Conflicts are usually referred to these authorities when they cannot be resolved within the family or when they threaten the stability of the community.

The vast majority of conflicts in Mali are brought before informal authorities before they reach courts and tribunals, including disputes involving domestic violence, divorce and inheritance. Litigation is only, if ever, utilized when a conflict cannot be resolved by informal authorities. The informal system is attractive to litigants for a number of reasons: particularly convenience, because informal authorities are close to the parties and resolve cases quickly, and price,

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<sup>113</sup> PRODEJ 2010-2014 at 38

<sup>114</sup> *Id.* at 43

<sup>115</sup> PNG-MALI at 41

<sup>116</sup> LAW CREATING UNITS OF LOCAL GOVERNMENT art. 68 (Law No. 95/034/AN/RM, Apr. 12, 1995); LAW RELATING TO THE CREATION AND ADMINISTRATION OF VILLAGES, FRACTIONS AND NEIGHBORHOODS art. 15 (Law No. 06-023, Jun. 28, 2006).

because litigants do not need to travel to hearings and do not need to pay court fees. Informal authorities are also more familiar, because the mediators involved are usually known by the community, speak their language, and share the same culture and religion. Finally, the fact that informal authorities attempt to resolve conflicts amicably reflects Malian society's preference for preserving social and family cohesion. They are therefore preferable to formal justice because, "dirty laundry doesn't get aired in public."

## Recommendations

The current obstacles to access to courts and tribunals in Mali demonstrate the importance of many of the reforms envisaged by PRODEJ 2010-2014. The planned construction of new Courts of Appeal in Sikasso, Ségou and Gao will bring appellate courts closer to many litigants. The establishment of Legal Assistance Offices attached to each jurisdiction will allow indigent litigants to obtain relief from court fees. Efforts to increase the institutional capacities and human resources of courts will hopefully improve the pace of justice. These reforms should be combined with other measures that recognize the particular obstacles that women face accessing courts and tribunals. For example, it is important to confront the social stigmas that discourage women from going to court and mean that law enforcement officers, and even magistrates, do not always diligently investigate and prosecute women's rights violations. It is encouraging in this regard that the PNG-Mali Action Plan 2011-2013 provides for the training of law enforcement officers on gender-based violence, as well as the creation of specialized intake centers for victims, two activities that are to be implemented by the Ministry of Justice.<sup>117</sup>

However, even taking into account the reforms of PRODEJ 2010-2014, it is important to recognize that obstacles to courts and tribunals will remain. Because most circles will continue to have only a single first instance court, with appellate courts located in regional capitals, courts and tribunals will remain remote from many communities, especially those living in rural areas. Mobile courts can mitigate this problem, and can periodically bring justice closer to isolated communities, but are only likely to satisfy a fraction of demand. In any case, courts and tribunals will remain state institutions that are unfamiliar to local communities and that are more expensive, and less convenient, than informal justice authorities. It is therefore likely that informal authorities, particularly family elders, religious leaders and local government actors, will remain fundamental to access to justice in Mali, and will hear, and probably solve, the majority of justice problems. Litigation before courts and tribunals will remain a last resort, used for conflicts that cannot be resolved at a community level. Because of the central role that informal authorities play in resolving justice problems, it is therefore important to reflect on the fairness of the solutions that they impose, and the likelihood that the solution reached is definitively enforced. These two questions are discussed in greater detail below (Elements 5 and 6).

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<sup>117</sup> PNG-MALI ACTION PLAN 2011-2013 at 26

## Element V. Fair Procedure

***Justice institutions, whether formal or informal, ensure that citizens have an opportunity to present their case and disputes are adjudicated impartially and without improper influence. Where cases are resolved by mediation, citizens make voluntary and informed decisions to settle.***

### Conclusion

Malian courts and tribunals give litigants in both criminal and civil proceedings an adequate opportunity to present evidence and arguments in support of their case. However, the justice dispensed by courts and tribunals is undermined by corruption and undue influence. The meager salaries paid to justice sector actors may well be an important cause of corruption. However, justice sector actors also point out that corruption is problem of culture and, “there will never be a definitive solution without changing culture.” This culture persists in a context in which few acts of corruption are criminally prosecuted or result in professional sanction. The High Judicial Council, which is responsible for disciplining magistrates, is criticized for lacking the transparency needed for proper oversight by civil society (the Council’s decisions are not made public and disciplinary proceedings can only be brought by the minister of justice). The government is considering revising the composition and procedure of the High Judicial Council to increase its transparency.

Informal justice authorities tend to use mediation to resolve conflicts. However, the status of women in Mali affects their ability to negotiate on an equal footing with other parties, especially in family cases. In addition, there is a certain social pressure that requires the parties to accept solutions proposed by informal authorities. As a result, the outcome of mediation can reflect the traditional, family and religious principles to which informal actors refer to resolve disputes. Those principles do not always adequately respect the legal rights of women. It is therefore important to explore ways to engage with informal authorities so that their decisions are more respectful of legal rights, especially women’s rights, while preserving the characteristics that make them accessible to litigants.

### Analysis

*“It’s rich man’s justice, it’s not for the poor. If justice is corrupt, citizens lose hope in the rule of law.” Oumou, interviewee.*

### **Formal Justice**

Malian courts and tribunals do give litigants in both criminal and civil proceedings an adequate opportunity to present evidence and arguments in support of their case. In criminal cases, when a case is being investigated by an examining magistrate, the accused and civil parties may request that the magistrate pursue any line of inquiry that they believe will advance their case (for example, questioning a particular witness or ordering expert evidence). If the examining magistrate refuses to pursue a line of inquiry, a party can appeal this decision to the indictments chamber of the Court of Appeal.<sup>118</sup> When a criminal case reaches court for trial before first instance courts or the Court of Assizes, the parties may call any witness that they choose, including those who were not questioned by the examining magistrate.<sup>119</sup> They also have the right to ask questions of all witnesses called. When the court has finished hearing evidence, the prosecutor and civil parties present arguments in support of the charges against the accused.

<sup>118</sup> CRIM. PROC. CODE art. 112

<sup>119</sup> *Id.* art. 315 (Court of Assizes); art. 420 (First Instance Courts).

The accused may then respond. The prosecutor and civil parties are permitted to reply, but the accused or his counsel always has the last word.<sup>120</sup> The accused and the civil party may also file written submissions to support their case.<sup>121</sup> In civil cases, the parties may file any evidence or submission that they choose. In addition, during the *mise en état* phase, the parties can ask the investigating judge to pursue any line of inquiry that they believe will support their case (however, if the judge refuses, his decision cannot be appealed).<sup>122</sup> Although no further evidence can be filed after the *mise en état*, the parties do have the right to present oral arguments when the case is before the court to be adjudicated.

Despite the opportunity given to litigants to present their case, the justice dispensed by courts and tribunals in Mali is fundamentally undermined by corruption and undue influence. Interviewees described corruption as “the greatest scourge,” “the weak link”, and “the cancer in the body” of the justice system. Attempts to use political or other influence to affect the decisions of magistrates are also common.<sup>123</sup> The level of corruption in the judicial system should be viewed in the context of corruption in other areas of Malian society: Mali is ranked 118 out of the 184 countries covered by Transparency International’s Corruption Perceptions Index, with a score of 2.8 out of 10.<sup>124</sup> As the government acknowledged during a roundtable on corruption and financial impropriety in 2008: “in spite of the reforms implemented, the phenomenon of corruption and financial impropriety has withstood our assaults.”<sup>125</sup>

This report limits its analysis to the causes of corruption and undue influence in the justice sector. It is interesting to note that the Malian judiciary appears to have the necessary institutional protections to insulate it from influence by the executive. Judges can only be appointed by the executive with the assent of the High Judicial Council (*Conseil Supérieur de la Magistrature* [hereafter CSM]).<sup>126</sup> This provides magistrates with a measure of independence as, although the CSM is chaired by the president of the Republic (with the minister of justice as vice-president), its members also include eight *ex officio* members, including several magistrates, and thirteen elected magistrates.<sup>127</sup> The CSM is also responsible for disciplining magistrates<sup>128</sup>, and when it rules on disciplinary matters it is chaired by the presiding judge of the Supreme Court.<sup>129</sup> The president of the Republic and the minister of justice do not participate in disciplinary hearings. The promotion of judges is managed by a commission composed solely of magistrates under the leadership of the presiding judge of the Supreme Court.

Given the protections provided to magistrates by the CSM, other factors must explain the presence of corruption and undue influence in the legal system. Justice sector actors often cite inadequate salaries as a significant cause of corruption (for civil servants, including magistrates, a minimum salary is about CFA 30,000 (around USD 67)). However, many justice sector actors, including magistrates, emphasize that a meager salary does not excuse corruption. They believe that corruption is a cultural issue, connected to declining moral and social values. Although it is

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<sup>120</sup> CRIM. PROC. CODE art. 333 (Court of Assizes); art. 427(First Instance Courts).

<sup>121</sup> *Id.* art. 303 (Cour of Assizes); art. 426 (First Instance Courts).

<sup>122</sup> CIV. PROC. CODE arts. 165, 172

<sup>123</sup> One magistrate complained: “if you have a case, any case at all, even the person who wants the judge to enforce his right, this person arranges to interfere with you through other people.”

<sup>124</sup> TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2011(2011) at 4

<sup>125</sup> PRIME MINISTER’S OFFICE, FINAL REPORT ON ROUNDTABLE ON CORRUPTION AND FINANCIAL IMPROPRIETY IN MALI at 8 (2008)

<sup>126</sup> LAW FIXING THE ORGANIZATION, COMPOSITION, CHARACTERISTICS AND FUNCTIONING OF HIGH JUDICIAL COUNCIL art. 12 (Law No. 03-29/AN-RM, Aug. 11, 2003) [hereinafter LAW ON CSM]

<sup>127</sup> *Id.* arts. 1, 5-11. When it rules on the appointment of magistrates, the CSM must be composed of twelve members, and votes by majority (in the event of a tie, the President casts the deciding vote) *Id.* art. 13.

<sup>128</sup> CONST. art. 82

<sup>129</sup> LAW ON CSM art. 14

important to guarantee appropriate salaries, people always want more, so “there will never be a definitive solution without changing culture.” Justice sector actors also note that the culture of corruption involves both public servants and the litigants who bribe them.

The lack of sanctions imposed against perpetrators of corruption is cited as a major cause of this culture. Few acts of corruption are criminally prosecuted or, in cases involving justice sector actors, result in professional sanctions. It is difficult to prosecute acts of corruption: corruption occurs between corrupt litigants and corrupt magistrates, so it is difficult to prove that the transaction occurred.<sup>130</sup> However, some explain the lack of disciplinary sanctions against magistrates by the fact that the CSM is dominated by magistrates, who are both “judge and party”. That the CSM’s deliberations occur in private only adds to the suspicion that magistrates are reluctant to sanction their peers.<sup>131</sup> The same complaint is made about lawyers, who are disciplined by the Bar Council (*Conseil de l’Ordre du Barreau*), which is composed exclusively of lawyers.<sup>132</sup> Some experts also believe that the procedure of the CSM, which gives the minister of justice the exclusive right to file complaints against magistrates, has a chilling effect on disciplinary proceedings. To address these criticisms, the government is planning a review of the composition of the CSM and a new procedure for pursuing disciplinary complaints.<sup>133</sup> It has been suggested that one positive step would be to invite civil society and human rights organizations to become members of the CSM.<sup>134</sup> These organizations represent the interests of litigants, and thus would be, “closer to the realities of justice as populations experience it.”<sup>135</sup> It has also been proposed that litigants should be permitted to file a complaint directly to the CSM, and that disciplinary affairs before the CSM be handled in a public hearing to facilitate oversight by civil society.<sup>136</sup> Many magistrates fear these reforms will compromise their independence by permitting unfounded attacks on their character and decisions.

As a final point, some commentators claim that the fact that a single judge acts as a judge, prosecutor and examining magistrate in JPCE facilitates corruption, because it leaves a litigant without redress in case of complaint about a judge’s conduct.<sup>137</sup> In the same vein, it has been argued that because decisions of TPI are rendered by a single judge this, “does not guarantee good, impartial and fair justice.”<sup>138</sup> The revisions made to the *carte judiciaire*, although yet to be implemented, address these concerns by replacing JPCE with TI, which will have separate magistrates acting as judge, examining magistrate and prosecutor, and substituting TGI, with three-judge panels, for TPI.

### ***Informal Justice***

Each of the informal authorities discussed in this study favors the amicable resolution of conflicts. For example, although the procedure used by heads of family to resolve conflicts differs throughout Mali, it does tend to have certain common elements. First, the head of the family asks the parties to present the facts of the dispute and their arguments in support of their case. Witnesses to key facts may also be heard to confirm or deny the parties’ statements. After

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<sup>130</sup> AFRICAN HUMAN SECURITY INITIATIVE, MALI, CRIMINALITY AND CRIMINAL JUSTICE at 36 (2009) [MALI CRIMINALITY AND CRIMINAL JUSTICE]

<sup>131</sup> NATIONAL FORUM ON JUSTICE IN MALI, CIVIL SOCIETY WORKING GROUP ON JUSTICE AND CORRUPTION (1999), *available at* <http://www.justicemali.org/www.justicemali.org/memo3.htm>

<sup>132</sup> LAW ON PROFESSION OF LAWYER chapter III and V

<sup>133</sup> PRODEJ 2010-2014 at 21

<sup>134</sup> MALI CRIMINALITY AND CRIMINAL JUSTICE at 24

<sup>135</sup> *Id.* at 25

<sup>136</sup> *Id.* at 26

<sup>137</sup> *Id.* at 36

<sup>138</sup> *Justice Reform Process in Mali: Exploring the New Carte Judiciaire, Interview with Minister of Justice Maharafa Traoré*, OFFICE OF RADIO AND TELEVISION BROADCASTING FOR MALI (Jul. 14, 2011)

evidence has been heard, the head of the family may adjourn the case to another date so that he or she has time to reflect, seek the opinion of others or obtain further information. When the head of family is ready to resolve the conflict, he conducts a mediation with the parties, seeking to identify and build upon areas of agreement and synergy. He also refers the parties to traditional principles and reminds them of their mutual obligations and responsibilities. For example, if a husband had struck his wife in the presence of his or her relatives, the head of family would tell him that this is a serious breach of the respect owed to elders.

Dispute resolution by religious leaders tends to follow a similar pattern to that of heads of family, although religious leaders place a greater emphasis on religious principles. For example, imams and Muslim elders draw on rules and proverbs contained in the Koran or the Sunnah (which describes practices followed by the Prophet Mohammed (peace be upon him)). The imam recites verses relating to the conflict in question and explains them to the parties. The imam then underscores that the parties' conduct should be in line with that which the Prophet Mohammed (peace be upon him) has indicated to them. Similarly, when griots mediate conflicts, they tend to use their knowledge of family and ethnic traditions and relationships to remind the parties of their obligations to each other and their families. Even neighborhood, village and fraction heads, although lacking religious or traditional authority, exploit the importance of community cohesion to urge the parties to reach an agreement.

To the extent that informal authorities use mediation to settle disputes, the status of women in the Malian family and community affects their ability to negotiate on an equal footing with their adversary, especially their husband. In addition, because of the status of informal authorities, as well as the importance of solving conflicts amicably, the parties are under a certain amount of pressure to accept solutions proposed by informal authorities. As a result, the outcome of mediation, as opposed to representing a voluntary and informed decision of the parties, can reflect the traditional, family and religious principles to which informal authorities refer to resolve disputes. These principles do not always respect the rights of women. For example, in cases of domestic violence, traditional and religious customs invite respect for women, but, where violence does occur, are concerned with preserving family unity. Instead of advocating criminal punishment, informal authorities therefore tend to try to reconcile the parties to preserve the integrity of the marriage. The victim is asked to tolerate violence in order to stay in her home and with her children. In cases of disputed inheritance, customs vary according to the different religions and ethnic groups of Mali. However, they often do not guarantee equal inheritance rights to men and women. For example, in Muslim custom, according to the rules of the Koran, a widow is entitled to one-eighth of the property left by her husband. Male descendants are also entitled to twice as much as female, an unequal distribution that is explained by the fact that a brother takes care of his sister. According to the traditions of some ethnicities in Mali, a widow is even part of her husband's estate. She does not have a right to a share of her husband's property and, to remain within the family, she must agree to marry a brother of her deceased husband (this practice is called *levirat*).

## Recommendations

Corruption and undue influence are significant obstacles to access to justice in Mali, and improving access to justice means tackling the culture that allows them to persist. As a starting point, incidents of corruption should be diligently prosecuted, and perpetrators punished. Magistrates and other justice sector actors involved in corruption should also face disciplinary sanctions. In this regard, steps should be taken to make the operation of the CSM more transparent, for example by requiring that decisions of the CSM be published, with reasons, to ensure that civil society can monitor its activities. Enabling litigants to file complaints of misconduct directly with the CSM might also be a positive measure, but should be combined with safeguards to eliminate malicious complaints. A reevaluation of the composition of the CSM, so as to include representatives of civil society, might also be an effective means of increasing

transparency, but should not compromise the independence of the judiciary (the CSM could perhaps maintain a majority of magistrates).

Even with a reformed CSM, the responsibility for oversight of the justice sector will remain primarily with CSOs. To improve civil society oversight, it would be interesting to examine whether a space could be provided for the public to report (anonymously) corruption in the justice system. For example, an Indian web site, *I Paid a Bribe*, provides a virtual space where citizens can anonymously report corruption by SMS or email.<sup>139</sup> Although such initiatives do not target individual officials, the information collected is used by CSOs to demand reform of the processes that facilitate corruption, and even the reform of particular institutions with a serious corruption problem. It would be interesting to consider whether such a system could provide an effective method of monitoring Malian justice institutions.

In spite of the risks that informal justice authorities pose to women's rights, they cannot be ignored. Their accessibility means that they will remain a fundamental aspect of Malian society, used to resolve the majority of justice problems. It is therefore important to explore ways to engage with informal authorities to make their decisions more respectful of legal rights, especially those of women, while preserving the features that make them accessible to litigants. In discussing this question, many people interviewed focused on the importance of training for informal justice actors ("they have their place, but have to be more informed about the existence of women's human rights"). It was also suggested that the role of informal authorities demonstrates the importance of making legal assistance available at the community level, so that citizens can appear before informal actors with knowledge of their rights and duties. Paralegals may be especially well placed to provide this advice because, working within their own communities, they understand key traditions and customs and know how to interact with local authorities.<sup>140</sup> Armed with this knowledge, paralegals do not offer the community a choice between law and custom, but try to influence customs to bring them in line with the parties' rights.<sup>141</sup> This approach, which does not see the tension between law and custom as a zero-sum game, may be vital to reconciling informal justice authorities in Mali with parties' legal rights.<sup>142</sup>

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<sup>139</sup> <http://ipaidabribe.com> is an initiative of the NGO Janaagraha Center for Citizenship and Democracy, based in Bangalore, India.

<sup>140</sup> RIGHTS AT THE HEART OF THE VILLAGE at 98-99

<sup>141</sup> *Id.* at 99

<sup>142</sup> As one interviewee stated: "[We have to] find a way to decide in all conscience how law can coexist with traditions and customs. [We have to] take into account the realities of our society rather than strictly apply provisions coming from elsewhere out of the simple desire for globalization or modernization....We have an old culture that has no cause to envy others. We accept inter-culturalism, which alone can establish respect and acceptance of others, openness in mind and heart, and unconditional equality amongst all."

## Element VI. Enforceable Decision

***Justice institutions are able to enforce their decisions, including through the use of sanctions.***

### Conclusion

The decisions of courts and tribunals are enforced by an execution officer (called a *huissier*). In the event of difficulty executing a judgment, the execution officer can request the intervention of law enforcement officers and can even file a complaint against the debtor in court. However, absent cooperation from the losing party, there are a number of obstacles to the enforcement of the decisions of formal courts. For example, there are significant costs associated with enforcement, such as the fees paid to execution officers (usually 10% of the amount recovered) and, should their involvement be necessary, to law enforcement agents. Corruption and undue influence also prevent the enforcement of decisions against powerful actors. Within the informal system, there is a certain moral pressure on the parties to respect settlements reached before family, religious or local government actors. However, because informal authorities lack coercive force to require the parties to comply with settlements, agreements are often not respected, and the same disputes surface.

### Analysis

*“They push you around until you get discouraged or give up half your money to the people in charge of enforcement.”* Fatou, interviewee.

Access to justice is not complete when a court issues a verdict or a settlement is agreed between the parties. A justice problem is only definitively resolved when the verdict or settlement is actually acted upon. In this section, we consider whether the decisions of courts and tribunals, and settlements reached before informal justice authorities, are enforced.

#### ***Formal Justice***

At the end of litigation in Mali’s courts, the winning party is given an authenticated copy of the judgment, as well as a statement from the court confirming that the judgment can be enforced (this statement is called the *formule exécutoire*).<sup>143</sup> The party gives this document to an execution officer (called a *huissier*), who then enforces the judgment, for example by seizing goods or property from the debtor. Judgments cannot, however, be enforced until notice has been given to the opposing party (unless the enforcement is voluntary).<sup>144</sup> The execution officer can request the assistance of law enforcement officers and, should he or she encounter serious problems enforcing a judgment, can also file a complaint in court, where a judge will compel the debtor to comply with the judgment or face further sanction.<sup>145</sup>

Several obstacles make the enforcement of court decisions difficult for vulnerable litigants. First, because of the level of poverty in Mali, many unsuccessful litigants lack the resources necessary to satisfy a judgment (the law prohibits the seizure of essential goods to enforce a judgment).<sup>146</sup> Furthermore, there are a number of costs involved in enforcing a judgment, including a fee for obtaining the *formule exécutoire*, payments to the execution officer (often 10% of the amount

<sup>143</sup> CIV. PROC. CODE art. 646.

<sup>144</sup> *Id.* art 508.

<sup>145</sup> *Id.* arts. 700, 702, 703

<sup>146</sup> *Id.* art. 705

recovered, plus value-added tax) and, if necessary, costs relating to the involvement of law enforcement or further court hearings. Corruption and undue influence are also “major obstacles” to the enforcement of judgments and as a result, the enforcement of a judgment is, “not easy against a husband who has resources or is in a position of authority.”

### ***Informal Justice***

The enforcement of settlements reached before informal authorities depends, in large part, on the willingness of the parties to keep their word. However, because family, religious and local government actors have a level of authority within the community, there is a certain moral pressure on the parties to respect agreements sanctioned by informal institutions. If a party reneges, he or she is considered as “recalcitrant” and “looked down on” by society. Nevertheless, agreements are not always respected, and past disputes do frequently resurface. Indeed, some interviewees believe that parties’ respect for informal authorities is declining as Malian society modernizes. It was suggested that this is a particular problem in urban areas, where, “concepts of family and cultural relationships have less and less value.”

### **Recommendations**

The Malian government is aware that it can be difficult to enforce court decisions in the formal justice system. One of the targets of PRODEJ 2010-2014 is the, “rigorous enforcement of court decisions”, and, to improve enforcement, the government is planning a specialized training for law enforcement officers. This training should include a module on identifying corruption and undue influence connected to the enforcement of judgments, which should be diligently prosecuted and punished. The government’s efforts to establish a functional legal aid system will also be a positive step, as litigants eligible for legal aid are exempted from paying fees related to enforcement.<sup>147</sup>

Given the central role that informal justice authorities play in resolving conflicts, the Malian government may wish to consider whether to require parties to respect settlements reached before informal actors. This might prevent conflicts from resurfacing, although it might also make informal authorities less attractive to litigants seeking a consensual approach to dispute resolution. One option worth considering would be training informal authorities to create written records of the settlements they facilitate, and then creating a simple, cost-effective mechanism through which settlements could be ratified by formal courts. A settlement, once ratified, would have the same force as a judgment of a formal court, and could, if necessary, be executed in a similar way. To protect the rights of vulnerable groups, particularly women, a condition of ratification might be a basic level of oversight of the settlement by formal courts (for example, an inquiry as to whether the mediation respected certain key due process rights, such as an absence of corruption or other undue influence). It is interesting in this regard that the Criminal Procedure Code already provides a mechanism for ratifying and supervising settlements reached during mediation.<sup>148</sup> For all except certain serious offenses (for example, sexual offenses and felonies) a prosecutor may, with the parties’ approval, refer a case for mediation if he or she believes that it is likely, “to ensure remedy of the damage caused to the victim, and to terminate the disturbance resulting from the offense.”<sup>149</sup> The settlement resulting from mediation is recorded, signed by the parties, and then confirmed by a court. The court will not, however, confirm settlements that are, “contrary to public order or morals”, providing a basic level of supervision over the mediation.<sup>150</sup> Prosecutors rarely choose to use mediation to resolve criminal cases, and it is unlikely that the government sees this mechanism as a way to involve informal authorities in criminal justice (it

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<sup>147</sup> LAW ON LEGAL ASSISTANCE art. 22

<sup>148</sup> CRIM. PROC. CODE art. 52.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

instead anticipates designating criminal mediators for each jurisdiction).<sup>151</sup> However, the legal framework created for criminal mediation demonstrates how formal courts could enforce – and oversee – settlements reached before informal authorities.

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<sup>151</sup> PRODEJ 2010-2014 at 40

## List of Acronyms

<b>AJAT</b>	Access to Justice Assessment Tool
<b>AMDH</b>	Malian Association for Human Rights ( <i>L'Association Malienne des Droits de l'Homme</i> )
<b>APDF</b>	Association for Progress and Defense of Rights of Women ( <i>L'Association pour le Progrès et la Défense des Droits des Femmes</i> )
<b>BAO</b>	Offices for Reception and Orientation ( <i>Bureau d'Accueil et d'Orientation</i> )
<b>CADJ</b>	Centers for Access to Rights and Justice ( <i>Centre d'Accès au Droit et à la Justice</i> )
<b>CAFO</b>	Coordination of Women's Rights Associations and NGOs for Mali ( <i>La Coordination des Associations et ONG Féminines du Mali</i> )
<b>CNPCP</b>	National Network for the Piloting of a Paralegal Training Curriculum ( <i>Cadre National de Pilotage du Curriculum de la Formation du Parajuriste</i> )
<b>CSM</b>	High Judicial Council ( <i>Conseil Supérieur de la Magistrature</i> )
<b>CSO</b>	Civil Society Organization
<b>DNPF</b>	Office for the Promotion of Women ( <i>Direction Nationale de Promotion de la Femme</i> )
<b>GP/DCF</b>	Working Group on Rights and Citizenship of Women ( <i>Le Groupe Pivot/Droits et Citoyenneté de Femmes</i> )
<b>MPFEF</b>	Ministry for the Promotion of Women, Children and the Family ( <i>Ministère de la Promotion de la Femme, de l'Enfant et de la Famille</i> )
<b>NGO</b>	Non-governmental Organisation
<b>ORTM</b>	Office of Radio and Television Broadcasting for Mali ( <i>L'Office de Radiodiffusion et de Télévision du Mali</i> )
<b>PNG-Mali</b>	National Gender Policy ( <i>Politique Nationale Genre</i> )
<b>PRODEJ</b>	Ten-Year Program for Reform of the Justice Sector ( <i>Programme Décennal de Développement de la Justice</i> )
<b>TGI</b>	Tribunal de Grande Instance
<b>TI</b>	Tribunal d'Instance
<b>TPI</b>	Tribunal de Première Instance
<b>UNDP</b>	United Nations Development Program
<b>WILDAF</b>	Women in Law and Development in Africa



# ACCESS TO JUSTICE ASSESSMENT TOOL

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Access to justice is the ability of citizens to seek and obtain remedies through formal or informal justice institutions, and in conformity with international human rights standards. Unless citizens have access to justice, the rights and duties enshrined in international treaties, constitutions and laws are meaningless, and fail to provide any protection to vulnerable groups. Improving access to justice, which is a central focus of the work of the ABA Rule of Law Initiative (ABA ROLI) and its partner, *L'Association des Juristes Maliennes* (AJM), is vital to ensure that rights exist in practice, rather than solely in theory.

The *Access to Justice Assessment Tool* (AJAT) is one in a series of assessment tools developed by experts in technical legal assistance and law reform at ABA ROLI. As part of ABA ROLI's commitment to promoting access to justice, the AJAT is a mechanism for assessing the extent to which citizens are able to use justice institutions to solve common justice problems.

The AJAT is intended to make the work of those who aim to improve access to justice more effective. It was inspired by two key beliefs: first, that access to justice programs are most successful when they address needs identified by reliable research, and, second, that local civil society organizations are best-placed to improve access to justice in their own communities, and should take the lead in developing and implementing access to justice programs. The AJAT seeks to encourage local civil society organizations to conduct research on access to justice and to design reforms and programs to address key obstacles. To do so, it provides them with a conceptual framework, the Elements of Access to Justice, for analyzing access to justice.

Findings are based on qualitative research methodologies, and are intended to present an informative analysis of access to justice in Mali. ABA ROLI hopes that this assessment will serve as a resource for government and international actors overseeing justice sector reform in Mali and also empower local civil society organizations to engage in, and support, efforts to improve access to justice.