



# Justice systems in the Sahel

*Iffat Idris*

*GSDRC, University of Birmingham*

*30 March 2020*

## Question

*What is the current state of justice provision in Mali, Niger, Burkina Faso and Chad? Include the following aspects:*

- *The different justice systems (state/formal, customary and religious);*
- *Advantages and problems/shortcomings in each;*
- *Extent to which they are used (citizen uptake), public perceptions of these and reasons for choosing one or another;*
- *Alignment/linkages and interactions between different justice systems;*
- *Impact on legitimacy of the state.*

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# 1. Summary

This review looks at justice provision in four countries in the Sahel: Mali, Niger, Burkina Faso and Chad. All feature formal (state) justice systems alongside customary/religious justice, with the latter typically being seen by citizens as more accessible, cheaper and less corrupt. State justice systems in all the countries face similar challenges: corruption, resource and capacity constraints, and political interference. However, there are also significant issues with customary justice mechanisms, notably exclusion (or limited participation) of women and other marginalised groups.

This review is based largely on grey literature, in particular studies by think tanks and international development partners. While substantial information was found about both the formal justice system and customary justice provision in Mali, far less was found about these in the other countries, with hardly any on justice provision in Chad.

Key findings of the review are as follows:

- **Parallel justice systems** – all countries feature the existence of both formal (state) justice systems alongside customary/traditional justice mechanisms. This reflects both the fact that the latter are long-established and accepted – they are the traditional route for obtaining justice in many societies – and the major shortcomings in state justice provision.
- **Alignment between state and customary justice systems** – The degree of formal alignment between different justice systems varies from country to country. In general, customary mechanisms are recognised in law for settlement of civil disputes and family cases. Responsibility for criminal justice tends to rest exclusively with the state.
- **Challenges facing state justice systems** – Common issues faced in the formal justice system in all countries are lack of resources and capacity, widespread corruption, political interference in the judiciary, and lack of awareness among the public about rights and legal processes. A more fundamental issue in some (notably Mali) is that the formal legal system is based on French law, and is thus alien to the local culture as well as being inaccessible because of reasons of cost, language, literacy, distance and so on.
- **Features of customary/religious justice** – Customary justice providers include family elders, religious leaders, tribal chiefs and other local figures of authority. Customary justice provision is convenient (all parties are located near each other), it is cheap (no court fees or travel costs incurred), and it is familiar (parties know the mediators, they speak their language and have the same culture). Customary and religious justice tend to be intertwined, with elements of Sharia (Islamic law) featuring in customary justice provision, notably settlement of land/inheritance disputes and personal (family) cases.
- **Challenges facing customary justice mechanisms** – Procedures in customary justice mechanisms are not always consistent with those required for 'fair' trials, e.g. the right of the accused to appeal decisions; harsh punishments can be imposed; there can be a lack of consistency and of accountability in customary justice provision; and enforcement can be problematic, leading to disputes resurfacing.
- **Issues around inclusion in both state and customary justice provision** – The literature highlights obstacles to participation of women in both the formal system and customary justice, albeit the barriers can be somewhat different: in the former, issues with access (due to distance, cost, lack of education) and in the latter, due to patriarchal

norms. In both systems the exclusion of women reflects the restricted position of women in wider society.

- **Perceptions of state and customary justice** – In many countries, the state justice system is seen by citizens as highly corrupt. People often expressed greater trust in traditional leaders and customary justice. A further factor leading people to favour customary over formal justice, is that the former is seen as preserving social cohesion and the latter often as destroying the social fabric.
- **Legitimacy of the state** – While this review focused on perceptions of the justice sector, the generally low level of public trust in formal justice systems has obvious (negative) implications for public perceptions of the state and its legitimacy.

This review highlights considerable gaps in the evidence base and the need for more research on the challenges facing formal justice systems in the four countries; the prevalence and precise nature of customary justice mechanisms; and public perceptions of both, including reasons for favouring one or the other. Information on Chad and Burkina Faso is especially limited. A more accurate and detailed understanding of justice provision would help identify approaches to strengthen justice provision, based on a pragmatic assessment of areas and scope for improvement. Clearly, given the constraints facing formal justice systems, there is a role for customary justice mechanisms, but safeguards are needed to ensure protection of human rights for all.

## 2. Mali

In Mali there are essentially three different systems of law in operation that produce multifaceted legal dynamics: ‘the legacy of French colonization, Islamic law, generally applied in the northern regions, and customary law, inspired by local practices and traditions’ (IDLO, 2018). Many community leaders play several roles at the same time, e.g. traditional chief, imam and mayor: ‘it’s difficult to find a line of demarcation or distinction between the various traditional authorities’ (IDLO, 2018).

### State justice system

#### Structure

The formal justice system in Mali has at the bottom justices of the peace (JPCEs) who combine the functions of investigator, prosecutor and judge. The aim was to ensure formal justice was available in rural areas, but JPCEs have been widely criticised for concentrating too much power in the hands of one person (van Veen et al, 2015: 40). They are being phased out under reforms initiated in 1992 and replaced by courts of first instance (Tribunaux d’instance, TIs), which have a separate judge, examining magistrate and prosecutor (van Veen et al 2015: 41).

Above these TIs are the Tribunaux de premiere instance (TPIs) which are divided into ordinary and specialised courts, and again have a judge, examining magistrate and prosecutor. These are also being phased out and replaced with higher courts (Tribunaux de grande instance or TGI) which will decide cases in panels of three judges rather than through a sole judge. Above these are three courts of appeal, located in Bamako, Kayes and Mopti. Above these, the highest courts in the state justice system are: a) the Supreme Court, which hears appeals from the lower courts; b) the Constitutional Court, which is supposed to balance the branches of government by

upholding the law and arbitrating conflicts between state institutions; and c) the High Court of Justice which tries cases of high treason, crimes carried out in the exercise of state functions, and those involving national security (van Veen et al, 2015: 41).

At independence, Mali retained the French legal system, which had the potential to ensure equal treatment for all on the basis of shared rights and duties, and to enhance transparency through its procedural formality and thus strengthen the social contract (van Veen et al, 2015: 23). It thus promised consistency, equality and predictability. However, another reason to retain the French system was to preserve the advantages of the elite (van Veen et al, 2015: 25).

## Challenges

Challenges to the state justice system can be divided into those at the political level, systemic issues and operational level problems.

At the **political level**, the repeated uprisings in the north of the country (four since independence in 1960) highlight the failure to create a sense of national identity and countrywide acceptance of the legitimacy of the state. This, in turn, makes it difficult 'to establish a concept of justice that is considered legitimate by all and a practice of justice in which its provision is experienced as the extension of impartial public authority instead of as an instrument through which state power is expressed' (van Veen et al, 2015: 15). A further issue in Mali is the continued dominance of the executive over the state. Mali's first 31 years after independence were characterised by autocratic rule, during which the formal justice system served as an instrument of state: 'it was designed for and tasked with achieving and defending the political objectives of the ruling party, especially the interests of its elites' (van Veen et al, 2015: 16). While a democratic constitution was introduced in 1992, the legacy of executive control continues, albeit exercised through informal and material controls (e.g. the Ministry of Justice controls the budget of the judiciary and the careers of the state's legal professionals, including public prosecutors and judges) (van Veen et al, 2015: 18). 'In such an executive-dominated context it is difficult to conceive of, and provide, justice as an independent public service that can neutrally and effectively arbitrate in disputes between citizens, between citizens and the state or even between parts of the state itself' (van Veen et al, 2015: 22). The US State Department's 2015 Country Human Rights Report for Mali also noted that 'the executive continued to exert influence over the judicial system' (US State Dept., 2015: 8).

Van Veen et al (2015: 25) argue that retention of the French legal system created 'permanent tension between the justice needs of the population and the type of justice that the state is able to provide'. They describe these as **systemic weaknesses**, inherent to the design of the state's judicial system and not due to the manner in which it operates (– which also means they cannot be resolved simply through increased funding). Systemic weaknesses in the state justice system include (van Veen et al 2015: 26-28):

- **Complexity** – the French system is highly complex, and requires organisations, culture, capacities and resources that Mali does not possess.
- **Language** – the language of the state justice system is French, but only one-third of Mali's population speak the language and only 10% are fluent in it. About 80% of Malians speak or understand Bambara and/or speak one of the country's 12 additional national languages.
- **Illiteracy** – adult literacy in Mali is around 33%, which makes the legal system completely inaccessible to most without some form of intermediary.

- Poverty – 86% of Mali’s population live in multidimensional poverty, with 77% earning less than USD2 a day. Mali ranked 176 out of 187 in the 2014 Human Development Index<sup>1</sup>. This means most Malians cannot afford the state justice system – and there are no simple and nationally available legal financial aid mechanisms.
- Population spread – 90% of Mali’s population live in the southern one-third of the country’s territory. Justice infrastructure is lacking throughout the country, but especially in rural areas and the north, meaning that litigants may have to travel over 200 km to reach the nearest court – making the costs unaffordable for most.
- ‘Culture clash’ – popular expectations of the form and purpose of justice differ from what the state has on offer. Malian traditions and culture are seen as tolerant, conflict-avoiding and consensus-seeking, which contrasts with the more procedural and punitive character of the legal system. Taking someone to court is not seen in a positive light.

Turning to **operational issues** hampering the state justice system, these can be summed up as endemic corruption, massive competence and capacity constraints, and a general lack of resources, ‘compounded by limited allocation and poor utilisation of the resources that do exist’ (van Veen et al, 2015: 39).

Corruption is widespread in the Malian public sector, and especially prevalent in the state judiciary. Domestic human rights groups reported in 2015 that bribery and influence-peddling were widespread in the courts (US State Dept., 2015). It is useful to differentiate between two types of corruption in the judiciary:

- Individual – corrupt practices that a number of legal professionals engage in on an individual basis. This usually entails significant payments on the side to get a favourable outcome in the courts (adding to the costs of accessing formal justice in Mali). It stems from the comparatively low salaries of judges, and from social pressure on those in the justice system to grant favours to family or community members.
- Systemic corruption – that results from collusion between, for example, elements of the executive and the judiciary (van Veen et al, 2015: 42).

To add to the problem, the state justice system largely fails to prevent and punish abuse of public office – within and outside the judiciary – so there is no deterrent against corruption.

There are significant resource shortfalls in the state justice system in Mali (US State Dept., 2015). With regard to funding, the average annual allocation over the period 2008-2014 to justice in the national budget was 0.63% (van Veen et al, 2015: 44). This suggests provision of justice is not a priority of the Malian government, and has obvious impacts in relation to service delivery (personnel, facilities, etc.). Conflict in the north has led to a lack of reach of the state justice system in that part of the country (Wambua & Logan, 2017; Goff et al, 2017).

However, van Veen et al (2015) highlight the fact that, even with the limited resources available, where judicial system staff show integrity and commitment, they are able to make those resources go a long way. Nonetheless, ‘the fact remains that the...resources required for making the state justice work as it was intended are significant, and outstrip the ability of the Malian state

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<sup>1</sup> By 2019, its ranking had fallen to 184 out of 189 countries. <http://hdr.undp.org/en/content/2019-human-development-index-ranking>

to provide them' (van Veen et al, 2015: 44). They identify three gaps that stand out because simply increasing resources will not solve them in the short run (van Veen et al, 2015: 45):

- Shortage of competent professionals, in particular judges and lawyers – in 2008 Mali had 4.8 judges per 100,000 inhabitants (cf. the North African average of 9.8 per 100,000, and global average of 11.5 per 100,000). A 2014 report by the Ministry of Justice found there were 355 lawyers in Mali at the time, for a population of about 16 million.
- Absence of adequate legal professional education and training – seen, for example, in lack of professional training opportunities, on-the-job refresher courses, lack of access to legal reference works. The result is that many legal professionals, in particular court registrars, do not perform adequately as they lack sufficient knowledge of the law.
- Absence of means and channels to raise low level of awareness among citizens of their rights and obligations under the country's laws, and of the state's legal processes.

Strengthening the provision of justice in Mali is important for several reasons. The conflict in the north featured atrocities committed by the state security forces, radical groups and insurgents: rendering justice in the north is essential to build the social contract between the state (centred in Bamako) and the citizens in the north (van Veen et al, 2015: 9). Across the country, atrocities have been committed (albeit to a lesser extent), as well as corruption and unlawful detention. Thus fairer and better justice is needed throughout Mali to shore up the legitimacy of the state and prevent social unrest (van Veen et al, 2015: 9). 'Third, an improved justice system, with more opportunities for redress and greater accountability, could stimulate progress in various core areas relevant to development' e.g. fairer competition for jobs in public office, more efficient utilisation of public funds (van Veen et al, 2018: 10). 'Poor-quality justice reduces the ability of Malians to resolve their disputes peacefully, undermines the social contract between state and citizens, and acts as a barrier to development' (van Veen et al, 2015: 3).

### **Public perceptions of state justice system**

The state justice system is seen by many Malians as one of the most corrupt government institutions (van Veen et al, 2015: 40). A leaked report from the US embassy in Mali in 2009 echoed this: 'the judicial system is highly corrupt, with under-the-table payoffs an accepted manner of influencing the outcome of a case' (cited in van Veen et al, 2015: 40). As well as perceiving the justice system as corrupt, van Veen et al (2015: 30) point out that Malians are likely to avoid it for sociocultural reasons. In Mali, taking a case to court is seen as 'declaring war' on the other party, while Malian culture prefers a more conciliatory approach. Given the other problems in the formal justice system – delays, inaccessibility, etc. – when a legal dispute or crime takes place the parties 'will see the state justice system as a last resort' (van Veen et al, 2015: 30).

Responses to the Afrobarometer Survey in Mali for 2014/2015 (Round 6) indicate that access to justice 'remains severely compromised'. Key findings were as follows (Wambua & Logan, 2017: 2):

- Only a minority (45%) of Malians said they trusted the courts "somewhat" or "a lot". Both the courts and the police (52%) were less trusted than most other public institutions in Mali, where religious leaders (86%) and traditional leaders (85%) enjoyed the greatest public trust.



- A majority (56%) of Malians said that “most” or “all” judges and magistrates were corrupt – the worst rating among all 36 surveyed countries<sup>2</sup> and well above the West Africa average (40%).
- Malians’ rate of contact with the justice system was very low: just 7% of citizens said they had dealings with the court system in the five years preceding the survey (2009-2014), the fourth-lowest rate among 36 surveyed countries.
- Men were twice as likely (9%) to have contact with courts as women (4%). Young citizens (18-25 years old), rural residents, and those without formal education had lower levels of contact than older Malians, urbanites, and those with at least a primary education.
- When asked why people might not take cases to court, Malians said they often preferred to take disputes to traditional leaders or local authorities (32%). Citizens also indicated that they did not expect fair treatment from the courts (20%), that they believed the courts would favour the rich and powerful (18%), and that they thought judges or other court officials would demand money (16%).

In 2018 the Hague Institute for Innovation of Law (Hiil) conducted a follow-up Justice Needs and Satisfaction (JNS) Survey in Mali (the first was carried out in 2014) to understand the justice needs of ordinary citizens and their paths to justice. It found that overall trust in the justice system in Mali was not very high, with only one in three people having confidence in the system (Hiil, 2019: 173). Figure 1 shows that levels of trust are much higher in customary justice institutions and non-governmental organisations (NGOs) than in the state justice system.

**See Figure 1: Levels of trust in specific institutions and organisations in Mali**, Source: Hiil, 2019: 174, <https://www.hiil.org/wp-content/uploads/2018/07/Hiil-Mali-JNS-report-EN-web.pdf>

## Customary and religious justice

Customary and religious justice systems in Mali are considered together in this report because the integration of these (influence of each on the other) is so extensive that it would be very difficult to completely separate them. However, individual aspects (unique to each) are highlighted.

### Features

It is estimated that over 80% of family and land disputes in poor and rural communities in Mali are handled by customary justice systems (IDLO, 2018).

Customary justice systems can have a range of providers (see Box 1). They all have a number of features which make them easily accessible (van Veen et al, 2015: 36):

- They are convenient, because all the parties are usually located near to each other;
- They are cheap, as no court fees or travel costs are incurred;

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<sup>2</sup> The 2014/2015 round of the Afrobarometer survey was conducted in 36 countries across Africa, with a total of 54,000 respondents (Wambua & Logan, 2017: 2).

- They are familiar, as the mediators involved in dispute settlements are usually known by the community, speak their language and share the same culture and religion.

### **Box 1: Providers of customary justice in Mali**

#### Family elders

As the basic building block of Malian society, the family represents the first level for resolving disputes. Conflicts are generally mediated at the initiative of the head of the family (normally the eldest male in the extended family) or on the request of another family member.

#### Religious leaders

Religious leaders help resolve disputes between members of their congregation. When a conflict occurs, the parties are called before a committee of elders – responsible for overseeing the institution’s activities in the community – which attempts to mediate the dispute. In the north of Mali, *Cadi’s* (religious judges) usually settle disputes.

#### Traditional communicators

Traditional communicators, known as *griots* in the south, are individuals invested by tradition and custom with the responsibility for recording and communicating the tradition and history of a family or community. The role of traditional communicators varies across communities, but they can be involved in mediating conflicts.

#### Local government actors

Neighbourhood and village heads are given authority by law to mediate civil or commercial disputes among citizens. Conflicts are usually referred to these authorities when they cannot be resolved within the family or when they threaten the stability of the community.

*Source: van Veen et al, 2015: 38.*

Goff et al’s study of customary justice mechanisms in northern Mali covered six administrative circles across three regions: Gao, Tombouctou and Mopti (Goff et al, 2017: 7). Gathering the views of a cross-section of the population in these areas, the study found that, while there were distinct customary justice mechanisms in each of the circles covered, they had common features (Goff et al, 2017: 3-4):

- Customary justice leaders tend to be older males who already hold important roles in their communities.
- Religious customary leaders usually have some formal training, but for others training can be non-existent or based solely on observation of other customary justice leaders.
- In general, the leaders speak with both sides to a dispute, hear witnesses, allow each side to confront each other and make their decisions in a public manner without fear of repercussions.
- The customary justice mechanisms handle a wide array of disputes including land, inheritance, theft or marital issues. Customary leaders can also refuse a case, with some preferring not to handle serious crimes like rape and murder, crimes related to the 2012 crisis, boundary disputes and sorcery.

Van Veen et al (2015: 36) note that customary justice systems are more active in areas where the state is not present, and the chief of the village tends to be the only real authority. In such places, ‘cases are not taken to the formal justice sector because there is a sense that it does not



exist' (van Veen et al, 2015: 36). This is echoed by Goff et al (2017), who found that because the state justice system has only a weak presence in the north, customary justice systems are dominant there.

Traditionally, customary justice systems have dealt with settlement and reconciliation in civil disputes, including family issues, resource-use conflicts and inheritance (Ursu, 2018: 2). 'In recent years, these authorities have had to operate in an increasingly violent environment and have witnessed the expansion of the scope and type of disputes brought before them' (Ursu, 2018: 2).

Mali is a predominantly Muslim country and Islamic law is sometimes incorporated into customary processes of mediation and reconciliation (Ursu, 2018). Inheritance claims, in particular, often involve the active participation of Islamic clergy and the application of Sharia (Islamic law) legal principles; this is recognised by the state to solve civil law disputes (Ursu, 2018: 7). However, the imposition of Sharia law is rooted more in tradition than in ideology, and there is little support for applying some of the harsher punishments derived from Sharia law. Ursu (2018: 7) concludes: 'not all customary justice systems apply sharia law and those systems that do apply it generally tend to do so in a moderate manner following traditional rather than radical points of view'.

## Challenges

While having obvious advantages over the state justice system, customary justice has its own challenges (van Veen et al, 2015: 36):

- Customary law reflects mostly rural, patriarchal value systems that are conservative, and can be incompatible with the rights granted under the country's constitution.
- The generally lower status of women affects their ability to negotiate on an equal footing with their adversaries (in law), especially their husbands. In rural areas, women and children often have no recognised status at all, and are therefore vulnerable in customary justice processes.
- Customary justice also suffers from corruption and politicisation, albeit to a lesser extent than the state justice system.
- Customary justice proceedings are generally only carried out orally, and there is no accountability or codification, so customary 'judges' can ignore precedents and create new ones if they wish.
- There are many different types of customary justice mechanisms and providers in Mali, including family and community heads, religious leaders and specific caste members (see Box 1). There is significant variation by region, ethnicity and religion.
- Enforcement of customary 'judgements' depends, in large part, on the willingness of the parties to carry them out. Because the main actors involved typically have a high level of authority in the community, there is a certain moral pressure on parties to respect agreements, and those that renege are considered 'recalcitrant' and 'looked down on' by society. Nonetheless, agreements are not always respected, and past disputes frequently resurface.

Ursu (2018: 4-5) highlights human rights concerns with regard to customary justice systems:

- During the mediation process, the accused is not always granted opportunities to express their views or appeal decisions – in contrast to international notions of fair trials.
- Some decisions issued by customary systems perpetuate discrimination against women and marginalised groups – in their desire to promote social cohesion and maintain traditions their decisions can maintain a conservative social order often characterised by patriarchal hierarchy and social inequality.
- Customary and religious leaders might impose cruel or inhumane forms of punishment that conflict with basic human rights.

On the final point, Ursu (2018: 6) notes that following the 2012 security crisis, northern regions and some central areas have witnessed the extensive use of Sharia (Islamic) law to resolve disputes. This can entail the imposition of punishments such as stoning, whipping and hand amputations. However, as noted above, while the Malian population is predominantly Muslim, they are generally moderate and tolerant in their views, and this is reflected in the application of Sharia law (Ursu, 2018).

Goff et al (2017: 5) found that land issues were the most common type of dispute brought to customary leaders, but respondents expressed concerns that decision-making on land disputes could be arbitrary or lack enforcement power. A new national law passed in March 2017 assigned specific roles to customary laws in registering land and resolving land disputes: this has the potential to address these weaknesses, as well as build links between the customary and formal justice systems (Goff et al, 2017: 5).

Many respondents in the northern Mali study said women were marginalised or prevented from directly participating in customary justice mechanisms (Goff et al, 2017: 4).

### **Public perceptions of customary justice systems**

In Goff et al's study of customary justice systems in northern Mali (2015: 4), interviewees who had direct experience as a participant in a customary justice process reported an 84% satisfaction rate, and the majority of respondents spoke in favour of the continual usage of these systems. Respondents liked the fact that customary justice mechanisms are free, easily accessible and more efficient than the formal justice system. However, they can also take longer than the formal justice system to resolve disputes, and a lack of written decisions weakens the enforceability of their decisions. Respondents saw the formal justice system as more corrupt than customary justice mechanisms, though the latter were also viewed by many as corrupt.

Goff et al (2017: 3) found that customary justice mechanisms were trusted in large part because of their ability to preserve social cohesion, whereas modern justice was seen as destroying the social fabric, complicating social interactions and disrespecting traditions and values. 'As members of the communities they serve, customary leaders are also seen as being more aware of the social implications of their decisions, and more willing to take efforts to create compromises between parties' (Goff et al, 2017: 3). Respondents said that, even if they disagreed with a decision, they would likely still adhere to it to maintain peace in the community.

However, van Veelen et al (2015: 36) point out that respect for informal authorities is declining as Malian society modernises, especially in urban areas where concepts of family and cultural relationships have less and less value. 'In consequence the use of customary justice mechanisms, as well as implementation rates of judgements they render, may see a relative decline in the future while remaining prominent overall' (van Veen et al, 2015: 36).

## Inclusion

Women face discrimination and issues with access in both customary and state justice systems. Discrimination is particularly obvious at leadership level: few women are allowed to participate directly in customary justice provision, for example in the role of council or jury (Ursu, 2018: 5). With regard to seeking redress before customary leaders, women could be deterred 'not because of direct prohibition but because of certain cultural and traditional boundaries that women are well aware of' (Ursu, 2018: 5). A similar normative dynamic operates in relation to the formal justice system, where women face even more barriers to access (Ursu, 2018: 5). 'For example, taking a family dispute before a state judge is perceived as a hostile act that threatens the social cohesion of the family and the entire community' (Ursu, 2018: 5).

Ursu notes that access to justice for women, whether customary or state systems, and their exclusion from justice reflects the generally more restricted position of women in society and communal norms and values. Thus: 'Exclusion is not a symptom of the justice system per se but of the wider social context. Genuine reform of access to justice can therefore only come about through measures aimed at the social empowerment of women and vulnerable and marginalised groups' (Ursu, 2018: 5).

## 3. Niger

### State justice system

#### Structure

As with Mali, the justice system in Niger is based on the French legal system. It comprises lower criminal, civil and appeal courts, and four higher courts: the Court of Appeals, the Supreme Court, the High Court of Justice, and the Court of State Security. In criminal courts investigative judges develop and bring to trial criminal cases which they judge; appeals courts are panels of professional judges who hear criminal appeals. The courts of civil procedure hear lawsuits related to civil matters and can apply judicial remedies, while a single appellate entity is responsible for administrative remedies.

The higher courts are as follows:

- Supreme Court of Niger – the highest judicial body of the state in administrative, judicial and financial matters. It hears cases appealed from lower civil and criminal courts, but only rules on the application of the law and constitutional questions: the lower Courts of Appeals may decide appeals on questions of fact and law.
- Court of Appeals of Niger – there is one in each of Niger's eight regions. They review questions of fact and law in criminal and civil law, and rulings may be appealed to the Supreme Court of Niger.
- Constitutional Court of Niger – has jurisdiction over constitutional and electoral matters, and rules on compliance with international treaties and agreements. The Court includes seven members and can be called upon to provide rulings by certain constitutional triggers (elections, referendum, constitution revision) or on the request of – among others – the President. When called upon to give binding rulings it is the final arbiter, and rulings must be carried out in 30 days. It came into prominence when required to offer a non-binding

ruling of President Mamadou Tandja's plan for a referendum on a new constitution. Its opposition, presented on 26 May 2009, triggered the President's dismissal of the National Assembly.

- High Court of Justice – crimes or misdemeanours committed by government officials in the exercise of their office are tried here. This court is composed of seven deputies elected from within the National Assembly on a provisional basis, and organised and instructed by the Supreme Court of Niger.
- State Security Court – a military court for trying offences committed by the military and police, but also initially enabling the military of Niger to try civilians accused of crimes touching upon state secrets, defence, espionage, or internal security. It was closed by the National Assembly in 1991 but some elements of the court were re-established in 2007 – though it can no longer try civilians.

## Challenges

Corruption is a major problem in the Niger judiciary (US State Dept., 2015; Bertelsmann Stiftung, 2018). Examples include family and business ties influencing lower-court decisions in civil matters. A 2016 Afrobarometer survey reported that 34% of respondents experienced problems in dealing with the courts such as paying bribes, delays and lack of access, though this was below the African average of around 40% (Bertelsmann Stiftung, 2018: 10).

Niger further suffers from a lack of authorised lawyers. Fighting for one's rights in a court of law is very expensive: the vast majority of the population either does not have access to the legal system or cannot afford the legal fees. Defendants have the right to counsel (at public expense for minors and indigent defendants charged with serious crimes), the right to be present at trial, to be informed of all the evidence against them, and to appeal verdicts. However, widespread ignorance of the law prevents many accused from taking full advantage of these rights (US State Dept., 2015: 6). Moreover, the limited number of jurisdictions, staff shortages and lack of resources, can lead to significant judicial delays, leaving large numbers of detainees awaiting trial for long periods (US State Dept., 2015: 6).

Although the constitution and law provide for an independent judiciary in Niger, the executive does sometimes interfere with the judicial process (US State Dept., 2015). The government reassigned some judges to low-profile positions after they asserted independence in handling high-profile cases or rendered decisions unfavourable to the government (US State Dept., 2015: 6). There were also allegations the government interfered or attempted to interfere in high-profile court cases involving the leadership of opposition parties.

The Constitutional Court and the Supreme Court have a long tradition of rulings that contradict executive decisions (Bertelsmann Stiftung, 2018: 10). In the 1990s and during the Tandja regime (1999–2010), the judiciary often demanded that the executive review laws. In recent years, however, the judiciary has been 'remarkably silent' and this has led to a reported reduction in interference by the executive (Bertelsmann Stiftung, 2018: 9). Furthermore, rulings by the Constitutional Court and Supreme Court are often simply ignored (US State Dept., 2015). High-ranking politicians are rarely subject to judicial action; if and when they are subject to investigation, cases are either abandoned or delayed indefinitely. If politicians are prosecuted, this is normally a sign that they have fallen out of favour with whomever is in charge of the executive (US State Dept., 2015). Judges granted provisional release pending trial to some high-profile defendants, who were seldom called back for trial and had complete freedom of

movement, could leave the country, and could even run as candidates in elections (US State Dept., 2015). Similarly, officeholders who break the law and engage in corrupt practices often attract adverse publicity, but are not adequately prosecuted. Trials of officeholders are often informed by political considerations (Bertelsmann Stiftung, 2018: 10).

### **Public perceptions of state justice system**

The Afrobarometer Round 6 survey of public perceptions of the legal system in Niger found that the country's court system enjoys the highest level of public trust among 36 African countries surveyed in 2014/2015 (Wambua & Logan, 2017: 1). Perceptions of corruption among judges, while substantial, were lower than regional and continental averages. Among the 9% of Nigeriens who reported having contact with the judicial system in the previous five years, the most common problems were long delays and the system's complexity (Wambua & Logan, 2017: 1).

Key findings were as follows (Wambua & Logan, 2017: 2):

- More than eight in 10 Nigeriens (82%) said they trusted the courts "somewhat" or "a lot". This was the highest rating among all 36 African countries surveyed in 2014/2015, and far above the West Africa average of 48%.
- Like the courts, the police were among public institutions that enjoyed a high level of public trust (86%) in Niger, surpassed only by religious leaders (93%), the army (92%), and traditional leaders (88%).
- About one in four Nigeriens (23%) said that "most" or "all" judges and magistrates were corrupt. This was one of the best ratings among 36 countries, well below the West Africa average of 40%.
- About one in 11 Nigeriens (9%) said they had dealings with the court system in the five years preceding the survey (2009-2014), somewhat below the 36-country average of 13%.
- Men were twice as likely (12%) to have contact with courts as women (6%). Economically well-off respondents (i.e. those with "no lived poverty") were less likely to have dealings with the court than their poorer counterparts.
- When asked why people might not take cases to court, Nigeriens said that people often preferred to take disputes to traditional leaders or local authorities (23%), they didn't expect fair treatment from the courts (14%), they didn't know how to take a case to court (13%), or they didn't know their legal rights (13%).
- Respondents who had interacted with the courts during the previous five years were asked which problems they encountered. As across West Africa and across all 36 surveyed countries, long delays were the most common problem, cited by 69% of Nigeriens. The complexity of the legal system was also a common problem (50%). A lack of legal advice, inattentive judges, and high costs were less frequently cited as difficulties in Niger than elsewhere in West Africa or across the continent.

### **Customary and religious justice**

Traditional mediation and customary courts play an important role in the justice system in Niger. The country's legal framework provides that the courts should apply the customs of the parties in disputes related to contracts, the status of persons, family matters, inheritance and gifts, and real estate, but not all civil issues (OHCHR, 2016: 34; US State Dept., 2015: 6). Indeed, it is normally thought of as 'disturbance of the local peace' to bring a person before a court, and the parties are

encouraged and in some types of cases required to attempt to settle the matter within the traditional justice structure before bringing a case to the formal courts (OHCHR, 2016: 35). There are two reasons for this: one, to promote harmony and conciliation through the traditional dispute resolution process; and, two, to relieve the caseload of the formal courts.

Normally dispute resolution is first attempted through the traditional chiefs (OHCHR, 2016). Chiefs receive government stipends but have no police or judicial powers (US State Dept., 2015). There is a structured hierarchy of traditional chiefs: those in villages or in specific subdivisions of villages, and higher up chiefs of larger geographic areas (at cantonal level) (OHCHR, 2016: 35).

Customary courts, based largely on Islamic law, try only civil law cases. A legal practitioner with basic legal training, advised by a (or two) customary assessor(s) with knowledge of the traditions of the disputants, heads these courts. The customary assessors are proposed by/are the traditional chiefs of the pertinent area to the court of first instance. The court can reject certain candidates and the Ministry of Justice makes the final selection on the basis of the list of candidates sent by the chief judge of the court.

In practice, the customary assessors are relied upon not only for their knowledge of local customs, but also for evaluating the evidence and the context of the dispute. The customary assessors have an important role as they stay in the community, while the judges (legal practitioners) of the court rotate geographically. The former are normally closely associated with the chiefs and other elders and speak the language of the community, whereas the latter may not (OHCHR, 2016). The customary assessors are thus seen as a key intermediary between the formal courts and the chiefs and other elders of a particular community, and not only advise on customs in the community and help evaluate the evidence, but also transmit the judgment of the court back to the community (OHCHR, 2016: 35).

Traditional mediation and customary courts do not provide the same legal protections as the formal court system. Formal law does not regulate the judicial actions of chiefs and customary courts, although defendants may appeal a verdict to the formal court system (US State Dept., 2015: 6).

## **Inclusion**

Outside the capital Niamey, citizens have almost no legal recourse. Access to legal protection is very expensive and thus impossible for 95% of the population (Bertelsmann Stiftung, 2018: 11). Despite constitutional protections, nomadic peoples have little or no access to government services. Significant traditional structures prevent large segments of the population from expressing their civil rights. Women have equal legal status with men in the formal court system, but not in customary courts and traditional mediation and do not enjoy the same access to legal redress (US State Dept., 2015: 6). Family law gives women inferior status in property disputes. In the eastern part of the country, women among the Hausa and Peul (also known as Fulani or Fulbe) communities are often not allowed to leave their homes without a male escort (Bertelsmann Stiftung, 2018: 11). In the Diffa region, the military confrontation between the Nigerien state and Boko Haram has displaced thousands of people, who are without sufficient legal protection (Bertelsmann Stiftung, 2018: 11).



## 4. Burkina Faso

### State justice system

#### Structure

Burkina Faso's legal system is based on the French legal system and on customary law.

The formal justice system comprises the Court of Cassation at the top, which is the superior jurisdiction of the judicial order, and the High Court of Justice (ISSAT, 2020). The latter comprises deputies that the National Assembly elects after each general renewal, as well as the magistrates designated by the president of the Court of Cassation (ISSAT, 2020). Judicial courts are available in every region.

#### Challenges

A US State Department report on human rights in Burkina Faso describes the judiciary as, 'corrupt, inefficient and subject to executive influence....Legal codes remained outdated, there were not enough courts, and legal costs were excessive. Citizens' poor knowledge of their rights further weakened their ability to obtain justice' (US State Dept., 2017: 8). Again, this is echoed by Bertelsmann Stiftung (2018, 12): 'the right to fair trial is limited by popular ignorance of the law and a continuing shortage of magistrates'. The number of magistrates in 2018 was 559, including 115 female magistrates (ISSAT, 2020). The ratio of magistrates per 100,000 inhabitants in 2018 was 2.5; this ratio is below the internationally recommended standard of 10 magistrates per 100,000 inhabitants (ISSAT, 2020). Furthermore, 'Cases of long-term detention without trial or access to legal counsel are widespread. Equality before the law and due process under the law exist in theory, but, in practice, it is often only citizens with financial means who can secure a fair or speedy trial' (Bertelsmann Stiftung, 2018: 12). 'The judicial system suffers from corruption, which stems from an overall system that is inefficient, poorly trained and poorly equipped. The economic vulnerability of its members makes them susceptible to exploitation' (Bertelsmann Stiftung, 2018: 11).

The judiciary in Burkina Faso are free according to the constitution, but judges are accountable to the President which makes their status ambivalent (ISSAT, 2020). Bertelsmann Stiftung's 2018 report echoes this: 'The judiciary is formally independent and institutionally distinct but dominated and politicized in practice by the executive branch. The executive orchestrates judicial appointments and promotions, and prosecutors are part of a hierarchy headed by the justice minister; because of this, the executive interferes in judicial decisions' (Bertelsmann Stiftung, 2018: 11). The judiciary operate under 'extreme political pressure', seen for example, in court proceedings being very slow when powerful people are involved, but very quick when they serve the government's interests (Bertelsmann Stiftung, 2018: 11). This has resulted in a culture of impunity among government officials (Bertelsmann Stiftung, 2018).

#### Public perceptions of state justice system

This review found little information on public perceptions of the justice sector in Burkina Faso. The Afrobarometer Round 7 survey, published in 2017, is in French, but appeared to contain nothing on the justice sector beyond asking if the President should not interfere in judicial decisions, even where he thinks they are wrong, and whether he should respect judicial

decisions, even where the things they are wrong (Afrobarometer, 2017: 20). According to the 2018 Bertelsmann Stiftung report, fighting government officials' impunity has ranked among the population's main demands since the 1998 murder of investigative journalist Norbert Zongo, but the judiciary has only hesitantly moved toward solving this or other crimes with suspected government involvement (Bertelsmann Stiftung, 2018: 11). According to the 2019 Global Corruption Barometer for Africa, around one-third of Burkinabe perceive judges and magistrates to be corrupt (cited in ISSAT, 2020).

## Customary and religious justice

This review found no information about customary and religious justice in Burkina Faso.

## 5. Chad

### State justice system

#### Structure

The legal system is based on French civil law, but the constitution recognises traditional law in locales where it is long established, provided local law does not interfere with public order or constitutional provisions for equality of citizens (US State Dept., 2015). Courts tend to blend the formal French-derived legal code with traditional practices.

#### Challenges

The US State Dept.'s 2015 report on human rights in Chad found that residents of rural areas and refugee/internally displaced persons (IDPs) camps often lacked access to formal judicial institutions, and legal reference texts were not available outside the capital or in Arabic. Major problems with the judiciary include underfunding, overburdened with cases and corruption (US State Dept., 2015; Bertelsmann Stiftung, 2018). Courts generally are weak and, in some areas, non-existent (US State Dept., 2015). 'Ordinary citizens generally avoid the courts, as they do not trust the judicial system and fear that any charges filed might backfire against them' (Bertelsmann Stiftung, 2018: 13).

Although the constitution and law provide for an independent judiciary, the judiciary is subject to executive interference. 'Members of the judiciary sometimes received death threats or were demoted for not acquiescing to pressure from officials. Government officials, particularly members of the military, often were able to avoid prosecution' (US State Dept., 2015: 6). This is echoed by Bertelsmann Stiftung (2018: 13): 'Judges acting independently face severe intimidation or dismissal'. A judicial oversight commission has the power to investigate judicial decisions and address suspected miscarriages of justice, but its members are appointed by the President, increasing executive control of the judiciary (US State Dept., 2015: 7). Government officials and other influential persons, especially members of the governing-party clan, often enjoy impunity; where they are sentenced or fined, it is obvious that the punishment is the result of behind-the-scenes power struggles (Bertelsmann Stiftung, 2018: 13).

The challenges with the justice sector can lead to people taking the law into their own hands. In the south of Chad, conflicts over land ownership between pastoralists and herders continue to lead to the violation of rights, and violence resulting in injuries and deaths. As the judiciary does

not offer any redress for injustice, farmers that feel wronged attempt to take justice into their own hands (Bertelsmann Stiftung, 2018: 14). This exacerbates conflict as herders, who often have ties to the ruling elite, respond to the violent actions from farmers with greater violence often with the backing of state agencies (e.g. police, gendarmerie or military) (Bertelsmann Stiftung, 2018: 14).

## Customary and religious justice

Customary law often supersedes Napoleonic (French) law (US State Dept., 2015: 7). In minor civil cases, the population often rely on traditional courts presided over by village chiefs, canton chiefs, or sultans. Penalties in traditional courts sometimes depend on the clan affiliations of the victim and perpetrator. Decisions of traditional courts may be appealed to in a formal court.

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## Suggested citation

Idris, I. (2020). *Justice systems in the Sahel*. K4D Helpdesk Report 765. Brighton, UK: Institute of Development Studies.

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