

Mechanisms to Solve Justice Problems (fonte: American BAR Association)

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).⁴¹ 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.⁴²

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).⁴³ 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.⁴⁴

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.⁴⁸ The law does not provide any further detail on how this mediation should occur, nor what oversight should be provided to such authorities.

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.¹¹⁶ 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, 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."