

Issue Paper –Mali’s Criminal Justice System

Dr Annie Barbara Chikwanha
November 2008

Mali’s legal system is based on codes inherited at independence from France and customary law. New laws were enacted after independence to adjust the system to Malian life. However, French colonial laws that were not abrogated are still in force.

Since independence in 1956, Mali has ratified all the major human rights instruments and Conventions. This lays a foundation for implementation of a human rights framework to guide policies and regulate practices. Both government and civil society claimed a keen interest in using the Human Rights framework as a means of respecting the human rights of all people as members of one society. Human rights education is regarded as an imperative to build Mali as a human rights nation.

Crime: Incidence and prevalence

Mali is one of the few developing countries that have a low crime rate. The incidence of violent crime is very low and petty crimes such as theft and pick-pocketing, are the most frequently reported incidents. INTERPOL data shows that the crime rate in Mali is relatively lower than in most industrialised countries. A comparison of Mali with a low crime rate country, Japan and a high crime rate country, the USA confirms this. An index¹ of the offenses listed in the table below shows the variations.

Crime rates 1998

Crime	Mali	Japan	USA
Murder	0.71	1.10	6.3
Rape	0.46	1.48	34.4
Robbery	0.05	2.71	165.2
Aggravated assault	1.45	15.40	360.0
Burglary	0.77	187.93	862.0
Lacerny	0.94	1198.13	2728.1
Motor vehicle theft	0.34	28.37	459.0
Total	10.03	1709.88	4615.5

Interpol data derived from the Uniform Crime Report for 1998

However, corruption is a problem. The Auditor General’s report of 2007 revealed that an estimated 218 million US dollars had been lost in revenues during 2006 due to financial mismanagement, corruption and fraud. Fuel importation companies were the biggest culprits who evaded and avoided taxation and had caused a loss of 15,5 million dollars. This is a scourge that deters development and it needs to be addressed.

Gender related crimes

Domestic violence is generally tolerated even though assault in marriage is a crime. Just as everywhere else, the police are reluctant to take action against perpetrators of domestic violence. Rape is a criminal offence but marital rape is not illegal. And as with everywhere else, many rape cases are under reported. The Ministry for the Promotion of Women, Children and the Family have produced a guide used to sensitise the legal fraternity on issues related to violence against women and how they should handle the different issues. The NGOs Action for the Defense and Promotion of Women's Rights and Action for the Promotion of Household Maids both operate shelters for victims of gender based violence. The Association of Malian Women Lawyers, the Association of Women in Law and Development, the Collective of Women's Associations and the Association for the Defense of Women's Rights all work towards highlighting legal inequalities and providing legal assistance to women. They also target the legal fraternity, religious and traditional leaders and educate them on women's rights.

Though the government is working towards eradicating Female Genital Mutilation by 2008, there are no laws against this in the country. Current estimates put the statistics of circumcised women at 95%. The National Committee Against Violence Towards Women has a strong network that is fighting to stop the practice. Rather than punish women involved in the rituals, the government has opted to raise awareness on the dangers of the practice.

Access to justice

Women have very limited access to justice and are very vulnerable in civil matters as well as in the protection of human rights. Ignorance of the law prevents women from seeking justice.

Law enforcement

Security forces are composed of the army, air force, the *Gendarmerie*, the National Guard and the police. Civilian authorities maintain control of the security forces but there have been a few incidences where the security forces acted independently of government authority. The local police forces are under the Ministry of Security and Civil Protection. The *Gendarmerie* are under the Minister of the Armed Forces. The police and gendarmes share responsibility for internal security and the police are responsible for the urban areas only. The police force is decentralised to the district level with each district having a commissioner who reports to national headquarters.

The police lack resources and adequate training and though impunity is not a problem, corruption allegations are rife. Reports of extra-judicial killings are very few and it was only in 2000 when security forces were accused of such crimes and in 2001 there were again reports of the police violating human rights. Results of the investigation are yet to be made public. However corruption within the force has been reported. Some police officers and *gendarmes* are alleged to extort bribes at vehicle checkpoints.

Police searchers are infrequent and all require judicial warrants. Unfortunately these are usually served at the request of a relative or if a bribe has been paid. In cases where money is involved, the police are reported to persuade the parties involved to settle at the police post and they too get a share of the loot.

Though the Constitution requires that detainees be charged within 48 hours and that they must be entitled to counsel, this doesn't usually happen and detainees often stay longer than the 48 hours. Limited rights of bail exist for minor crimes and petty civil offenses and at times, authorities release defendants on their own recognizance. Administrative bottlenecks and insufficient lawyers, judges and courts all contribute to delays in bringing cases to trial. Local lawyers give estimates that more than half the number of inmates are detainees awaiting trial.

However, there are reports that security forces maintain physical and technical surveillance over individuals deemed to be a threat to internal security².

Detention

Arbitrary arrests and detention are prohibited by the Constitution and though the government generally observes these prohibitions, police have been known to arrest and detain persons arbitrarily.

Juvenile justice

The Convention on the Rights of the Child define a child as anyone below the age of 18 years. In Mali, there is variation on this definition and this depends on the issue at hand and the matter under scrutiny. The majority age differs in judicial, civil, social and political matters. On criminal issues, the age of majority is 18 years and this is stipulated in Articles 1 and 28 of Act No. 87-98/ANRM of 9 Feb 1987. However, the act does not necessarily absolve juveniles of criminal responsibility as it states that minors between 13 and 18 can be expected to shoulder criminal responsibility if the court decides that they acted knowingly. The act also established the juvenile court system even though this is yet to be functional across the country. In civil matters, 21 years is the age of majority even though this applies to boys only- for girls, at 18 they can make decisions to marry only independently. Still if the boy is 18 and the girl 15, parental consent would allow them to get married. However, under age girls often get married off and this violates the law.

The International Labour Organisation (ILO) estimated in 1998 that at least 52.5% of children between the ages of 10 and 14 were working in Mali³. Children work in the agricultural and mining sector, as domestic servants, vendors and beggars. Exploitation occurs in these places where the children work long hours and they very often become victims of physical abuse. This violates the Labour Code (1996) which puts the basic minimum working age at 14 years. The code allows 12-14 year olds to work for up to 2 hours under parental supervision; 14 to 16 year olds can work during the day for up to 4 and a half hours with permission from the Labour Inspectorate and 16 to 18 year olds can work in non-physical

demanding jobs. However, many continue to break the laws since the inspectorate lacks capacity to enforce the law especially in the informal sector. The government ratified the ILO Conventions no 182 on the Worst Forms of Child Labour. The Constitution prohibits forced or compulsory labour but this is ignored in most sectors. There is no constitutional or legal provision to protect the interests and rights of children and the juvenile court system is yet to operate. The Social Services Department is mandated to intervene in cases of child abuse and neglect but reported cases are very low and statistics are generally deemed to be unreliable.

Human trafficking

Mali has been pointed out as one of the points of origin for child trafficking. Many of these children are sold into forced labour on commercial farms or as domestic servants in Cote d'Ivoire. Since 2001, 500 children trafficked from Mali have been intercepted by legal authorities in Cote d'Ivoire and returned to the country⁴. An estimated 15 000 children are believed to have been sold into forced labour over the past few years. Organized networks of traffickers lure the unsuspecting parents into children by promising rewarding jobs only to be sold for at most 40 US dollars.

Articles 187 and 189 of the Malian Criminal Code forbid trafficking in children but does not address adult trafficking. Reports state that adults too are victims of trafficking and that the crime occurs mostly within the country even though girls and women are trafficked to Nigeria to work in the sex industry. Mali has taken steps to combat the problem. The parliament recently passed a law to punish traffickers harshly through prison sentences of between 5 and 20 years. From 1999, the country has been part of an 8 ILO-International Programme on the Elimination of Child Labour regional project. In the first phase, the project assessed the severity of the problem and in the 2nd phase that started in 2001, efforts were directed at: rehabilitating children who had been victims of trafficking, raising awareness of trafficking and building capacity at both the local and regional levels to combat the problem. The government signed a treaty with the government of Cote d'Ivoire to cooperate in combating trafficking. The Ministry for the Promotion of Women, Children and the family; the Ministry of Employment, Public Services and Labour, in coordination with the Ministry of Foreign Affairs and the Ministry of Territorial Administration are all working on rehabilitating the victims and strengthening the legal system in combating trafficking. In 2001, more than 300 children were successfully returned to their families. A major problem is that parents are often unwilling to file charges against known traffickers and in some cases when they do, the cases eventually disappear within the system⁵.

Prisons

Amnesty International applauds the absence of political prisoners in the country but is also concerned that unsentenced prisoners can wait in prison for as long as 10 years to get their verdicts. Imprisonment is generally frowned upon by

society and judges who met out harsh sentences are frowned upon by the public. This has pushed the Prison administration to pay more attention to penal reforms and reforming the criminal justice system in general. Mali has a relatively low prison population with a rate of 35 per 100 000. Female prisoners are just 2% of the prison population⁶. It is only because of the high case loads that over 70% of the prisoners are still awaiting trial otherwise the population would be lower. These long remand periods imply that the country ought to adhere to the UN Standard Minimum Rules for the Treatment of Prisoners and UN Standard Minimum Rules for Non-custodial measures.

Prison conditions are generally poor: there is overcrowding, poor healthcare and food is scarce. The conditions are worse outside of the capital, Bamako. Since 1991, only 2 new prisons were opened: a youth prison and a women's prison. These were part of reforms required by the UN since the separate holding quarters for women and juveniles at the Bamako central prison for men were a human rights violation.

However, juveniles are often held in the same prison as adults even though they are put in different cells. Women in Bamako only are held separately from males in prisons, everywhere else they are incarcerated in the same complex though in different cells. Another anomaly is that pre-trial detainees are held together with convicted prisoners. The government allows human rights groups access to prisons and the Malian Association of Human Rights, the Malian Association of Women Jurists and International Committee of the Red Cross continue to pay visits to prisons.

Women in prison

These are usually poor, illiterate women from the rural areas who usually become victims of their domestic work circumstances. Sexual assault by employers often leads to unwanted pregnancies and the women are thus forced to abort- which is a crime in the country. They are then charged with infanticide. Many of the crimes the women commit are related to the domestic situations or confronting systemic violence that is part of the patriarchal social practices they live in. Many of the female prisoners are former domestic workers of the upper classes⁷. Ex-female prisoners are stigmatized and shunned by their families after release. However recidivism rates are very low amongst females in the country but because of the social stigma, many prisoners tend to regard prison as home since they are unlikely to be marriage material after prison.

Mali has made a significant innovation in designing a prison for women. In departing from the French –western cell prison model, Bolle women's prison was designed like an African compound with the aim of creating a communal prison system. This is quite a radical change from the usual western panopticon style. Prisoners with babies stay with them and they have a playing facility and the women can continue with activities like gardening and raising poultry. Those guilty of infanticide are made to share with those who are raising their children

and though this is designed to rehabilitate, it can also be a form of punishment. Deference to age is important and the eldest is in charge of each dormitory and she makes all the important decisions. So prisoners tend to police each other. Conflicts are resolved the 'African way'. *Surveillantes* intervene before fights break out and mutual apologizing restores order and peace.

Judiciary

The Supreme court has both judicial and administrative powers. The ministry of justice appoints judges and supervises the law enforcement and judicial functions. The Constitution spells out the separation between the constitutional court that also acts as an election arbiter and a high court of justice that has power to try senior government officials in case of treason. Mali's legal system derives from French civil law and customary law, and provides for judicial review of legislative acts in a Constitutional Court (which was formally established on 9 March 1994). Mali has not accepted compulsory ICJ jurisdiction.

A Supreme Court was established in Bamako in 1969. It is made up of 19 members, nominated for five years. The judicial section has three civil chambers and one criminal chamber. The Supreme Court has both judicial and administrative powers. The administrative section deals with appeals and fundamental rulings.

The Court of Appeal is also in Bamako. There are two magistrate courts of first instance, courts for labor disputes, and a special court of state security. Customary courts were been abolished. The 1992 constitution established a separate constitutional court and a High Court of Justice charged with responsibility for trying senior government officials accused of treason.

Court structure

Supreme Court- admin and judicial powers

A Constitutional Court-(election arbitration duties)

Circuit court

The 1992 constitution guarantees independence of the judiciary, and constitutional provisions for freedom of speech, press, assembly, association, and religion are generally respected. Nonetheless, the executive has considerable influence over the judiciary. The president heads the Superior Judicial, the body that supervises judicial activity, and the Ministry of Justice appoints judges, can suspend them and oversees law enforcement. Trials are public, defendants have the right to an attorney of their choice, and court-appointed attorneys are available to indigent defendants in criminal cases. However, the judicial system has a large case backlog resulting in long periods of pretrial detention.

Trials are all public except in the case of juveniles. And all defendants have the right to be present and have an attorney of their choice. The state appoints attorneys for those who cannot afford. However, the village chiefs decide the majority of disputes in rural areas in consultation with elders. If such decisions are challenged in court, only those found to have legal merit are upheld. It is not clear if the guidelines for determining 'legal merit' are codified. Variation in interpretations would result in unfair decisions on the same crimes.

Judges are severely overwhelmed by high case load with some judges reportedly handling one thousand cases. There have been concerns that judges often refuse to rule and prosecutors are prevented from indictments if a case is found to involve several family issues. This is because tradition is very often taken as a mitigation factor. This means that judges struggle in determining the severity of crimes according to traditional customs. Crimes categorized as non-traditional such as drug trafficking can often get serve punishments yet murder will be determined by the traditional customs.

The executive branch is accused of exerting influence over the judiciary at times and this has resulted in unfair trials. Local human rights allege that there are instances of bribery to influence court decisions.

Freedom of Assembly and association

On very few occasions, the police have been accused of criminalizing the right to demonstrate.

Traditional policing

One of the privileged groups in Malian society is the *jeliw* (griots or bards) whose main job is to ensure harmony and peace in the community⁸. They intervene in all kinds of disputes at all levels from the domestic to the international and are tasked with finding solutions if an offense is committed. The *jeliw* use shame as a tool to reign in errand citizens and because they operate at both the domestic (horizontal level) and the national (vertical level), they wield political influence and their approval is essential in many spheres of life. And because they have the power to shame, victims often fail to argue their cases out. Shaming has the same effect as imprisonment since it can lead to marginalization. However, the *jeliw* are also exposed to abuse just like judges and they often have to humble themselves in order to maintain the respect they deserve from disputing parties. Because urban lifestyles are different from the rural ones, the *jeliw* mediate and police the communities differently. Urbanites tend to opt for other alternatives to intervene in disputes but the *jeliw* still wield enough influence in Malian society to discourage citizens from utilizing the French justice system. This traditional justice mechanism lowers prison figures tremendously and is model worth exploring for African countries.

The public also intervenes in disputes such that the police are rarely called in. There are also jokers who intervene mostly in assault cases and these *sanankun*

(joking relationships) play a significant role in maintaining harmony at the local level. They are very often considered as the perfect judges at the local level. Also, age-mates have authority to intervene and resolve disputes.

Collective punishment is another tool used by these traditional mechanisms. At times, the entire clan can be fined for an individual offender from their community and this puts pressure on the family to reprimand the errant person. These mechanisms remove imprisonment from being the fulcrum of penal justice and provide a possible option to achieving a just society.

Torture and Other Cruel, Inhuman or degrading treatment

Though the constitution prohibits this, there are a few reports that police abuse civilians and that they use excessive force to manage demonstrations.

¹ The USA FBI index of crime is computed from the following variables: murder, rape, robbery, aggravated assault, burglary, larceny and motor vehicle theft

² See Crime and Society, Comparative Criminology-Mali, internet

³ See Bureau of International Labour Affairs Mali: Child Labour in Mali, <http://www.dol.gov/ILAB/media/reports/iclp/Advancing1/html/mali.htm> accessed 26 July 2008

⁴ See Bureau of International Labour Affairs Mali: Child Labour in Mali, <http://www.dol.gov/ILAB/media/reports/iclp/Advancing1/html/mali.htm> accessed 26 July 2008

⁵ See Wikipedia, Human Rights in Mali, accessed 26 July 2008.

⁶ *ibid*

⁷ Nagel Mechthild 2003-2004 Gender Incarceration and Peacemaking in Mali, State University of New York

⁸ Nagel Mechthild 2003-2004 Gender Incarceration and Peacemaking in Mali, State University of New York