ACCESS TO JUSTICE ASSESSMENT

FOR

GUINEA

January 2012

© American Bar Association
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>i</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>5</td>
</tr>
<tr>
<td>Guinea Background</td>
<td>7</td>
</tr>
<tr>
<td>Key Populations and Legal Issues</td>
<td>11</td>
</tr>
<tr>
<td>Guinea: The Elements of Access to Justice</td>
<td>13</td>
</tr>
<tr>
<td>Element I. Legal Framework</td>
<td>13</td>
</tr>
<tr>
<td>Element II. Legal Knowledge</td>
<td>17</td>
</tr>
<tr>
<td>Element III. Advice and Representation</td>
<td>23</td>
</tr>
<tr>
<td>Element IV. Access to a Justice Institution</td>
<td>27</td>
</tr>
<tr>
<td>Element V. Fair Procedure</td>
<td>35</td>
</tr>
<tr>
<td>Element VI. Enforceable Decision</td>
<td>41</td>
</tr>
<tr>
<td>List of Acronyms</td>
<td>43</td>
</tr>
</tbody>
</table>
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 La Rencontre Africaine pour la Défense des Droits de l’Homme (RADDHO) and ABA ROLI. RADDHO 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. RADDHO then analyzed the data collected and drafted this report, with ABA ROLI providing multiple rounds of commentary and edits. The final report was reviewed by experts and key stakeholders in Guinea and, after a final edit, was published in English and French.

The findings in this report are based on qualitative research methodologies, and are intended to present an informative analysis of access to justice in Guinea. 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 Conakry. 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, heads of neighborhoods, heads of sectors, imams, priests and heads of family. A number of victims of domestic violence, harassment, and unfair inheritance 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 RADDHO 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 Guinea.

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.

The president of RADDHO, Mamadi Kaba, led the work on this report, supported by RADDHO’s permanent staff, particularly Ibrahima Baldé and Leticia Lamah. A number of legal experts also provided advice to RADDHO throughout this project, including Me. Mohamed Traore, Me. Mamadi Kandet, Me. Zézé Beavogui, Me. Lansana Tembadou, and Me. Christian Sow, prior to his appointment as Guinea’s Minister of Justice. RADDHO assembled a team of recent graduates to conduct much of this report’s research. Team members included Fatoumata Binta Bah, Abdouramane Balde, Tidane Barry, Sékou Balia Camara, Alpha Oumar Diallo, Karim Kaba, N’faly Kaba, Fodé Kante, Mariam Kouyaté, Koumba Angeline Sevadouno, Alpha Oumar Sow and Florent Tonguino.

ABA ROLI’s Legal Analyst, Jim Wormington, worked with RADDHO on the implementation of the AJAT, with support from Program Manager, Hadja Tall, and Program Associate, Diane Albrecht. 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. Guinea’s recent past demonstrates the effect that an absence of access to justice can have on a state and its citizens. A neglected justice system that was, in any case, only an extension of executive power, meant citizens had little recourse when their rights were violated. The resulting culture of impunity led to the violent suppression of opposition, entrenched corruption, and widespread human rights abuses by security forces.

Guinea now has, in Alpha Condé, the first democratically-elected president in its history. Condé’s government, encouraged by its international partners, appears to understand the importance of rebuilding the justice system for Guinea’s nascent democracy. In March 2011, the government convened a high-level roundtable, the États Généraux de la Justice, to identify a broad strategy for justice sector reform, and a pilot committee has subsequently been established to oversee reforms. International donors, particularly the European Union, are providing funds to support reform.

A focus on access to justice will undoubtedly be a key element of justice sector reform in Guinea. This report discusses the key obstacles to access to justice that reforms must address. To do so, it considers access to justice through a six-part framework, the Elements of Access to Justice, each of which is essential if citizens are to be able and willing to use justice institutions. Where obstacles to access to justice are identified, recommendations are proposed as to how they might be addressed. Although the report discusses access to justice in Guinea in general, it uses three women’s rights-focused case studies – domestic violence, unfair inheritance and harassment in the workplace – to illustrate obstacles to access to justice.

The 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.**

   In the three women’s rights case studies considered by this report, the law provides a basket of rights that, while not perfect, gives one particularly vulnerable group a measure of protection. Although the law does not specifically criminalize gender-based violence, perpetrators of domestic violence or harassment can be prosecuted for a number of related crimes. Victims also have the right to compensation and, in the case of violence by a spouse, to a divorce. In cases of disputed inheritance, courts oversee the distribution of property, and apply a legal framework that gives equal rights to men and women.

   Guinea’s legal framework provides citizens with a number of mechanisms to solve justice problems. For criminal matters, such as domestic violence or harassment, 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 disputed inheritance, an aggrieved party has the right to petition a court for damages or another appropriate remedy. Although a number of informal justice institutions exist in Guinea they have no legal power to resolve conflicts or enforce legal rights.

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

   A lack of legal awareness amongst Guinea’s citizens is a significant obstacle to access to justice. While the level of literacy in Guinea – less than 35% of adults are literate – does make it difficult
to conduct effective legal education, recent initiatives, including the use of community-based paralegals and private local radio, show that it is possible to penetrate even a largely illiterate population. However, if the example of women's rights is reflective of wider practices, legal awareness campaigns in Guinea are generally implemented on an ad hoc basis according to the availability, and priorities, of donors. This creates a risk that programs cover the same ground and that a significant part of the population is neglected. Guinea is in need of a coordinated strategy, bringing together government and civil society actors, for improving legal awareness. In the case of women's rights, there are signs of a more coordinated strategy: Guinea's National Gender Policy provides for the creation of a committee tasked with coordinating gender programming amongst governmental and non-governmental institutions, including efforts to improve legal awareness. If successful, similar bodies could be created to coordinate the efforts of governmental and non-governmental actors working with other vulnerable populations.

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

It is impossible for Guinea’s less than two hundred lawyers, only a handful of who are located outside of Conakry, to satisfy the need for legal advice and representation of a population of more than ten million people. The dearth of lawyers is a direct result of the barriers to entry to the profession: a mandatory entrance exam has only been organized once since its creation in 2008. Guinea’s laws do provide a right to legal assistance to indigent litigants in both criminal and civil cases. However, there is, in reality, no effective system of legal aid and many litigants lack legal representation, even in the most serious criminal cases. There are a number of groups of public interest lawyers who, with support from international donors, provide free legal aid to vulnerable groups, but these organizations can only satisfy a fraction of demand. In the absence of sufficient lawyers, jurists – law graduates who have not passed the exams necessary to become a lawyer – and paralegals – citizens without any formal legal qualification but who are trained in basic legal concepts – are a vital source of legal advice and representation. However, the establishment of jurist and paralegal services in Guinea has occurred on a sporadic basis and many promising programs have been discontinued once funding runs out.

Justice reform in Guinea must include efforts to make it easier for Guineans to obtain access to a lawyer. This will require it to be easier to access the profession and, at the very least, the more frequent organization of the exam necessary to enter the profession. Resources should also be dedicated to the establishment of a state-run legal aid system and, in the interim, to the civil society organizations who provide free legal assistance to vulnerable litigants. However, in the short and medium term, the vast majority of Guineans, particularly in the interior, will have no access to a lawyer, and will continue to rely on jurists and paralegals for legal advice and representation. The government and its international partners should therefore support the provision of legal advice and representation by jurists and paralegals and, in particular, should ensure that successful programs receivable sustainable funding.

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 factors that make courts and tribunals inaccessible to vulnerable Guineans. First instance courts (TPI and JP), which are located in capital of each prefecture, are remote from many communities, especially rural areas. Many first instance courts also lack the personnel and resources to adjudicate cases in a timely manner. In any case, a majority of both civil and criminal cases are not definitely resolved at first instance, and require one or more hearings before the Court of Appeal. Guinea has only two Courts of Appeal, and parties from certain regions have to travel more than 250 miles to reach them. The cost of formal justice, both from official fees and from corruption, also makes justice unaffordable in a country whose gross domestic product remains only USD 413.50 per capita. Finally, the social stigma attached to filing a complaint in court, which is viewed as a way to destabilize families and communities, discourages many people, especially vulnerable groups, from litigation.
As a result of the barriers to formal justice, the majority of disputes in Guinea are resolved by informal authorities including heads of family, religious leaders and local government officials. Such authorities are far more accessible to litigants because they have a concrete presence at the community level, and are less expensive than courts and tribunals. Furthermore, because informal authorities tend to use mediation to settle cases, they are not seen as threatening the cohesion of the family or the community.

Efforts are underway to revisit the number and distribution of courts in Guinea and, in particular, to build new Courts of Appeal in two regional capitals, Labé and Nzérékoré. A new generation of magistrates is also being trained at a specialized judicial training center. These measures should be combined with attempts to reduce the cost of filing a legal complaint and to reduce the social stigma associated with litigation. However, the reform of Guinea’s formal justice system is a long-term project and will not have an immediate impact on access to justice for vulnerable groups. Guinea’s government must therefore continue to think imaginatively about how to bring justice closer to communities. One short and medium-term option would be the use of mobile courts to bring justice to isolated communities. Informal authorities will also continue to play an essential role in the resolution of conflicts. Guinea’s government must therefore decide whether it wants to recognize informal institutions as legitimate justice sector actors and to take steps to regulate their operation. This is a complex question that has already troubled governments in Africa and elsewhere. To begin the discussion, the government should initiate a comprehensive and participatory consultation process to consider this issue.

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.

The justice dispensed by courts in Guinea, and the confidence that Guineans have in it, are fundamentally undermined by corruption and improper influence. Although the level of corruption in the justice system mirrors that present in other sectors, there are a number of factors that make courts particularly vulnerable. A High Judicial Council that should be responsible for the appointment, supervision, and discipline of judges, has never been put in place. Decisions to appoint or promote judges are instead made by the executive, without any external oversight. The ministry involved, the Ministry of Public Function, is the same institution responsible for the appointment of other government officials, effectively giving magistrates the same status (and chain-of-command) as any other civil servant. Guinea’s 2010 constitution provides for the creation of a new High Judicial Council, and efforts are underway to draft the legislation necessary to establish the body.

Informal justice institutions, whether involving familial, religious or local government actors, tend to use mediation to seek consensus among the parties to a dispute. However, because of the authority that heads of family, religious leaders and local government officials have within their community, there is a certain pressure on the parties to accept proposed settlements. As a result, the outcome of mediation can reflect the traditional and religious principles and doctrines to which community leaders refer to resolve disputes. This creates a risk that mediation preserves existing unequal community power structures at the expense of the legal rights of vulnerable groups, particularly women. Any discussion of the powers that the Guinean government should give to informal authorities to resolve conflicts must therefore reconcile their religious and traditional character with the risk that this character prejudices the legal rights of vulnerable groups, particularly women.

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

The enforcement of the decisions of Guinea’s courts is often difficult. Judgments must be executed by an execution officer, an official licensed by the state to enforce court decisions.
Guinea has less than 120 execution officers, and only a few of them live and work outside of Conakry. Many litigants cannot, in any case, afford to pay an execution officer to enforce a judgment. Execution officers also complain that the executive and the military obstruct their attempts to enforce court decisions. While an execution officer can ask for assistance from law enforcement to execute a judgment, this requires the litigant to pay a further fee to the police officers involved.

The informal justice system lacks any coercive force with which to enforce agreements reached between parties to a dispute. Whether agreements are executed therefore depends on the respect the parties have for the authority of informal actors and for the familial, religious and traditional principles they apply. If Guinea does decide to recognize the role of informal justice authorities in resolving legal disputes, it will have to decide whether to give the settlements they facilitate the same force as a decision of a court.
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. Guinea’s recent past demonstrates the effect that an absence of access to justice can have on a state and its citizens. A neglected justice system that was, in any case, only an extension of executive power, meant citizens had little recourse when their rights were violated. The resulting culture of impunity led to the violent suppression of opposition, entrenched corruption, and widespread human rights abuses by security forces against the civilian population.

Guinea’s government, with support from the international community, has begun the process of reconstructing the justice system. In March 2011, the government convened a high-level roundtable, the États Généraux de la Justice, to identify a broad strategy for justice sector reform. A pilot committee has subsequently been established by law to oversee the reform of the justice sector, and is currently being put in place. The work of the pilot committee is supported by a justice sector working group (Plateforme Justice), which brings together relevant ministries, Guinean civil society groups and international donors and non-governmental organizations [hereinafter NGOs]. International donors, particularly the European Union, are providing funds to support necessary reforms.

A focus on access to justice will undoubtedly be a key element of justice sector reform: improvements in the functioning of courts and tribunals mean little if citizens cannot, or will not, utilize them. This report discusses the key obstacles to access to justice that justice reform in Guinea must address. To do so, it breaks down access to justice into a number of components, the Elements of Access to Justice, and considers the extent to which each element is present in Guinea. Because each element is essential if citizens are to be able and willing to use justice institutions, the focus of the report is on what citizens – the consumers of justice – need to have access to justice. This offers a new perspective from recent justice sector assessments undertaken in Guinea, many of which are cited in this report, in which justice sector experts conduct detailed evaluations of key justice institutions but do not consider the interaction of those institutions with citizens. The Elements of Access to Justice are described in the table below.

<table>
<thead>
<tr>
<th>The Elements of Access to Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal Framework</strong></td>
</tr>
<tr>
<td><strong>Legal Knowledge</strong></td>
</tr>
<tr>
<td><strong>Legal Advice and Representation</strong></td>
</tr>
<tr>
<td><strong>Access to a Justice Institution</strong></td>
</tr>
<tr>
<td><strong>Fair Procedure</strong></td>
</tr>
<tr>
<td><strong>Enforceable Decision</strong></td>
</tr>
</tbody>
</table>

1 Decree Dealing with the Creation, Attributions and Functioning of the Bodies Charged with Implementation of Justice Reforms (Decree No. 2011-286/PRG/SCG, adopted Nov. 24, 2011)
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, 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.
Guinea Background

Historical Context

The Republic of Guinea has an area of 867,000 square miles and a population estimated at 10,824,200. The country is divided into four major natural regions: Maritime Guinea or Lower Guinea (on the Atlantic coast), Middle Guinea (south of Senegal), Upper Guinea (an immense savannah forming a transition zone with Mali) and the Forest Region (a forested mountain region at the southeast extremity, close to Liberia).

Guinea’s population is divided among about thirty ethnicities, many of which are present in the wider sub-region. Peuls are the largest group (30-40%), followed by Malinkés (25-35%), Soussous (10-15%) and then other smaller groups like the Guerzé and Toma. Each group has its own language, but French is the official language of the country. 85% of the population practices Islam, 14% are Christians, with the rest animists, but traditional beliefs are still dominant among all religions.

Although the peoples of Guinea have inhabited the region for centuries, the country of Guinea came into being on October 2, 1958, when it declared independence from France. The new country, led by anti-colonial leader Sékou Touré, was rapidly transformed into a dictatorship, with opposition brutally suppressed. When Touré died on March 26, 1984, his regime had caused tens of thousands to flee the country, and was responsible for the torture and execution of thousands of people, especially at Camp Boiro, the “Gulag of Guinea.”

After the death of Touré, Colonel Lansana Conté seized power in a coup d'état. Under Conté, Guinea transitioned from a one-party dictatorship to a multi-party democracy, but Conté himself used electoral fraud to keep hold of the presidency until his death in 2008. While the Conté regime was less extreme than that of Touré, he still used authoritarian methods to eliminate his opponents and consolidate power. For example, in January and February 2007, security forces fired on strikers who were demonstrating against the country’s economic and political conditions, resulting in around 140 deaths and more than 1,700 injuries. The Conté regime was also characterized by a culture of impunity in which abuses committed by the president, his entourage and the security forces were unpunished, severely weakening the justice system.

When the death of Conté was announced in December 2008, a faction of the army, directed by Captain Moussa Dadis Camara, seized power, and proclaimed the dissolution of republican institutions, to be replaced by a junta called the National Council for Democracy and Development (Conseil National de la Démocratie et du Développement [hereinafter CNDD]). When he took power, Camara explained that the new regime would be temporary and that no member of the junta would stand in presidential elections planned for 2010. However, it soon become clear that Camara intended to run for president, and a peaceful opposition protest on September 28, 2009 was violently suppressed by defense and security forces. More than 150 people were killed, and soldiers raped dozens of women.

On December 3, 2009, an army officer tried to assassinate Camara, who was seriously injured. After his evacuation, his deputy, General Sékouba Konaté, assumed power, and in an agreement signed in Ouagadougou on January 16, 2010, he approved the creation of a National Transition Council (Conseil National de Transition [hereinafter CNT]) to organize democratic presidential elections. After two rounds of elections in June 2010 and November 2010, which were deemed credible by the international community, Alpha Condé, leader of the Rassemblement du Peuple Guinéen [hereinafter RPG] party was elected as Guinea’s first democratic president. His opponent, Cellou Dalein Diallo, remains president of the principal opposition party, the Union des Forces Démocratiques de Guinée [hereinafter UFDG].
More than a year after the election, the political situation is still unstable. In July 2011, a group of soldiers tried to assassinate President Condé. Legislative elections have still not been held. Ethnic and political tensions remain: the second round of presidential elections was marked by violence among supporters of the two leading parties, while a demonstration by the opposition on September 27, 2011 was violently put down by security forces, causing several deaths. Condé’s government must also reconstruct the essential social and economic services of a country weakened by decades of bad governance. Despite being rich in natural resources, Guinea is still one of the least developed countries in the world: it was ranked 178 out of 187 countries in the United Nations Development Program [hereinafter UNDP] Human Development Index 2011.2

Legal and Political Context

National Political Institutions

Guinea is a country in which three institutions share power: the legislature, specifically the National Assembly; the executive, in the form of the presidency of the Republic; and finally the judiciary, which we discuss in a separate section below.

The members of the National Assembly (deputés) are elected by universal suffrage for a renewable term of five years. To seek election, each candidate must represent a legally constituted political party. One third of the National Assembly’s members represent specific electoral districts. The remaining two thirds are elected through proportional representation from a list of candidates put together by each party. It is the National Assembly’s responsibility to enact the laws of Guinea. The laws enacted by the National Assembly may govern a list of matters defined by the constitution, including approval of the state budget. Guinean laws are either organic or ordinary, and organic laws must be enacted or amended by a two-thirds majority of the National Assembly.3 Matters outside of the domain of law are regulatory in nature, and may be regulated by the president and his government by decree. As legislative elections in Guinea have not yet taken place following the transition to democracy, the CNT fulfills the legislative functions of the National Assembly.

Executive power is exercised by the president of Guinea, who is elected by universal suffrage for a term of five years, which can be renewed only once. The president chooses a prime minister and ministers. In the event of disagreement between the president and the National Assembly, the president has the power to dissolve the National Assembly, triggering new elections, but only after the third year of the legislature.4

Local Government Institutions

Local governance in Guinea involves both concepts of decentralization and deconcentration. Decentralization refers to the effort to delegate political and financial powers from the central government to local actors. The principal institutions of decentralization are local councils (collectivités locales), called urban communes (Communes Urbaines [hereinafter CU]) in urban areas and rural development communities (Communautés Rurales de Développement [hereinafter CRD]) in rural areas. CUs are directed by a mayor and a commune council and CRDs by a president and community council, both of which are elected by the local population. CUs and CRDs have extensive powers pertaining to the management of their municipality or community.

Deconcentration refers to the effort to project executive power to the local level. The levels of deconcentrated power in Guinea are the following: 7 administrative regions (distinct from

---

2 UNITED NATIONS DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT 2011 at 129 (2011)
3 CONSTITUTION OF THE REPUBLIC OF GUINEA art. 83 (adopted 7 May 2010) [hereinafter CONST.]
4 CONST. art. 92
Guinea’s natural regions), governed by governors; 33 prefectures, governed by prefects; and 302 sub-prefectures, directed by sub-prefects. The role of government actors at the regional, prefecture and sub-prefecture level is to ensure consistency and harmony among the policies of the executive and those of decentralized bodies. The capital city of Conakry has a special status, and is governed by a governor appointed by the state. It has five communes, each with an elected mayor.

Each CRD and CU contains a further subdivision. There are districts (districts) within CRDs, governed by an elected district head and district council, and neighborhoods (quartiers) in CUs and the communes of Conakry, governed by an elected neighborhood head and council. Districts and neighborhoods are themselves divided into sectors, each overseen by a sector head appointed by the government from among influential local figures. Sectors are a very small unit of local government: the capital city of Conakry, which has about 1,500,000 inhabitants, has 5 communes, almost 100 neighborhoods, and close to 500 sectors.

**Judicial Institutions**

The **Constitutional Court** has jurisdiction over constitutional and electoral issues and questions relating to fundamental rights and freedoms. It also determines the constitutionality of newly enacted laws and decrees. The Constitutional Court has nine judges, including three magistrates, one lawyer, a law professor, two representatives of the National Human Rights Institution and two civic leaders.\(^5\) The Constitutional Court, which was created by the 2010 constitution, has yet to be established and so the Supreme Court remains competent for matters falling under its jurisdiction, as was the case for complaints relating to the 2010 presidential election.\(^6\)

The **Supreme Court** is the highest court for administrative and judicial matters. It reviews the legality of judgments of lower courts and considers whether Guinean laws have been correctly interpreted and applied (it does not review the findings of facts of lower courts).\(^7\) The Supreme Court normally sits in panels of three judges.

The **Court of Appeal** reviews the decisions of first instance courts (Tribunaux de Première Instance and Justices de Paix). It reconsiders both the factual and legal basis for the first instance decision. There are two Courts of Appeal in Guinea: one in Conakry for Lower Guinea and Middle Guinea, and one in Kankan that covers Upper Guinea and the Forest Region. The Court of Appeal normally sits in panels of three judges. 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. Sessions of the Court of Assizes are supposed to be held every four months.\(^8\) The Court of Assizes is composed of three magistrates and a jury of four citizens, and must reach decisions by a majority of at least five of its members.\(^9\)

**Tribunaux de Première Instance** (literally, tribunals of first instance [hereinafter TPI]) are first instance courts with jurisdiction over criminal, civil and administrative matters. There are ten TPIs in Guinea, three in Conakry and seven others in the capitals of Guinea’s administrative regions. A single judge usually adjudicates cases coming before TPI.

**Justice de Paix** (literally Justices of the Peace [hereinafter JP]) are first instance courts that are located in each prefecture that does not contain a TPI. Each JP generally has only a single magistrate, who plays the role of judge, prosecutor, and examining magistrate. JPs are

---

\(^5\) Id. art. 100
\(^6\) Id. art. 155
\(^7\) Id. art. 113
\(^8\) LAW CREATING CRIMINAL PROCEDURE CODE art. 233 (Law No. 037/AN/98, adopted Dec. 31, 1998) [hereinafter CRIM. PROC. CODE]
\(^9\) Id. arts. 237, 353
competent in civil and economic matters, for claims of less than a certain value, and in criminal matters.

COURTS WITHIN THE JURISDICTION OF THE COURTS OF APPEAL IN CONAKRY AND KANKAN

<table>
<thead>
<tr>
<th>Court of Appeal</th>
<th>Tribunaux de Première Instance</th>
<th>Justices de Paix</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conakry</td>
<td>Conakry (3)</td>
<td>Telimelé, Coyah, Dubréka, Forékariah, Fria, Boffa, Koundara, Gaoual, Dalaba, Pita, Tougué, Koubia, Mali, Lelouma.</td>
</tr>
<tr>
<td></td>
<td>Kindia</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Boke</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mamou</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Labe</td>
<td></td>
</tr>
<tr>
<td>Kankan</td>
<td>Kankan</td>
<td>Siguiri, Kouroussa, Mandiana, Kerouané, Kissidougou, Dabola, Dinguiraye Gueckedou, Yomou, Beyla, Lola, Macenta.</td>
</tr>
<tr>
<td></td>
<td>Faranah</td>
<td></td>
</tr>
<tr>
<td></td>
<td>N’Zerekore</td>
<td></td>
</tr>
</tbody>
</table>
Key Populations and Legal Issues

It is difficult to create a typical consumer of justice in Guinea. Citizens divided by gender, age, income, political influence and other factors will face different challenges. The extent of access to justice will also depend on the type of rights violation sought to be remedied: a citizen seeking to prosecute a perpetrator of gender-based violence will face different obstacles to one trying to enforce a contract to purchase land. For this reason, this report chooses to use one group of justice consumers as a test for access to justice in Guinea more generally. It assesses the particular challenges that this group faces in obtaining access to justice, and seeks to use this analysis to draw lessons for access to justice in Guinea more generally.

This report chooses to focus on the challenges that women face as consumers of justice, principally because, as Guinea’s National Gender Policy observes: “women are the least well off, the most vulnerable, and are the least likely to have the skills and resources necessary to realize their rights”.\(^\text{11}\) A number of reports have considered the so far fruitless attempts to obtain justice against those responsible for the shocking violence of September 28, 2009, in which more than 100 women suffered brutal sexual violence at the hands of the security forces.\(^\text{12}\) This case, however, which involves a special panel of investigate judges closely scrutinized by the international community, is perhaps not reflective of the daily struggle for access to justice in Guinea (although many of the obstacles are similar). This report therefore chooses to use as examples women’s attempts to obtain access to justice in three supposedly more mundane cases: domestic violence; unfair inheritance; and harassment in the workplace. Below, we give a short definition of each, as well as a real-life example of the pain that they can cause. The report uses these three case studies to illustrate the challenges of access to justice in Guinea.

**Domestic Violence:** Physical, sexual and psychological violence against (for the purposes of this report) women and girls by a spouse or partner, and by other family members, whether this violence occurs within or beyond the confines of the home. The report does not discuss efforts to obtain justice against perpetrators of female genital mutilation.

> "The most recent incident was a month ago, when my husband’s two young brothers joined up to beat me until I sprained my left arm and hurt my back, because their mother told them that I had insulted her when she complained about how long I was taking to wash her clothes. My husband shows no restraint around me, the same with his brothers and sisters. Each of them thinks they have the right to subject me to their whims and moods. I feel like I have no protection other than silence, surrender and complete submission." Aicha, interviewee.

**Unfair Inheritance:** A woman’s share of the inheritance from a family member is reduced simply by virtue of her gender or, because of her gender, a woman is unable to enforce her right to a share of the inheritance.

---

\(^{11}\) National Gender Policy of the Republic of Guinea, Office for the Promotion of Women, Ministry of Social Affairs and the Promotion of Women and Children at 10 (adopted Jan. 2011) [hereinafter National Gender Policy]

\(^{12}\) See, for example, International Federation for Human Rights (FIDH) and Guinean Human Rights Organization (OGDH), Guinea Conakry: One Year After the Massacre of September 28, 2009 - New Power, Hope for Justice (2010)
“I was away when my father died, and when I came back, my share of the inheritance was given to me by the elders. One year later, we realized that my father had left a house, which nobody knew about except his youngest wife, the one he loved the most. She secretly sold the house to send her son to the United States. When we realized this, we took shotguns, machetes and clubs to intimidate the new owner of the property, because we didn’t think there was any other way except violence to remedy the injustice we had suffered. Oumou, interviewee.

Harassment in the workplace: The regular use of inappropriate words or conduct by a superior or colleague towards a woman in the workplace.

“I came to this company as an intern and I was about to be hired. My boss, who was constantly harassing me, bothered me so much that I had to say some really shocking things to him. I was certain that he would get revenge. Not knowing what to do, I trusted in God, hoping that he would protect me. I confided in some colleagues, but my boss still ended up accusing me of stealing a laptop.” Marie, interviewee.
Guinea: The 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

In the three women’s rights case studies considered by this report, the law provides a basket of rights that, while not perfect, gives one particularly vulnerable group a measure of protection. Although the law does not specifically criminalize gender-based violence, perpetrators of domestic violence or harassment can be prosecuted for a number of related crimes. Victims also have the right to compensation and, in the case of spousal abuse, to a divorce. In cases of disputed inheritance, courts oversee the distribution of property, and apply a legal framework that does not discriminate between men and women.

Guinea’s legal framework provides citizens with a number of mechanisms to solve justice problems. For criminal matters, such as domestic violence or harassment, 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 disputed inheritance, an aggrieved party has the right to petition a court for damages or another appropriate remedy. Although a number of informal justice institutions exist in Guinea they have no legal power to resolve conflicts or enforce legal rights.

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.

We begin our analysis of the legal framework by considering the rights and duties that the law accords to Guinea’s citizens. 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, harassment in the workplace and unfair inheritance – and hope that this provides some insight on the extent to which the legal framework protects one particularly vulnerable group.

Guinea has no specific provisions prohibiting violence against women. Victims of gender-based violence, such as domestic violence or harassment, must instead hope perpetrators are prosecuted for other violent offenses. Pertinent offenses, beginning with the most serious, include: murder, punishable by death or life in prison\(^\text{13}\); rape\(^\text{14}\); indecent assault\(^\text{15}\); battery\(^\text{16}\); and threats.\(^\text{17}\) Where these offenses are committed against a spouse, this does not constitute an aggravating circumstance and does not automatically trigger an increase in sentence. A victim of

---

\(^{13}\) LAW CREATING CRIMINAL CODE arts. 282-289 (Law No. 98/036, adopted Dec. 31, 1998) [hereinafter CRIM. CODE]

\(^{14}\) Id. art. 321

\(^{15}\) Id. arts. 322-325

\(^{16}\) Id. arts. 295-305

\(^{17}\) Id. arts. 290-294
spousal abuse also has the right to a divorce and, where a divorce action is pursued, to damages for the material or moral harm caused by the dissolution of the marriage.\textsuperscript{18} Following a divorce, however, children older than seven years are entrusted to their father, unless the parties agree otherwise.\textsuperscript{19}

Inheritances in Guinea are, in large part, determined by law.\textsuperscript{20} While a person may draw up a will, he can bequeath no more than one third of his property; the rest will be distributed according to law.\textsuperscript{21} In determining the distribution of a deceased’s property, the law does not discriminate against women. For example, the surviving spouse – woman or man – has the right to one-eighth of the estate, or to one quarter if the couple has no children in common and the deceased has no relatives.\textsuperscript{22} The deceased’s father and mother each have the right to one-sixth of the property, unless the deceased has no descendants, in which case their share increases.\textsuperscript{23} The descendants share the remainder of the estate, and do so equally among women and men.\textsuperscript{24} If the distribution of an inheritance cannot be done amicably, or if one of the heirs is a minor or is absent, the appropriate shares are decided in court (before a TPI)\textsuperscript{25} and the distribution of property is overseen by a notary.\textsuperscript{26}

The mechanisms used to enforce Guinea’s laws differ depending on whether criminal or civil laws are involved. Two distinct types of legal actions result from a breach of criminal law, such as an act of domestic violence or harassment. The first, the public action (\textit{l’action publique}), describes the proceedings brought by the state to maintain public order through the prosecution of offenses.\textsuperscript{27} The second, a civil action (\textit{l’action civile}), belongs to a person wronged by an offense and gives him or her the right to seek damages to remedy the harm caused.\textsuperscript{28} When a public action is initiated, a victim with the right to a civil action can be joined as a civil party (\textit{partie civile}) and then has the right to participate in the proceedings and obtain damages from a convicted perpetrator. 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.\textsuperscript{29}

A public action usually begins when a law enforcement agent (\textit{Officier de Police Judiciaire})\textsuperscript{30} or a prosecuting magistrate (\textit{procureur}) learns of the commission of an offense. The law enforcement agent, under the supervision of the prosecuting magistrate, investigates the alleged offense and then the prosecuting magistrate decides whether the matter should be discontinued or pursued further. There are three categories of offenses in Guinea. The most serious offenses are felonies

\textsuperscript{18} LAW CREATING CIVIL CODE arts. 344, 358 (Law No. 98/034/CTRN, adopted Dec. 31, 1998) [hereinafter CIVIL CODE]
\textsuperscript{19} Id. art. 359
\textsuperscript{20} Id. arts. 460-511
\textsuperscript{21} Id. arts. 460-461
\textsuperscript{22} Id. art. 483. It should be noted that, for the spouse to be entitled to his or her share of the estate, the marriage would have to be recognized by law as a civil marriage. A religious marriage that was not celebrated before a state official has no legal effect. Id. art. 201.
\textsuperscript{23} Id. art. 490
\textsuperscript{24} Id. arts. 488, 489, 493
\textsuperscript{25} Id. art. 474
\textsuperscript{26} DECREES CREATING CODE OF CIVIL, ECONOMIC AND ADMINISTRATIVE PROCEDURE art.1262 (Law No.100/PRG/SGG, adopted June 16, 1998) [hereinafter CIV. PROC. CODE]
\textsuperscript{27} CRIM. PROC. CODE art 1bis
\textsuperscript{28} Id. art 6
\textsuperscript{29} Id.
\textsuperscript{30} Officiers de Police Judiciaires, known as OPJ, are law enforcement agents authorized by law to prosecute, investigate and arrest the perpetrators of offenses. There are OPJ-policiers, who are police officers, and OPJ-gendarmes, a military police force that reports to the Ministry of the Defense.
(crimes), followed by misdemeanors (délits) and finally minor infractions (contraventions). Following completion of his investigation, the prosecuting magistrate can transfer misdemeanors and minor infractions directly to court for trial (misdemeanors are tried by either a TPI or a JP; minor infractions are adjudicated by a police tribunal (Tribunal Simple de Police)). Felonies must be referred to an examining magistrate (juge d'instruction) at a TPI or JP. The examining magistrate continues to investigate the offense and, once satisfied that the investigation is complete, decides whether to discontinue the matter or send it to the indictments chamber (chambre d'accusation) of the Court of Appeal. The chamber, which is made up of three magistrates, reexamines the decision of the examining magistrate, and if satisfied that a felony has been committed, refers the matter to the Court of Assizes for trial. A public action can also be initiated by the victim of an offense, either by bringing a complaint directly to court or, in the case of a felony, to an examining magistrate. 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 bring 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 summons his adversary to appear in court and which describes the arguments on which the claim is founded. The two parties must then appear at the first instance court on the appropriate date. The court may either adjudicate the matter or, if it decides that further information is needed, it can send the case to an investigating judge to collect further evidence (this phase is called the mise en état). When the investigating judge believes that the case is ready to be adjudicated, the matter is referred back to court and tried.

The decision of a TPI or JP in criminal cases can be appealed to the Court of Appeal, which will review both the legal and factual basis of the first instance verdict. The only recourse against a judgment of the Court of Assizes is by way of appeal to the Supreme Court. Decisions in civil cases of a TPI or JP can be 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.

Although informal justice institutions exist in Guinea, and are discussed in more detail elsewhere in this report, Guinea's laws do not provide any institution other than courts and tribunals with the legal power to resolve justice problems or enforce legal rights.

---

31 The classification of an offense depends on the sentence that it incurs. CRIM. CODE art. 1. For example, any offense which results in the death penalty, life imprisonment, or imprisonment for greater than five years is a felony. CRIM. CODE art. 8.
32 CRIM. PROC. CODE art. 89
33 CIV. PROC. CODE art. 43. For actions involving claims under a certain amount, the action may be brought directly to the judge (without service on the opposing party).
Element II. Legal Knowledge

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

Conclusion

A lack of legal knowledge represents a real obstacle to access to justice in Guinea. A low level of literacy and education makes implementing effective legal awareness campaigns difficult. Nevertheless, certain recent initiatives, including the work of community-based paralegals and the use of private local radio, show that it is possible to reach a largely illiterate population. However, if the example of women’s rights is reflective of wider practices, legal awareness campaigns in Guinea are generally implemented on an ad hoc basis according to the availability, and priorities, of donors. This creates a risk that programs cover the same ground and that a significant part of the population is neglected. Guinea is in need of a coordinated strategy, bringing together government and civil society actors, for improving legal awareness. In the case of women’s rights, there are signs of a more coordinated strategy: Guinea’s National Gender Policy provides for the creation of a committee tasked with coordinating gender programming amongst governmental and non-governmental institutions, including efforts to improve legal awareness. If successful, similar bodies could be created to coordinate the efforts of governmental and non-governmental actors working with other vulnerable populations.

Analysis

“I was sleeping in my room, while my husband was away, when my brother-in-law came and raped me. I was too ashamed to tell anyone about my suffering. I didn’t really know what I could do to escape the humiliation. I didn’t even know if I could send him to prison. I could no longer stand seeing this boy come and go freely without caring about the harm that he had inflicted on me.” Maimouna, interviewee.

Guinea’s government has an obligation to ensure that its citizens know their rights and the mechanisms through which they can assert them. 34 Below, we take a critical look at the efforts of the state and civil society organizations [hereinafter CSOs] to raise legal awareness. However, before we begin this analysis, we should acknowledge that these efforts are taking place in a country where the levels of literacy and education are still among the lowest in the sub-region: 34.5% of adults are literate, and 21.5% of women. 35 The literacy rate is even worse in certain areas, and bottoms out at 6% in Kankan. 36 The level of illiteracy reflects a similarly low level of education and schooling: although the number of children enrolled in primary education has now

34 CONST. art. 25
reached 78.3% (70.1% for women), most adults have not had any primary education.\textsuperscript{37} The rate of persons enrolled in primary education only reached 50% in 1997.\textsuperscript{38}

**State Efforts to Increase Legal Knowledge**

Laws in Guinea are supposed to be brought to the public’s attention through their insertion in the Official Journal, which is published in French, Guinea’s official language, on the tenth and twenty-fifth of each month.\textsuperscript{39} The Journal publishes recently enacted laws in their entirety, without any summary. It is published by the general secretariat of the government, located in Conakry, which also has an archive of the Journal that is open to the public. Key extracts of the Journal are republished, also in French, by the state newspaper *Horoya*, which has a circulation of less than 1000 copies and is primarily read by civil servants.\textsuperscript{40} The Official Journal is not available online, although some laws and extracts from it have been collected on websites by legal scholars. In any case, a very small percentage of the population uses the internet.\textsuperscript{41}

The Official Journal is clearly not a practical way to inform a largely illiterate population about the content of laws. In reality, the responsibility for raising legal awareness falls on certain key ministries. For example, the Human Rights Office (*Direction Nationale des Droits de l’Homme*) of the Ministry of Justice has a human rights-promotion division that plays a key role in raising awareness of national, regional and international human rights instruments. The division has a special focus on the rights of detainees and conducts training and awareness sessions for prisoners and prison officers. The National Human Rights Commission (*Commission Nationale des Droits de l’Homme*), which is not yet in place, will also conduct awareness activities concerning human rights.\textsuperscript{42}

In the context of women’s rights, the Office for the Promotion of Women (*Direction Nationale de la Promotion Féminine* [hereinafter DNPF]) of the Ministry of Social Affairs and the Promotion of Women and Children (*Ministère des Affaires Sociales et de la Promotion Féminine et de l’Enfance* [hereinafter MASPFE]) works to raise legal awareness amongst vulnerable women. The DNPF, which has branches in each prefecture, organizes awareness-raising events, such as community debates and discussions, often in partnership with NGOs and with the support of donors. The DNPF also establishes resources on women’s rights (for example, it recently commissioned and distributed a textbook module on violence against girls).

The DNPF, which is charged with implementing government policy on the advancement of women, should also play a role in coordinating governmental and non-governmental efforts to

\textsuperscript{37} NATIONAL INSTITUTE OF STATISTICS, TABLE: CHANGE IN GROSS ENROLLMENT RATE IN PRIMARY EDUCATION BY SEX (2010), available at http://www.stat-guinee.org. The gross rate of education is the total enrollments in a specific level of education expressed as a percentage of the population eligible for schooling at that same level.

\textsuperscript{38} Id.

\textsuperscript{39} CIVIL CODE art. 3

\textsuperscript{40} INFOASAID, GUINEA: MEDIA AND TELECOMMUNICATIONS LANDSCAPE GUIDE at 11 (2011) [hereinafter MEDIA GUIDE]

\textsuperscript{41} The International Telecommunications Union estimated that in 2008 there were 90,000 active internet users. INTERNATIONAL TELECOMMUNICATIONS UNION, INFORMATION SOCIETY STATISTICAL PROFILES 2009, AFRICA at 60 (2009).

\textsuperscript{42} The decree creating the commission states that it will be, “associated with the development of programs concerning education and research on human rights and will participate in their implementation in school, university and professional settings”. DECREE CREATING NATIONAL HUMAN RIGHTS COMMISSION art. 4 (adopted Mar. 17, 2011). It will also “increase awareness of human rights and the struggle against all forms of discrimination, particularly racial discrimination, through public awareness activities, particularly through information and teaching using all media.” Id.
Improve legal awareness. In the past, however, legal awareness campaigns have not followed a national strategy, but have rather been implemented by individual institutions (or coalitions of institutions) according to the availability, and priorities, of donors. This creates a risk that programs cover the same ground and that significant regions or populations are neglected. In the case of women’s rights, there are signs of a more coordinated strategy. In January 2011, the MASPFE finalized a National Gender Policy [hereinafter PNG], accompanied by a strategic action plan, which includes a focus on access to justice and raising legal awareness amongst women.\(^{43}\) The implementation of the PNG will be primarily overseen by the MASPFE, but the PNG also provides for the creation of a technical coordinating committee tasked with “ensuring good communication among the various actors involved.”\(^{44}\) The committee, which is to meet quarterly, is chaired by the MASPFE, but includes among its members international donors, national and international NGOs and gender specialists from key ministries.\(^{45}\) Such a committee, if effective, could play a vital role in ensuring that efforts to raise rights awareness amongst women are coordinated at the highest levels.

**Civil Society Efforts to Increase Legal Knowledge**

CSOs play an important role in raising legal awareness, either through media campaigns, discussed in greater detail below, or through the activities of their staff on the ground. For instance, to return to the example of women’s rights, many NGOs have used paralegals – citizens who have no formal legal qualification but who are trained in basic legal principles – to make the content of law more accessible to grassroots populations. Between 1998 and 2005, a group of eight women’s rights NGOs, the National Coalition for the Rights and Citizenship of Women in Guinea (*Coalition Nationale de Guinée pour les Droits et la Citoyenneté des Femmes* [hereinafter CONAG-DCF]) conducted a series of trainings to teach paralegals to raise legal awareness within their community.\(^{46}\) Paralegals, once trained, organized community meetings to discuss key legal problems and give those attending a better understanding of their rights and how to exercise them. In total, according to the international organization that supported the work of CONAG-DCF, the coalition was able to train a network of 1,500 paralegals and conducted awareness sessions for 200,000 people, including 170,000 women.\(^{47}\) Since 2005, many women’s rights organizations, including the Association of Female Jurists (*Association des Femmes Juristes de Guinée* [hereinafter AFJG]) and the Association for the Defense of Women’s and Children’s Rights (*Association pour la Défense des Droits des Enfants et des Femmes de Guinée* [hereinafter ADDEF-Guinée]), have continued to organize rights awareness seminars and workshops, including through paralegals. These women’s rights groups, as with most civil society organizations, depend on the support of international donors for the majority of their funding.

---

\(^{43}\) For example, one of the objectives of the strategic action plan is to “promote victims’ access to justice”, including through the activity, “inform and educate the public on the procedures in force”. NATIONAL GENDER POLICY at 37.

\(^{44}\) NATIONAL GENDER POLICY at 31

\(^{45}\) Id.

\(^{46}\) The members of the CONAG-DCF were: Association de Défense des Droits de la Femme (ADDEF-Guinée); Association d’Appui au Développement des Initiatives Communautaires (ADIC); Association Guinéenne des Femmes Leaders (AGUILFEL); Association Guinéenne pour l’Allègement des Charges Féminines (AGACFEM); Association Mère et Enfant (AME); Coordination des ONGs Féminines de Guinée (COFEG); Cellule de Coordination sur les Pratiques Traditionnelles Néfastes Affectant la Santé de la Femme et de l’Enfant (CPTAFE); Syndicat Libre des Enseignant et Chercheurs de Guinée (SLECG).

The role of the media in raising legal awareness is inevitably affected by Guinea’s media environment. Guinea has only one daily newspaper, *Horoya*, which is financed and published by the Information Ministry (*Ministère de l’Information*), as well as a few weekly newspapers. However, the circulation of newspapers is very limited (the most popular, the satirical newspaper *Le Lynx*, and its counterpart *La Lance*, do not sell more than 7000 copies each week) and does not extend outside of Conakry. Most Guineans do not have access to a television, especially in rural areas. In any case, television in Guinea is a state monopoly, with two public stations controlled by the national media institution, Radiodiffusion-Télévision Guinéenne [hereinafter RTG]. RTG does produce a regular show focused on legal issues, which is called called Justice, Information and Law (*Justice, Information, et Droit*).

Because of the inaccessibility of newspapers and television, radio is the primary form of mass communication. Public radio in Guinea, operated by RTG and called National Radio (*Radio Nationale*) or Guinea Radio (*Radio Guinéenne*), is national in scope, and covers half of the towns in the interior. In addition, there is a network of state-run local channels, called Rural Radio (*Radios Rurales*), which expands the zone of public radio coverage. National Radio broadcasts largely in French, but Rural Radio stations often use the local languages of the region in which they are broadcast. In addition to public radio, there are an increasing number of private stations, with more than 42 in existence in 2010. Although these private radio stations are concentrated in Conakry, a number of them reach cities in the interior.

Radio is often used in legal awareness campaigns. Rural Radio stations broadcast many programs discussing rights issues, and often focus on particular justice problems affecting their target region. Women’s rights organizations also frequently partner with private radio stations, which are adept at broadcasting in local languages (although their area of coverage can be limited). Educational radio shows sometimes incorporate *griots*, traditional storytellers who have the respect (and ear) of the population. Many private radio shows focused on women’s rights problems also encourage listener participation, a very popular way of connecting with audiences in Guinea and a way to allow citizens to both express their own concerns and benefit from others’ experiences.

**Recommendations**

The testimony of Maimouna, quoted at the beginning of this section, demonstrates the suffering that can result from a lack of legal knowledge. Efforts to promote legal awareness in Guinea must overcome several challenges, in particular low levels of literacy and education, and are often undertaken with only modest financial resources. In order to maximize impact, Guinea should therefore ensure that legal awareness programs implemented by state and non-state institutions

48 MEDIA GUIDE at 48
49 MEDIA GUIDE at 14
50 POVERTY REDUCTION STRATEGY at 18
51 For a comprehensive list of radio stations in Guinea, see MEDIA GUIDE at 30.
52 For example, the organization Women’s News in Guinea (*Actualité Féminine en Guinée* [hereinafter AFEG]) created the private radio station Renaissance FM in order to ensure the promotion and enhancement of women’s rights (Renaissance FM was created after a split between the two directors of the station Radio Familia FM, also created by AFEG. After briefly closing in February 2011, Radio Familia has now reopened, but the majority of its journalists and broadcasts are now with Renaissance FM). Many of Renaissance FM’s broadcasts deal with women’s rights. For example, the program “Confidence” is about married life and the difficulties women have in their domestic lives (including domestic violence and unfair inheritance). Another program, “Women and Activities” deals with the professional lives of women. The private radio station, Soleil FM, has two shows, “Girls and Professions” and “Fifi in the Sun”, which promote gender equality at work. In 2010, CONAG-DCF itself created two private community radio stations, called Bamabou, although they have had a number of technical problems.
are coordinated and avoid duplication. This will require close collaboration between state and non-state actors and organs, such as that envisioned by the PNG, to foster frequent communication.

In the short and medium term, radio is likely to remain the most effective tool with which to ensure legal awareness campaigns penetrate isolated communities, especially rural areas. When designing radio campaigns, regional and local strategies that use Rural Radio or private radio stations (if they exist in the target area) are probably more effective than national campaigns. A local strategy makes it possible to use appropriate languages and provide a local flavor to the content of the broadcast, for example, through the use of traditional storytellers or audience participation. It is also worth noting, however, that as Guinea’s infrastructure continues to improve, there will be media other than radio that could be used for legal awareness campaigns. Guinea has a relatively high rate of cell phone usage and this technology has already been used by citizens to report alleged irregularities in the 2010 presidential election. In the future, SMS could perhaps be used to broadcast legal awareness messages, and even for interactive conversation with users, as has already happened in other countries.

---

53 In 2009, Guinea had 34.7 cell phone subscriptions per 100 persons. INTERNATIONAL TELECOMMUNICATION UNION, ICT AND TELECOMMUNICATIONS IN LEAST DEVELOPED COUNTRIES, REVIEW OF PROGRESS MADE DURING THE DECADE 2000-2010 at 108 (2011).

Element III. Advice and Representation

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

Conclusion

It is impossible for Guinea’s less than two hundred lawyers, almost all of who are located in the capital, Conakry, to satisfy the need for legal advice and representation of a population of more than ten million people. The dearth of lawyers is a direct result of the barriers to entry to the profession, in particular the infrequent organization of a mandatory entrance exam. Guinea’s laws do provide indigent litigants with the right to legal assistance in both criminal and civil cases. However, there is no government system of legal aid, and while, in criminal cases, lawyers who represent accused before the Court of Assizes are supposed to receive a small commission, they are rarely paid. There are a number of groups of public interest lawyers who provide legal aid to vulnerable populations, including through caravans of lawyers that travel to rural areas, but they can only satisfy a fraction of demand. In the absence of sufficient lawyers, jurists and paralegals remain a vital source of legal advice and representation. However, the establishment of jurist and paralegal-driven services in Guinea has occurred on a sporadic basis and many promising programs have been discontinued as a result of a lack of funding.

Analysis

“Since I arrived in this department, my bosses have not seen me as a colleague, but rather as a young girl whom they all desire. None of them miss a chance to harass me. I don’t know what evidence I could collect to be taken seriously if I had to go to court. I don’t even know where to complain or how.” Aminatou, Interviewee.

Even Guineans who know their basic rights and duties are unlikely to be able to navigate the judicial system. They need advice to explain the steps necessary to file a claim and, in the event of litigation, someone 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 Guinea: lawyers, jurists and paralegals. The profession of lawyer is regulated by law, and grants its members the exclusive right to argue cases before courts and tribunals. Jurists, a term which has no official connotation, have a law degree, and therefore probably a good knowledge of Guinean law, but have not met the entrance requirements needed to be a lawyer. A paralegal has no formal legal qualification but is trained in basic legal principles and skills (for example, negotiation and mediation).

Access to Lawyers

Guinea has less than 200 lawyers to serve its population of more than ten million people (and a good number of these lawyers do not practice regularly). The vast majority of lawyers are located in Conakry, Guinea’s capital and economic hub. There are fewer than ten lawyers in the interior of the country, and many large regional cities are served by only one or two.

---

The dearth of lawyers in Guinea is linked to the difficulty of entering the profession. To join the bar, an aspiring lawyer must have a Master of Laws (Diplôme de Maitrise de Droit) or equivalent qualification, must successfully pass an entrance exam, the Certificate of Aptitude for the Practice of Law (Certificat d’Aptitude à la Profession d’Avocat [hereinafter CAPA]), and then complete a three-year internship. The bar association is supposed to organize the CAPA each year, but, because of the cost involved, it has been held only once since its creation in 2008. The last time the exam was held, only 11 of the over 100 candidates passed.

The law does guarantee litigants the right to a lawyer in criminal and civil cases. In criminal cases, all persons have the right to be assisted by a lawyer in case of arrest, detention or prosecution. In civil cases, under the Civil Procedure Code, enacted in 1998, indigent litigants have the right to legal assistance. A person is deemed indigent if he or she is forced to rely on public generosity or the assistance of a relative or friend for fundamental food, housing and clothing needs. To have the right to legal assistance, a potential beneficiary must obtain a certificate of indigence from a mayor, the president of a CRD, or a neighborhood or district head.

However, while the right to the assistance is guaranteed by law, it is not realized in practice. In civil matters, Guinea has no state legal aid system. Following the passage of the Civil Procedure Code, the Ministry of Justice created a legal aid office with the aim of putting the law’s provisions into practice. However, the office was never allocated any funding. Even in criminal matters, when the government is supposed to pay a small sum to lawyers who represent accused before the Court of Assizes, these fees are rarely paid. Most accused have no representation.

In the absence of state-funded legal assistance, Guineans who require the services of a lawyer must hire one themselves. The fees of lawyers are not fixed, but are negotiated between the lawyer and client. While the fees involved depend on the amount at stake and the time the lawyer will devote to the case, they are well beyond the means of the vast majority of Guineans. There is no obligation that lawyers complete a portion of their work on a pro bono basis. However, there are a number of lawyers, supported by international donors, who do provide free legal assistance to disadvantaged groups. For example, the organization Equal Rights for All (Mêmes Droits pour Tous [hereinafter MDT]) provides legal aid to accused before the indictments chamber of the Court of Appeal and before the Court of Assizes. It also advises and represents detainees in Conakry’s prisons, especially the central prison (Maison Centrale), with the goal of avoiding excessive pre-trial detention. Another organization, Lawyers Without Borders (Avocats Sans Frontières – Guinée [hereinafter ASF]), also provides legal assistance for accused appearing before the Cour of Assises. ASF has also started to lead temporary caravans of lawyers and jurists to service Guinea’s interior. These caravans visit regional cities and rural areas to implement legal awareness activities, provide legal advice, and visit detention centers. Where possible, they also provide representation to citizens appearing before TPI and JP. The caravans focus on the rights of detainees, but they also touch on other legal problems, including women’s rights. Finally, some lawyers, including ASF and members of the Guinean Human Rights Organization (Organisation Guinéenne des Droits de l’Homme [hereinafter OGDH]), are providing free legal assistance to women who were victims of the events of September 28, 2009.

57 DECREES ORGANIZING CAPA art. 11
58 CONST. Art 9. This right is further detailed in the Code of Criminal Procedure, which gives an accused examined by an examining magistrate or prosecuted by the Court of Assizes or a first instance court the right to be defended by a lawyer. CRIM. PROC. CODE arts. 116, 268, 408.
59 CIV. PROC. CODE art. 549
60 Id.
61 Id.
Access to Jurists and Paralegals

Given the dearth of lawyers in Guinea, paralegals and jurists are a vital source of advice and representation. A well-trained jurist or paralegal can advise a litigant on his rights and the potential options for asserting them. With the client's agreement, he or she can also attempt to resolve a dispute through negotiation or mediation. Even in cases where litigation is required, although only lawyers have the right to argue before courts and tribunals, litigants have the right to authorize a proxy to "represent" or "assist" them. The notion of representation means that the proxy acts "in the name of" or "in place of" the litigant. Assistance means advising the litigant and presenting his or her case without having the power to bind him or her.

In the recent past, many programs in Guinea have used jurists and paralegals to provide advice and representation to potential litigants. The Ministry of Justice, with the support of UNDP, has established Local Information Centers (Centres d'Information de Proximité [hereinafter CIP]) near the TPI in Conakry and in Guinea's regional capitals. The mission of the CIP, created in 2006, is to inform citizens of their rights and duties, as well as to provide legal and psychosocial assistance. Each CIP has at least one jurist, but does not have lawyers on staff. There are other examples of programs that are specific to women's rights. In 1998, the MASPFE successfully established five Legal Assistance Centers (Centres d’Assistance Juridique [hereinafter CAJ]) in the five communes of Conakry. The CAJ aimed to ensure the promotion of women's rights and those of other vulnerable populations. However, they closed in 2000 as the MASPFE lacked funds to pay staff. In 1998, ADDEF-Guinée established listening houses (maisons d'écoutes), managed by jurists and paralegals, in Conakry's communes and several prefectures in the interior. The listening houses were intended to promote understanding of women's rights, help women and children solve justice problems and, if necessary, refer women to the appropriate authorities. However, ADDEF-Guinée's listening houses were closed in 2002 when funding ran out. Paralegals trained by CONAG-DCF between 1998 and 2005 also resolved many women's rights problems in the communities in which they worked. More recently, the women's rights NGO the Association for Social Assistance (Association Guinéenne de l’Assistance Sociale [hereinafter AGUIAS]) has established a toll-free line to allow women (and children) to talk confidentially about the violence or abuse they have suffered. Although the assistance offered over the phone is principally psychological, AGUIAS also refers victims to legal organizations, such as MDT, that can provide legal assistance and help victims initiate legal proceedings. One of the recommendations of the strategic action plan of the PNG is that AGUIAS' toll-free lines be expanded.

Recommendations

Justice reform in Guinea should try to transform the right to a lawyer, already provided for in law, into a reality. This will require an increase in the number of lawyers, and for barriers to entry to the legal profession to be removed. In particular, financial and technical assistance should be provided to the bar association to ensure that the CAPA is held at least once a year. Efforts should also be made to create a state-run legal aid system. One proposed option is for young lawyers to provide free legal assistance during their mandatory three-year internship and to receive a small state stipend in return. This would both facilitate access to advice and representation and access to the legal profession. While a state legal aid system is being

62 CIV. PROC. CODE arts. 539-544
63 Id. art. 539
64 Id. art. 540
65 NATIONAL GENDER POLICY at 31
66 INTERNATIONAL SECURITY SECTOR ADVISORY TEAM, MISSION TO IDENTIFY AREAS OF INTERVENTION IN THE JUSTICE SECTOR IN THE REPUBLIC OF GUINEA at 74 (2010) [hereinafter ISSAT JUSTICE SECTOR ASSESSMENT 2010]
constructed, donors should continue to support the work of public interest lawyers to provide free legal assistance to vulnerable litigants.

Reform of the legal profession will occur gradually and, in the meantime, the vast majority of Guineans will have no access to a lawyer. In the short and medium term, the government and its international partners should therefore continue to facilitate access to jurists and paralegals. In particular, a greater effort must be made to provide sustainable funding to successful programs, as many promising programs have been discontinued once their funding is exhausted. Furthermore, in other countries, a key reason for the success of paralegal programs has been an effort to link paralegals to lawyers that can supervise and support them.\(^67\) This oversight ensures paralegals provide a certain basic level of service, and means that cases can be referred to lawyers when they surpass the competencies of a jurist or paralegal. Increased funding for paralegal and jurist-drive services should be combined with efforts to create more permanent linkages between lawyers, jurists and paralegals.

Finally, efforts to expand legal assistance and jurist and paralegal services should recognize the needs of the six million Guineans living outside of Conakry, particularly those in rural areas. As long as there is one level of access to legal advice and representation for Conakry and another for the interior, there will always be two levels of access to justice in Guinea.

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 factors that make courts and tribunals inaccessible to vulnerable Guineans. First instance courts (TPI and JP), which are located in the capital of each prefecture, are remote from many communities, especially rural areas. Many first instance courts also lack the personnel and resources to adjudicate cases in a timely manner. In any case, a majority of both civil and criminal cases are not definitely resolved at first instance, and require one or more hearings before the Court of Appeal. Guinea has only two Courts of Appeal, and parties from certain regions have to travel more than 250 miles to reach them. The cost of formal justice, both from official fees and from corruption, also makes justice unaffordable in a country whose gross domestic product remains only USD 413.50 per capita. Finally, the social stigma attached to filing a complaint in court, which is viewed as a way to destabilize families and communities, discourages many people, especially vulnerable groups, from litigation.

As a result of the barriers to formal justice, the majority of disputes in Guinea are resolved by informal authorities including heads of family, religious leaders and local government officials. Such authorities are far more accessible to litigants because they have a concrete presence at the community level, and are less expensive than courts and tribunals. Furthermore, because informal authorities tend to use mediation to settle cases, they are not seen as threatening the cohesion of the family or the community.

The current justice reform process in Guinea is assessing the need to construct new first instance courts that are closer to potential litigations. There are also plans to train a new generation of magistrates to staff existing, and new, jurisdictions. These reforms should be combined with attempts to reduce the cost of filing a legal complaint and to reduce the social stigma associated with litigation. However, any reform of the formal justice system must be viewed as a long-term project. Even once reforms are implemented – and new jurisdictions constructed – formal justice will remain remote from many communities, especially rural areas. Guinea’s government must therefore continue to reflect on how to bring justice closer to the vulnerable groups it is intended to serve. One short and medium-term option would be the use of mobile courts to bring justice to isolated communities. Informal authorities will also continue to play an essential role in the resolution of conflicts at a community level. Guinea’s government must therefore decide whether it wants to formally recognize the role of these authorities and take steps to ensure their operation is consistent with the values of Guinea’s new democracy. This is a complex question that many governments in Africa have already grappled with. Perhaps, to begin the discussion, Guinea should initiate a comprehensive and participatory consultation process to consider this issue.

**Analysis**

“Here, we say that we when a woman goes to sleep like the earth, God grants her the favors he has granted to the earth. A woman will get a happy ending if she bears her suffering and has faith in the future.” Salimatou, Interviewee.

In this section of the report, we examine whether Guineans can access the justice institutions, whether formal or informal, that they need to assert their rights. We begin with formal justice, and consider the obstacles that Guineans must overcome to bring a complaint before a court or tribunal, including the distance that litigants must travel, the irregular operation of courts and tribunals, the costs of formal justice and the effect of social stigmas. We then introduce the
informal justice authorities that operate in Guinea, and compare their accessibility to that of formal justice.

**Access to Formal Justice Institutions**

**Proximity**

The distribution and structure of jurisdictions in Guinea is called *la carte judiciaire* (literally, the justice map). The courts that are located closest to Guineans are found in the capital of each prefecture. The prefectures that house the capitals of Guinea’s administrative regions have a TPI; while all other prefectures have a JP. Conakry is an exception, and has three TPI for its five communes. The average size of a prefecture in Guinea is around 2,850 square miles, with the median size 2,540 square miles, and many communities are located tens of kilometers from the nearest first instance court. Travel in Guinea is, moreover, made difficult by a lack of transport infrastructure, especially in rural areas, and by a serious traffic problem in towns and cities.

In addition, although TPIs and JPs are Guineans’ first point of contact with the formal justice system, it is not likely that these first instance courts will definitively resolve their case. In civil cases, litigants always have the right to appeal the decision of a TPI or JP to the Court to Appeal, who will review both the factual and legal basis for the first instance decision. Guinea has only two Courts of Appeal: one in Conakry, which covers Lower Guinea and Middle Guinea, and another in Kankan for Upper Guinea and the Forest Region. A litigant from Labé (Middle Guinée) who wished to file a claim at the Court of Appeal in Conakry would have to travel more than 250 miles; a litigant from Nzérékoré (the Forest Region) who has a hearing before the Court of Appeal in Kankan (Upper Guinée) would have to travel a similar distance. The situation is even worse in criminal cases, particularly for felonies. As discussed previously (Element 1), all 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. The Court of Assizes is, in effect, a special session of the Court of Appeal that is supposed to be organized every four months. However, because of the resources required to organize each session (witnesses, juries and lawyers must be compensated), the last session of the Court of Assizes was held in 2008 (although some individual cases are heard sporadically through support from international donors, including the Office of the United Nations High Commissioner for Human Rights).

Participants in the March 2011 justice roundtable acknowledged that the current distribution of courts and tribunals in Guinea is an obstacle to access to justice. They recommended the construction of Courts of Appeal in Labé, the capital of Middle Guinea, and in Nzérékoré, the capital of Forest Guinea and proposed that a technical commission be charged with revising *la carte judiciaire*. Because such a revision must be based on objective data, the European Union, as part of its continued support to the Ministry of Justice, has commissioned a team of Guinean statisticians and jurists, assisted by international experts, to report on the needs of the judicial sector and propose a revised carte judiciaire. The report, which will inform discussion of proposed reforms amongst national and international actors, contains data on every jurisdiction in Guinea, including the number of magistrates, clerks and other judicial personnel present at each court or tribunal, the infrastructure available to them, and the number and types of disputes received and

---

69 In Conakry, which has the worst traffic in the country, the nine-mile trip from the airport to downtown can take more than two hours.
70 CRIM. PROC. CODE art. 235
adjudicated. Following this initial report, another study will examine the financial cost of reform of the carte judiciaire.

Functioning

Even if litigants are able to travel to court to file a case, many TPIs and JPs, especially in the interior, lack the human resources necessary to process cases in a timely manner. Guinea only has 290 magistrates, or 2.7 per 100,000 inhabitants, and fewer than 150 of these are currently posted to Courts of Appeals, TPIs or JPs. The numbers of magistrates will soon reduce even further, because a significant number are due to retire in the next five years. Magistrates are not distributed evenly amongst Guinea’s regions and, even accounting for demographic differences, urban areas are favored over rural areas. For example, the commune of Kaloum in Conakry has 21 magistrates, or 34 per 100,000 inhabitants, while Gaoual, a rural prefecture in the Boké administrative region, has only one magistrate for over 135,000 inhabitants. Siguiri, in the Kankan administrative region, has two magistrates serving a population of 475,000. First instance courts in rural areas also lack other key personnel, such as clerks. While the main cause of the lack of personnel is a recent failure to recruit sufficient magistrates and staff, it is also true that certain magistrates are absent from their posts (especially in provincial areas) but are still collecting a salary.\(^{72}\)

The March 2011 justice sector roundtable recognized the need to recruit and train a new generation of judges, clerks and other personnel to staff existing, and potentially new, jurisdictions in Guinea. The roundtable recommended recruiting 50 trainee judges and 50 clerks per year until current deficit in personnel is eliminated.\(^{73}\) The recruitment and training of magistrates and clerks is undertaken by Guinea’s Center for Judicial Training and Documentation (Centre de Formation et de Documentation Judiciaire [hereinafter CFDJ]), which is supported by France’s development agency. The CFDJ has graduated two new classes of magistrates (one in 2008 and another in 2011), each of which completed two years of theoretical study and an eight-month internship. A recruitment examination for the third class is scheduled for February 2012.

Costs

The costs of filing a case before Guinea’s justice system are a major obstacle to access to justice in a country where the gross domestic product is USD 413.5 per capita.\(^{74}\) In civil cases, bringing a case before a TPI or JP requires the payment of a fee to file the complaint and to serve the defendant. The Civil Procedure Code does not provide any mechanism to eliminate these costs for indigent litigants, even those with the right to free legal assistance. Litigants must also frequently pay unofficial fees, for example a bribe to the court clerk to ensure that the case comes to court in a timely manner. Parties must also keep in mind that, should they or lose, they may be required to pay costs incurred by the court and their opponent.\(^{75}\) Even in criminal cases, when a case is being brought by the state to maintain public order, government actors often lack the resources necessary to prosecute the case. For example, a 2010 report noted that many police officers operate without any proper equipment or weapons and travel by taxi to conduct their investigations. Litigants therefore sometimes pay the police’s travel costs or vehicle rental fees to ensure that an accused is brought to court.\(^{76}\) In criminal cases where, following the decision of a prosecutor not to pursue a case, a litigant decides to initiates a prosecution him or herself, the

\(^{72}\) ISSAT JUSTICE SECTOR ASSESSMENT 2010 at 29

\(^{73}\) STATE OF THE JUSTICE SYSTEM ¶11/8

\(^{74}\) NATIONAL INSTITUTE OF STATISTICS, TABLE: GENERAL STATISTICS, available at http://www.stat-guinee.org

\(^{75}\) CIV. PROC. CODE arts. 741, 745

\(^{76}\) ISSAT JUSTICE SECTOR ASSESSMENT 2010 at 47, 51
litigant must pay the costs of the prosecution. The litigant also runs the risk of paying further costs if the accused is acquitted.

Social Factors

Potential litigants in Guinea must overcome the social stigma that attaches to a decision to bring a case to court. The emphasis that Guinean society places on social cohesion requires that potential litigants try to resolve conflicts amicably, and avoid escalating a dispute so as to destabilize familial or communal relations. The dilemma facing victims of domestic violence illustrates this obstacle. In many communities in Guinea, a victim of domestic violence who takes legal action against a family member, especially her husband, is viewed as deliberately breaking the social bonds that bind her to her family and society. She risks being divorced by her husband, rejected by her in-laws, and even losing the social and financial support of her own family (one victim interviewed for this report, who had complained to the police about her violent husband, was prevented by her father from returning to her family home). Some organizations do provide social and economic assistance to victims of gender-based violence to help them overcome the consequences of confronting abusive partners. For example, the organization AGUJAS, which runs the toll-free line discussed previously (Element 3), also operates a safe house which offers victims shelter and helps them with social and economic reintegration. The government, with the support of UNDP, has also established gender-based violence treatment centers in four hospitals. Although these pilot centers focus on the health of the victims, including documenting injuries for purposes of litigation, their services can also include social and economic reintegration.

Social factors also impact the attitude of authorities towards particular cases. For example, victims of gender-based violence criticize the attitude of magistrates and law enforcement toward their complaints, explaining that the officers involved do not take them seriously or try to convince them to withdraw their allegation. Lawyers who offer legal assistance to victims of gender-based violence have also observed reluctance on the part of prosecutors to order the arrest of perpetrators, and a tendency by the police to use a lack of resources as an excuse to avoid investigating cases. To address these problems, some organizations, including UNDP, train magistrates and law enforcement agents on how to sensitively conduct criminal investigations targeting gender-based violence. Attitudes to gender-based violence would also improve were security forces and the justice sector to employ a greater number of women (as an example, out of the around 200 lawyers admitted to the bar, only 5 are women). One person interviewed for the purposes of this report was discouraged from continuing a harassment allegation before the Labor Ombudsman (Inspection Général de Travail) because she, “found herself facing all these men to describe behavior which some of them gleefully engaged in.”

Access to Informal Justice Institutions

It is very difficult to generalize about the organization and functioning of informal justice authorities in Guinea. The nature of informal authorities depends on the region, ethnicity, religion

---

77 CRIM. PROC. CODE arts. 91, 385. The sum is fixed by order of the examining magistrate.
78 Before the TPI and JP, a losing civil party must pay costs. The court can, however, use its discretion to reduce or eliminate the amount of costs the party has to pay. CRIM. PROC. CODE art. 468. In the Court of Assizes, the losing civil party is not sentenced to pay costs unless he or she initiated the public action (even in this case the court can use its discretion to reduce them). CRIM. PROC. CODE art. 367.
79 For example, Press Release, UNDP and Ministry of Justice, The Government (specifically the Ministry of Justice) and UNDP, with Financing from the United Nations Peacekeeping Fund, are Training Judicial Personnel on Techniques for Investigating Sexual Violence and Other Types of Gender-based Violence (Feb. 25, 2011)
and family of the parties involved. However, there are three main categories of informal justice actors: heads of family, religious leaders and local government officials. The Guinean family, the cornerstone of society, is an extended one, and includes cousins and family friends. Conflicts within the family are settled by the head of the family, normally the eldest male in the group. Religious leaders, such as imams and priests, are also called on to solve conflicts in the community and, in the case of imams, are assisted by the mosque’s governing council, a body of elders who help manage the mosque and its congregation. The local government actors involved in conflict mediation include sector heads (chefs de secteur), neighborhood heads (chefs de quartier), village heads (chefs de village), mayors and presidents of CRD. Although the official role of these actors is in local governance, they also manage local conflicts, especially those with an inter-family or inter-community aspect.

There is a certain hierarchy among the family, religious and local government authorities involved in resolving conflicts. Attempts to resolve family conflicts normally start within the family, and only when the conflict cannot be resolved is it taken before religious and administrative authorities. Similarly, if a problem is not settled by a sector head, it will be brought to the neighborhood or village head, and even, if necessary, to the commune or CRD level. However, this hierarchy is not formal, and matters can be taken to any authority directly, especially when that authority is best suited to resolve the conflict.

Family and religious leaders and local government actors are a much more accessible avenue of redress than courts and tribunals. A 2002 study estimated that close to 80% of conflicts are resolved by the informal system. Informal authorities are much closer to litigants, as they have a concrete presence within each community. There are also no costs associated with their involvement in a dispute and, because they try to settle cases amicably, they are not seen as threatening the cohesion of the family or the community (many victims of domestic violence stated that they prefer the informal system because it protects their marriage, guarantees their children’s future, and avoids the debilitating social consequences of divorce and legal disputes). For these reasons, a majority of our interviewees shared the perspective that, “a bad settlement is better than a good trial, because it’s cheap and fast.”

Recommendations

Although informal authorities play a vital role in resolving conflicts in Guinea, the ability to bring a complaint to a court or tribunal is still a basic component of access to justice and ensures that a litigant has another avenue of redress if community-based conflict resolution fails. The threat of litigation also makes it more likely that negotiation or mediation will yield a fair result, because the parties and authorities involved understand that their decisions may be contested elsewhere. For this reason, the current lack of access to courts and tribunals is an essential obstacle to justice in Guinea.

The current work of the Guinean government and its international partners to reform Guinea’s carte judiciaire so as to bring courts and tribunals closer to the citizens they serve is a vital step towards improving access to justice. These reforms should be combined with measures to make courts and tribunals affordable. For example, indigent litigants should be excused from paying courts fees (including where an indigent citizen wishes to initiate a public prosecution). One potential option in this regard would be to link such a reform to reinvigoration of the legal aid system, such that a certificate of indigence would entitle a party to both legal assistance and an exemption from courts fees. While this might increase the risk of frivolous claims, this risk would be mitigated by the costs that a losing party can incur. Justice reform should also confront the

---

81 In the case of harassment in the workplace, conflicts, if settled amicably, are more often mediated by unions, who represent the worker’s interest with regard to the company.
social stigmas that discourage people from going to court. This requires community education campaigns to inform citizens of the rights of vulnerable groups – including the importance of access to justice – as well as initiatives to provide litigants with help coping with the economic and social consequences of bringing a complaint to court.

Reform of the formal justice system, while vital, is a long-term project and will not have an immediate impact on access to justice for many disadvantaged groups. Even after reforms have been implemented, formal justice institutions will remain inaccessible to many communities, especially in rural areas. Guinea’s government must therefore reflect on how to guarantee access to justice to communities that are currently, and many well remain, isolated from courts and tribunals.

One short and medium-term option would be the use of mobile courts: temporary court sessions organized in a location distant from the permanent seat of the tribunal. The law currently authorizes mobile courts for criminal matters, both for misdemeanors tried by TPIs and JPs and for felonies tried by the Court of Assizes (the latter requires a decree from the Minister of Justice). For example, the Court of Appeal of Kankan organized a mobile session of the Court of Assizes in Nzérékoré in September 2011 to try the alleged perpetrators of clashes in the Galakpaye district in May 2011. Judges, clerks, prosecutors, and lawyers traveled to Nzérékoré to participate. Were mobile courts to be expanded to civil matters (and this might require an amendment to Civil Procedure Code), and if they were organized on a more systematic and regular basis, they could partially bridge the gap between justice institutions and litigants. However, this approach must be balanced against the costs of organizing mobile courts and that of other options (such as improving a region’s transport infrastructure and providing direct financial assistance to litigants to enable them to travel to permanent courts). The assessment of the carte judiciaire that the government is currently undertaking with the support of the European Union may provide the data necessary to develop a proposed schedule of mobile courts, which would be based on the demand for justice of each region. Such a schedule could be used to attract the support of funders and to coordinate the efforts of international and national NGOs working in the justice sector.

Guinea’s government must also consider whether it wishes to recognize the role that informal authorities play in access to justice, and to take steps to provide government oversight of these authorities. This question will solicit divergent opinions. On the one hand, there will be those who do not see a role for informal justice actors in a modern democracy. Equality among citizens means that a single justice system should serve all citizens, and that the justice we receive should not depend on our family, ethnicity or religion. Support for informal justice institutions also risks encroaching on fundamental rights guaranteed by the constitution and the law, especially women’s rights (see Element 5). On the other hand, there will be those who emphasize the importance of preserving the family, religious and traditional heritage of Guinea, and who underscore the fundamental role that informal justice already plays in access to justice. Formal justice, even after necessary reforms, can never replace informal authorities who are closer to litigants, more in line with their values, and more effective at resolving conflicts.

It may be possible to balance these two viewpoints by creating a policy that identifies a role for informal systems in resolving conflicts in certain situations and constrains them in others. In designing this policy, Guinea could perhaps be guided by the experience of other countries, in Africa and elsewhere. South Africa, for example, recently proposed a draft law and accompanying policy that describes a role for traditional justice authorities in a modern and democratic justice system. The content of this law is discussed in more detail below (Elements 5 and 6). However,

---

83 CRIM. PROC. CODE art. 393 (TPI and JP), art. 233 (Court of Assizes).
84 REPUBLIC OF SOUTH AFRICA TRADITIONAL COURTS BILL 2008 (explanatory summary published in Government Gazette Mar. 27, 2008) [hereinafter TRADITIONAL COURTS BILL]; POLICY FRAMEWORK ON THE TRADITIONAL JUSTICE SYSTEM UNDER THE CONSTITUTION, MINISTRY FOR JUSTICE AND
the law itself was drafted after a lengthy period of consultation and dialogue. The principal consultation, undertaken by the country’s law commission, used a discussion paper, translated into all of the country’s national languages, to trigger discussion amongst a range of participants. The consultation included public workshops in each region, and solicited input from informal justice authorities, magistrates, prosecutors, academics and litigants. A series of special workshops was also organized to seek the perspectives of women. Given the complexity and controversial nature of the questions raised by informal justice institutions, Guinea might itself benefit from this type of consultation process.

---


67 Id.
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

The justice dispensed by courts and tribunals in Guinea, and the confidence that Guineans have in it, are undermined by corruption and improper influence. Although the level of corruption in the justice system mirrors that in Guinean society overall, the justice system has a number of characteristics which make it particularly vulnerable. Magistrates and other court staff are poorly compensated and lack the institutional protections necessary to guarantee their independence. The High Judicial Council that is supposed to responsible for overseeing the appointment and advancement of magistrates has never been put in place. Decisions to appoint and assign judges are therefore taken by the executive, specifically the Ministry of Public Function (Ministère de la Fonction Publique), without any external oversight. This implies that magistrates (and their chain-of-command) are the same as any other civil servant, with an inevitable effect on their independence. Guinea’s 2010 constitution restates that it is the responsibility of a High Judicial Council to appoint and supervise magistrates, and efforts are underway to draft legislation describing the functioning and organization of a “new” High Judicial Council.

Informal justice institutions, whether involving familial, religious, or local government actors, tend to prioritize amicable resolution of conflicts. However, because of the status informal authorities have within their community, there is a certain pressure on the parties to accept proposed settlements. As a result, the outcome of mediation tends to reflect the traditional, family and religious principles to which community leaders refer to resolve disputes. This creates a risk that mediation preserves existing community power structures, at the expense of the legal rights of vulnerable groups, particularly women. Any discussion of the powers the Guinean government should give to informal authorities to resolve conflicts must therefore try to reconcile their religious and traditional character with the risk that this character prejudices the legal rights of vulnerable groups, particularly women.

Analysis

Litigants’ access to justice institutions has no value unless those institutions are capable of producing a fair result. Litigants’ willingness to utilize justice institutions to resolve conflicts also depends on their conviction that these institutions are just. In this section, we analyze whether the institutions examined by this study, both formal and informal, utilize a fair procedure to resolve cases.

Formal Justice

“Corruption is an everyday part of justice. It’s just one of the results of the process.” Kadiatou, Interviewee.

Guinean courts and tribunals give each litigant ample opportunity to present their cases. During a criminal trial, the accused and civil parties can call witnesses, including those that were not questioned by the examining magistrate.\(^88\) The accused and civil parties also have the right to

\(^88\) CRIM. PROC. CODE art. 324
question all witnesses called (albeit with the president of the court as an intermediary).89 Once the court has finished hearing evidence, the civil party, the prosecution and the defendant all have the right to make arguments in support of their case. After the defendant’s concluding remarks, the judge (or judges and juries for the Court of Assizes) deliberate in secret and, after a decision has been made, issue their verdict in public. In civil matters, the parties can file in court any evidence that they believe supports their case. Once a case is ready to be adjudicated, the plaintiff and the defendant are invited to make submissions to the court in support of their claims. When the court believes it has all the information it needs to decide the case, the judges retire to deliberate, with decisions made in secret and (where a court has more than a single judge) reached by majority vote. Judgments are normally pronounced in public and must include reasons justifying the court’s decision. We should also note that, in civil matters, a judge may at any time attempt to reconcile the parties (conciliation is mandatory in certain cases, including divorce and inheritance).90 If conciliation is successful, the agreement is recorded and signed by the judge and the parties.

Despite the opportunity given to litigants to present their case, the justice dispensed by courts and tribunals in Guinea, and the confidence that Guineans have in it, is fundamentally undermined by corruption and improper influence. There is a popular saying in Guinea that, “the poor man is always in the wrong.” Powerful citizens, for example government officials or members of the military, can also use their power to influence the results of legal proceedings. A 2010 report even noted that the Ministry of Justice regularly summons judges and prosecutors and directs them to decide cases in a particular way.91 The level of corruption in the judicial system reflects that of Guinean society in general. Guinea is ranked 164 out of the 184 countries covered by Transparency International’s Corruption Perceptions Index, with a grade of 2.1 out of 10. However, the justice system has a number of characteristics that make it particularly vulnerable.

First, in spite of a promising legal framework, Guinea lacks the protections necessary to protect magistrates from influence by the executive. According to 2010 constitution, magistrates should be appointed and assigned to their posts by the president of the Republic, following nomination by Ministry of Justice, but with the assent of a High Judicial Council, called the Conseil Supérieur de la Magistrature [hereinafter CSM].92 This arrangement provides magistrates with a measure of independence because, although the CSM is chaired by the president of the Republic and the minister of justice, its members also include fifteen magistrates who are elected or designated by their peers.93 The provisions of the new constitution that relate to the CSM replace similar provisions that were contained in a 1991 law.94

Reality, however, does not conform to the legal structure contained in the 2010 constitution or even the 1991 law. A CSM has never been put in place. Decisions to appoint, assign and pay judges are taken by the executive, specifically the Ministry of Public Function (Ministère de la Fonction Publique), without any external oversight. This implies that magistrates have the same status as any other civil servant, with an inevitable effect on their chain-of-command (and independence). After the adoption of the new constitution, and following a recommendation from the March 2011 justice roundtable, efforts began to draft a new law describing the functioning and organization of a “new” CSM, as well as to compile the decrees and orders necessary to

89 CRIM. PROC. CODE art. 305 (Court of Assizes), art. 435 (TPI and JP).
90 CIV. PROC. CODE art. 444
91 ISSAT JUSTICE SECTOR ASSESSMENT 2010 at 54
92 CONST. arts 109, 110. Any appointment or assignment of magistrates without the assent of the High Judicial Council is null and void.
93 CONST. art. 112
94 LAW CREATING HIGH JUDICIAL COUNCIL (Law No. L91/010/CTRN, adopted Dec. 23, 1991)
implement this new law.\textsuperscript{95} In the interim, the appointment, assignment and management of magistrates remain the responsibility of the Ministry of Public Function.

The absence of the CSM has a further impact on corruption. According to the 2010 constitution, the CSM should be responsible for disciplining magistrates (when the CSM sits as a disciplinary body, its presidency passes from the president of the Republic to the president of the Supreme Court, guaranteeing the CSM’s independence).\textsuperscript{96} However, with no CSM in place, magistrates are rarely disciplined, including in cases of corruption.\textsuperscript{97} Other monitoring mechanisms are also ineffective. The Inspectorate General for Judicial Services (\textit{Inspection Générale des Services Judiciaires (IGSJ)}), a department of the Ministry of Justice charged with monitoring the proper functioning of courts and tribunals, is composed of magistrates who are hesitant to criticize their peers.\textsuperscript{98} Within each court, where the chief judge should exercise control over the court’s functioning and personnel, monitoring is minimal. Where complaints are made by a litigant, a settlement is usually negotiated amicably between the chief judge, the litigant and the accused magistrate.\textsuperscript{99} When this lack of oversight is combined with the minimal official salary that most magistrates receive (which is not sufficient to meet the needs of a family), it is no surprise that incidents of corruption are frequent.\textsuperscript{100} The March 2011 justice roundtable emphasized the importance of raising magistrates’ salaries as soon as possible.\textsuperscript{101}

The final factor cited as a cause of corruption in the justice system is that, in TPIs and JPs, a single judge adjudicates the majority of cases (note that in a JP, a single magistrate acts as judge, prosecutor and examining magistrate). It has been suggested that this facilitates corruption, since it is “harder to buy two members of a tribunal that only one, and the other two judges will always be aware that the third is watching them.”\textsuperscript{102} For this reason, the revision of the carte judiciaire could consider whether there should be increased supervision of single judges in JPs and TPIs. There are many possible options, including creating a right to appeal a decision of a JP to a TPI, sitting as a three-judge court; instigating a condition that all cases before the TPIs be decided by a three-judge panel; and limiting the subject-matter jurisdiction of JPs.

\textbf{Informal Justice}

\begin{quote}
\textit{“The informal system is not favorable to women, because they cannot express everything they are going through and are forced to give in....There are cases where a woman does not speak, everything is said for her and she accepts things with a broken heart.”} Fatima, Interviewee.
\end{quote}

Each of the informal authorities discussed in this study, whether involving familial, religious, or local government actors, tends to favor the amicable resolution of conflicts. For example, although heads of family do not follow a fixed method to resolve conflicts, dispute resolution within the family has certain common elements. First, the head of the family brings together the parties, as well as their relatives and any relevant witnesses. The parties explain themselves and witnesses give their versions of events. Then, with the assistance of other family elders, the head

\textsuperscript{95} \textit{STATE OF THE JUSTICE SYSTEM} ¶I/1 and ¶I/2
\textsuperscript{96} \textit{CONST.} art. 111
\textsuperscript{97} \textit{ISSAT JUSTICE SECTOR ASSESSMENT 2010} at 42
\textsuperscript{98} \textit{Id.}
\textsuperscript{99} \textit{Id.} at 43
\textsuperscript{100} A magistrate interviewed by Human Rights Watch in 2010 said that his salary of one million Guinean francs (around USD 150) was not enough to meet the needs of his family. \textit{HUMAN RIGHTS WATCH, WE HAVE LIVED IN DARKNESS} at 46 (2011).
\textsuperscript{101} \textit{STATE OF THE JUSTICE SYSTEM} ¶I/3
\textsuperscript{102} \textit{MARTRES ET AL, ADDITIONAL STUDY ON THE JUSTICE COMPONENT OF INSTITUTIONAL SUPPORT FOR GOVERNANCE IN GUINEA} at 42 (European Union, 2009)
of the family tries to find an amicable solution that will be accepted by both parties. The parties’ wishes are taken into account, but the head of the family also recalls traditional and religious principles and even family traditions to persuade the parties to come to an agreement. Religious leaders use a similar method to resolve conflicts, save with more emphasis on religious principles. For example, in discussing a case of domestic violence, an imam explained that he tries to find an agreement between the parties but that he also refers to the Koran, which advocates for forgiveness. For local government actors, the process used to resolve conflicts varies according to the locality involved, but also gives priority to amicable dispute resolution. Settlements are sometimes recorded on paper and signed by the authority involved.

Although informal authorities prefer to resolve conflicts amicably, the agreement reached does not always reflect a consensual and informed decision by both parties. Because of the status that informal authorities have within their community, there is a certain pressure on the parties to accept the settlements they propose. As a result, the outcome of mediation reflects the traditional, family and religious principles to which community leaders refer to resolve disputes. This creates a risk that mediation preserves existing community power structures, at the expense of the legal rights of the parties, particularly vulnerable groups. For example, the informal system can discriminate against women in two ways. First, the familial, religious and traditional norms that influence proceedings are often in conflict with the legal rights of women. A sector head interviewed for this report admitted that, in inheritance cases, although the law provides for equal rights between men and women, he does not apply the law because it is contrary to religious principles. Secondly, the status of women in the family and community means that they are less able to refuse the settlements proposed by informal authorities. The relations between these two factors are interesting. Although family, religious and traditional principles have an impact on proceedings before informal authorities, they are flexible and can be contested. At the end of the day, it is the informal authorities themselves who decide how norms are applied and who are responsible for their consequences. For example, one woman interviewed minimized the role that Islam plays in facilitating discrimination against women, observing that: “People blame religion, but men do what benefits them and not what religion says.”

Recommendations

Corruption and undue influence are, without doubt, two of the greatest problems affecting the formal justice system in Guinea. The current reforms envisioned to fight corruption, including the establishment of a functional CSM, are therefore extremely important. It would also 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 an internet forum on which citizens can report corruption by SMS or email. The web site collates the data according to the institutions and the region implicated. Although such initiatives do not target individual officials, the information collected is used by civil society to demand reform of processes that facilitate corruption and changes to the institutions that are most frequently implicated. It would be useful to consider whether such a system could provide an effective method of monitoring Guinean justice institutions.

The question of how to reconcile the operation of informal authorities with the rights of the parties, and especially women, should be part of a discussion of the role that informal authorities play in access to justice. For example, there will be those who argue that the jurisdiction of informal authorities should be limited to minor justice problems, so that they do not infringe on more fundamental rights. In South Africa, for example, the government has proposed limiting the jurisdiction of informal courts to certain minor criminal matters, and imposing a limit on the value

103 http://ipaidabribe.com is an initiative of an NGO Janaagraha Centre for Citizenship and Democracy, based in Bangalore, India.
of the civil cases that they can decide. Another proposal discussed in South Africa was that traditional courts should not be permitted to handle cases concerning women's rights because they are biased against women. The response of those opposed to these changes, in South Africa as well, probably, as in Guinea, is that any change to a system based on traditional, religious or family principles risks undermining the legitimacy of these institutions and creating opposition to reform from within informal authorities. If it decides to officially sanction an informal justice system, Guinea, like South Africa, will have to decide what changes to make to informal authorities to protect the rights of the parties.

104 The Traditional Courts Bill 2008 limits the criminal competence of traditional courts to theft, property damage, assault and crimen injuria. TRADITIONAL COURTS BILL art. 6 and schedule. TRADITIONAL COURTS BILL art. 5(2) limits traditional courts' civil jurisdiction.

105 LAW COMMISSION REPORT at 10. The government’s draft law decided to exclude family matters from the jurisdiction of traditional courts, but did not exclude them from trying criminal cases of domestic violence. TRADITIONAL COURTS BILL arts. 5, 6.
Element VI. Enforceable Decision

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

Conclusion

Absent agreement of the parties, the enforcement of decisions of Guinea’s courts is often difficult. Decisions must be enforced by an execution officer (called a *huissier*), although this officer can also request the assistance of law enforcement when he or she has problems executing a judgment. Guinea has less than 120 execution officers, only a few of whom live and work outside of Conakry. Furthermore, many litigants cannot afford the fees that execution officers charge (and those of law enforcement should they be involved in executing the judgment). Execution officers complain that the executive and the military interfere with attempts to enforce court decisions. The informal justice system lacks any coercive force with which to enforce agreements reached between parties to a dispute. Whether agreements are enforced therefore depends on the respect the parties have for the authority involved. If Guinea does decide to recognize the role of informal justice authorities in access to justice, it will have to decide whether to give the settlements reached before those authorities the same force as a decision of a formal court.

Analysis

“*The real problem is interference. Not long ago, a governor prevented an execution officer from enforcing a court decision; he even slapped him.*” Execution Officer, 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

In the formal justice system, judgments (for example, damages awarded in a civil case or to a civil party in a criminal case) can be executed either voluntarily or by force. If a judgment is to be executed by force, the court clerk gives the winning party an authenticated copy of the judgment. The party then gives this to an execution officer, who enforces the court decision and receives, in addition to a standard fee, a percentage of the sum involved. There are several possible methods that an execution officer can use to enforce the judgment, including the seizure and sale of goods or property. However, a judgment cannot be enforced until the party against whom the judgment will be enforced has been informed. The execution officer can also, through the prosecutor’s office, request the intervention of law enforcement when he or she encounters problems in enforcing a judgment (for example when the parties refuse to cooperate or threaten the execution officer) but the law enforcement officers involved also require payment for their services.

For the most part, the obstacles to the enforcement of judgments are the same as those which hinder access to courts and tribunals. Access to execution officers is not always easy: there are fewer than 120 and the vast majority are in Conakry. Many litigants cannot afford the fees of execution officers, as well those of law enforcement if they are involved in executing the judgment. In addition, many execution officers complain that the executive and the military

106 CIV. PROC. CODE art. 555
107 *Id.*. 556
obstruct their attempts to enforce court decisions. One execution officer said that he and his colleagues “fear for their lives,” when the military seeks to obstruct the enforcement of a judgment.

Informal Justice

It is not easy to enforce agreements reached before informal authorities. The settlement of disputes by family, religious and administrative authorities is not officially recognized in Guinea, and so agreements (unless written up into contracts) are not binding on the parties. The implementation of agreements is therefore largely dependent on the parties’ respect for the family, religious or local government authority involved. Although many decisions are respected, disputes often resurface as there is no sanction with which to force the parties to comply with their undertakings.

Recommendations

Corruption and interference by the executive remain perhaps the greatest challenges for the enforcement of court decisions. One of the recommendations of the March 2011 justice sector roundtable was the prohibition of any interference by civil and military authorities in enforcement of decisions, but this undoubtedly important step seems unlikely to occur if no measures are taken to sanction acts of interference. Perhaps one important step would be to make professional training available to execution officers, who are currently licensed without participating in a formal professional training program. The March 2011 roundtable also recommended revised (and presumably increased) regulation of execution officers. This could include drafting a Code of Conduct and steps to strengthen their independence from the executive, to increase respect for their profession, and to create a disciplinary mechanism.

The fact that informal authorities lack coercive force with which to enforce judgments is not necessarily a disadvantage: their consensual nature may explain why they are so successful in maintaining social harmony. However, the absence of sanctions with which to enforce agreements does make it more likely that disputes resurface. The Guinean government may therefore wish to consider whether it would improve access to justice if certain agreements reached before informal authorities were given the force of law, such that they could be enforced in a similar way to other court decisions. In South Africa, for example, the government has proposed that a fine or compensation that results from the intervention of a traditional court have the same status as an order from a formal tribunal, and that a formal court be able to enforce it. The government has also suggested that traditional courts be empowered to sentence and sanction a party or witness who fails to appear without reasonable excuse. Such steps should, however, only be considered in Guinea if they are combined with efforts to ensure that informal authorities respect fundamental rights, especially those of women. One option in this regard would be to condition the enforcement of agreements on a certain level of monitoring of informal authorities by courts and tribunals. The South African government, for example, has proposed that it be possible to “appeal” decisions of the informal system before formal courts should the traditional court’s decision contain an abuse of power, a grave procedural irregularity, or evidence of corruption or other undue influence.

---

108 STATE OF THE JUSTICE SYSTEM ¶IV/6
109 ISSAT JUSTICE SECTOR ASSESSMENT 2010 at 33
110 STATE OF THE JUSTICE SYSTEM ¶IV/1
111 TRADITIONAL COURTS BILL art. 11(d)
112 Id. art. 20(c)
113 Id. art. 12
## List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADDEF-Guinée</td>
<td>Association for the Defense of Women’s and Children’s Rights</td>
</tr>
<tr>
<td>AFEG</td>
<td>Women’s News in Guinea</td>
</tr>
<tr>
<td>AFJG</td>
<td>Association of Female Jurists</td>
</tr>
<tr>
<td>AGUIAS</td>
<td>Association for Social Assistance</td>
</tr>
<tr>
<td>AJAT</td>
<td>Access to Justice Assessment Tool</td>
</tr>
<tr>
<td>ASF</td>
<td>Lawyers Without Borders</td>
</tr>
<tr>
<td>CAJ</td>
<td>Legal Assistance Center</td>
</tr>
<tr>
<td>CAPA</td>
<td>Certificate of Aptitude for the Practice of Law</td>
</tr>
<tr>
<td>CFDJ</td>
<td>Center for Judicial Training and Documentation</td>
</tr>
<tr>
<td>CIP</td>
<td>Local Information Centers</td>
</tr>
<tr>
<td>CNDD</td>
<td>National Council for Democracy and Development</td>
</tr>
<tr>
<td>CNT</td>
<td>National Transition Council</td>
</tr>
<tr>
<td>CONAG-DCF</td>
<td>National Coalition for the Rights and Citizenship of Women in Guinea</td>
</tr>
<tr>
<td>CRD</td>
<td>Rural Development Community</td>
</tr>
<tr>
<td>CSM</td>
<td>High Judicial Council</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
</tr>
<tr>
<td>CU</td>
<td>Urban Commune</td>
</tr>
<tr>
<td>DNPF</td>
<td>Office for the Promotion of Women</td>
</tr>
<tr>
<td>IGSJ</td>
<td>Inspectorate General for Judicial Services</td>
</tr>
<tr>
<td>JP</td>
<td>Justice of Peace</td>
</tr>
<tr>
<td>MASPFE</td>
<td>Ministry of Social Affairs and the Promotion of Women and Children</td>
</tr>
<tr>
<td>MDT</td>
<td>Equal Rights for All</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental Organisation</td>
</tr>
<tr>
<td>OGDH</td>
<td>Guinean Human Rights Organization</td>
</tr>
<tr>
<td>PNG</td>
<td>National Gender Policy</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
</tr>
<tr>
<td>RPG</td>
<td>Rassemblement du Peuple Guinéen</td>
</tr>
<tr>
<td>RTG</td>
<td>Radiodiffusion-Télévision Guinéenne</td>
</tr>
<tr>
<td>TPI</td>
<td>Tribunal of First Instance</td>
</tr>
<tr>
<td>UFDG</td>
<td>Union des Forces Démocratiques de Guinée</td>
</tr>
</tbody>
</table>