



Strengthening the Rule of Law in Mali

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DISCUSSION NOTE

SPEED READ

MAIN MESSAGE

Though many donors have begun to invest in strengthening the rule of law in Mali since the 2012 (political) crisis, a common, sector-wide strategy to reform the justice and security sector is still lacking. Authors have not found evidence of results or changes in the functioning of (parts of) the justice sector in the course of the development of this paper. Most programs are in their first year of implementation. Such programs should benefit from the lessons learned of more than 15 years judicial reform in Mali. This report builds on those lessons learned, reminds some general programming virtues and offers policy recommendations for more effective rule of law programming in Mali. It presents these in five key areas of recommended action.

AUDIENCE

Policymakers and experts on rule of law programming in Mali.

5 KEY AREAS OF RECOMMENDED ACTION

This paper signals five areas where changes could contribute to enhanced efficiency and effectiveness of rule of law programming:

- 1 Developing a common vision and strategy**
A common strategy for the justice sector based on a theory of change and donor coordination can focus interventions and enhance their efficiency and effectiveness
- 2 Creating preconditions and catalysts for change**
Support coordination of formal justice actors, strengthening and improving informal justice delivery, linking formal and informal justice delivery, enforce the link between security and justice
- 3 Enhance program management**
Fund programs and projects in line with a common overall strategy guided by lessons learned, principles from the Paris Declaration, the Accra Agenda, and use of IATI standards
- 4 Putting citizens at the center of the action**
Promote and ensure meaningful participation, involve citizens in processes and results, and promote the meaningful right to information
- 5 Start to deal with corruption**
Enhance the capacity of central actors in the security and justice sector to fight and reduce corruption, invest in strengthening the judiciary's governance structure and its leadership

FOLLOW UP

These recommendations will be debated during a follow up event of the Knowledge Platform Security & Rule of Law in Fall 2015.

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About the Platform

The Knowledge Platform Security & Rule of Law is the principal hub in the Netherlands on security & rule of law in fragile and conflict affected settings. Well-connected to the relevant local, national and international networks, the Platform aims to unlock existing knowledge and stimulate new insights in order to contribute to the evidence base and effectiveness of international engagement on security & rule of law in FCAS.

Introduction

In 2013, Servaas Feiertag and Jan de Vries published an article on vice versa with 7 areas of attention for rule of law programming in Mali¹. In 2014 the Knowledge Platform Security & Rule of Law (the Platform) began formulating joint policy recommendations to inform rule of law programming in Mali. These recommendations were to be based on recent mapping studies and other field research undertaken by a variety of Dutch organizations that focus on promoting rule of law. The work was never completed, however. This paper attempts to finalize it.

The report is written with the assumption that all parties have the same objectives: to contribute to strengthening rule of law and the security sector in a way that furthers independent, impartial, and efficient justice delivery that includes full respect for human rights and effectively deals with corruption, including in the justice sector.

Methodology

Policy recommendations drafted in the course of 2013 - 2014 were used as the basis for this paper. Additional interviews were conducted with representatives from relevant organizations to assess the relevance of the original draft, to collect lessons learned from implementation of recent projects and programs, and to get more specific information on the thematic areas they worked on. Research was conducted on the latest project reports, articles, and other related documentation from the interviewed organizations. These organizations included the Netherlands Institute of International Relations Clingendael, HiiL Innovating Justice, Human Security Collective, the International Cooperation Agency of the Association of Netherlands Municipalities, the Netherlands Institute for Multiparty Democracy, and the Netherlands Helsinki Committee. Other organizations were approached, but could not be interviewed for various reasons: The Hague Institute for Global Justice, Oxfam Novib and the International Development Law Organization. Donors and others were analyzed as well. On the basis of this research, five primary areas were identified.

This paper focuses on the five areas. They are general areas and do not directly reflect the thematic work of the organizations or the specific thematic challenges and concerns. Rather, they touch on common generic challenges and recommendations taken, among others, from interviews and available project information. The content of this paper does not reflect the opinion of the organizations and persons consulted in this process.

¹ <http://www.viceversaonline.nl/2013/12/zeven-aandachtspunten-voor-de-nederlandse-missie-naar-mali/>

The choice for areas of attention

A 2013 article outlined seven areas of attention to inform and support the design and implementation of Dutch development cooperation in the Justice and Security sector in Mali.² In 2014, the Platform began an internal first draft of policy recommendations to inform rule of law programming in Mali. These two documents formed the basis for the interviews and desk research that led to our choice for the five areas. We circulated these to the interviewed organizations and asked for their feedback. Specifically, we asked them whether they agree that these are the most relevant and important points to guide a discussion on how the impact, efficiency and effectiveness of the Dutch Development Cooperation efforts can be further enhanced and how international donor and stakeholder coordination can be secured. We also used available information provided by the Dutch Embassy in Bamako.³

This paper is not an overall assessment of the performance of Dutch Development Cooperation in Mali, but instead signals a number of areas where changes could contribute to enhanced efficiency and effectiveness. We therefore present neither transcripts nor opinions of the interviewed representatives of the organizations and have neither addressed nor repeated themes already integrated into Dutch Ministry of Foreign Affairs programs.

Each of the areas identified are in the security and justice sector:

- 1 develop a common vision and strategy,
- 2 create the preconditions and catalysts for change,
- 3 Enhance program management,
- 4 Put citizens at the center of the action, and
- 5 Start dealing with corruption.

Develop a common vision and strategy

Since the 2012 security crisis and coup d'état in Mali, many donors have begun to invest in justice sector reform and, more generally, strengthening the rule of law. They thus seem to recognize that the absence or weak state of rule of law and overall poor governance were among the prime causes of the crisis. The various donor-funded initiatives in the justice sector often engage the same state and nonstate actors, which easily leads to duplication of efforts, competing commitments, and even conflicting objectives and approaches. To date, we have found no evidence that a common, sector-wide strategy exists to reform the justice and security sector, but recognize that the donor community has made some efforts to promote such development. This section offers ideas about how a common strategy for the

² Jan de Vries and Servaas Feiertag, "Seven issues for the Dutch mission to Mali," *Vice Versa: Weet Wat er Speelt*, December 9, 2013, <http://www.viceversaonline.nl/2013/12/zeven-aandachtspunten-voor-de-nederlandse-missie-naar-mali/>.

³ "International Cooperation: Multiannual Plan 2014–2017," Embassy of the Kingdom of the Netherlands in Bamako, Mali, <http://lemali.nlambassade.org/sujets-cles/cooperation-internationale>.

justice sector based on a theory of change and donor coordination could focus interventions and enhance their efficiency and effectiveness.

Develop a common Theory of change

Creating a common strategy for the justice sector with all relevant actors, notably citizens, is crucial. Doing so follows from the principles of harmonization and alignment in the Paris Declaration and the Accra Agenda for Action. It provides a common framework and vision on justice reform against which actors plan, monitor, and evaluate interventions. It creates a framework of communication among actors about change: what change they think will occur, what changes are feasible and realistic, and how such changes will happen. It is a stepping-stone to understanding which actors are best placed to work on certain changes. It avoids duplication and contradiction of efforts and it provides a format for citizen participation.

Change in fragile, postconflict contexts is complex and nonlinear, and affects the rule of law in positive and negative ways continuously. It is therefore often difficult to predict how change will actually unfold. A shared vision among key stakeholders on what change is desired and how it is likely to happen, along with concrete principles of harmonization and alignment, will enhance the likelihood of efforts being coherent and synergetic. It does not mean that all stakeholders have a blueprint for reform, but that they have a common understanding of the context, the desired and realistic changes, and how these are likely to happen. Theory of change methodology has the benefit of providing the kind of flexibility and representation of complexity needed in Mali.

It also forces all actors to make more explicit assumptions about how change works. This in turn tends to reveal different views on the context, power dynamics, and structures that may open new ways of thinking about change and innovative interventions. Such assumptions should be evidence-based and, if evidence is not clear, then actions should be designed to gather it. In line with the objective of placing citizens at the center of interventions at all stages, evidence should at the very least be gathered from citizens, among others, through their perceptions.

Monitoring plays an important role in effective use of the theory of change. Monitoring change to ensure that the theory of change is updated and remains relevant stimulates a culture of learning and inclusiveness among all stakeholders. It requires from all involved parties a level of transparency, trust, and honesty about the planned and implemented interventions. It requires flexibility and an open mind for learning. Monitoring is done continuously and meetings should be arranged to discuss the theory of change and how interventions are or are not affecting change.

The theory of change developed in the Ministry of Foreign Affairs for the security and rule of law policy could be a useful starting point for the justice sector in Mali.

Set up Donor coordination

Developing a theory of change and monitoring, evaluating, and learning requires considerable coordination that needs to continue throughout a program's implementation and evaluation. The coordination is geared toward designing interventions, monitoring progress, assessing the validity of the theory of change and the underlying assumptions, and learning from each other (about what works and what not). We recognize that coordination may not always be easy to accomplish in the political context of development cooperation. It requires leadership and commitment, but remains necessary to better results. Such leadership is required among donors and coordination should include key national, regional, and international actors. The substantial role of civil society is important and should be guaranteed.

Create preconditions and catalysts for change

Interventions should be informed by a common vision and strategy for the security and rule of law sector, as we explained above. Some areas of intervention and essential preconditions can be identified already and are enumerated below. This is not an exhaustive list.

Support coordination of justice actors in the formal justice sector

Improved coordination between actors and justice sector institutions is an important precondition to facilitating change and will benefit the functioning of the sector in several ways. First, it will create better understanding between actors of what the effects are of their activities (or the absence thereof) on others. Second, it will contribute to a culture of learning and accountability. Third, it will enhance predictability and speed of processes. Finally, it will start reducing the gap between justice institutions and citizens.

Donors should provide technical assistance in how to set up such coordination and support other assistance required as a result of improved coordination. Civil society organizations and representatives of the local population should participate in coordination activities (such as monthly meetings) to enhance transparency and citizen participation.

Support strengthening and improving informal justice delivery

In many, if not all countries, most problems related to justice are dealt with in informal settings (starting with the family and staying within the village). Many citizens consider local mechanisms as more effective, efficient, accessible, and better equipped to restore harmony. This is especially important in Mali and requires that interventions aim to strengthen such mechanisms.

At the same time, knowledge is scant about the functioning of informal mechanisms and their deficiencies in terms of corruption, underlying power relations, gender inequality, respect for human rights, and access (especially for vulnerable community members). The fairness of

their outcomes can and should be measured by the perception of citizens and should be complemented by other accepted assessment standards of fairness, effectiveness, and transparency, such as those in human rights conventions. These standards could be implemented through a set of guiding principles for informal justice. Interventions should aim to improve the dissemination of information and the legal empowerment of citizens with regard to these informal systems. Such actions and measures will help citizens better understand their rights, the mechanisms, how to operate within these mechanisms, and what cultural shifts may be required to ensure that identified deficiencies are addressed. Concrete assistance to citizens could be provided through paralegal services and other legal aid mechanisms.

Support linking formal and informal justice delivery

Strengthening rule of law would require stronger engagement between formal and informal structures to enhance better mutual understanding and acceptance. Learning, coordination, and cooperation between existing formal and informal mechanisms should be promoted as well as facilitate that cases that cannot be addressed informally are referred to appropriate formal institutions. This way, both systems become complementary and mutually reinforcing. At the same time, it is important to determine whether tasks and responsibilities between formal and informal structures can be delineated and enforced in where both systems are present.⁴

In addition, we recommend research to analyze informal systems and structures to better understand these functions and their implications for justice delivery. Informal systems are often presented as a single comprehensive system, but are more likely to be a collection of distinct systems with different sets of norms, decision-making, and related procedures that vary dramatically. This research would be followed up with development of principles that guide informal justice systems to promote, respect, and fulfill human rights and basic principles of the rule of law. It may also develop other approaches to implement customary mechanisms, for example, such as creating special jurisdictions. This approach has been followed in other countries, such as in Zambia, which created local courts that apply customary law, which enhanced access to justice. Local courts are part of the formal judiciary, apply customary law, and cases are adjudicated by local judges. Most of these judges did not receive formal legal training but do have to demonstrate that they are versed in local customary law and meet a number of other requirements. *Mutatis mutandis*, such concepts may inspire solutions in Mali.

Enforce link between security and justice and concentrate on human security

A link in programming should be made between security and justice. Human security needs to be central, not only in identifying insecurities, but also in identifying the answers. A human security approach requires gathering more insights into citizens' perceptions of their security, not only what makes them feel secure and insecure and who is responsible for it, but also who the security providers in Mali are and how citizens can effectively have oversight of the

⁴ Full compliance of the law means respect for the rule of law, including the rights of victims and suspects.

security sector. Questions about justice are also important: what it is, how it should be provided, and who can provide it. Programming requires active citizen participation in enhancing security, such as community policing. Reforms in the justice sector in Mali would thus be linked to ongoing security sector reform.

The role of civil society actors such as NGOs, religious leaders, social workers, traditional leaders, and youth organizations needs to be recognized. Similarly, dialogue and programs that guarantee an interaction between all stakeholders need to be stimulated, facilitated, and geared toward preventing conflict, improving mutual understanding, and resisting stigmatization and hate at all times. Dialogue is the first step. The second is building both sustained engagement in ownership and partnership of justice and security and accountability mechanisms linked to meaningful citizen participation.

Enhance program management

Programs and projects should be funded in line with a common overall strategy guided by lessons learned. General principles from the Paris Declaration and the Accra agenda are possible starting points.

Apply lessons learned

Many of the identified problems in the security and justice sector were already signaled in 2001 and 2007 and many other reports commissioned by international donors. That means that these problems were well known before the crisis. Lessons learned from past interventions are critical, as is being explicit about how they will be integrated in a new strategy and how they generally reflect implementation, monitoring, and evaluations. Additional time for reflection and analysis may be needed to adapt such lessons to current circumstances. Such reflection could, and should, lead to interventions different from those undertaken before the crisis. It should also be integrated in common strategy and the theory of change.

Paris Declaration and Accra Agenda for Action

The Paris Declaration and Accra Agenda for Action offer specific principles for development interventions that could, at least partially, inform program management in Mali's justice sector. Those of harmonization and alignment are largely covered in the development of a common strategy. Other principles include ownership, capacity development, and results.

- **Ownership, in combination with inclusive partnerships and mutual accountability.** Ownership means that countries set their own strategies, participate in setting policies, and take a leading role in coordinating efforts. In the context of Mali, this principle should be interpreted together with inclusive partnerships. Specifically, this means government, parliament, civil society, and other key stakeholders should cooperate and collaborate in programme design, implementation, monitoring and evaluation. Local ownership is not a synonym for laissez-faire and does not mean that the donor has no

role to play but to observe whether Malian counterparts take action. The donor community is and remains fully responsible for the results of the interventions they choose to finance and support. Donors have a particular obligation to ensure that funds are used for what they have been provided and intervene if that use cannot be demonstrated.

- **Capacity development.** In the context of Mali, capacity development should be focused on the ability to manage, plan for, monitor, and evaluate justice sector interventions and change in the sector in the future. For civil society actors, this means attention is given to organizational and institutional capacity development. This requires either that donors move away from project-based funding per se or that institutional and organizational development is made explicitly a part of project funding.
- **Results and delivering results.** Interventions in Mali should have realistic goals that can be measured and managed, just as they should anywhere. Results should be formulated in terms of behavioral change. Realistic and sustainable results can be achieved by financing change and requiring the Malian government at all times to indicate how such change will be sustainably funded through the national budget.

Apply IATI standards

The Dutch Ministry of Foreign Affairs has begun to embrace International Aid Transparency Initiative (IATI) standards for development cooperation. One consequence is openness about funding channels, what initiatives and organizations are funded, and what the expected and actual results are, at least in terms of outputs. Many donors in Mali invested significantly in the justice sector before the crisis, mainly through the Ten Year Justice Development Program (PRODEJ). The results of this funding have been minimal. The justice sector remains weak. Assessing why this is the case despite generous funding is at this point difficult at best. For many, it was a surprise. That it was a surprise is remarkable given the many indications in various monitoring and evaluation reports over the last ten years. Renewed negative surprise can and must be avoided through active, transparent and continuous monitoring by external actors. Monitoring needs to be accompanied by ongoing active access to and dissemination of relevant information to citizens about the common strategy, the interventions, and the results in full compliance with the IATI standards. The rule should be that all relevant information is to be made public and mechanisms in place to gather additional information, including that from planning, monitoring, and evaluations. Exceptions should only be made for information that endangers the lives and physical integrity of individuals and groups.

Put citizens at the center of the action

The justice sector in Mali will only establish itself as a relevant regulatory authority of social relations function effectively in the long term if the central role of citizens as citizens is recognized and enforced. Only if it is, can the justice system serve them and contribute to making the law effective and enforceable on an equitable basis. It currently does not.

Interventions should be designed to contribute to improved justice delivery for citizens and make it the benchmark for success or failure of the program. Improved delivery needs to be measured through active participation in the design and through surveys, credible complaint mechanisms, and active information sharing. Measurement in turn should always be based on objectively verifiable indicators designed on the basis of reliable baseline data.

Promote and ensure meaningful participation

For participation to be consequential, citizens must be consulted as to their needs and wants, just as their understanding of their rights and the duties of the justice sector actors and the state should be enhanced. This information should be integrated within programs. Ask for feedback on programs and design credible ongoing complaint mechanisms that can address their grievances in the event of failures in the justice system. Publish and disseminate feedback in an accessible way that can inform monitoring and evaluation.

When citizens are consulted and surveyed, the information, analysis, and decisions taken on the basis of this consultation must be relayed back to the citizens. Consultation is not a one-way communication that absolves the receiver of information of the responsibility to inform the giver of information about what has been done with this information, why, and why not.

Involve citizens in processes and results

Efforts to further enhance capacities, increase access to information, and empower citizens more generally are critical and should be included as a standard in justice interventions. Such efforts are a shared responsibility of donors, international actors (including CSOs), and both national and local CSOs. Interventions should plan and budget for such involvement.

Citizen participation in planning, monitoring, and evaluating is a process that in itself should fulfil their justice sector needs and rights and should be the ultimate result of related interventions. The process should be explicitly geared toward enhancing their knowledge, empowering them on justice and human rights, and increasing their knowledge and understanding of the roles of all actors within the justice sector.

Fulfil the right to information

Citizen access to information about justice and the law needs to be improved. The default must be an enforceable right instead of an (incidental) benefit, which especially is needed at the various stages of criminal, civil and administrative justice procedures. The right to information includes the availability and access to documents for citizens, organisations and groups which are relevant in any procedure that involves them. In some cases, it also refers to information that the government proactively must make available to e.g. citizens and relevant stakeholders. Social media, civil society, and innovative communication each offer ways to improve such access. Methods should also take into account the fact that many people do not read or understand French. Promotion should create decentralized mechanisms of the justice system at various levels to bring actors closer to citizens.

Meaningful access to information is also a critical precondition for effective external monitoring and accountability mechanisms. Such mechanisms must be both credible and legitimate and both represent and respect citizens' legal interests. Ensuring these interests contributes to legal empowerment and promotes a culture of transparency and accountability.

Starting to deal with corruption

“Tolérance zéro pour la corruption” was one of the key messages during and after the election campaign of President Ibrahim Boubacar Keïta and presented as one of the key priorities of his government. To date, however, reporting has included few successes and criticism of the government is on the rise. The media sometimes question both their ability and their commitment to tackle corruption, which is a central problem and affects Malian society at all levels. Yet if corruption is not addressed, it is difficult to imagine that any reforms could be successful. Various governance indicators of the World Bank and Transparency International's Corruption Perceptions Index indicate that corruption is perceived as widespread and systemic at all levels of society. The judiciary is seen as corrupt and inefficient, contributing to a general culture of impunity. This section concentrates on corruption in the justice sector.

A condition for meaningful and sustainable justice reform

Corruption is a central problem in the security and justice sector and has a significant impact on its capacity to deliver fair, impartial, and effective justice to the Malian population. In the past, efforts have concentrated more on strengthening independence and less on accountability. In 2014, President Keïta's government indicated that the fight against corruption will continue to be a top priority. We therefore recommend integrating certain elements in all programs to enhance the capacity of central actors in the security and justice sector to fight and reduce corruption, with an accent on the judiciary. We do not recommend a witch-hunt on corrupt members of the judiciary, but instead emphasize systemic measures to help prevent corruption and effectively deal with specified cases in the future. This will not only help to address corruption within the judiciary and strengthen overall justice delivery, but also is a critical condition to successfully prosecute grand corruption cases. The latter is badly needed to restore a meaningful social contract between the state and citizens.

Independence and accountability

Additional measures and investments are needed to strengthen the judiciary's governance structure and its leadership, neither of which function well in practice, and thus to enhance its independence and accountability. Judicial independence exists on paper but is challenged by the dominant position of the executive, which has a decisive impact on appointments, the careers of judicial staff, and budget allocations. From a historical perspective, this situation is easy to understand. However, for the judiciary to effectively play its role in the *trias politica*, change is called for. Accountability also exists on paper but is not enforced. It is

critically needed as a natural counterbalance for an independent judiciary. Five recommendations are proposed to tackle these problems effectively.

1 Review salaries and budget for the security and justice sector

A review is needed to assess what would constitute adequate salaries and budget for the security and justice sector. Such an analysis would not compare salaries of judiciaries in other countries, but instead those at the national Malian level on the basis of required responsibility, knowledge, and skills. Adequate salaries ensure that judges and prosecutors can support their families, remain loyal to their profession, and at the very least, have no direct economic “need” to resort to corruption.

2 Establish independent career appointments and promotions

A strong judiciary is achieved by selecting candidates qualified to professionally adjudicate cases in full respect for ethical guidelines. Transparent, merits-based criteria for the appointment and promotion need to be established to prevent these being based on political affiliation or other inappropriate influence. If promotion is handled by a government agency, such as the Ministry of Justice, independence may be compromised. If senior judges or a judicial council handle it, the quality of the outcome will depend on the independence of the judicial leadership. For the short to medium term, international observers and civil society organizations might assume responsibility.

3 Develop and implement professional standards and adequate training

Good decision-making requires detailed knowledge of the law, strong analytical skills to deliver and explain judgments, and understanding of the practical application of ethical standards and the challenges of court and case management. Professional standards and adequate training are critical to those ends.

4 Develop and implement an enforceable code of conduct

Mali’s present Code de Déontologie does include useful norms, but its enforcement remains incomplete and sometimes raises questions in the press about its application.⁵ Additional code should specify aspirational maximum norms, and, more important, enforceable minimum norms to be applied by an independent judicial panel of international experts with observer status. Investigation of corruption charges in particular should be addressed in ways that facilitate enforcement and due process.

5 Design a judicial panel with international observers and CSO participation

A judicial panel to investigate corruption within the judiciary is crucial to ensure that the improved conditions are accompanied by sanctions if corruption is discovered. Its composition should include international observers and civil society organizations to ensure impartiality. It should also include citizens to fully acknowledge that they are the end users of the justice system.

⁵ Code de Déontologie, annexe a la loi N°02-054/du 16 Décembre 2002 portant Statut des Magistrats

Conclusions

The commissioned assignment had two primary objectives: to provide both a clear set of policy recommendations on rule of law programming in Mali, and input for a related exchange between policymakers and experts. This paper has discussed five sets of policy recommendations. This section presents conclusions as well as statements and questions to encourage discussion at the experts' meeting later in 2015. These statements are not necessarily our opinions or those of the institutions interviewed. We do, however, believe that they are part of a holistic approach that can serve innovative thinking. We also believe that they cover a wide range of opinions and ideas sometimes expressed in the context of Mali development policy. Sometimes they can also be seen as the elephant in the room and therefore probably need to be addressed. As such, they have been formulated to encourage discussion.

On developing a common vision and strategy

- Developing a common vision and strategy requires recognized leadership. Such leadership needs to be recognized as independent, impartial, and knowledgeable. It should also have the will and ability to bring together all relevant stakeholders in the justice sector. It should have a drive to move beyond project funding and project results. The question to be answered is who best fulfills these criteria.
- Should a strategy and vision be developed before engaging in projects or can projects inform a common strategy? Is strategy the starting point or are lessons from doing the starting point?
- Donor coordination in many countries is a simple exchange of information in the presence of a government representative. Creating a common strategy and monitoring requires a different type of engagement. It appears that some stakeholders (donors, government, and civil society) either do not consider this a priority or are not interested in such engagement.

On creating preconditions and catalysts for change

- Enforcing mechanisms that work in the eyes of Malians, such as informal justice systems, may detract from the need to enforce mechanisms crucial for the state and may even compete with them. The Malian government may need to establish the monopoly on justice delivery in practice as well. How can the needs of citizens for justice delivery be balanced with the ambitions of the state while establishing and strengthening the rule of law, common to all Malians?
- How can justice and actors in the justice sector be brought closer to people? And how can that be done without creating a patchwork system full of legal pluralism leading to further legal uncertainty? Do effective informal justice systems indeed weaken the formal system? Bearing in mind that the Malian constitution recognizes the validity of customary law as long as it does not conflict with state law.

- There is no single informal system: informal mechanisms are completely different from one area to another and work differently for different types of issues and groups. Should such unification take place? If so, what are the potential risks?

On enhancing program management

- Civil society is relatively weak in Mali. Civil society organizations, which are considered to be strong and more or less functional, are absorbed by projects they struggle to manage. Yet very little is done to strengthen civil society in general and to develop credible and legitimate organizations with appropriate governance structures. How can programs contribute to strengthening the capacity of civil society (organizations) to enable them to become a multiform, credible, and legitimate actor in Mali and its justice sector? How can new civil society organizations be stimulated to grow and play their role in developing and strengthening the security and justice sector?
- Most programs have a short- to medium-term horizon (at most five years). Donors usually appoint individuals to manage such programs for the same period, and staff at embassies stay on their posts for four years. During this period they need to get to know the country, build relations, show concrete results, and consider their careers. Such a short span of activity stimulates neither institutional memory nor knowledge management of past interventions, which are therefore usually rather weak. Work remains mainly output oriented and done through partners with established relationships. This cycle repeats itself. Yet we know that for things to be done differently in Mali, time must be taken to develop strategies and learn lessons, focus should be on change and sustainability, and institutions should be built from the core. Projects should be allowed to fail and should focus on longer-term results. Focus should be on continuous learning, follow-up, and adaptation. What does this mean, in concrete terms, for donors? How can they change this cycle or diminish negative impacts? Is it realistic that donors can actually provide such long-term support or should this support be understood in a different way?
- IATI standards are mainly output oriented and merely a system. Its success still very much depends how it is implemented. It can also be easily misused to control civil society. How should the IATI standards be implemented in Mali?

On putting the citizens at the center of action

- Who are these citizens? What should the focus be? Should there be a focus on vulnerable groups? What about the rest of society?
- Why is it important to engage with citizens? It is probably much easier to engage and deal with the government institutions and to let them take responsibility for better justice delivery. They are better trained and know the local context well. Why is it that previous donor support to justice sector institutions did not demonstrate improved justice delivery to citizens? Are there any compelling reasons to believe that this time the situation is different, that donor support will indeed enhance better justice delivery for citizens? If so, what has changed to justify that assessment?
- Citizens at present have no true representatives, whether they are parliamentarians or civil society or others. Serious effort should be geared toward ensuring that those who should or could be true legitimate representatives can play that role effectively.

- Because everything starts with education, it should be a top priority in the justice sector. If people cannot read or write, informing and empowering them to demand information becomes more difficult.

On dealing with corruption

- Working on corruption is a precondition if other work in the justice sector is to be effective.
- Support to a corrupt justice system can actually cause serious damage in that it legitimizes corruption. What precautions have been taken to prevent this situation in Mali?
- Many civil servants have developed careers in justice institutions. The middle and top management layers are often populated with people who have built their careers in corrupt institutions. To what extent can it be expected that the same people can or would lead an effective fight against corruption? If so, what are the reasons for these assumptions? Might such cooperation might actually block effective work against corruption?
- Very little direct anticorruption work has been done to date. Mali is the only country in the region with a judicial ethics code, yet apparently it has no significant effect on the functioning of the justice sector. Why is this? How can this cycle be broken? Should donors take a more active and vocal stand on this issue? If so, what should they should be doing?
- Can those within these institutions who are not corrupt be identified, supported, and promoted to change the dynamics that fuel corruption?



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