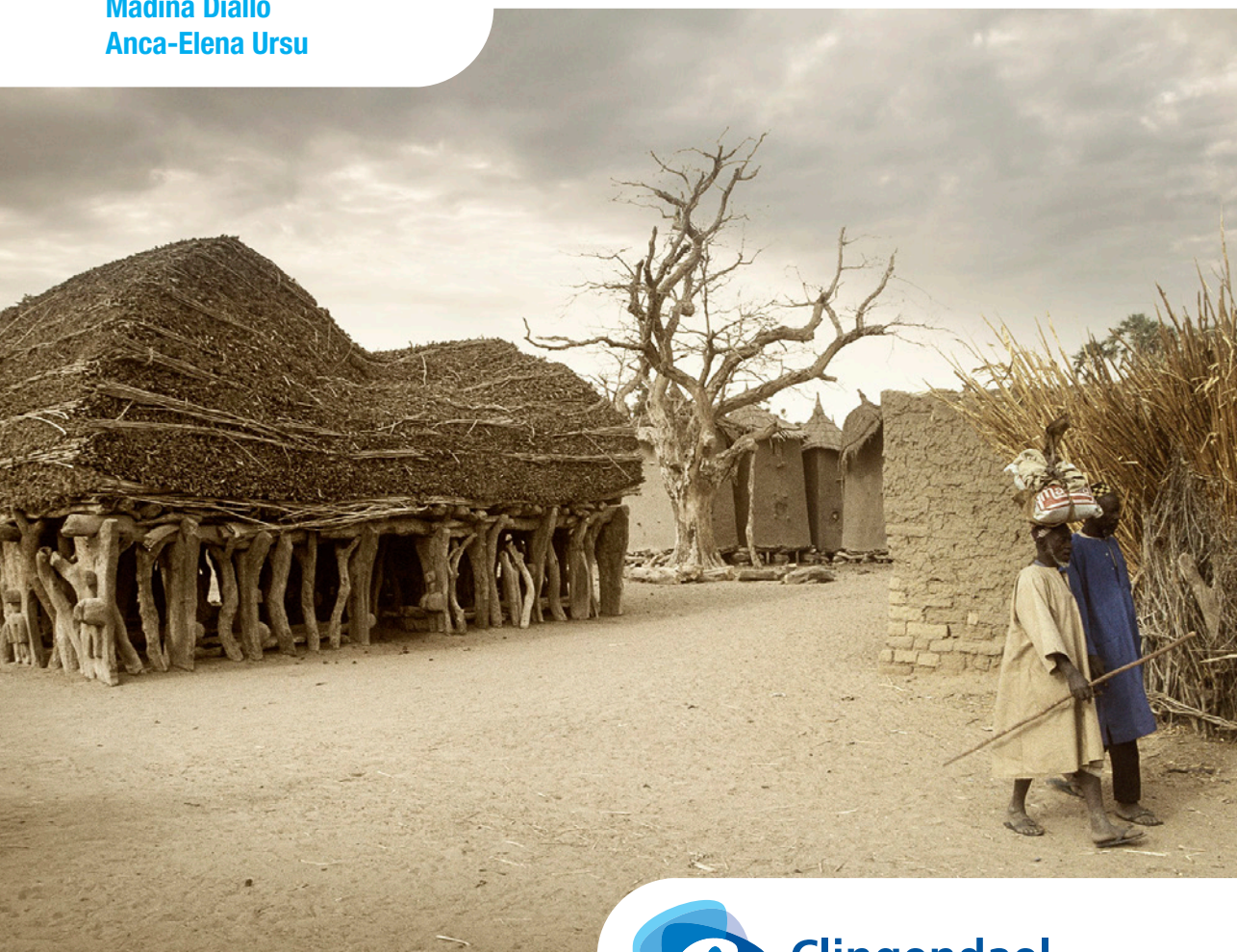


# Under the microscope: Customary justice systems in northern Mali

Diana Goff  
Madina Diallo  
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CRU Report



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Cover photo: Two men in Ansongo walking past a toguna, an open shelter that can be used for customary justice processes. © robertonencini / Shutterstock.com

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# Abstract

This report reveals heretofore undocumented information about the customary justice systems in northern Mali, which we gathered from 108 interviews across the regions of Gao, Mopti and Tombouctou. This information can be utilized by national and international stakeholders who see further engagement with these systems as an essential part of a multi-pronged effort to bring peace to Mali in the wake of the 2012 crisis. The report's main findings are sevenfold: 1) as each locality has its own traditions, each will require a context specific approach; 2) where interviewees specified that certain capacity building or change initiatives would be welcome, it is advantageous to build on this existing momentum for change; 3) justice gaps identified by interviewees are ripe areas for engagement; 4) ensuring fair treatment of vulnerable groups will likely require the use of interventions such as quotas, the creation of competing mechanisms, and community debate on whether biased treatment aligns with the core values of the local customary mechanisms; 5) it would be beneficial to help the customary and formal justice systems create a more coherent system for working together through facilitating dialogue between the groups at the local or national level; 6) a follow-up study targeting the youth population, which this study was not able to effectively reach, would be helpful to ensure their buy-in for the future use of these mechanisms; and 7) some recommendations made by the interviewees will need to be addressed by a sector-wide approach in order to be effectively addressed.

# Acknowledgements

This research would not have been possible without the Dutch Ministry of Foreign Affairs, where the support of Marianne Peters, senior policy officer rule of law, was invaluable. We also greatly appreciated the support of Roelof Haveman, the first secretary for security and rule of law at the Dutch Embassy in Bamako.

We thank the Bamako-based Groupe Observation des Dynamiques Sociales Spatiales & Expertise Endogène (Groupe ODDYSSEE), and especially their executive director, Amagoïn Keita, and their scientific coordinator, Dr Brahima Fomba, for partnering with us to help hire, coordinate and support the researchers who carried out the interviews in the regions of Gao, Tombouctou and Mopti. Further, we also extend our deepest appreciation to those researchers—Mamadou Togola, Dr Bréma Ely Dicko, Mahamadou Doumma, Adizatou Diallo and Sane Chirfi Alpha—as well as the local fixers who assisted them.

We are grateful for the feedback on designing and carrying out this study from the participants of an expert workshop held in The Hague, an expert workshop hosted by Groupe ODDYSSEE in Bamako and in a meeting with the Bamako chapter of Réseau des Communicateurs Traditionnels (RECOTRADE). We thank Boukary Sangaré, a PhD candidate at Leiden University/African Studies Centre, and Daoulata Amadou Haidara, a Bamako-based lawyer and humanist, for their assistance in setting up the field research both at these workshops and beyond.

Finally, we thank Mariska van Beijnum, head of the Clingendael Conflict Research Unit (CRU), for her feedback during the preparation of this report.

Any errors or omissions are the responsibility of the authors.

# Executive summary

Since the 2012 crisis in Mali, international and national actors have looked to strengthening its justice sector as one way to build peace and stability. Because the state has no real presence in the northern regions of Mali, the justice ecology there is dominated by customary justice mechanisms, with which stakeholders must therefore engage if they are to make significant headway in local justice sector development. However, information is not available on how customary justice systems in the north function, what their strengths and limitations are and their ability to make needed changes. This mapping study, based on interviews by local researchers across six administrative 'circles' in the northern regions of Gao, Mopti and Tombouctou, seeks to fill this information gap.

This report reveals distinct customary justice mechanisms in each of the subject circles, but certain commonalities as well. For example, the customary justice leaders tend to be older males who already hold important roles in their communities. Religious customary leaders usually have some formal training, but for others training can be nonexistent or based solely on observation of other customary justice leaders. In general, the leaders speak with both sides to a dispute, hear witnesses, allow each side to confront each other and make their decisions in a public manner without fear of repercussions. Interviewees prefer to keep disputes among their families or neighbours, rather than dealing with them outside of the village level. The customary justice mechanisms handle a wide-array of disputes including land, inheritance, theft or marital issues. Customary leaders can also refuse a case, with some preferring not to handle serious crimes like rape and murder, crimes related to the 2012 crisis, boundary disputes and sorcery.

Interviewees who had direct experience as a participant in a customary justice process reported an 84 percent satisfaction rate, and the majority of this report's respondents spoke in favour of the continual usage of these systems. Interviewees like that customary justice mechanisms are free, easily accessible and more efficient than the formal justice system. However, they can also take longer than the formal justice system to resolve disputes, and a lack of written decisions weakens the enforceability of their decisions. Of the 25 customary justice leaders interviewed, 24 percent already collaborate with the formal justice system, and 52 percent stated that they would like to collaborate more with that sector in the future.

There is a strong preference for customary justice leaders to be divorced from politics to ensure that their decisions are based on what they believe to be right in their conscience. A majority of those who discussed the issue of corruption also viewed the formal justice system as being more corrupt than customary justice mechanisms, and very few shared examples of bypassing customary justice leaders in order to find

a fairer outcome. Many also viewed customary justice systems as being corrupt, but believed that those systems are more likely than the formal system to return to a form of 'pure justice.'

Customary justice mechanisms are trusted in large part because of their ability to preserve social cohesion, whereas modern justice is seen as destroying the social fabric, complicating social interactions and disrespecting traditions and values. As members of the communities they serve, customary leaders are also seen as being more aware of the social implications of their decisions, and more willing to take efforts to create compromises between parties. Interviewees expressed that even if they disagreed with a decision, they would likely still adhere to it to maintain peace in the community.

There were mixed views in terms of whether these mechanisms are suitable to handle cases related to vulnerable groups. Many expressed the belief that women are marginalized or prevented from directly participating in these systems, especially at the leadership level. The reasoning for this difference in treatment was often justified through statements from the Qur'an, and also led some respondents to believe that modern justice would handle women's issues better, as it provides more equality between the sexes. However, out of 57 respondents across the three regions who gave a response on the issue as to whether customary systems can become more inclusive of women, 22 answered yes, 18 answered no and 17 were uncertain.

This report was unable to gain much information on these systems' treatment of the youth population, as many interviewees did not address the issue, and we were not able to interview more than a few people under the age of 30. Of the responses obtained there is a mixed view, with some believing that the systems can evolve in relation to youth, but others stating that as the roles and privileges of community members are strictly defined by tradition, change will be hard to implement. Some also pointed out that more rights are afforded to youth by the formal justice system than customary justice traditions. However, the customary systems are seen as being accessible to the youth.

Most dismissed inquiries into customary justice's treatment of slaves as irrelevant given that slavery no longer exists. However, some also held that slavery still exists, and among this group there was a split between those who believed that the customary systems could evolve in relation to slaves and those who did not. It was also asserted by one interviewee that younger slaves are more likely than older slaves to bring their masters to justice.

There are two themes that are particularly policy relevant in terms of supporting customary justice mechanisms: the potential revalorisation of the role of the qadi, and the role of customary justice leaders in land disputes. The qadi is an Islamic judge that is comparable to a judge in western systems, and is used predominantly in the northern



regions of Mali. Both the 2015 peace agreement and a 2017 reconciliation conference held in Bamako called for the revalorisation of this mechanism to mediate civil disputes. Interviewees described the qadis' processes as being very similar to those of the other customary leaders referenced above, and this report made the notable finding that none of our respondents identified the institution of the qadi as being corrupt or political.

Respondents identified land issues as being the most popular area for which they have brought a dispute to a customary leader. However, they also identified drawbacks of going to customary justice for help in this area. For example, the report's respondents revealed a concern that the decision-making regarding land disputes could be arbitrary or lack enforcement power. However, the report also describes how a new national law passed in March of 2017, which attributes specific roles to customary leaders over the registering of land and resolving land disputes, has the potential to address these weaknesses in addition to forging a greater connection between the customary and formal justice systems.

When asked how the customary justice mechanisms in their regions could be strengthened and improved, respondents largely pointed in the direction of capacity-building measures such as training in their own methods and in disciplines such as human rights, technology, science and war crimes. Respondent suggestions also revealed an interest in raising awareness about how these localised systems work, of making clearer links or divisions of labour between the customary and formal systems, and of supporting discussions that could ultimately lead to the creation of a new integrated dispute resolution system that draws on the qualities of both.

We have identified seven specific policy recommendations – some context-specific, some sector-wide—for future engagement with these systems: 1) this study has found that each circle has its own specific traditions, and hence despite some commonalities, there is no one customary justice mechanism in Mali. Due to these differences, each locality will therefore require a context specific approach; 2) where it was revealed that certain interventions would be welcomed, for example in terms of capacity building measures and making clear links between the customary systems and formal system, it would be advantageous to build on the already existing momentum for change; 3) justice gaps specified by respondents, such as in the treatment of crimes related to the crisis and the distribution of property in the circle of Mopti to those who have left and then returned, can be a ripe entry point for interventions; 4) certain groups, such as women, youth and slaves are still vulnerable to unfair treatment by these mechanisms and a remedy for this will likely require the use of interventions such as quotas, the creation of competing mechanisms, and community debate on whether biased treatment aligns with the core values of the local customary mechanisms; 5) it would be beneficial to help the customary and formal justice systems create a more coherent system for working together through facilitating dialogue between the groups at the local or national level, for example at justice summit type of events, or through the use of

creative storytelling methods to help explain the systems to each other and to show how they could work well together; 6) a follow-up study targeting the youth population would be helpful to ensure their buy-in for the future use of these mechanisms; and 7) some recommendations, such as for the customary leaders to make written records of their judgments, will need to be addressed by a sector-wide approach, in this case literacy training, in order to be effectively addressed.

# Introduction

The people of Mali use many types of justice mechanisms, both connected to and further disassociated from the state, to resolve their conflicts. This has led to the creation of a diverse justice ecology that includes both what are often described as ‘formal’ actors—such as state appointed lawyers and judges — and ‘customary’ actors — such as qadis, imans, village chiefs, family heads and elders.<sup>1</sup> Because the state lacks a large presence in northern Mali, customary justice systems are the dominant actors in the justice sector. Despite this, until recently little attention focused on how these mechanisms work and perform. This situation has changed in the wake of the 2012 crisis: international actors see these systems as being integral to the creation of a stronger justice system within Mali and a more peaceful state.

To contribute to an increased understanding of these customary justice systems and to facilitate potential engagement with them by national and international actors, this report captures the views of a cross-section of the population on this topic in six administrative ‘circles’ across three regions in northern Mali: specifically, Gao and Ansongo in Gao, Tombouctou and Niafunké in Tombouctou, and Mopti and Douentza in Mopti.<sup>2</sup>

Section 1 describes the categories and number of interviewees, and offers more detailed information about the customary leaders with whom we spoke. Section 2 describes how customary justice systems generally work in the northern regions of Mopti, Tombouctou and Gao; accompanying graphics show more specifically how they tend to work for each circle. Section 3 delves more deeply into the role of a specific customary justice leader, the qadi, which is of particular interest to policy makers because of a provision in the 2015 Agreement on Peace and Reconciliation that the institution be revalorised in areas where this mechanism is heavily used. Section 4 discusses concerns interviewees had on the intermingling of politics and customary justice systems. Section 5 describes the extent to which interviewees view customary justice systems as being corrupt, also in comparison with formal justice institutions. Section 6 examines the role of customary justice systems in preserving social cohesion within their communities. Section 7 analyses how customary justice systems are seen in regards to their treatment of vulnerable groups such as women, slaves and the youth population. Section 8 discusses

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1 The term ‘customary justice system’ is not universally defined. For this study, it refers to religious, traditional and other localized mechanisms.

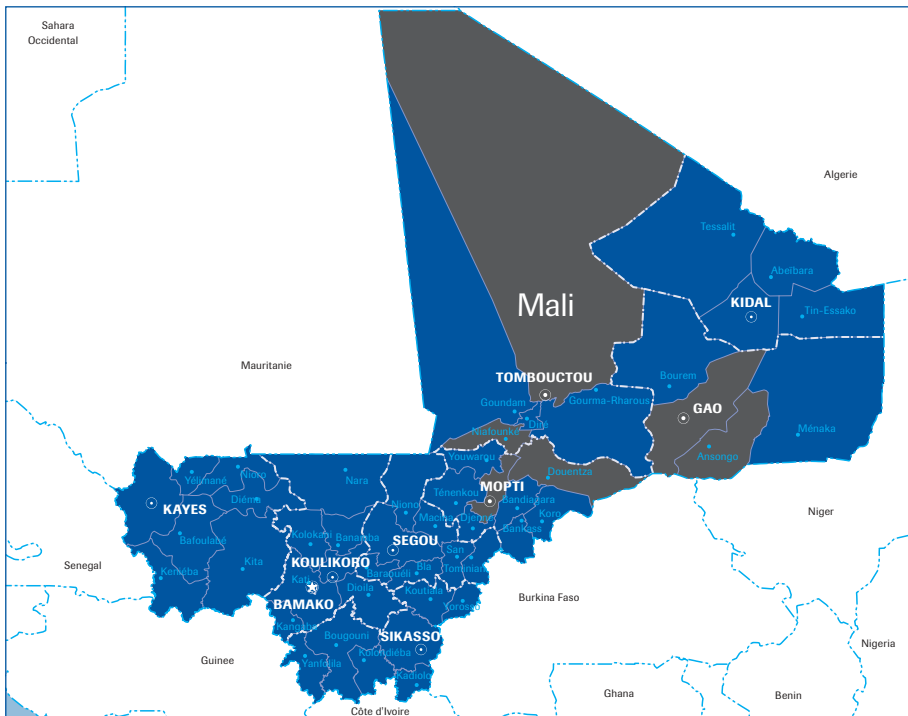
2 Going forward any mention of Gao, Mopti or Tombouctou will refer to the circles and not the regions, unless it is stated otherwise.

the role that customary justice mechanisms play in crimes related to the crisis, and Section 9 examines to what extent they are used for more general crimes. Section 10 reveals the reported high rate of use of customary justice systems for land disputes, and shows how a recently passed national law may work to improve the ability of customary and formal state authorities to work together on this issue going forward. Section 11 discusses specific recommendations of interviewees for customary justice systems. Section 12 provides policy recommendations for those national and international stakeholders who plan further engagement with these systems to point a clear way forward for development in this area.

# 1 Interviewees

During the field research, we collected 108 interviews<sup>3</sup> across four groups: 1) customary justice leaders, such as qadis, imams, village chiefs, *marabouts*, elders and heads of families; 2) those who have brought a dispute in front of a customary justice system; 3) those who have been called to answer a dispute and 4) a sampling of the general population of each area (see figure 1). We used open-ended questions tailored to each group's specific role or way of interacting with the customary justice systems.

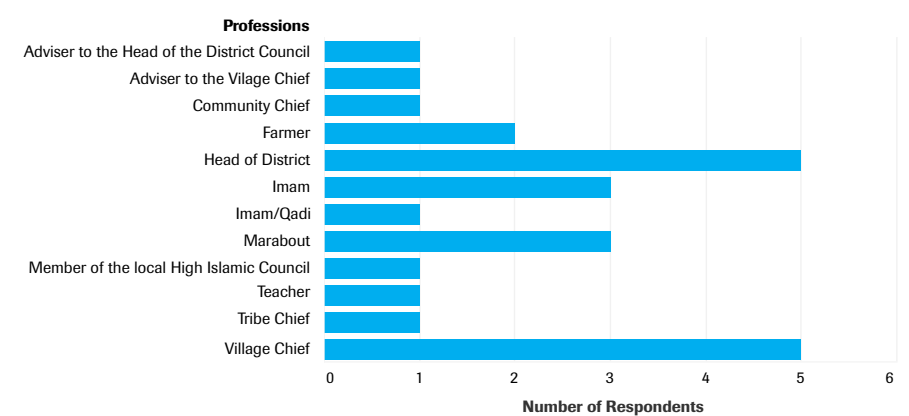
### Figure 1 Locations of interviews



3 For the public version of this report, we have removed the citations to specific respondents in order to protect their privacy.

In total, we interviewed 25 customary justice leaders. We found that in addition to these leadership roles, some also simultaneously held other jobs, such as teaching or farming (see figure 2). Others are retired from other professions but have maintained their customary justice roles.

**Figure 2 Professional identifications made by customary justice leaders**



The average age of the leaders interviewed is 65, the youngest being 36 and the oldest 78 (figure 3a). By way of comparison, the average age of those interviewed who have used a customary justice system is 49 (figure 3b). We do not have enough information for conclusive findings about the age of customary justice leaders, but these observations align with interview remarks that being an older member of the community is one way customary justice leaders gain their status. Other methods include inheritance and election.

Figure 3A Average age of customary justice leaders

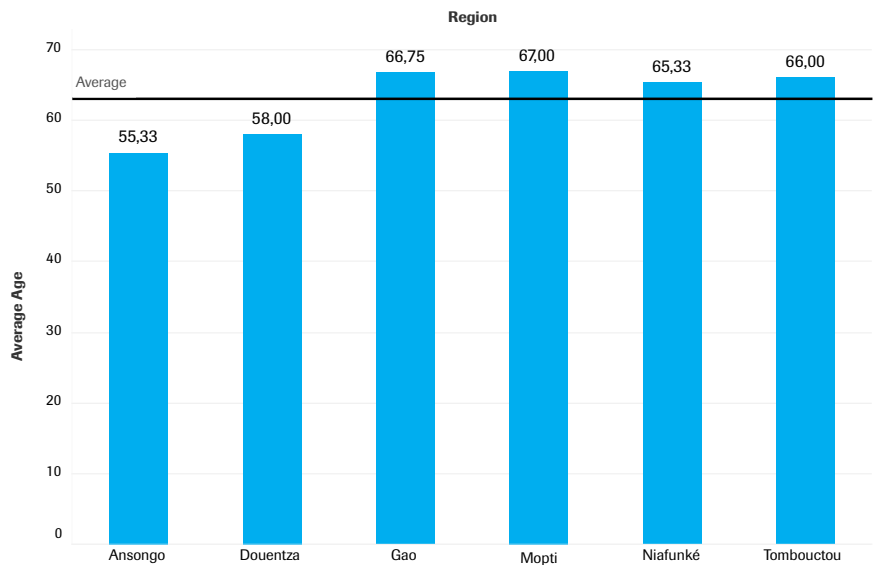
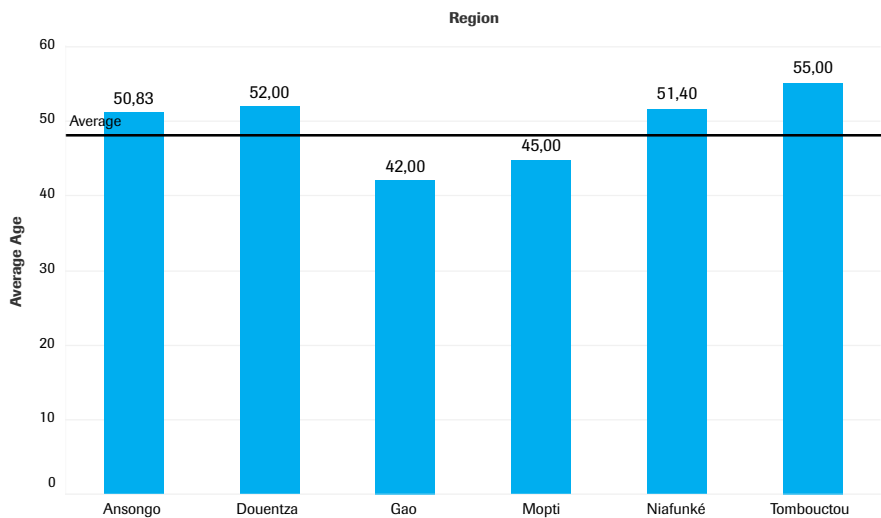


Figure 3B Average age of customary justice users



## 2 Customary justice in the northern regions

In general, the customary justice mechanisms of Gao, Mopti and Tombouctou have similar processes. Typically in response to disputes over land, inheritance, theft or marital issues, individuals will ask customary leaders for help, either to determine a fair result or to act as a mediator between parties. These leaders tend to be men who have an important role in their communities (such as a village or community chief), a religious figure (such as an imam, *marabout* or qadi) or a traditional communicator (such as a *griot*). The oldest people in the community, sometimes referred to as sages, are also often approached to take on this role. With the exception of religious leaders, training could either be nonexistent or based on observing the customary leaders that came before them.

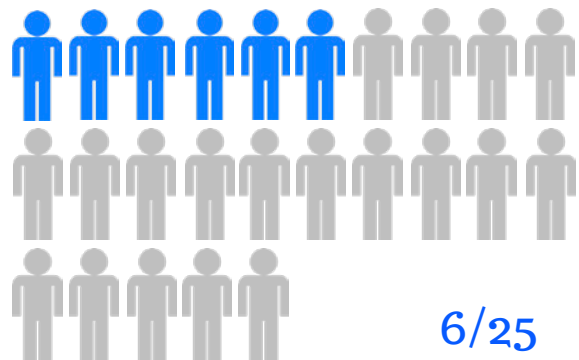
The typical conflict resolution process starts at the level of a family discussion, then moves to a discussion between friends, then neighbours, then the neighbourhood and successively to the village. Most respondents try to keep disputes from being dealt with outside of the village level because of a preference that ‘dirty linen be washed in the family.’

When called upon, a customary leader will generally speak with both sides, consult witnesses, and allow each side to confront each other. The leader’s decision is usually publicly made and can be influenced by the input or vote of a council of advisers, a religious text or the community’s traditions. The decisions are not legally binding but are enforced given the perceived moral authority of the customary leader.

The origin of these traditions is unknown, but many believe that they predate the colonial era. Customary justice mechanisms are free of charge, easily accessible and seen as being more efficient than the formal justice system. However, many respondents also explained that customary justice decision-making processes can take longer than formal justice processes to allow the time needed to find a resolution that restores societal harmony, not just one that proclaims a winner. Customary justice leaders typically do not make a written record of their decisions, which is perceived as weakening their enforceability. Collaboration between the customary and formal justice systems is somewhat typical, and is welcome to the extent that this prevents multiple or contradictory decisions on the same issue. Of the 25 customary justice leaders who indicated whether they collaborate with the formal justice system, only six (24 percent) answered affirmatively (figure 4).

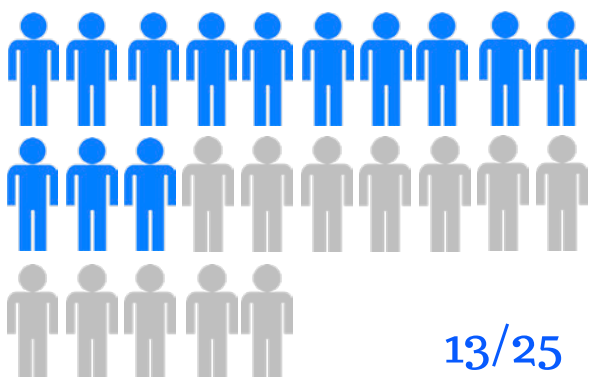


**Figure 4 Customary justice leaders who already collaborate with the formal justice system**



Thirteen customary justice leaders, or 52 percent of those who answered the question, explained that in the future they would like to collaborate more with the formal justice system (figure 5). Reasons include wanting to create a reliable system of precedence, to improve their knowledge and abilities in dispute mediation and to create a better articulation between what should be handled by customary justice rather than by formal justice. Customary justice leaders who do not wish to collaborate more with formal justice gave several reasons including that the actors of the formal system are too corrupt, that the formal justice actors are too pretentious and ‘not from our society’ and that they are too ‘aged’ to do so.

**Figure 5 Would like to collaborate more with the formal justice system**



The customary leaders interviewed handle a wide-ranging array of disputes, some taking on multiple cases every week, others only several cases a year. They will not necessarily take on every conflict, some specifying witchcraft, serious crimes and boundary disputes as being more suited for resolution by the formal justice system. For the most part, customary leaders do not fear any repercussions from their involvement in disputes because they are speaking ‘the truth,’ and because they take decisions collectively while acting in the interest of the greater community.

The majority of those interviewed spoke in favour of the continual usage of customary justice and indicated a general sense that customary leaders were a good first port of call to resolve disputes.<sup>4</sup> Many explained that even if they disagreed with a decision, they still believed that it should be followed because it was made for the good of the community. Those who disagreed with a customary justice ruling and decided to take their dispute to the formal justice system seemed to be able to do so without any trouble.

Infographics depicting the unique features of the customary justice mechanisms in Tombouctou, Niafunké, Gao, Ansongo, Mopti and Douentza are interspersed throughout the report.

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<sup>4</sup> For example, of the 82 respondents who directly answered the question of what regarding customary justice they would change if they had no limits, 52 expressed a clear preference for continued use of customary justice mechanisms and their ways of resolving conflicts.

### 3 Role of the qadi

One customary leader in particular, the qadi, is currently generating considerable attention in Mali in an attempt, as part of the peace process, to revalorise this institution's position within the country's legal system. Specifically, Article 46 of the 2015 Agreement on Peace and Reconciliation in Mali calls for the rehabilitation of the role of the qadis in the administration of justice with a particular focus on civil mediation, and for providing for high-quality training for all justice actors, including the qadis.<sup>5</sup> Most recently, in the spring of 2017, Bamako hosted a national reconciliation conference that included both President Ibrahim Boubacar Keïta and the Coordination of Movements of Azawad, a northern Malian rebel alliance. The final report of the gathering reiterated the need to promote qadis as well as other traditional conflict resolution mechanisms and roles.<sup>6</sup>

In Islamic law, a qadi is comparable to a magistrate or judge in contemporary Western judicial systems. As well as adjudicating disputes, the qadi performs extrajudicial functions, including mediation and managing public works.<sup>7</sup> Within customary justice systems, the qadis and religious leaders at large – imams, *marabouts* and the like – occupy a special place. Given their social status, and their knowledge of the Qur'an, they are perceived as the key institution for the 'preservation of Muslim law'.<sup>8</sup>

The qadi exercises his functions as a member of the community he serves (figure 6). Indeed, it is a prerequisite of Islamic law that any individual seeking to act as qadi has to first demonstrate extensive knowledge of the local traditions and practices of that community. Familiarity with local circumstances allows the qadi to better understand the frame of reference of litigating parties and to mediate disputes by taking into consideration the past, present and future relationships in the community.<sup>9</sup> Further, as an active member of the community, living in the same social landscape as the disputants, the qadi has a strong interest in preserving harmony. Traditionally, disputants are not considered as single entities, extrapolated from their social context, but rather as

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5 Accord Pour la Paix et la Reconciliation au Mali. 2015, <http://photos.state.gov/libraries/mali/328671/peace-accord-translations/1-accord-paix-et-reconciliation-francais.pdf> (accessed 12 July 2017).

6 Rapport General de la Conference d'Entente Nationale Bamako, 27/03/2017-02/04/2017, [http://news.abamako.com/documents/docs/rapport\\_cen.pdf](http://news.abamako.com/documents/docs/rapport_cen.pdf).

7 Hallaq, Wael. 2009. *An Introduction to Islamic law*, Oxford University Press, 175.

8 Takiou, C. 1999. *Modes alternatifs de règlement des conflits*, Justice Pour Tous, le Journal du Forum National sur la Justice, n. 4.

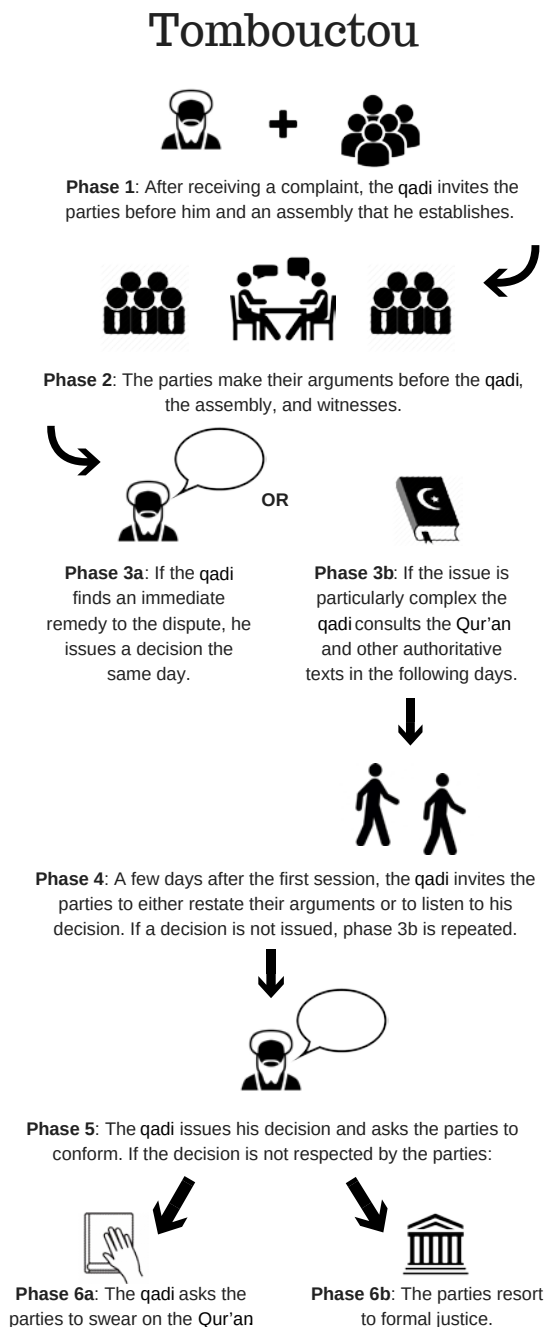
9 *Ibid.*, 11-12.

an 'integral part of larger social units,' such as the village. Immersed in a complex social landscape, the qadi operates at the intersection of moral and social demands and the formal legal Islamic normative.<sup>10</sup> His mandate is therefore twofold, settling disputes and preserving social cohesion. As one respondent from Gao elaborated, 'we believe that we are Muslims and [the qadis'] decisions are taken in accordance with the Qur'an and they maintain social cohesion.'

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<sup>10</sup> *Ibid.*, 62.

**Figure 6 An example of customary justice in Tombouctou**



This infographic is based on the aggregation of 14 interviews describing the customary justice systems in Tombouctou. No respondent described the entire process from beginning to end.

Based on the findings of this report,<sup>11</sup> litigants appear before the qadi without the support of a professional advocate. One interviewee in the Tombouctou region, the area where the qadi is most prominent, explained that 'at the invitation of the qadi, the problem is presented before him, his advisers, and some other notables.' Disputants make their arguments directly in the presence of the qadi, and introduce their cases with great simplicity, unhampered by anything resembling the setting of formal tribunals. As one respondent explained, 'the debates are open to the public, for anyone who wishes to attend.' During the hearings, the claimant and his witnesses are invited to make their arguments; the qadi then listens to the counterpart, the defendant and his witnesses. If a witness cannot attend, the discussion of the case is postponed until they become available: 'I remember that once, during the hearings, a witness had to leave for an emergency. It was then necessary to extend the hearings until he returned, two days later.'

Respondents described the qadis as handling mainly civil matters, including property, heritage, marital issues and verbal disputes. Nevertheless, as MINUSMA reported in March 2015, given the absence of the state and the paralysis of its institutions in the north of the country, some qadis now adjudicate criminal matters on a limited basis.<sup>12</sup>

In addition, according to those interviewed, the qadis serve all members of the community without discrimination. Interviewees did not highlight any noticeable gulf between the qadis and themselves, however economically impoverished or educationally disadvantaged they might be. In several instances it was emphasized that access to justice through the figure of the qadi was universal. As one respondent explained, 'all those who have a difficulty or a problem are allowed to appear before the qadi. He makes no difference between men and women, youth and elders.' Notably, the services of the qadis in the field of dispute settlement are free. Some interviewees also highlighted that corruption and politics might deteriorate the functioning of customary justice systems. None, however, made that allegation against the qadis.

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11 We were only able to interview one qadi for this report, so the views on these issues are for the most part expressed by those with direct experience with a qadi, or from their position as a member of a community that utilizes one.

12 Mission Multidimensionnelle Intégrée des Nations Unies pour la Stabilisation au Mali (MINUSMA). 2015. 'Rapport sur la situation des droits de l'homme au Mali du 1er novembre 2013 au 31 mai 2014,' 20 March, United Nations Human Rights Office of the High Commissioner, 34, <http://www.ohchr.org/Documents/Countries/ML/RapportNovembre2013Mai2014.pdf> (accessed 12 July 2017).

## 4 Politics

This study revealed a strong preference for customary leaders to be divorced from politics to ensure that their counselling is pure and not based on external interests.

In Douentza, it was mentioned that if the customary leader belongs to an opposition party, his power would be undermined. This is seen as a general issue here because many customary leaders have become members of the opposition since decentralisation. One belief in Douentza is that democracy has led to the fragmentation of families, and thus people are less willing to listen to the village councillors' decisions. It was also expressed that, because of democracy, people who disagree with the village chiefs' decisions are more likely to ignore them and instead bring their cases to the formal justice system.

In Mopti, respondents wanted to depoliticise the customary leaders because being involved in politics prevents them from making their decisions in an upright way 'as they did in ancient times.' One interviewee also explained a belief that from the beginning of the postcolonial era the government intended to weaken these leaders because they were the ones who rebelled. Nevertheless, the preference is still to try to 'manage certain cases at the level of customary justice ... [because] we do not need a French system that divides us more.'

Democracy was also identified as weakening the customary system in Niafunké, where an elected prefect chose a village chief who was not supported by the village council and the communal council (see figure 7). This led to litigation at the Supreme Court in Bamako, and the village was left without a chief in the meantime. The decision-making process of some customary leaders in Niafunké is also seen by some as being corrupted by politics given that they allegedly make decisions based on political interests rather than from 'the soul and conscience.' This issue led one respondent to prefer modern justice where 'at least there are remedies' and help in defending one's position.

**Figure 7 An example of customary justice in Niafunké**

## Niafunké

**Phase 1:** There appears to be a clear hierarchy in dispute resolution, starting with the family, followed by the traditional chiefs (at village/ district level), the imam, and the formal authorities represented by the mayor or the sub-prefect.



**Phase 2:** The village chief/head of district invites the parties to make their arguments individually, and subsequently together before his advisers and witnesses.



**Phase 3:** The village chief/head of district and his advisers assess the arguments of the parties and make a decision together.



**Phase 4:** The village chief/head of district issues the decision.



**Phase 5a:** If the parties are satisfied with the decision they might resort to formal justice to certify the outcome.

**Phase 5b:** If the parties are unsatisfied and/or the decision is not implemented, they might resort to formal justice for further litigation. In this case, they have to file a request with the mayor, or the sub-prefect.

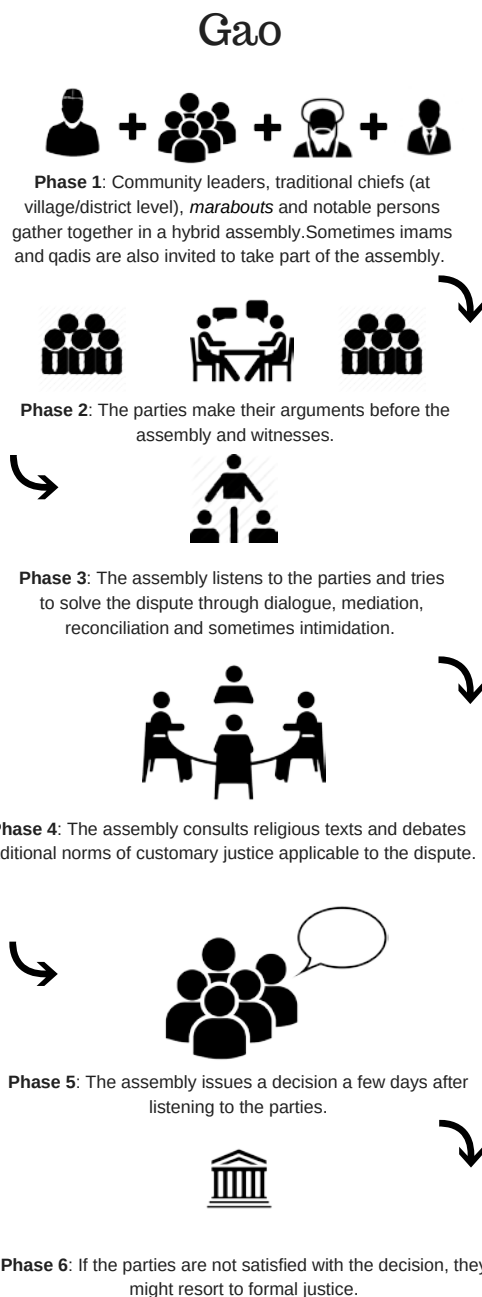
This infographic is based on the aggregation of 17 interviews describing the customary justice systems in Niafunké. No respondent described the entire process from beginning to end.



This issue of politics and customary justice also came up in a discussion that a customary leader in Niafunké had with mayors from Tombouctou. In Tombouctou, they reportedly attempted to restore the principle that a mayor cannot be the chief at the same time, but those chiefs who were also mayors would not agree. The basis of the argument for chiefs to be apolitical is that chiefs must be seen as being open to everyone. If both the position of mayor and chief are held simultaneously, faith in the chiefs can dwindle.

In Gao, it was also mentioned that although the *marabouts* still treat everyone the same way, the village chiefs have become political and therefore discriminatory against certain parties (figure 8). And in Ansongo, it was argued that the customary leaders and imams should not be attached to a political party to ensure their impartiality.

**Figure 8 An example of customary justice in Gao**

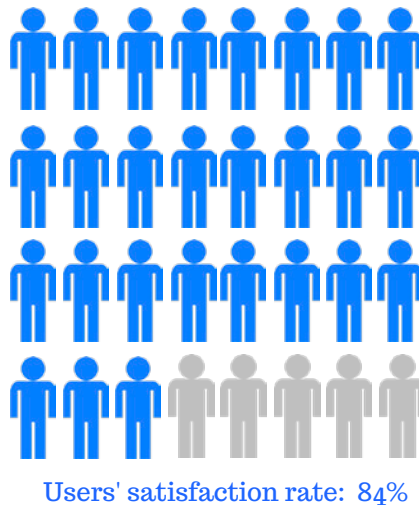


This infographic is based on the aggregation of 26 interviews describing the customary justice systems in Gao. No respondent described the entire process from beginning to end.

## 5 Corruption

The majority of respondents throughout the three regions who touched on the issue of corruption viewed the formal justice system as being more corrupt than its customary justice counterparts. This sentiment was expressed with statements such as ‘the lawyers get paid to convert the truth into lies. Lawyers only like lies.’ And though many also viewed customary systems as corrupt, the majority also believed that those systems were more likely to be able to return to their roots and provide ‘pure justice’ than that the formal system would become truly just. Further, only three people told of instances where they or a disputant against them had intentionally bypassed customary justice leaders to find a fairer outcome in the formal justice system (see figure 9).

**Figure 9** User satisfaction rate of individuals who either brought a dispute to a customary justice mechanism or who were summoned to answer for one



In Mopti, one interviewee asserted that because people do not understand the way the formal system works, ‘corrupt officials find the solution of their salvation at this level.’ Some intermediaries between the customary systems and formal system also provoke conflicts to generate a fee, which they also may even informally share with the judge. One customary leader who was asked whether he would ever work with the formal justice system replied, ‘sincerely not... because we saw nothing that is certainly clean,’

and ‘when we say God they say money.’ Some also said that the traditional chieftainship should be valued more because the mayor or the prefect can be unfair.

In Niafunké, a respondent argued that within ‘[formal] justice, there is no justice’ and the one who pays more money is the one who receives a judgement in their favour. Another respondent, however, bemoaned that ‘traditional justice people are no longer correct, there is too much influence, there is often too much interpretation.’ Yet another believed that ‘there is no justice, either customary justice or modern justice. To be right you have to pay something... Here there is cannibalism.’ In this location in particular, some cases have lasted in the formal justice system for 10 to 20 years and have spanned six or seven judges; the customary chiefs also do not have any incentive to resolve the problem because they may take a share of the formal judges’ per diems. One interviewee explained that though customary justice does not need to be suppressed, ‘the actors in this customary justice must work as they should. When you are chosen as a village chief you must be right between your populations, you must give with honesty.’ Another said that the ‘old people’ are also influenced by money, and that the only weakness of the customary justice systems is ‘money and complacency, nothing but that.’

In Gao, an interviewee complained that ‘customary leaders of other times were chosen by a hereditary system, but now they can even be chosen by white corruption and there is no respect.’ In Ansongo, one interviewee was not happy that he had to go to modern justice because he was unsatisfied with a decision made by a customary leader, and that ‘if the truth is not said’ he would go to the formal system (see figure 10). Another, however, said that customary justice systems were superior to the formal system, which ‘only tells the truth of the rich.’

**Figure 10 An example of customary justice in Ansongo**



This infographic is based on the aggregation of 17 interviews describing the customary justice systems in Ansongo. No respondent described the entire process from beginning to end.

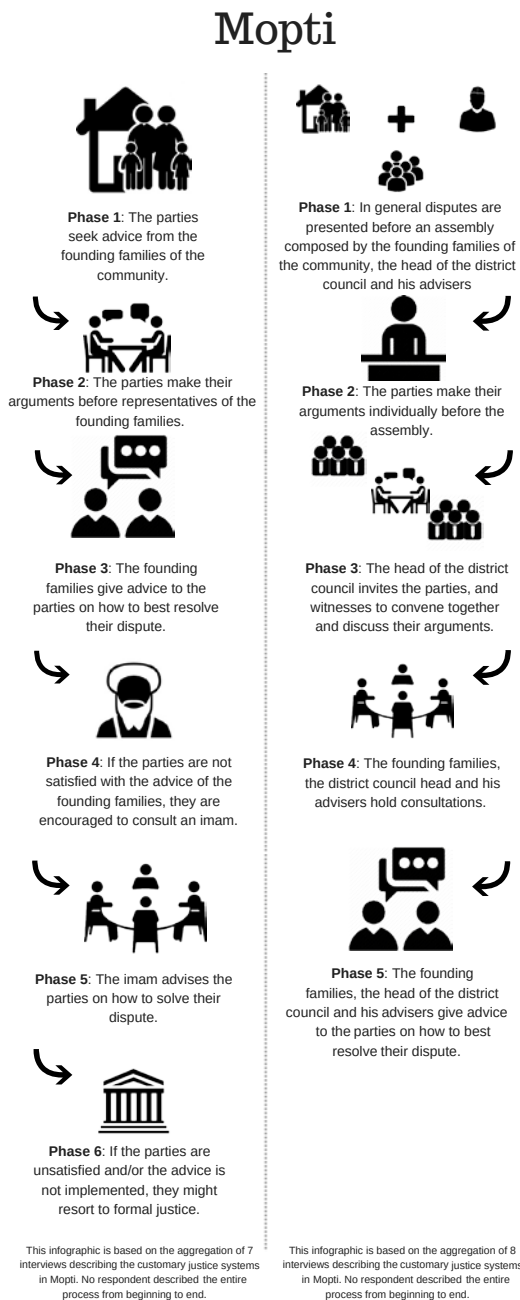
## 6 Social cohesion

An overwhelming majority of respondents trust customary justice mechanisms primarily because of their ability to preserve social cohesion within the community. This is especially important in rural contexts, where customary justice mechanisms are recognised as useful for the organisation of a neighbourhood or village and for maintaining peace and local traditions.

It is believed that, to maintain social cohesion, disputes should be solved internally, within the family or village. For example, an interviewee in Niafunké explained that even if he disagreed with a traditional leader's decision, he would not bring his case to modern justice for the sake of social harmony. Modern justice is depicted as an institution that tears down social fabric and disrespects traditions and values. Rather than resolving disputes, modern justice is believed to complicate social interactions between individuals. Bringing someone to state justice is considered unforgettable and unforgivable. As one person explained, 'Even if we are brothers of the same father or the same mother, we will never get along again.'

Another common claim was that traditional leaders have the legitimacy and ability to know what is good for the community. Traditional actors are seen as being more aware of the stakes and social implications of their decisions, and therefore as being more willing to work to create compromises between parties. This in turn is seen as supporting the maintenance of peace and cohesion within the community.

**Figure 11 Examples of customary justice in Mopti - two distinct pathways described**



## 7 Treatment of vulnerable groups

### Women

Responses in relation to women and customary justice systems varied. Many interviewees across the three regions expressed the view that women are marginalised or prevented from directly participating in these systems, especially at a leadership or decision-making level. Various statements supported this view: 'If you ever let a woman guide you, you will go bankrupt.' 'It is always said that a man is superior to women in customary justice.' 'There is never equality between a man and a woman, the woman must always be submissive.' Often the reasoning for this discrepancy in treatment was tied to religious texts, specifically the Qur'an, with statements such as 'they are treated as such in relation to religion' and 'I know the place of women in the Qur'an.'

An assertion heard in the regions of Mopti and Tombouctou in particular is that women are not truly marginalised because male leaders wait to take major decisions until they receive counsel from their wives at night. Other arguments to prove inclusivity included women's participation in the processes as victims and that the emphasis of these systems is actually on women and children. A handful of respondents noted that the formal justice system, which holds men and women on more equal levels, contradicts the customs and traditions of the customary systems, even to an unacceptable degree. For example, some customary leaders reportedly believe that women have fewer property rights than men. This, some argue, would make adaptation of the customary justice systems to the modern justice systems difficult because 'it would be a falsification of what God said.'

Such views have led some respondents to believe that modern justice is better because it provides more equality and to point out that the belief in customary systems that a woman is inferior to a man has caused a discord between the two systems. A question was also posed as to why the judges of the formal system do not use female assessors to provide needed advice. However, because judges tend to select local customary leaders as assessors, it may not be discrimination as much as a reflection of the current reality that women will likely not hold these positions in their communities.

Eighteen respondents also stated that customary justice mechanisms are either already evolving regarding the role of women or at least capable of doing so. Some of these statements were based on a perception that Islam has evolved to provide women with



more rights than local customary leaders. Others pointed out that women increasingly have their own associations and participate in the leadership of political parties. In Niafunké, for example, four women are included at the commune council level and there is a mayor who has a female assistant. Two interviewees also asserted that one promising development is that women participate in local debates more now, and that with training the customary justice systems would be able to adapt.

Notably, in some communities, women were mentioned as functional parties in the customary justice system, even if not in leading roles. A village chief explained that in the event of difficulty he might call upon an imam and 'maybe a woman, a youngster, or an elder.' In one instance, a mayor created a committee, which included two women, for the mediation of a dispute. Two respondents explained that women, in particular older ones, are respected and active actors in customary justice systems. Of 57 respondents across the three regions on whether customary justice can adapt and become more inclusive of women, 22 answered yes, 18 answered no and 17 were uncertain.

## Youth

Results were relatively sparse and mixed about the treatment of youth by customary justice mechanisms because interviewees were not especially responsive on the issue. We were also not able to interview members of the youth population beyond a few people under the age of 30 and several leaders of youth associations. A helpful follow-up to this study would therefore be one that focuses on youth populations in the northern regions on the same issues. The information revealed is still a helpful start, however, showing that views on these systems' performance in connection with the youth population are varied, and providing a few descriptions of how they work for youth-related disputes.

In Niafunké, three residents reported their belief that customary justice can evolve regarding the treatment of youth. One explained that in the case of disputes between children of the same village, the issue is first handled within the family. If the family is unable to resolve the conflict, the case is brought to the village chief and, as a last resort, to the imam. Others explained that though women and children did not have any voice for a long time, today they do.

In Tombouctou, three in four interviewees who addressed this topic believed that, as is true for the issue of women, the laws of the state justice system regarding youth directly contradict customary justice traditions. Another interviewee explained that illegitimate children are unable to inherit under sharia law.

Interviewees in Gao who were responsive on this issue were split between those who believed that customary justice can and cannot adapt in relation to children. Customary

justice leaders affirmed that the rights of children are taken into account in the Islamic religion, though the extent of those rights was not specified.

In Douentza, the few people who addressed the subject of youth viewed customary justice as being as available to this demographic as it is for everyone else. In Mopti, three in five interviewees who addressed this topic expressed doubts that customary justice mechanisms would be able to change in regard to their treatment of youth. One individual explained that his doubts were based on traditional society being organised along age groups, which clearly define the responsibilities, rights, duties and privileges of each individual.

## Slaves

For the most part, questions about the treatment of slaves by customary justice systems were dismissed as irrelevant in light of the belief that slavery no longer exists. However, it was also explained that “[E]ven if Article 2 of the Malian Constitution ensures equality between every Malian, we are in a hierarchical society where each member knows where [his or her] position stands.”

Among those who considered slavery to be a living institution in these regions, two groups could be identified. The first includes people who believe that customary justice can evolve in its position towards slavery. This notion is based on the religious argument that slavery is strictly forbidden in the Qur’an because everyone is equal in the eyes of God. Customary justice actors, and religious leaders in particular, therefore have the duty to treat everyone, including anyone considered to be a slave, equally and fairly.

The second group includes people who think that customary justice mechanisms are unable to evolve in regards to slavery. This opinion is based on the belief that the idea of slavery is too deeply rooted in the mentality of people in certain areas, and in the hierarchical Malian societal structures where family background confers specific rights, duties and privileges. For instance, two interviewees affirmed that a ‘slave’ would never dare to bring his ‘master’ to customary authorities. Another, however, pointed out that a generational gap exists, so even though old slaves would not bring their master to justice, younger generations might.

The interviews also offered interesting insights on the issue of slavery. A few respondents in Gao, Ansongo and Mopti asserted that certain slaves are satisfied with their status, or that the slaves are viewed as immediate family members. Other interviewees looked on slaves as people benefiting from their status. One declared that some slaves refuse to be liberated because they believe that according to their ancestors’ will, they have a duty to their masters to remain with them. Another revealed that in Mopti some captives have been chased away by their masters for financial

reasons; the masters realised that their captives represented a financial burden when their slaves' expenditures were higher than their return.

In Douentza, two village chiefs and one customary justice adviser stated that all strands of society, including descendants of slaves, are represented in their village councils (see figure 12).

**Figure 12 An example of customary justice in Douentza**



This infographic is based on the aggregation of 17 interviews describing the customary justice systems in Douentza. No respondent described the entire process from beginning to end.

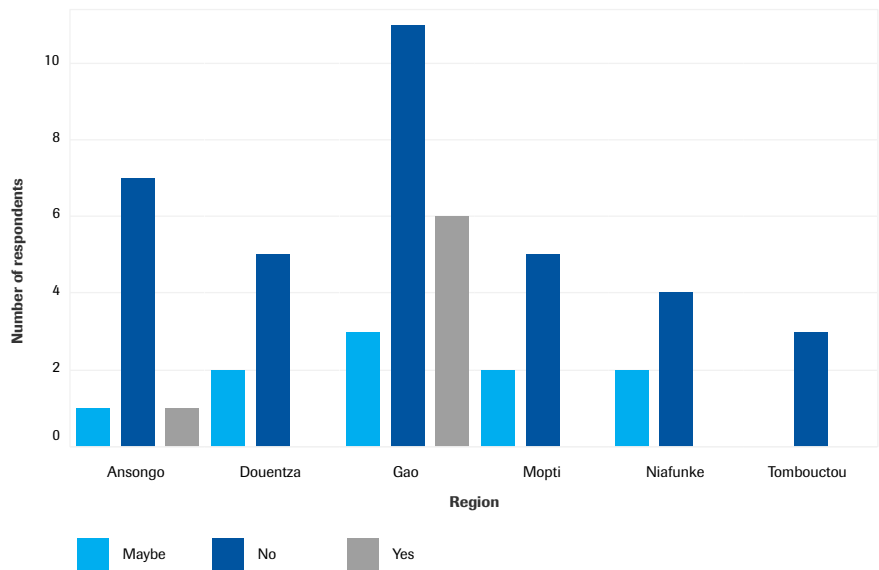
## 8 Crimes related to the crisis

Of those respondents who addressed this issue, a majority, including customary justice leaders, believe that customary justice mechanisms are unable to deal with cases related to the recent security crisis (figure 13). One reason is that because customary justice is not officially recognised and endorsed by state authorities and institutions, it does not have the necessary enforcement strength to do so. Another reason is the lack of technical and financial means of customary systems, given that 'war crimes' require thorough investigations and technical expertise that traditional leaders do not have. Additionally, people who committed human rights abuses during the security crisis often did so as part of rebel and jihadist groups, and customary leaders find it challenging to handle atrocities committed in that context.

An interviewee from Douentza set up a crisis committee of 12 people, representing each ethnic group, which acted as an intermediary between the population and the jihadists, and which suggests some involvement by customary leaders in a crisis-related political mediation role. In Niafunké, a similar committee was established but, according to one respondent, was at the mercy of the Islamists and therefore powerless. However, another respondent described how the crisis committee there was able to persuade the 'rebels' to return a child and money taken from him to his family, and to prevent them from plundering a merchant's shop.

A minority of respondents believed that customary mechanisms are capable of handling the crimes related to the crisis. One customary leader explained that these crimes could be handled based on the solutions offered by religion, and pointed out that a precept of the Qur'an is that if you kill someone, you will also get killed. Although this could be in contradiction of formal law, he argued that at least the reasoning is not politicised. A second leader explained that they would be capable to handle these cases because if people want a problem to become small, it will become so. A third leader argued that they could handle such cases if they 'were advised.' Others believed that the customary leaders' ability to bring about social cohesion would work in these cases, especially in a time of peace.

Figure 13 Can customary justice address crimes related to the crisis?



## 9 General crimes

Of those who addressed the issue of general crimes, most respondents asserted that the formal justice system would be the most appropriate venue. In the event of rape and murder within the community, the families of victims are often unsatisfied with the judgement made by customary authorities and tend to bring the cases to state justice. One interviewee cited the example of a little girl who was raped and killed by a local man. The customary justice intervention did not satisfy the victim's family, which then brought the case to the gendarmerie. One customary leader also explicitly stated that he would not take murder cases; another directly stated that he would not take rape cases; and a third asserted that he would not take on either type of case.

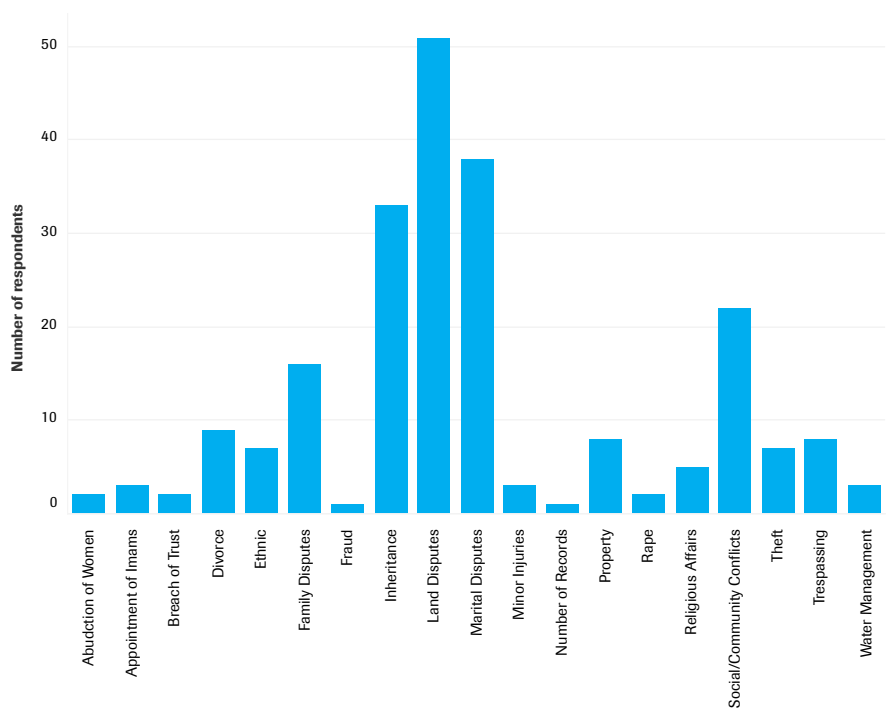
On the other hand, there are accounts of rape and murder that were successfully resolved by customary justice leaders. For example, two violent crimes in Niafunké, including one murder, were solved through confessions and the sacrifice of animals. There was also a rape case in another locality where both the husband of the victim and a party related to the assailant were satisfied with the resolution.

Notably, however, the respondents in Gao were more equally divided on this question: eight of 22 people asserted that customary justice mechanisms are able to handle criminal cases, and that the interference of formal justice means that customary leaders are being ignored. This argument is based on the belief of the power of these authorities to restore social cohesion.

# 10 Land disputes

Overall, respondents cited land disputes, including property rights, trespassing and tenure, as the type of conflict they most frequently bring before customary justice (figure 14). Others cited property-related disputes. Specifically, nine interviewees brought disputes in relation to the water rights of fishermen, six brought disputes related to grazing rights for animals and three brought disputes related to cattle driving. All these litigants declared themselves satisfied with the mediation process and its outcome.

Figure 14 Dispute types cited



These findings align with a recent report in the Malian press that rural land ownership remains an important source of social conflicts and rivalries, and that most land-related conflicts involve agricultural lands, which are a scarce resource across the country. This shortage is further aggravated by the speculation of private entrepreneurs, against



whom farmers feel powerless.<sup>13</sup> Further, these findings also match a 2015 International Monetary Fund report stating that ‘the real estate and property sectors in Mali are not formally regulated or supervised’ and that customary practices dominate in the awarding of land titles. This state of affairs has led to fraudulent actions to arbitrarily award land, among other corruption related issues.<sup>14</sup>

In recent years, recognising that the status quo on the regulation of property is untenable, the Government of Mali has attempted to craft and adopt a law to improve the management of real estate and to replace the perceived arbitrariness of customary practices. The final law, adopted by the National Assembly in March 2017, *Loi portant sur le foncier agricole*, attributes specific roles to customary justice actors. For example, village chiefs are put in charge of any land transactions in which ownership is not formally registered, including donations and loans of land for a specific use. Every transaction authorised by a traditional chief is then filed with the municipality and legalised by the mayor. With regard to property regulations, customary ownership not registered with the municipality becomes official and permanent after 20 years of continuous use of the land by the same individual.

Additionally, every holder of customary ownership over a parcel of land is entitled to have their property rights formalised by the municipality, but only after approval by the village chief. Customary rights are recognised, preserved and can be transformed into ownership rights in accordance with the regulations. Most important, no agricultural land title can be established without verifying precedent customary agricultural land rights. Finally, the law regulates cattle driving, grazing and fishing rights. In the case of conflicts arising from land disputes, every village will have a Village Land Commission, which will be authorised to attempt a mediation of any dispute before deferring it to formal justice. No details are given with regards to their anticipated structure, however, including whether marginalised groups such as women or youth would be included in the decision-making process.

The law passed in March 2017 is potentially beneficial for both customary and formal justice, and for efforts to ultimately better integrate the two. First, the law provides clear guidance to customary chiefs, reduces arbitrary decision making and leads to the formalisation of the decisions of customary chiefs. It thus has the potential to curb one of the main identified flaws: the ‘lack of written evidence, everything is oral, no enforcement power, no obligation.’ Moreover, the law guarantees greater inclusiveness

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13 D’Almeida, C. 2016. ‘Foncier rural: l’épine malienne,’ *Journal du Mali*, <http://www.journaldumali.com/2016/08/11/foncier-rural-lepine-malienne/> (accessed 12 July 2017).

14 Esposito, G., and Gunka, C. 2014. ‘Mali, Technical Assistance Report: Anti-Corruption and Anti-Money Laundering,’ IMF Country Report No. 15/185, International Monetary Fund, Washington, DC, 14, <https://www.imf.org/external/pubs/ft/scr/2015/cr15185.pdf> (accessed 12 July 2017).

of vulnerable actors such as women and youth, by assigning them at least 15 percent of the agricultural land. Given the state's attention to the issue, land disputes will likely be a driver of the evolution of customary mechanisms and of their connection to formal justice institutions.

# 11 Respondent Recommendations for Improvement of Customary Justice Systems

All respondents were asked what they would do about the customary justice systems in Mali if they had no limits. A popular recommendation was for customary leaders to receive training, including of their own traditions, conflict resolution methods, human rights, technology, war crimes and science. Many recommended that judgements and practices be recorded and that the state put enforcement power behind the rulings of customary leaders. Interviewees also suggested that customary systems could be strengthened by monitoring decisions, creating a security institution to work with customary justice actors, regulating who is allowed to become a customary justice leader and reinvigorating the practice of maintaining a register of 'notable' personalities.

Many were concerned about breaking down customary systems without a solid mechanism to replace them, suggested that customary law be taught in Malian law schools to ensure that lawyers are aware of how they work and encouraged use of the media to inform people about these mechanisms. Additional calls were to halt efforts to assimilate to the legal systems of other cultures and to instead emphasize learning and relying on local customary practices, including by studying the evolution of customary justice systems, their effectiveness and the values they are based on.

Further recommendations were to formalise and motivate customary leaders by providing them a salary and an office. Some customary leaders also expressed a desire for technical support and training by formal justice system officials. Respondents suggested efforts to find a middle ground by creating conflict resolution systems that straddle customary and formal justice, acknowledging that this effort would take considerable effort and involve numerous meetings and discussion. In terms of existing links between the formal system's judges and assessors from the customary justice systems, some suggested ensuring that the judges consult and listen to the assessors respectfully rather than disregarding them or using them opportunistically to back up corrupt decisions. Many respondents wanted clarification on what issues should be handled by customary versus formal justice leaders, and for it to be mandatory for the state officials to send the customary justice systems anything designated for them.

In regards to women, calls were made to ensure that customary systems treat men and women equally. Many also recommended that women be included at the leadership level of customary justice systems and that the formal justice system use women as assessors.

More specific recommendations include having local members of Réseau des Communicateurs Traditionnels (RECOTRADE) become involved in resolving the crimes related to the crisis rather than only members from Bamako. Some also would like to bring back practices such as banishment (for those who disregard customary justice systems and their rulings) and the 'fire test' (used in Douentza – which entails suspects walking across fire barefoot and being declared guilty if their feet are swollen the next day). Others would like the imams and the general population to be better educated in Islam, because it is believed that applying it to all cases would prevent problems. A respondent from Ansongo recommended diffusing conflicts by giving victims two sheep as long as emotions ran high. Lastly, one respondent explained that in Mopti dangerous conflicts related to inheritances at the village level are emerging because customary justice leaders do not have a tradition that addresses the distribution of property to those who have left and later returned. It would be helpful, the respondent observed, to support the customary leaders there in finding a suitable way to address the issue.

## 12 Policy recommendations

This study has endeavoured to provide a clearer picture of the customary justice mechanisms in the northern Malian regions of Gao, Mopti and Tombouctou, including how they function, and of the issues surrounding them. Despite our efforts within the constraints of available resources to interview a cross-section of the population and across as large an area as possible, the sample size and geographic area covered were not large enough for conclusive results. Nevertheless, the snapshot can still be used to point the way forward in terms of policy recommendations and as a basis for further study.

First, as in most fragile or conflict states where communities tend to be disconnected and fragmented from one another, customary justice mechanisms in each of the selected circles have unique characteristics. Accordingly, each circle would need to be approached in a context-specific way, including in terms of their connection to politics and corruption. Political economy analysis of local justice sector dynamics can also assist in making informed decisions about the best entry points for each circle from all levels to ensure inclusive engagement.<sup>15</sup>

Second, interventions are shown to be welcome in certain cases, for example, for customary justice actors to receive enhanced training, for judgements to be recorded and for the state to put its enforcement power behind customary justice rulings. Given the expressed interest and openness to such interventions, it would be advantageous for donors to build on this existing momentum for change. Further, efforts by the Malian state to revalorise the role of the qadi and other traditional mechanisms in peace negotiations and to use customary justice to better address land disputes are ripe entry points for any interventions to strengthen these systems.

Third, certain identified justice gaps could be addressed, for example, in the area of crimes related to the crisis, which very few customary justice leaders were willing to address, and which are also not currently being effectively dealt with by the formal or international justice sector. As the optimal solution is not always a possibility in fragile or conflict states, those who consider customary justice systems to be the best available solution to address such crimes could build on the desire in certain locations for training in war crimes investigations, human rights, science and technology. As respondents also recommended, the state would need to support these actors, whether through the justice or security sector or both. As mentioned, a justice gap is also reported in Mopti,

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15 Goff, D. 2016. 'Working with Informal Justice: Key considerations for confident engagement,' Knowledge Platform Security and Rule of Law, The Hague, December.

at least at the customary justice level, related to distribution of the property of those who have left and then returned.

Fourth, the role of vulnerable groups – namely, women, slaves and the youth population – is still contested in customary systems. Thus, resistance would need to be countered, as well as the question of whether strict adherents to Islamic law would be able to reconcile their rulings with all of the rights accorded by the Malian state. A variety of interventions would still work to create change, including the forceful implementation of quotas at the leadership level, the creation of competing inclusive mechanisms, and creating space to debate whether excluding these vulnerable groups at the leadership level is in line with one of the primary values of customary justice, which is to address the justice needs of the entire community. Such interventions have been attempted enough in both development and general institutional change contexts that stakeholders should be able to find lessons learned and evidence as to their impact in various settings.<sup>16</sup>

Fifth, the customary and formal justice systems in Mali are shown to work together in an intermingling way, which could be better clarified and perhaps adapted into a more coherent unified system. Supporting the engagement of these actors in organised dialogues such as justice summit events or smaller gatherings, both at the national and local level, could enable them to come to a better understanding of one another's methods, and to discover updated ways of working both together and apart. More creative strategies could also be used, such as radio shows or dramatic productions, which use story-telling methods to describe issues such as how each system works or how they could be better fused together.

Sixth, because this study did not include members of the youth population in any significant way, a follow-up study that focuses on this sector would be helpful to ensure that the customary justice mechanisms in these regions have youth support. Given that the age group of those 14 years and younger makes up 47.27 percent of Mali's population alone, the buy-in of youth into the value of these mechanisms will be essential if they are to be effective in the future.<sup>17</sup>

Finally, not all needs of these systems can be fully met by interventions into the justice sector alone. For example, many desire to have the judgements recorded, but because many of the actors and beneficiaries of these systems are illiterate the concurrent or preceding need is for literacy training. Looking at these issues from a sector-wide approach is then likely to be more effective than targeted justice sector interventions.

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<sup>16</sup> *Ibid.*

<sup>17</sup> 'Mali Demographics Profile 2016,' *Index Mundi*, 8 October 2016, [http://www.indexmundi.com/mali/demographics\\_profile.html](http://www.indexmundi.com/mali/demographics_profile.html) (accessed 12 July 2017).

# Conclusion

Unique customary justice systems are clearly still prominent in the northern Malian regions of Gao, Mopti and Tombouctou, and interest on the part of customary leaders and the populations there for them to play a larger and more official role is considerable. Those in these regions want more support of these systems, including training, recording traditions and financing. It is also clear that although customary justice actors in these regions can be politicised and corrupt, they also offer a wealth of knowledge on how to resolve disputes and maintain peace within their communities. Some are also open to dealing with a range of crimes, including in areas where justice gaps are notable, such as in crimes related to the crisis. National and international stakeholders should continue to engage with the populations in the regions of Gao, Mopti and Tombouctou on their views of customary justice systems, and continue to support the evolution of the justice sector in Mali.

# Annex 1 Methodology

## Data collection

Desk research and phone interviews were carried out between February and July 2016. An expert meeting of academics, practitioners and policy makers who have undertaken similar studies or who have knowledge of the customary justice systems in Mali or western Africa was also convened in The Hague on 22 February 2016.

To carry out the field research in northern Mali, the Clingendael Institute partnered with the Bamako-based Groupe Observation des Dynamiques Sociales Spatiales & Expertise Endogène (Groupe ODYSSEE). Under the supervision of Dr Brahima Fomba, Groupe ODYSSEE's scientific coordinator, a team of Malian researchers, in some cases with the help of local fixers, interviewed 108 individuals between 13 August and 14 October 2016. This team consisted of the following researchers: Mamadou Togola (Mopti and Niafunké); Dr Bréma Ely Dicko (Douentza); Mahamadou Doumma (Ansongo); Adizatou Diallo (Gao); and Sane Chirfi Alpha (Tombouctou).

The principal field research method was qualitative semistructured interviews that had a slight variance per group, to take into account the different contexts from which they would be speaking. The sampling strategy was premised on including individuals that experienced customary justice systems from different perspectives. The researchers identified the relevant authority figures and community members in each of the locations they visited. The interviews were targeted at: 1) actors in the customary justice system; 2) persons who have brought a dispute to a customary justice system; 3) persons who have been called to answer a dispute in front of a customary justice system; and 4) a sampling of the general population of each area, including administrative authorities, actors of the state justice system, civil society groups, marginalised groups and religious minorities.

Before the researchers went into the field, a second expert meeting was held on 9 August 2016 at Groupe ODYSSEE's headquarters in Bamako with representatives of the various international organisations carrying out similar studies in Mali, as well as other local stakeholders, including academics and customary justice leaders. A third expert meeting was held in Bamako on 12 August 2016 with seven members of Réseau des Communicateurs Traditionnels (RECOTRADE) to gain advice on the research questions and to hear firsthand accounts of the work of customary justice leaders.



## Data analysis

For the data analysis, all interviews were imported and coded in Microsoft Excel, and every individual was allocated a unique number that identified their interview in the dataset. After scanning the content of the interviews, we identified a number of recurrent dominant themes: 1) age of customary justice actors, 2) age of users of customary justice systems, 3) alternative profession of customary justice actors, 4) number of disputes, 6) type of disputes, 7) inclusiveness of women, 8) satisfaction with the outcome of customary justice systems, 9) collaboration between customary and formal justice, 10) perceptions of customary justice systems by their users, 11) mechanisms of customary justice system, 12) resolution of crisis crimes through customary justice and 13) recommendations by customary justice actors. This initial coding allowed us to better understand sociodemographic characteristics of the respondents and to identify elements of interest for this report. Finally, all these themes were transformed in descriptive statistics and infographics. For this purpose, we used text mining techniques extracting meaningful numeric indices from the text of the interviews, and made the information contained in the text accessible to data mining processes. The themes of each section of this report were either areas of interest identified in advance by international stakeholders working in the justice sector in Mali or topics repeatedly discussed by the respondents.

**Table 1 Breakdown of interviewees**

Circle	Customary justice leaders	Persons who have brought disputes before customary justice	Persons who have been called to answer a dispute before customary justice	Sampling of general population of each circle
<b>Ansongo</b>	3	3	3	8
<b>Douentza</b>	4	2	2	9
<b>Gao</b>	4	2	2	19
<b>Mopti</b>	5	3	2	5
<b>Niafunké</b>	4	2	3	9
<b>Tombouctou</b>	5	5	3	1

# References

## Books

Hallaq, Wael. 2009. *An Introduction to Islamic law*, Oxford University Press.

## Reports, articles, programming and policy documents

Accord Pour la Paix et la Reconciliation au Mali. 2015, <http://photos.state.gov/libraries/mali/328671/peace-accord-translations/1-accord-paix-et-reconciliation-francais.pdf> (accessed 12 July 2017).

D'Almeida, C. 2016. 'Foncier rural: l'épine malienne,' *Journal du Mali*, <http://www.journaldumali.com/2016/08/11/foncier-rural-lepine-malienne/> (accessed 12 July 2017).

Esposito, G., and Gunka, C. 2014. 'Mali, Technical Assistance Report: Anti-Corruption and Anti-Money Laundering,' IMF Country Report No. 15/185, International Monetary Fund, Washington, DC, 14, <https://www.imf.org/external/pubs/ft/scr/2015/cr15185.pdf> (accessed 12 July 2017).

Goff, D. 2016. 'Working with Informal Justice: Key considerations for confident engagement,' Knowledge Platform Security and Rule of Law, The Hague, December.

'Mali Demographics Profile 2016,' *Index Mundi*, 8 October 2016, [http://www.indexmundi.com/mali/demographics\\_profile.html](http://www.indexmundi.com/mali/demographics_profile.html) (accessed 12 July 2017).

Mission Multidimensionnelle Intégrée des Nations Unies pour la Stabilisation au Mali (MINUSMA). 2015. 'Rapport sur la situation des droits de l'homme au Mali du 1er novembre 2013 au 31 mai 2014,' 20 March, United Nations Human Rights Office of the High Commissioner, <http://www.ohchr.org/Documents/Countries/ML/RapportNovembre2013Mai2014.pdf> (accessed 12 July 2017).

Rapport General de la Conference d'Entente Nationale Bamako, 27/03/2017-02/04/2017, [http://news.abamako.com/documents/docs/rapport\\_cen.pdf](http://news.abamako.com/documents/docs/rapport_cen.pdf) (accessed 17 July 2017).

Takiou, C. 1999. *Modes alternatifs de règlement des conflits*, Justice Pour Tous, le Journal du Forum National sur la Justice.