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Women and law in Mali

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Introduction

For our contribution to this *Liber Amicorum*, we have chosen to study the gender dimensions of law in Mali. There are several ways to approach this broad subject. The most common approach would be to focus on specific legal areas, such as inheritance law, family law, property rights, access to natural resources, and violence against women. The next step would then be to discover discriminatory elements in these laws, i.e., those leading to inequality in treatment as between women and men, and suggest ways of improving the laws. These subjects are important but have been relatively well documented for Sub-Saharan Africa. Therefore, we have decided look into the social working of law and its implications for women in Mali. To do this, we first explain what we mean by the social working of law and elaborate on relevant concepts within this framework, such as legal pluralism, forum shopping and semi-autonomous social fields. We then apply this to the legal situation of women in Mali. We are also interested in how organizations established to promote and protect women's rights are addressing these issues. To answer this question, we selected three organizations in Mali, sent them an e-mail questionnaire and spent some time in their offices talking with clients and lawyers. We begin, however, with the presentation of some background information on the position of women and the legal system in Mali.

Gender roles

In Mali, gender roles were until recently well defined and firmly embedded in a tradition of female subordination (Diallo and Vaa 2001: 8). Stratification by age and gender is still strong, and traditional norms of segregation and power differentials dominate gender relations. A Malian woman is first and foremost valued in her roles of spouse and mother. She has to support her husband in every possible way.¹

Despite this prevailing social context, women do get involved in a variety of activities outside the home. They are industrious workers who make ends

¹ Proverbs in the local language may illustrate this gender ideology: 'If a man competes with his brother, and his brother has a stronger spouse, the brother will surpass him in all respects'.

meet at home when men have hard times meeting their responsibilities. According to Diallo and Vaa (2001: 8), Malian women operate skilfully around normative barriers controlling their mobility, autonomy and decision making. The strategies they deploy vary, depending on circumstances, and the social position of the women involved. This means that women, as a category, are not homogeneous. Personal characteristics embedded in a certain social context and kinship network define more or less a woman's room for manoeuvre. This point may seem obvious, but the literature still speaks in an overwhelming way about 'the situation of women in Mali', 'the legal situation of women', etc. It is important to distinguish different categories of women. To illustrate this, we give three examples of women in Mali who were able to secure top-level positions in Malian society. We emphasize that these women are exceptions in Mali, rather than the norm. These examples can, however, give us insight into how gender norms 'work' at a certain level, and into women's socio-cultural position.

Aoua Keita

Aoua Keita was born into an aristocratic family. She was raised by her mother in her father's compound, surrounded by his co-wives and slaves. In 1923, her father sent her – against her mother's will – to the first girls' school in Bamako. Aoua Keita was a gifted student, and in 1931 she obtained in Dakar her diploma in midwifery, the only training offered to girls at the time. Her father arranged her marriage with a young doctor who, just like Aoua, was politically conscious. He encouraged her to enter politics. In her autobiography, *Aoua Kéita: Femme d'Afrique* (1975), she says that she entered politics because she became sterile after an operation. In 1949, her mother-in-law forced her son, who was opposed to polygamy, to divorce her. Aoua Keita, as almost the only literate woman in a largely illiterate society, played an extraordinary role in Gao, managing, with other women, to organize against the repression that threatened to influence the legislative elections of 1951. The USRDA's (*Union Soudanaise du Rassemblement Démocratique Africain*) success in the voting district was total. She became a member of the political bureau of the party. In 1959, she was the first woman in French-speaking Africa to be elected to the assembly governing her country, to her mother's terror and not without admonitions from Modibo Keita, the first president of Mali, to the men of Mali to accept her.

According to Coquery-Vidrovitch (1997: 181), Aoua remains an exception because of her intelligence, her determination, and her not being a 'normal'

Adame Ba Konaré

Mrs Konaré is the wife of the President of Mali, Alpha Oumar Konaré. They have four children. Mrs Konaré is also a respected historian who wrote several books about the history of Mali. She was born into an intellectual family and studied history in Poland. Before she became the first lady of Mali, she was a teacher at the *Ecole Normale Supérieure* in Bamako, and head of the history-geography department. As an historian, she compiled a dictionary of famous women in Mali in which she wrote the bibliographies of prominent Malian women, showing that most of them were active in education, health or welfare (Ba Konaré 1993). According to Mrs Konaré, law is not the main obstacle to women having a professional career. Cultural obstacles are much more important. She even speaks of a war between the sexes, in which the male has, for the moment, the victory (personal communication).

All three women can be called 'rare-exception' women, a term borrowed from Botswana's first female Judge, Unity Dow (2000: 7-8). They have in common that they contribute to decision making from positions of weakness, because they have to deal constantly with trying to shrug off the private sphere that seems to follow them everywhere. They have to adapt to the role expectations with which they are familiar from their rural homes, even when living in an urban context.

The question of whether you are married and have children is very important. Even where women attain professional success and economic self-sufficiency, they are still expected to have husbands and children. Women need to feel respected socially, regardless of whether they are educated or illiterate. The negative way in which Fatoumata Siré is described is a good example. What is more, not only is she divorced, she is also an outspoken feminist. This is a double disadvantage.

The legal system in Mali

In Mali, one can distinguish three systems of law: the 'unwritten' customary law, religious/Islamic law and state law. Like all former French colonies in Africa, Mali inherited a state law system heavily inspired by the French statutes (*Code Civil*, *Code Pénal*, etc.). During colonial times, the legal system was influenced by the efforts of the French to introduce the then current French values with regard to women. After independence, the state laws were more or less adapted to the Malian situation, and by now most statutes are sexually neutral. However, this does not imply gender equality in law.

African woman – being divorced, independent and sterile. Aoua Keita essentially worked for and with women in her profession as a midwife. She never gave up her femininity, calling on women to take care of their looks as well as their economic autonomy. Once a deputy, she worked enthusiastically for marriage law reforms. Yet, her conservative view of women's roles was surprising. As a rural woman, she was critical of modern city women who took on the futile, bourgeois lifestyle of housebound women. In her speeches and her writing, she called on women to remain faithful to tradition and to take care of 'all qualities that are the pride of the mistress of the house'. A woman should first be a faithful wife, a diligent housewife and a good mother, sparing her husband the expense of a maid. She went so far as to make a speech in this vein at the USRDA Congress in 1960, a speech that attracted male members and engendered the hostility of women. Coquery-Vidrovitch (1997: 181) says that Aoua Keita's political programme was short-sighted. It stopped with the liberation from the colonial yoke, which should in itself have brought about women's emancipation. Justly proud of her successes, she ultimately sided with men, who had a hard time admitting success in a woman. She herself did not seem to feel that other women might achieve what she had. Perhaps even though she sought to change society, she had internalized what the process taught her: that she was not like other African women.

In general, after independence, only a few women were politically active, and state policy was not directed at giving women and men equal rights. This changed after 1991 but, in spite of a promising multiparty system, there are still not many women participating in formal politics today. Neither are their lives so well documented as the life of Aoua Keita, who entered the ranks of French-speaking heroines of women's liberation.

Fatoumata Siré Diakité

Fatoumata Siré is the founder and the president of the *Association pour le Progrès et la Défense des Droits des Femmes Maliennes* (APDF) (Association for the Promotion and Defence of Malian Women's Rights). She is also a professor of English. She is divorced and has three children. In an article on the twelve most prominent public figures in present-day Mali, she is depicted as a 'deserter', since she is more active in international women conferences than in the classroom, and as a *toubab*, as a white woman, and not as a normal Malian woman. She is also depicted as aggressive because of her radical feminist statements in public (Mali 2000: 218-25).

First of all, there remain articles in the different 'codes' of the state law that have a strong discriminatory character. The discriminatory elements in the various articles are collected in a study, compiled in 1995 by a group of lawyers from the *Association de Juristes Maliennes* (AJM) (Association of Malian Jurists), on the situation of women in state laws. A striking example is article 32 of the *Code du Mariage et de la Parenté* (Marriage and Family Law), which states: 'The husband owes protection to his wife, and the wife owes obedience to her husband'. In practice, this gives the husband unlimited and uncontrolled power to restrict the freedom of movement of his wife. Even divorced women are restricted in their activities by their former husbands. In 2000, this led to a famous case when a woman wanted to start an international trade business. Her husband, from whom she was legally separated, went to court in order to prevent this, and asked the judge to withdraw his wife's passport. His claim was sustained. When the woman refused to hand in her passport, she was sentenced to two years imprisonment. This verdict came within three weeks, which is a remarkable achievement in a country where suspects sometimes wait more than ten years before their case is brought to court. Fortunately, women's organizations took action and some weeks later the verdict was cancelled on appeal.

Apart from blunt discrimination in textbooks, a gap exists between the written rules and what takes place in practice. The need for a revision of gender relations in the household and in the public sphere is not recognized. Current debates on a revised *Code du mariage et de la Parenté* (Marriage and Family Law) clearly show that neither men nor women are ready for a substantial change in the position of women. Powerful Islamic lobbies and men in administrative positions are key actors in this process, and they are trying to prevent challenging ideas being included in the draft to be presented to parliament. Moreover, even if laws are changed in a gender-neutral manner, this does not mean that local actors apply them in this way. This brings us to the theory of the social working of law and to the issue of the co-existence of different systems of law (legal pluralism, forum shopping, semi-autonomous social fields).

The social working of law

This theory has been elaborated in recent years in the sociology and anthropology of law. It looks at legal regulation from the point of view of the local actor (or actress) and poses, as its central question, the circumstances under which legal regulation can be expected to have an effect on the actor's

pregnancy only to return several years later. They recognize the child and take him/her with them without having made any contributions. Because of the scale of urban society, they escape familial and legal sanctions. Mothers see the injustice of it all, but they feel the children are ultimately better off with their father's family. Not only do they think that the men are better able to provide for the child, but also it is considered socially very important to bear one's father's name and to live in his family. A child living with its father is a child like any other, whether conceived within or outside wedlock; a child living with its mother will, in the eyes of the community, always remain a bastard and suffer the attached stigma 'a bastard is not a person' (Brand 1998: 150).

Women's legal rights organizations

All kinds of organizations were set up around 1991 in Mali, at the onset of the democratization process. It was a period of great expectations. The new constitution of the Third Republic, unlike – after independence – those of the First and Second Republics (1960-1967 and 1967-1991), guaranteed freedom of speech, freedom of the press, and freedom of assembly. In a few short months more than twenty newspapers appeared on the streets, a dozen independent radio stations began broadcasting on the newly liberated airwaves, and thousands of civil associations were organized. From consumer groups to women's associations, all sought newfound freedoms after decades of silence and submission (Drisdelle 1997: 23). The origin and development of the organizations seeking to promote and protect the rights of women have to be seen in this context. To get a picture of what these organizations actually do in the field of gender and law, and how they use law for the improvement of the situation of women, we focus on the achievements of, and the obstacles encountered by, these organizations. We selected three of them:

1. *Association pour le Progrès et la Défense des Droits des Femmes Maliennes* (APDF), a democratic, apolitical and independent association created in 1991 to promote the rights of Malian women and to improve their socio-economic and legal status. The APDF is under the inspired direction of Fatoumata Siré Diakité, who is one of the leading ladies in Africa pursuing the cause of women's rights and equal opportunities.

2. *La Clinique Juridique DEME-SO*, a section of *L'Association DEME-SO*, an association of *Jeunes Juristes Maliens*. It provides support to the

behaviour. It does not focus only on the level of national law. To analyse changing law and gender relations, it is indeed insufficient to address the complex relationship between state law and customary law within the framework of the legal doctrine. One has also to be aware of the social working of law in a given context. For women, this is of utmost importance because in their daily lives the written state laws have little relevance. A primary goal has to be the examination of the specific logic and dynamic of the social control systems found within indigenous cultures.² One must be aware, however, that, while much can be achieved through an analysis of the way law disadvantages women, it is also relevant to explore the specific way in which law is involved in the construction of female and gender roles in different societies. It is not enough to see law as an instrument. Law does more than this. It structures and constructs gendered experiences that differentiate women's experiences into good mothers, bad women, married women, illegitimate daughters and widows. It is important to keep in mind the ideological power of law.

Legal pluralism

Under the label of legal pluralism, the anthropology of law came to study how several normative regimes may co-exist in the same social field. By legal pluralism we mean a constant interplay between different systems of law and their social, economic and cultural surroundings. Together, these elements shape the environment in which decisions in courts, families, social groups and households are made and choices exercised. To provide insights into the complex and varied possibilities and limitations affecting women's use or non-use of seemingly beneficial reforms, the law needs to be examined in its socio-economic and socio-cultural context.

It is crucial to take women's resources into account in order to understand their use or non-use of the various kinds of laws. A woman's resources include

² This line of thought is pursued by the 'Women and Law in Southern Africa Research Project' (WLSA). WLSA was concerned firstly with the investigation of the law in the statute books and whether or not it discriminates against women and, secondly, with the application of the law. Both these concerns aim at improving women's formal rights and equality under existing legal structures. The most important criticism of this approach is the argument that formal rights and equality do not always ensure fair and equal treatment for all, and for women in particular, due to factors pertaining to their social and economic positions in society (Weis Bentzon *et al.* 1998; Himonga 1994; Hellum 1995; 1999; Armstrong 1987; Steward and Armstrong 1990).

her personal, mental and physical capacity to handle emerging problems and tasks. Other resources include kinship, friendship, property, money and education. Legal resources in terms of knowledge about her statutory rights are equally a part of a woman's opportunity structure. Her resources cannot be determined *a priori*. They are affected by her position in terms of age, religion, ethnicity and class. Gender may turn out to be a constraint or a resource (Weis Bentzon *et al.* 1998: 111). Furthermore, women's decisions regarding law are likely to be influenced by their identities. For instance, a woman with a manifest and coherent identity within her local environment may decline to exercise, or may feel no need to enforce, her rights through the formal legal system, particularly if the dominant local norms are in conflict with those of the legal system.

The central question, then, is not the intention of the law (maker), but what the person does with it on the 'shop floor' of social life.

Forum shopping

Individual actors try to serve their interests best by some form of legal forum shopping. Forum shopping implies the selective use of law to suit a litigant's interests, whether or not this takes place in a court or other court-like forum (Von Benda-Beckmann 1984). The concept includes all kinds of strategic behaviour. In her study of unmarried mothers and the law in Botswana, Molokomme (1991: 242) gives several examples of (un)successful forum shoppers and states that, in some cases, the women are simply bluffing men into believing that they will take their case to the magistrate's court. Because this court and its remedies are so unpopular among men, women hope the mere threat will induce their menfolk to negotiate seriously and compensate them for pregnancy. As an illustration, we cite a summarized version of a case of a successful forum shopper, recorded by Molokomme (1991: 248-9):

A seventeen-year-old schoolgirl was impregnated by a twenty-year-old boy who worked in a mining town. The girl's parents first approached the boy personally. He accepted paternity of the child, but indicated that he would not marry the girl. The girl's parents wrote the boy's parents a letter explaining the situation, but they never responded. The girl made demands upon the boy to provide her with money in order to buy some necessary goods for the baby, and, irregularly, the boy gave her some money before and after the child's birth. Having observed that support was irregular and the boy was not visiting mother and child, the girl's father summoned the boy to his home for negotiations, where he turned up with two relatives. The boy and his relatives took the position that he was too young to support the child. Alternatively, they suggested that the child be handed over to the boy's mother to look after. The girl's father was extremely annoyed by this suggestion, rejected it, but did not do anything further. The girl herself then approached the customary court, which refused to entertain her case,

apparently because a male guardian did not accompany her. She then proceeded to the district commissioner, who called the boy and made an order for 50 pula per month (about fl. 22,50) as maintenance of the child. The boy rejected the order, whereupon the girl took the matter to the chief's court. The girl explained the situation, alleging mainly that the boy had failed to support the child. Having established that the boy earned a regular income of 250 pula per month, the deputy chief decided with the following words: 'There is a law meant for the protection of children which should be used. [...] I order you to pay 50 pula every month as maintenance until the child reaches eighteen years of age. It is up to the girl's parents to follow up the matter of seduction with the boy's parents'.

According to Molokomme, the sequence of resolution of this dispute shows that the woman and her father initially followed the ideal procedure, by beginning with negotiations, first between the young people themselves, and after that between the two families. When these were unsuccessful, the father lost interest, but the girl persisted. Like a typical forum shopper, she took her case to the customary court, the district commissioner and the chief's court, where she was finally successful.

Baerends (1994: 84) considers that forum shopping in practice works advantageously for men more often than for women. She emphasizes that some categories of women, namely, unmarried mothers, widows and divorcees, make far more use of state legal facilities than other women, particularly if they lack support from family and kin. Several factors, then, also affect women's access to the legal system. These include: the socio-cultural conditions of representation of women by men in external affairs; information about legal procedures; first-hand experience as well as second-hand knowledge provided by someone close at hand; financial costs; travelling distance (in order to travel, women usually need formal permission from a father, brother or husband); and the expected results, support or disapproval on the part of a woman's social group, her kinship group or support network.

Semi-autonomous social fields

The concept of the semi-autonomous social field was developed by Moore (1973). She argued that normative orders, including those presented by the national legal system, are best seen as partially discrete, but nevertheless overlapping and interpenetrating social fields, where meaning is communicated on an interactive basis. Semi-autonomous social fields are defined as social organizations that generate their own norms and values. But norms are also legislated by governments or created through judicial decisions and impinge on semi-autonomous social fields and their rules. This concept is a useful tool for the description and analysis of the rule-generating and rule-

upholding processes that affect the position of women and gender relations in situations where a plurality of normative structures governs human interaction. It also allows for an identification of those arenas where actions and decisions are taken that influence the position of women (Weis Bentzon *et al.* 1998: 41). Semi-autonomy indicates that these rule-generating or rule-upholding social fields do not function in isolation but through mutual interaction. These interactions are influenced by knowledge that actors have of a wide variety of norms, ranging from legislated to religious norms (Moore 1978: 56). According to Roberts (1994: 977), Moore was not talking exclusively about 'law', but rather about 'normative fields' in general. Nevertheless, her approach proved immediately congenial to that of legal anthropologists. She depicted change as a fluid, interactive process, full of imponderables and unintended consequences. This led Griffiths (1991: 18) to conclude:

Thus the social working of law, even in the case of some degree of penetration [from state laws] is more dependent upon the circumstances and motives of the actors than the intentions of the legislator. And their circumstances and motives are to a large extent determined by the semi-autonomous social fields in which they find themselves.

Hellum (1999: 178-9) gives an example of a semi-autonomous social field. During her fieldwork in Zimbabwe, the church community emerged as an example of such an entity. Through their legal authority to solemnize civil marriages, many church ministers influence people's outlook on sexuality, procreation and marriage. Furthermore, they have their own rules and regulations that, together with legislation, are brought to bear on local marriage customs. Church members who fail to conform to these rules and regulations may be expelled from the church. Zimbabwe's historiography suggests that internal church regulation – which can be seen as a semi-autonomous social field – was far more effective in passing on Western marriage customs to local people than the regulatory efforts made by the settler state.

The concept of legal pluralism, and the associated analytical tools of forum shopping and semi-autonomous social fields, open up new and crucial ways through which the interaction of law and social life can be explored. In using them, we obtain a more holistic picture of the factors affecting women's lived realities and the choices they make, or the decisions and directions forced upon them. What is required is data collection and analytical methods in which all law-related data on women's, men's and children's lived realities are fitted together. Let us turn now to Mali and investigate in what way law is approached there.

Women and law in Mali

Above we mentioned that there are three systems of law in Mali: customary law, religious/Islamic law and state law. The literature on each of them is extensive, but little has been written about the interplay between the three in the daily lives of Malian men and women. With regard to women, the focus in the last few years has been on their *droits positifs*, the written state law, and on discriminatory laws in the different *codes* of the state law. Theoretical works, however, like the *Livre blanc sur la situation de la femme malienne* (2000: 65) (White book on the situation of Malian women), stress the gap between the written rules and what takes place in practice:

Sur le plan de la législation sociale et particulièrement en ce qui concerne le droit au travail et de la prévoyance sociale, la femme malienne bénéficie des mêmes droits que l'homme ainsi que de l'égalité des chances, dans les textes, malheureusement dans les faits, la réalité est tout autre. (At the social legislation level, and particularly in relation to work and social security, the Malian woman enjoys the same rights as her male counterpart, as also equality of opportunity, in theory; unfortunately, in practice, the reality is quite different.)

In one of the few studies on the incompatibility of modern civil law with general practice in Mali, Brand (1998: 138) argues that laws that are being applied generally confirm existing patterns or trends. Other laws are less easily adopted, because they assume a different notion of the person and the organization of society. In most cases, these latter contain regulations that could favour women. The law articles designed to strengthen women's positions are based on the assumptions of bilaterality, autonomy of the individual and on the nuclear family model, all notions alien to Malian society. According to Brand (1998: 150), they demand accompanying measures to enforce their execution. It does not seem likely that a nuclear family model will emerge in the near future, nor will the relating person be replaced by the autonomous individual because of the predominant insecurity in nearly every aspect of life and the virtual absence of a security providing state.

Brand gives an example concerning the rights and obligations of paternity in the case of children born out of wedlock. The *Code de la Parenté* states that the recognition of a child by its father is irrevocable and entails the obligation to provide the means for feeding, sheltering, clothing and medically caring for the child, and, for a period of three years, its mother. Furthermore, it states that if the father acknowledges the child at a later date, the parental rights remain with the mother. These rules should benefit unmarried mothers and assure them at least a minimum allowance. However, in Bamako, many fathers of children born out of wedlock disappear at some moment during the

pregnancy only to return several years later. They recognize the child and take him/her with them without having made any contributions. Because of the scale of urban society, they escape familial and legal sanctions. Mothers see the injustice of it all, but they feel the children are ultimately better off with their father's family. Not only do they think that the men are better able to provide for the child, but also it is considered socially very important to bear one's father's name and to live in his family. A child living with its father is a child like any other, whether conceived within or outside wedlock; a child living with its mother will, in the eyes of the community, always remain a bastard and suffer the attached stigma 'a bastard is not a person' (Brand 1998: 150).

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2. *La Clinique Juridique DEME-SO*, a section of *L'Association DEME-SO*, an association of *Jeunes Juristes Maliens*. It provides support to the

democratization process and promotes compliance with human rights in Mali. A substantial part of their activities is directed at women.

3. *L'Association de Juristes Maliennes (AJM)*, which was officially set up in 1988 and has a membership of approximately fifty women lawyers, solicitors, judges and magistrates. AJM is apolitical and promotes and protects the rights of the family and of women in Mali.

All three organizations began their activities around 1991, with the exception of AJM, which was officially established in 1988. However, the latter only began to flourish after 1991. These organizations are also members the network of Women in Law and Development in Africa (WiLDAF 1994), a pan-African non-governmental, non-profit organization bringing together organizations and individuals that use law to promote respect for women's rights in African countries. While the APDF and the AJM focus exclusively on women and girls, DEME-SO in addition aims to reach the so-called 'poor' and children of either sex. The three organizations have their headquarters in the capital, Bamako.

Of the three organizations, the APDF is the largest, and pursues the broadest objectives. Besides promoting and protecting the legal rights of women and girls and educating them to prevent all forms of discrimination, it also focuses on the social role of Malian women and their economic contribution in their homes and for the country. The APDF supports women's efforts to become economically independent by promoting income generating activities, and setting up day-care centres. Its publications, such as the *Livre Blanc* (2000), give a more general picture of the situation of Malian women.³

The other two organizations deal exclusively with legal issues. The AJM and DEME-SO conduct regular seminars, workshops and public debates and work as pressure groups. They have been instrumental in abolishing laws that discriminate against women. The AJM runs a legal clinic, which provides free legal assistance to destitute women and minors and educates people in Malian law and women's rights. In 1995, a group of lawyers from the AJM compiled, with the assistance of the American Embassy, a study entitled *La situation de la femme dans le droit positif malien et ses perspectives d'évolution* (GAREJ 1995). It

³ Of the nine chapters, two deal directly with women's rights and women's political participation.

was a major impetus for altering discriminatory articles in the law. Changes will be incorporated in the *Code du Mariage et de la Tutelle* (Marriage and Guardianship Laws) in the near future.⁴

DEME-SO and APDF also visit prisons to monitor and improve the treatment of prisoners. They encourage women prisoners to learn the basic skills for an income generating activity for when they are released.

Approaches to law in Mali by women's legal rights organizations

What can be derived from the questionnaires about the content of these organizations' legal approach, bearing in mind our theoretical position in the field of gender and law, based on the idea of the social working of law and legal pluralism, outlined in the previous sections?

The APDF takes the state laws as a point of departure. Women have to be educated in their fundamental legal rights and encouraged to exercise them so they can become active members of society. All discriminatory legal rules in the different codes must be corrected. One of the spearheads of the APDF pertains to changes regarding violence against women. For instance, they see female circumcision as an old-fashioned and barbaric traditional practice that must be eradicated. It is considered a violation of women's human rights:

Il est à constater, cependant, que certaines formes spécifiques d'atteinte à l'intégrité physique et corporelle de la femme/fille et qui sont supposées être liées à la coutume et à la tradition restent toujours non réprimées, la plus évidente et la plus néfaste de toutes demeure l'excision. Elle constitue une violation flagrante de l'intégrité physique et corporelle de la fille/femme ainsi que celle de ses droits humains (Livre Blanc 2000: 68). (It should be noted, however, that certain specific forms of attack on the physical and corporal integrity of the woman/girl, supposed to relate to custom and tradition, remain in force. Circumcision continues to be the most obvious and most evil example of this. It constitutes a flagrant violation of the physical and corporal integrity of the girl/woman, as also of her human rights).

DEME-SO, and AJM too, adopt as their starting point the civil state laws, as well as the international conventions signed and ratified by Mali, as a means to end all forms of discrimination against women.

The three organizations are aware that the situation in real life is complex and requires more than just a better application and awareness of the formal legal rules to achieve an improved position for women in society. From an interview with Mrs Bintou Bouaré-Samaké, head of the *Clinique Juridique*

⁴ Personal communication from Moussa Djire and Amadou Keita, visiting fellows of the African Studies Centre, Leiden.

(Legal Clinic) of AJM, it is clear that the cases they are dealing with have, besides a juridical component, also social aspects. How the social aspects are handled remained vague, and is a matter for further research. The AJM, for example, may be giving juridical aid to women on the basis of customary law and Islamic law, or helping to settle disputes before it is necessary to go to court. From our interviews, we may say that most women who come to the legal clinics for advice have problems in their professional life due to the obstructive behaviour of their husbands, but these problems are seldom addressed directly in these terms. Instead, the women formulate the problems as marriage problems, such as, 'my husband wants to take another wife', or 'he wants to divorce me'. In most cases, the husband is asked to come to the clinic and discuss the problems. The issue of the women's professional constraints is only superficially raised. The result is that, most of the time, peace within the household is restored, but at a high price for the woman who has to abandon her professional ambitions.

This is really a sour outcome indeed! In their research and approach, the organizations do not seem to enter the complicated lived realities of women. Moreover, they treat women as a homogeneous category, distinguishing only between women and girls. The presumption is that there is a set of values that women aspire to and that determine what women want. But which women and what values? Such a monolithic female perspective is too simplistic. Whose concerns are to be addressed by the 'modernization' of women's rights in Mali – the urban/rural elite, market women, farmers, factory workers, prostitutes, housewives, teachers? One important reservation has to be made. Our findings are based on only a short questionnaire, and a few face-to-face interviews, and are therefore limited in scope. There can be a difference between theory and practice. More research is needed. An additional problem is that organizations such as those discussed here have to fulfil certain standards in order to receive money from donor organizations to secure their future, and this may also have influenced their answers to the questionnaire.

Nevertheless, our impression is that the organizations are concerned with the investigations of the law on the statute books to see whether or not there is discrimination against women, and secondly, with the application of the law. Both these concerns aim at improving women's formal rights and equality under the existing legal structures. Formal rights and equality, however, do not always ensure legal treatment and fairness for all, and for women in particular, due to factors pertaining to their social and economic positions in society. Steward (1993: 226) states that law is viewed as a tool, which, in the

right hands, can be used to improve women's position both symbolically, as an educational tool, and instrumentally, to bring about reforms. In her view this can be dangerous, because:

It is not a question of what legal changes are necessary to enable women to contribute to the abstract goal of national development, but what patriarchal, local, national and international legal, political and economic factors affect the women's rights to their own development in terms of their own environment (Steward 1993: 23).

There is another point that has to be taken into consideration. The organizations mentioned all took the law that was introduced by the French colonial powers as their point of departure, together with modern ideas about human rights and emancipation. These are originally foreign laws and ideas coming from different worlds and are not directly applicable to the Malian situation. Malian notions of the person and social relations are fundamentally different from the notions underlying the civil code. According to Brand (1998), one has to elaborate on the basic principles of the Malian social order and the concept of gendered personhood to understand why civil or state law is working or not. This is an important insight.

We also have to consider legal pluralism in the context of pluralism in the post-colonial world in general. According to Griffiths (in Adelman 1998: 73), the legal organization of society is congruent with its social organization. African societies are amongst the most pluralist in the world, comprising a diversity of tribal, ethnic, cultural and religious groups, different traditions, and people divided along urban and rural lines. It would therefore follow that African states should manifest a healthy legal pluralism reflecting this diversity. But why is it then, that national organizations aiming to promote women's legal rights concentrate on state laws in particular, and, furthermore, voice a very outspoken, mostly negative, opinion on the subject of traditional customs with regard to women?

One plausible explanation is that these organizations are themselves part of the pluralist strata in Malian society. The organizations are founded on a new political wave of democratization, in itself a difficult concept in Malian society. The organizations are mainly funded by donors (for instance DEME-SO is funded by NOVIB, a Dutch NGO). To secure their funds, they must please the donor community and adopt the ideological discourse of their financiers. They also have to pay lip service to the guidelines of international organizations such as the United Nations. The creation of the *Commission Nationale pour la Promotion de la Femme* (National Commission for Women's Advancement) to comply with United Nations requirements and to ensure an appropriate form

of representation for Mali at the Beijing Conference is an example. It is a matter for further investigation as to whether the organizations themselves are aware of this and see it as a problem, or whether they genuinely want to comply with all these rules and guidelines. Furthermore, the leading elite of the organizations are in many cases foreign-educated and familiar with the western way of living and thinking. They are urban women employed as professionals, relatively independent of kinship structures, who find themselves resorting to updated and universal (colonial) laws. Finally, the organizations are located mainly in Bamako, the centre of modern Mali, whereas the rural-urban divide is wide. All these factors make these organizations part of the problem of legal pluralism.

To end this article, we may ask ourselves whether law can be used as an instrument to bring about change in the position of women. We may conclude from the above that law certainly can play a role, but that its role is limited. Changing existing gender roles in Malian society seems much more important. We agree with the first lady of Mali who said that culture, not law, is the main obstacle to women having a career for themselves. Without widening the scope of socially accepted gender relations for women, it is impossible to attain the greater freedom and independence required to improve their situation and make women more equal to men.

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