

# Sophie Andreetta and Annalena Kolloch

## **„On se débrouille“**

How to be a good judge when  
the state lets you down?

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### **Abstract**

Over the last couple of years, Beninese magistrates have gone on multiple strikes. Most of them complain about their substantial workload, low pay, and poor working conditions. They also highlight the discrepancies between the magistrates' social status and what their families expect from them. While there seems to be a professional *malaise* within the Beninese bench, judges and prosecutors also insist on the importance of their work and the ethics that goes together with it.

This is why we will be looking at the discourses and representations of the social and professional status of Beninese judges. Why do young lawyers choose the path of being a magistrate over other legal careers? How do judges and prosecutors in the Republic of Benin balance professional ethos with practical work routine?

### **Zusammenfassung**

Seit 2012 streiken Richter und Staatsanwälte in Benin zunehmend und zum Teil monatelang am Stück, um sich gegen Korruptionsvorwürfe und Strafversetzungen zu wehren, ihre richterliche Unabhängigkeit einzufordern und gegen politische Einflussnahme und Einmischungen der Exekutive in die Judikative zu demonstrieren. Viele unter ihnen beklagen sich über eine hohe Arbeitsbelastung, zu niedrige Bezahlung und schlechte Arbeitsbedingungen. Dabei werden die Diskrepanzen zwischen dem richterlichen Status und den Erwartungen der eigenen Familie betont. Während innerhalb der Beninischen Richterschaft eine berufliche *malaise* zu bestehen scheint, insistieren Richter und Staatsanwälte aber auch auf die Wichtigkeit ihres Berufes und dem damit einhergehenden hohen Berufsideal.

Aus diesen Gründen betrachten wir Diskurse und Darstellungen des sozialen und professionellen Status der beninischen Richterschaft. Warum entscheiden sich junge Juristen, den Weg als Richter oder Staatsanwalt einzuschlagen und anderen juristischen Karrieren vorzuziehen? Wie vereinen Richter und Staatsanwälte in Benin ihr hohes Berufsideal mit den Anforderungen der alltäglichen Arbeitsroutine? Dabei betrachten wir auch Alter und Geschlecht und untersuchen die Implikationen für die Arbeit als Staatsdiener in Benin.

### **The authors**

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## Introduction<sup>1</sup>

Over the last couple of years, Beninese judges and prosecutors have gone on multiple strikes, each lasting several months. They complained about a number of issues, such as the ministry of justice implying corruption issues (2012); their independence and fear of political infringement (2013); and the most recent appointments (2014). When it comes to judges from the bench, today most of them complain about their substantial workload, low pay, and poor working conditions. They also highlight the discrepancies between the magistrates' social status and what their families expect from them, as their standard of living is commonly assumed to be higher than it is. While there seems to be a professional *malaise* within the Beninese bench, judges also insist on the importance of their work and professional ethics.

This is why, for the purpose of this paper, we will be looking at the discourses and representations of Beninese judges on their own social and professional status. Why do young lawyers choose the path of being a magistrate over other legal careers? What does doing their job "right" entail, and what are the associated obstacles? How do judges and prosecutors in the Republic of Benin balance professional ethos with practical work routine?

This paper is written from an actor-centred and emic perspective (see also Bierschenk 1999: 323; Olivier de Sardan 2008: 116-120; Schlehe 2008: 121): we focused on the actors themselves, and their view of their profession. In order to do so, we combined data from our respective research and fieldworks in Benin between 2009 and 2015. While Sophie Andretta was researching in the southern part of the country, especially in Cotonou, Annalena Kolloch also did fieldwork in Parakou, Abomey, Ouidah and Porto-Novo. We combined the methods of an ethnographic approach – using participant observation, in-depth biographical interviews, questionnaires, legal documents and statistical data. We shadowed judges and prosecutors, sat and worked in their offices, lived with their families, went to trials and talked to other legal professionals. We asked them about their personal lives and their families. We also talked to lawyers, clerks, bailiffs, translators, police agents and executives from the ministry of justice. We followed and interviewed litigants. Considering that there is little empirical research on judges and prosecutors in Africa in general, and in Benin in particular, we aim to offer a better understanding of their daily work and routines. They belong to the state, represent the state, transform the state, and yet they say that they are not well equipped or supported by it.

This paper therefore touches upon wider debates about the perception and discursive discourses on the state and public services in Africa. It looks at the specificities of the justice system and its professionals. What does being a (good) judge entail in Benin today?

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<sup>1</sup> This paper was first presented at the European Conference on African Studies (ECAS) in Paris on July 8<sup>th</sup>, 2015, and is based on our fieldwork on the justice system in Benin carried out between 2009 and 2015, especially on judges and prosecutors. Our research was funded by the Sulzmann-Stiftung, the German Academic Exchange Service (DAAD) and the Ministry of Education, Science and Culture in Rheinland-Pfalz; and by the Fonds de la Recherche Scientifique (FRS-FNRS). We would like to thank our interview partners and collaborators in Benin, the participants at the ECAS 2015 and our colleagues in Mainz and Liège for their support, their comments and suggestions concerning this paper. We are also very grateful for the organisers and participants of the two Point Sud Workshops on African Courts in December 2014 in Niamey and in February 2016 in Ouagadougou which helped us to bring together our findings. A special thanks goes to Martin J. and Konstanze N'Guessan.

## Judges and African states in the social sciences literature

According to Thiery (2007), an independent and efficient judiciary is a precondition for democracy and good governance. It is a necessary counterbalance to the executive and the legislative powers of the state. Development cooperation also highlights the importance of the state and the judiciary in Africa. However, there is little empirical research on the way state courts function and legal decisions are made (Bierschenk 2004: 188; Sy 2003: 3; Tidjani Alou 2001: 59-60).

For a long time, African studies scholars did not see the state as social process – rather, they tried to understand it as an entity. They described the “typical” African state as clientelistic, neo-patrimonial, criminal, predatory, imported or kleptocratic (Médard 1991, Bayart 1989, Drabon 1990, Coolidge & Rose-Ackerman 2000). These scholars focused on the nature of the African state rather than the way in which its administrations function on a daily basis. Fifteen years later, the empirical gap that resulted from this practice became the focus of investigations by socio-anthropologists from Europe and Africa, looking at the state through its public services and public servants in Niger, Benin, Mali and Senegal, but also in Guinea and the Ivory Coast (Olivier de Sardan 2009: 39-41). Characteristics like clientelism, discrepancies between formal organisation and actual tasks, a culture of impunity, corruption and low motivation and productivity of civil servants (Olivier de Sardan 2009) do, of course, also exist in industrialised countries, but on a smaller scale. Keeping the aforementioned elements in mind, researchers have recently focused on the daily practices of civil servants in Africa. Besides informal practices, their more recent research describes the daily practices of civil servants and how they contribute to the making and functioning of the state (Bierschenk & Olivier de Sardan 2014). Building on the research tradition of the “states at work” programme, this paper provides a detailed analysis of the work of Beninese judges – not only looking at their position as civil servants but also as legal professionals and as members of the judiciary.

African magistrates have often been considered within the corruption paradigm. The African judiciary was frequently analysed as “in crisis”, failing or sometimes even breaking down (Moutéké 1994 in Fall 2003: 2; Sy 2003: 3). In Benin, state courts were generally seen as overstrained, poorly equipped, understaffed, and organisationally challenged (Bierschenk 2004: 187-189). Within that context, judges and prosecutors are often understood to be corrupt, incompetent and prejudiced (Fall 2003: 2). According to surveys, this is a sentiment that Beninese citizens seem to share (Afrobarometer 2013: 47).

Over the last couple of years, only a handful of researchers have considered the magistrates’ careers and discourses in West Africa. Budniok (2014) focused on the social structure, career paths, self-images and practices of judges in Ghana. Hamani (2008; 2011) wrote about the careers and relationships of the magistrates in Niger. Tchantipo (2012) focused on the official and practical norms as well as the strategies of the actors in the judicial service in the Atacora region in the North of Benin. Each of these studies found that judges and prosecutors, despite poor working conditions and lack of infrastructure or manpower, say that they are doing their best to do their litigants justice. Taking the aforementioned assertion as a starting point, we wondered: what do judges have to say about their own working conditions in Benin? How do they actually handle cases and make decisions?

Except for Kolloch (2014) and Andretta (2016) there are no extensive studies on the daily work of magistrates in Benin, therefore there is something to be said about the particularities of the legal arena, the professional practices and the political and moral challenges that go with it on the one hand, and the practical constraints and arrangements on the other hand.

### **A brief history of the Beninese justice system**

Until 2015 – and therefore, during most of our respective research – the Beninese justice system was based on a legal dualism inherited from colonial times: the existence of both local customary law and French law (Houngan Ayemonna 2008: 26; Mangin 1990: 21). From 1894 onwards, the colonial governor took over all administrative and legal tasks in Dahomey. Western models of the state were introduced, people and resources exploited and controlled by the colonial despotic state (Bierschenk 2010: 6-7). Within that context, the legal system was used as an instrument of colonial administration (Tidjani Alou 2006: 172).

In terms of the legal system, French law was imposed over the entire French colonial empire; the judiciary was governed by the principles of French law – however, there were two exceptions. The first one was a special penal regime that was linked to conquering and controlling African territories. *L'indigénat* was first implemented in Algeria in 1834, then generalised to the rest of the French colonial empire, including Dahomey (Manière 2007; Brunet-La-Ruche 2013). Based on the distinction between French citizens and colonial subjects, the aforementioned policy led to the creation of special courts at the local level – indigenous courts, as well as specific offenses and punishments for “indigenous peoples” (Mangin 1990). The second exception was about private matters: facing local resistance, France decided to allow its colonies to maintain their own customs from 1914 onwards (Andretta 2014). As a consequence, two kinds of courts used to coexist: “modern courts” and “tradition” ones. For issues such as family law or land rights, French citizens and naturalised indigenous peoples were governed by “modern law”, subjects in Dahomey by “traditions” (Kouassigan 1975). In 1946, the aforementioned distinction was abolished, along with the *indigénat* regime. When it came to civil law, Beninese citizens were allowed to choose which legal regime they wanted to be ruled under. French law applied to those who had a civil marriage ceremony; traditional law to the others (Gbaguidi 1998). The Beninese legal system is still based on this colonial heritage (Houngan Ayemonna 2008: 11).

On 1 August, 1960, Dahomey (which became Benin in 1975) became independent. Between 1960 and 1972, the country was marked by high political instability with 11 presidents and six different constitutions (Bierschenk 2009: 13). In 1972, Mathieu Kérékou took over and ruled the country until 1989, when the state fell into crisis and staff and salaries dramatically decreased (Houngan Ayemonna 2008: 81). The first attempt of reform created 23 *tribunaux populaires*<sup>2</sup> (popular courts), where professional judges worked together with lay judges, elected by the people (Tchantipo 2012: 23-24). For Beninese judges, the experience was a difficult one: they had to explain the judicial process to their non-professional colleagues, who had no legal training. There were no buildings to accommodate the 23 courts, not

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<sup>2</sup> As the anglophone and francophone legal system differ, an accurate translation of the function of French courts is difficult. We therefore decided to use the original French denotations.

enough prisons, and insufficient financial resources to make them function. Most of the judges involved therefore said that they gladly returned to the former system of eight *tribunaux* with the democratic renewal in 1990.

In the 1960s there were only a handful of magistrates, most of them French and male. Beninese magistrates started integrating the judicial system, but until the 1980s, they were trained in France. The first female judge was appointed in 1965; the first female prosecutor in 1981 (Houngan Ayemonna 2008: 11). They were appointed within the eight *tribunaux de première instance* (courts of first instance, TPI) in Abomey, Cotonou, Kandi, Lokossa, Natitingou, Ouidah, Parakou and Porto-Novo (Loi N°1964-028). In 1981, the first cohort of Beninese magistrates was trained and graduated in Benin, at the *centre de formation administrative et de perfectionnement* (CEFAP), which was later renamed *institut national des sciences juridiques et administration* (INSJEA) and later on ENA(M) (*école nationale de la magistrature et de l'administration*). Today, in order to become a judge or prosecutor, one has to study law and obtain a master's degree. Then one has to pass the entry test organised by the state, and study for two years at the *école nationale de la magistrature et de l'administration*. The magistrates' training is a general one, with no specialisation, which means that the same person can work as a judge and as a prosecutor. The ministry of justice then decides on the first position for young graduates. *Magistrats du siège* (judges and inquisitors) are independent and irremovable by law while *magistrats du parquet* (prosecutors) depend on the ministry of justice. From a handful in the 1960s, the number of Beninese magistrates increased to 160 in 2009, and 228 in 2015.

Aside from the number of civil servants and the nature of their training, recent reforms have significantly changed the face of the Beninese judiciary, and therefore, the working conditions of its magistrates. Six new courts of first instance were created (there are now 14 in total), as well as two additional courts of appeal in Abomey and Parakou (there was only one in 1990, in Cotonou) – although according to the law (Art. 36, Loi N°2001-37) there should be 28 TPI. New laws were implemented like the new code of civil procedure, the new code of criminal procedure, and, interestingly, the new land code – abrogating the last area where customary law was still implemented. The security conditions of the judges and prosecutors have been improved: in first degree courts, every judge and prosecutor now has a camera and release buzzer. The latest improvements result partly out of the many strikes that magistrates have initiated since the end of 2011.

### **Becoming a judge: when the state is letting you down**

For many young judges and prosecutors today, being a magistrate was not a calling. They wanted to be lawyers, public notaries or business law experts. As civil servants, they mention the low pay and high workload: working conditions that, according to them, are not worthy of a magistrate. The previous generation however, had a different, and more positive, view of their position. This raises the question, why has public service been relegated to “plan B” when it comes to young lawyers, and what does this tell us about being a public servant in Benin today?

*The “state as a nest”, or being a judge before the 1990s*

Maximien Sagui<sup>3</sup> began studying law in 1973 at the University of Benin. In 1980, he passed the entry test to be trained as a magistrate.

While we were waiting to be taught, the state was appointing us as civil servants. I worked for a year, then started the course in 1982. I graduated in 1984, and when we got our degree, the state appointed us to court (Maximien Sagui, Cotonou, April 2013, SA)<sup>4</sup>.

He started his career as a public prosecutor at the *tribunal de première instance* (High Court) in Porto-Novo in 1986. Two years later, he was moved to a *tribunal de district* (District Court) in Allada – the equivalent of a first degree court after the first reform of the judiciary in 1988. When the regime collapsed a year later, the jurisdiction disappeared and Maximien Sagui was appointed in Cotonou, first as a *juge correctionnel* (criminal judge), then as a commercial judge. When the Constitutional Court was created, he started working within the law department, where he was active between 1993 and 2001. He was then appointed to the *cour d’appel* (Court of Appeal) in Cotonou. Four years later, he was moved again, when he was appointed as the president of Abomey’s *cour d’appel*. He then worked for the Supreme Court before retiring.

For this older generation of lawyers, being a civil servant was the most straightforward professional path. The Marxist regime had made the state the main employer, and young university graduates were almost automatically recruited into public administrations, as Mathieu Zannou, former president of Cotonou’s *tribunal de première instance* explains. A lot of the law graduates were actually hired as teachers first, and then trained as magistrates. Their salaries started out at 47 000 FCFA (70 euros), to be increased to 90 000 (137 euros) when they finally integrated the legal system. They could also choose the private sector, but as Sotima Tossou, former public prosecutor underlines, “the state’s nest was a lot more comfortable, and easier to handle than launching your own firm” (Porto-Novo, April 2014, SA). Of course they sometimes had to work far away from home, and housing benefits did not always match the cost of relocating – but as Sotima Tossou concludes: “the state hasn’t quite done everything for us, but it has done enough” (Porto-Novo, April 2014, SA).

*Becoming a judge in Benin today, public service as a “plan B”?*

Today, young judges often underline that the bench was not their first career choice. Most recent law graduates explain that they first wanted to become lawyers. They either failed the bar exam and then turned to public service, or just took the magistrate school entry exam as a way of practicing for the bar. Rodrigue Dagnon, a 31-year-old judge, explains: “I heard that the state was hiring magistrates, so I went and took the test, just to see. And I ended up with the best grade. So I decided to give up on the bar” (Cotonou, March 2013, SA). Rodrigue Dagnon graduated in 2013, after two years of training. He was then asked to help out with

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<sup>3</sup> Not all magistrates were willing to read their names publicly. So we decided to anonymise all our informants. All names used in this paper are invented aliases.

<sup>4</sup> The citations in this paper are translated by us. SA means that Sophie Andreetta gathered this information in an interview, AK means that Annalena Kolloch got the information in an interview.

the prosecutor's office in Cotonou before being appointed somewhere. This transition period lasted two years: in 2015, he was finally sent to Abomey as a *tribunal de première instance* judge.

Similarly to many other young judges, Rodrigue Dagnon stresses the difference between the public and the private sector: "We work in the lawyers' pockets", he says, referring to the fact that while a magistrates' income is fixed – usually between 400 000 and 500 000 FCFA (760 euros) per month for a young judge, including all indemnities – solicitors sometimes make millions on one single case. The aforementioned comparison is at least partly biased, given that lawyers have no regular income, but it is nevertheless directly linked to the sometimes conflictual relationship between judges and lawyers, who define their own social status as above the magistrates'. "We are the ones with the contacts, the social network. So if they want to be promoted, they need us to introduce them", says Mamadou Seidou, a 41-year-old lawyer in Cotonou (April 2013, SA).

During hearings, lawyers sometimes refuse to listen to the judge, or disrespect their authority, especially if he was recently appointed. Lawyers often pick up their phones, which is strictly forbidden. They sometimes talk back to or contradict the judge, or ignore him when their case is about to be postponed so that they can call their clients. Aside from money, seniority is indeed a decisive element in defining social hierarchies in Benin. Older members of the bar therefore define themselves as "seniors" when interacting with young magistrates: "Aside from the president of the court, I have seen them all be sworn in", Mamadou Seidou tells Sophie Andretta about Cotonou's *tribunal de première instance* judges.

This matter of income and social status is an issue way beyond the circle of legal professions, as judge Tobias Kakpo explains:

Everyone respects you in the Beninese society, that's all. You have got a name, a reputation and you have to behave accordingly. You are respected, but that's all. When it comes to money we don't get much, because the state doesn't pay his magistrates like he should. (Cotonou, Mars 2012, SA).

The magistrates' salaries have, however, increased on several occasions over the last few years, especially after public policies started targeting a decrease in corruption and the criminal justice fees case, which took place in the early 2000s. Over 30 judges and prosecutors as well as other court officers and treasurers were accused of corruption. The case ended with sentences up to five years' prison, and in 2010 some 22 magistrates were excluded from the corps de la magistrature. Sotima Tossou explains that, "before the criminal justice fees, magistrates were not paid well at all. If those facts even happened, it is because magistrates did not have a proper income" (Porto-Novo, April 2014, SA).

In the 1980s, early-career judges earned around 50 000 FCFA<sup>5</sup>. After the criminal justice fees case, and the following assessment that corruption was mainly due to insufficient income, the 2005 law about the *statut de la magistrature* significantly increased judges' salaries. An appointment bonus was also introduced in 2004.

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<sup>5</sup> This salary has not been increased since 1960, then it was about 200 Euros. Because of the high inflation the value of money decreased dramatically, in 1996 this salary has been around 75 Euros.

According to the older members of the profession, young judges lack perspective. For the youngest generation, however, the aforementioned increases still do not allow them to behave according to what is expected of someone in their position: dressing a certain way, owning a car, and having a house that is worthy of a high executive. Dorcas Amoussou, judge at the *tribunal de première instance* in Cotonou explains:

Everybody thinks that we make a lot of money in this line of work. So if anything happens, your family turns to you, and they expect a lot more from you than from anybody else. As of now, I am making 380 000 a month. And it is not easy to make ends meet. My car costs me about 100 000 FCFA a month, my rent, 80 000. I also have to pay for electricity, water, I have to buy clothes, I have to eat, I have to pay for my son's school. The fact that my husband contributes helps, but we are in Africa, we have to be united (Judge Dorcas Amoussou, Cotonou, October 2012, SA).

As in many other African cities (Anders 2010; Jaffré 2003), family is perceived as a financial liability, sometimes even as a threat by public servants.

Beyond their income, judges also complain about worn-out buildings, lack of equipment and the considerable workload. "Take a look at the crumbling, at the air conditioning that is broken, do you think that is worthy of a magistrate", a young judge in Porto-Novo asked Sophie once (March 2014, SA).

While the infrastructure is often in a better shape in the commercial capital, magistrates often complain about their workload. Many of them say that they take work home after hours, or come to the office during the weekend. They also use the help of interns, students, or even family members to cope with the high number of cases that they have to decide on. As Bierschenk (2008) states, those complaints seem completely justified. According to the ministry of justice, in 2011 Cotonou's *tribunal de première instance* had 2 225 pending penal, and 6 422 civil, cases, and 2323 people in custody, divided across a total of 37 magistrates (MJLDH, unpublished). As the economic and commercial capital, Cotonou has the busiest court in the country. Within the same period of time, the *tribunal de première instance* in Parakou had about 826 penal, and 1634 civil, cases, and 632 people in custody, across 12 magistrates.

Finally, court judges highlight the both tangible and spiritual dangers that they face. Most of them are indeed afraid of the physical violence that people might inflict on them, and of the magic spells that they might try in order to sway their decision, as Rodrigue Dagnon explains:

You are not an ordinary citizen anymore. People can hurt you at any time, especially when it comes to penal cases, when prison is involved, you need to be careful. When I come to court, I am careful, and I explain to the suspect why what he did deserves to be punished. That is the biggest risk (Cotonou, March 2013, SA).

Judges and prosecutors use various strategies in order to protect themselves: most of them avoid going out at night, they only answer phone calls from people that they know, and

most of them go to church on a regular basis. Most of the judges therefore highlight the importance of their faith in God, bringing them protection.

*A gendered perspective – women out of law school*

Out of 228 magistrates in Benin today, 36 are female which amounts to one sixth (16 percent). Compared to other Beninese higher functions like the bar (25 female lawyers out of 197 lawyers, which is one eighth; 13 percent) and politics (only six female deputies out of 83 deputies; seven percent), this could be considered “a lot”.

In the literature, this low ratio of women within the civil service is explained in one of two ways. Some emphasise access to school and education, which is more difficult for girls (Behrends 2002: 12-15, 72; Houghton 1981: 139). Others argue that the underrepresentation of women could be explained by a lack of support from men (Bowman & Kuenyehia 2003: 602). “The traditional model of the judicial professions has been a profoundly male one [...], the judge was a figure embodying masculine authority”, Boigeol (2003: 409) states. The profession of a judge or prosecutor is therefore often conceptualised as “male” (see e.g. Hamani 2008: 6, 25-26). In Benin, both of those explanations seem to apply: “For our parents, judging was men’s business” (Judge Danielle Ahossi, CS, May 2009, AK). Looking at the magistrates’ social background, we also realised that most of the female magistrates were from higher or middle class families. Only four of them came from a lower-class background – contrary to the majority of their male colleagues who were usually born into lower middle-class families. This could mean that families from higher social classes opted in favour of education not only for boys but also for girls, so that their daughters could climb the professional ladder. This would also apply in Ghana, where female lawyers are usually from middle and upper-class backgrounds, while their male counterparts are middle and lower-class (Budniok 2014: 155).

Women judges also said they would have preferred to be a lawyer or doctor, like their male colleagues, but once arriving at the *magistrature*, most of them admitted that they actually liked their job. Despite the low salary, they explained that being a civil servant grants them regular income, as well as working hours that are compatible with family life. Being a female judge also allows them to work at home and care for their children. Female prosecutors however nuanced that statement, complaining about having stricter working hours and having to fulfil weekend services.

Josephine Affo, a female judge at a *tribunal de première instance*, and former prosecutors explains:

The bench, that’s a quiet life. The bench allows me to be magistrate, a woman who works and a mother at home. I have more time for my family life. I can take better care of my children now. When I was a prosecutor, I didn’t have time. There was a lot of stress, we always had to listen to people, deal with hot cases, and when you came to the office at 8 o’clock in the morning, you never knew when you would leave it again. Being a prosecutor was much more stressful (Josephine Affo, April 2009, AK).

The majority of the female magistrates that we met therefore preferred to be a judge because of the professional freedom that goes with it. The working hours allow them to still care for their children. Like many other working women, they cook meals in advance, freeze or order them, and arrange childcare during the day. Most Beninese judges and prosecutors also have housemaids, which helps them combine career and children more easily. For most of them, their position is the second source of income within the family: their husbands often have similar or higher positions, while their male counterparts are often married to women without a regular income. But when it comes to their job, women judges see themselves as perfectly equal to their male colleagues, as Agnès Domingo, a female president of a *cour d'appel* noted: “We should not make this complicated in our heads. We went to the same schools, the same faculties; there are no reasons why we cannot do the same job” (Cotonou, May 2009, AK).

Contrary to their European and North American counterparts in Switzerland, Germany and the United States of America (e.g. Ludewig, Weislehner & Angehrn (2007), Hassels & Hommerich (1993) and Schultz & Shaw (2013)), Beninese female magistrates don't feel discriminated against or discredited on the account of their gender. They do not see professional advancement and children as mutually exclusive. “On fait avec” most of them say, meaning that they manage to juggle between family and career without having to sacrifice one over the other. Being a mother, wife and a professional judge at the same time is much more self-evident for them than for their Western counterparts, who tend to see those as difficult to combine (see Kolloch 2014). They are, however, much more involved with in civil society, promoting women's rights, helping and informing ordinary citizens. Just like female lawyers, they get involved with women's rights associations, NGOs or radio programs – while their professional ethos prescribes a withdrawal from public life and reservation. This kind of social engagement seems to be specific to women, and virtually non-existent amongst their male counterparts.

If men seem to care more about income, and women about human rights and access to justice, it is probably because male judges are often the main or only provider for their families. Women therefore have more time to engage in social activities.

### *Careers and appointments: between politics, hierarchies and professional integrity*

Judges and prosecutors are nominated by decree from the state president, by proposition of the minister of justice, and opinion of the *conseil supérieur de la magistrature* (Art. 3, Loi N°2001-35)<sup>6</sup>. Magistrates in Benin don't have any influence on their first appointment. Several actors influence their carriers. The ministry of justice exercises considerable discretion since he is deciding over the nomination of judges and prosecutors (Hamani 2008: 11) and assigning the magistrates' first positions. They can either work within the ministry, or be appointed as a judge or public prosecutor in court. Their position can change throughout their carrier. Magistrates often say that the ministry of justice decides on their advancement depending on personal and financial politics. Judges are independent and irremovable. They have a certain influence on their own carrier while prosecutors are bound

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<sup>6</sup> This model also is practiced in France and Guinea (Dramé 2008: 15).

by instructions given by the ministry. Most of the Beninese magistrates therefore would rather work as a judge, as judge Celestine Chabi explains:

I prefer the bench, this way I can be really independent, and no politician can call me. The minister of justice, even if he wants something, if he calls me, he has to ask in an intelligent manner. But if you work as a prosecutor, there it's the minister of justice: 'I want this!' You have to do what he says, if you don't, sanctions will be taken! Really, as far as I am concerned, I cannot work as a prosecutor. I am against the orders; I don't like being told what to do. I can't do! (Parakou, March 2009, AK).

Beninese judges and prosecutors are – through their profession – integrated in the *corps de la magistrature*, which is marked by a distinct hierarchy, control and respect. But although they are supposed to be independent and irremovable, the magistrates' professional careers are still influenced by politics. Several actors and institutions, starting with the ministry of justice, then the *conseil supérieure de la magistrature* (CSM) as well as the *union nationale des magistrats du Bénin* (UNAMAB) and the Beninese president himself, can determine whether they get promoted or sanctioned. The *conseil* has the power to sanction and even to exclude magistrates from the *corps* – this happened after the criminal justice fees case in 2010, when 22 magistrates were excluded. Under the Beninese constitution, the president is the head of the state, the government, and supreme commander of the armed forces (Art. 41, 54, 62, Constitution of Benin). He also presides the council of ministers (Art. 55), selects three of seven constitutional judges as well as all judges and prosecutors – amongst those selected by the ministry of justice (Art. 56). Finally, he presides over the CSM (Art. 129), however, by law, the justice system is public and independent of executive and legislative powers (Art. 2 and 16, Loi N°2001-37). Given the extensive powers of the president, the implementation of this strict separation of powers could be questioned in Benin – in addition to which the decision over finances and careers take place in the ministry of justice. One fourth of the Beninese population doesn't consider the legal system independent (Afrobarometer 2013: 77) – but of course, the issue is far from specific to Africa (Fall 2003: 12).

If you don't work well, they can send you to the chancellery. You cannot decide. The magistrates who work slowly are send to the chancellery. Over there, they are only collaborators, they don't make any decisions. They can only attend meetings, that's all. (Mathieu Takpara, staff manager, ministry of justice, March 2015, AK).

Pierre Ahinnou started studying law in 1981, and graduated in 1984. Before and after studying, he worked for different ministries. In 1986, he passed the entrance examination for the ENAM and finished his training two years later. He was integrated as a magistrate the same year. He worked at the ministry of justice as assistant of the general prosecutor. In 1990, he started out as a judge at the TPI in Porto-Novo, later on as a prosecutor in Cotonou, then as an inquisitor again in Porto-Novo. Several years later, he was nominated as a prosecutor in Abomey, and would later be made president of the tribunal in Parakou, where he finished his career.

This example shows that magistrates in Benin can – throughout their career – switch between

the profession of a judge and a prosecutor. It also shows the high mobility within the country: Pierre Ahinnou was working in Cotonou and Porto-Novo in the south, where he had all of his children and where he built his house; then in Abomey, which is 150 km away, and in Parakou, which is about 450 km further north. Pierre, however, never worked at a Court of Appeal or even the Supreme Court: he was always asked to stay at the *tribunaux de première instance*.

Decisions to promote or relocate magistrates are usually not transparent: they usually ignore which marks their superiors gave them and where they will be appointed next. Relationships seem to be an advantage, yet higher ranking officers simultaneously request a *bonne moralité* and ideal behaviour, which according to judges and prosecutors, can hardly be achieved because of the daily situation. Magistrates therefore have to juggle between conflicting orders – between moral obligations and daily practice – within a complex bureaucracy. Most of them are unsure whether or when they will climb the career ladder. This unpredictability helps holding down beginners, thus strengthening the hierarchy and power of the higher ranking superiors.

Despite all of the above, most Beninese judges that we met highlighted the fact that they are independent by law, and enjoyed their professional freedom.

I don't take sides, this is what I like, which allows me be free. I love freedom, personal freedom, mental freedom. I like to be comfortable with my job. I don't like tensions. I do my work with love and wisdom. (Judge Florent Quenum, Cotonou, April 2009, AK).

Public prosecutors are of course bound by written instructions, but a lot of them mention that if they want to go against them, they can do so in their closing argument in court.

### *The professional malaise of Beninese judges*

Young judges often feel like their work does not get the credit that it deserves. Of course they are feared and respected by those who have a case in their chambers, but in the eyes of the members of the legal profession, their income and the lifestyle that derives from it is often seen as below the one of those working for the private sector. In this sense, the Beninese situation is the exact opposite as most industrial countries: in Belgium and in France, magistrates are often former lawyers who, after several years of experience, take and pass a challenging entry test (Magalie Molière, commercial law judge, Belgium, SA). In Cotonou, judges are often young law graduates, whose entry exam is considered easier than the one of the bar. This situation can also be analysed within the wider context of the way social classes and hierarchies have changed in the Beninese commercial capital. While being a public servant used to be one of the most profitable and respectable positions in Cotonou, the private sector, along with liberal professions, is now the one offering the most competitive wages. Within that context, working for the state today certainly means belonging to the upper middle-class, but it no longer matches the elite's expensive cars and lifestyle.

Beyond lifestyle and income, this “professional crisis” is also linked to the working conditions of young magistrates and their sometimes complicated relationship with the

executive. After a series of strikes in 2012, 2013 and 2014, the government then suggested to amend professional statutes so that striking would be forbidden for magistrates. Led by the union of Beninese magistrates, the UNAMAB, magistrates started demonstrating in the streets and marched, in their robes, towards the National Assembly. While this goes directly against the ideal of discretion that magistrates have to observe, it also shows the importance of “independence” in their professional ideal. Without it, many magistrates fear for the stability of the rule of law. Demonstrating was thus seen as the only solution which, in the end, led to the withdrawal of the legal draft from parliament.

In general, the strikes showed outward solidarity from the population and the media. „Les magistrats béninois battent le pavé“ („The Beninese judges go on the street“) writes Harit (2014), even if (only) one quarter of all magistrates demonstrated. Most of the high court judges did not take part, explaining their reluctance to getting involved in such a public process. Older generations generally insist on the importance of behaving in a way that is worthy of a magistrate and, for them, public protests are not. They also underline that transfers and nominations within the judiciary have not been transparent for years, “but when we were told to go somewhere and take office, we went and made the best of it” (Stephanie da Silva, Supreme Court judge, April 2015, AK). Younger judges on the other hand often feel that the state leaves them alone, is not interested in their rights and does too little for the justice system and their actors.

### **“On se débrouille”: being a good judge nevertheless**

Despite the downsides to their working conditions, Beninese judges still take pride in doing their job right. Beyond just making legal decisions, they underline their role as mediators, the need to be fair and to uphold exemplary moral standards. Looking beyond downsides, and instead focusing on handling cases and making decisions, how do judges talk about their job?

#### *The importance of implementing the law*

“When we make a decision, we feel proud”, Rodrigue Dagnon said when talking about his job as a judge, “lawyers sometimes come unprepared, and their clients may not notice, but we have to do the research. After all, our name will be on that decision” (Cotonou, March 2013, SA).

While highlighting the imbalanced workload, low pay and degrading infrastructure, young judges also note the importance of their work in court. It is up to them to interpret the law, to say who is right and who is wrong, to “be the hand of justice”. Elisabeth Houndete, female judge at the *cour d’appel* talked about the great responsibility of this profession:

It is an enormous responsibility. You have to be very careful because you make a decision about other people, if you sign a piece of paper now... when I was an inquisitor I found that quite bizarre. You only sign a piece of paper and someone is sent to jail, denied freedom because of you. People’s freedom depends on you, which is something that makes you think. (Cotonou, April 2009, AK).

But it also goes beyond those official attributions. In family law hearings for example, judges say that they also act as mediators, trying to “restore peace” within the family.

As a matter of fact, family law judges recognise that when it comes to inheritance, family norms sometimes contradict legal principles. Is it worth making a decision when you know it can never be enforced? In a context where the law isn’t always understood or respected by everyone, magistrates try to inform, mediate, or even bend the rules in order to find a solution that is acceptable for all. Constant Gbediga, family law judge in Cotonou explains:

Most of the time, children and families come to us torn apart by inheritance matters, so making a decision does not seem appropriate. So we try to go beyond the legal decision and attempt, as much as we can, to address the family dispute, and then hear from everyone involved. The law says, however, that nobody can be forced to remain in undivided property, so if we cannot get people to agree, then we just order everything to be shared. (April 2012, SA).

Most judges see their role as focused on bringing peace within the families – whether it is in inheritance disputes or divorce proceedings, where they often try to bring couples back together. Following the 2004 code on persons and family, the first step in consensual divorce proceedings is a mediation hearing within the judges’ chambers. Upon the failure of this first mediation attempt, the parties then start litigation, each of them telling the judge why they want to be separated. After gathering everyone’s consent and justifications, the magistrate can then make a decision to end the marriage. Most of the time, however, judges still try to bring couples back together, even after the mediation hearing has failed. Judge Dieudonné Vignon, for example, has a habit of postponing most consensual divorce cases, “so that spouses have time to think”. The same goes for inheritance disputes:

The first thing to do is to try and make them understand that beyond the disagreements that they have today, they are still a family. That is the first problem to address. In the case that I had today, I am not sure I was able to reconcile them, but I think that from one hearing to the next, they realised that some sort of consensus was possible. (Judge Constant Gbediga, Cotonou, March 2012, SA).

In order to do this, family law magistrates sometimes explain legal principles to those who transgress them, sometimes they try to reason with them, calling upon their sense of fairness. Widows, for example, are often excluded from their husbands’ inheritance by their families, while the code grants them 25 percent of the patrimony when they are legally married. Customary weddings, on the other hand, are not taken into account since the new code only accepts monogamy and civil marriage. Within that context, when the widow holds a wedding certificate, the judge states that as a spouse, she is entitled to her share. If she doesn’t, magistrates then call upon family norms:

She spent her whole life alongside of him, all those years. Whatever he managed to accomplish when he was alive, it was because of her. And now you are saying that she gets nothing? That is not fair! (Judge Angeline Vlavourou, Cotonou, October 2013, SA).

In both cases, magistrates also try to appeal to the parties' common sense: if the deceased were alive, wouldn't he be providing for his wife?

In order to restore order within the families, magistrates not only mediate but also teach during hearings. They sometimes explain the legal principles to the parties involved, sometimes try and reason those whose actions are perfectly legal yet at odds with family norms. As an example, in inheritance cases, some people come to court with their extended family. The 2004 code on persons and family, however, states that only the parties to the case are allowed to come into the judges' chambers. "The family chief, he comes to the hearing, and we understand that. After all it is their business too", Maximien Sagui, state judge in Abomey-Calavi explains. Some judges just order the extended family to leave, but most of them choose to still hear from them – even though what they say won't be taken into consideration in the legal decision. For those magistrates, this is a way of showing consideration to those older family members, who they know do not always know of, or agree with, relevant legal principles. It is also an opportunity to explain what the law says, and get them to acknowledge the validity of a court decision.

Finally, in family matters as well as in many other kinds of cases, magistrates highlight the fact that while they have to respect the law when making their decisions, they are also sometimes perfectly aware that these will never be enforced. Talking about a penal case that she was deciding on, judge Angeline Vlavanou says:

I have to sentence the suspect to pay damages to the plaintive. But when you look at him, you know that he doesn't have anything. Even if I order him to pay the minimum amount. I don't have a choice though; I have to make the decision. But I am wondering, what's the point? (Judge Angeline Vlavanou, Cotonou, October 2013, SA).

If they feel undervalued by their fellow lawyers, judges seem to define their role as a magistrate way beyond applying and interpreting the law. They see themselves as guarantors of social peace, and therefore often go the extra mile in order to find a solution that is not only legal, but also legitimate.

### *Debating corruption, a matter of upbringing?*

From the 1990s onwards, "good governance" and "corruption" have been the keywords of the majority of reform and public policies on the African continent. In Benin, corruption has been at the centre of a number of public debates: special commissions were created, seminars organised, and various reports described the importance of the phenomena in different public services. When it comes to the justice system, the case of criminal justice fees has brought the issue into the sphere of public debate, and is still frequently mentioned by both ordinary citizens and legal professionals when talking about the justice system. The scandal broke in 2001: for the last four years, magistrates, bailiffs and secretaries had been misappropriating public funds. Tried in 2004, 22 magistrates were found guilty, some of them were even sent to jail (Messaoudi & N'Dyae 2004). But this case also initiated a wider reflection on public servants' working conditions and the more general measures that could help avoid these kinds of scandals in the future. In 2005, the new law on the magistrates'

status was adopted, increasing, amongst other things, their monthly income. In the eyes of the citizens however, this case confirmed that the justice system is corrupted.

But what do Beninese magistrates have to say about corruption? In Cotonou, most of the judges see it as wrongful rumours that people spread when they are unhappy about a decision. It is seen as a risk or a temptation, as something that only others are guilty of, and sometimes, punished for. The phenomenon is never fully denied, but it is always perpetrated by others: colleagues, clerks, interns or intermediaries.

The existence of corruption in West African courts has been established and debated in the literature (Bierschenk 2008; Bako-Arifari 2006; Tidjani Alou 2001), and is often linked to both formal and informal intermediaries helping users to navigate the courts. The first kind of intermediaries are lawyers, the second ones can be clerks, interns, translators or former members of the judiciary (Blundo/Olivier de Sardan et al. 2003: 83, 141-146). Several magistrates told us about this popular practice within Beninese courts:

Some people say: ‘Yes, I know this judge, he has this case, if you give me money, I can go to see him and make your case a lot faster’. There are many things like that. I once had a clerk who was doing that [...] there are also people from outside this house who take money. That is how everybody comes to think that magistrates are corrupt. You never know what people are doing behind your back, what they do on your behalf and what they say about your work. Some people get your name dirty by taking money and pretending that it is for you, and you don’t even know. (Inquisitor Béatrice Bada, Cotonou, April 2009, AK).

Some of these intermediaries talk to people directly at the entrance of the court, offer them their help and take money “for the judges”. They then go into the judges’ chambers and ask for something irrelevant. Back with the plaintiff, they claim to have given the money to the judge (compare Blundo 2007: 133; Tidjani Alou 2006: 166), or say that the judge needs more money because the case is quite difficult. If the case goes “well”, these intermediaries are liked. If the case goes “badly” at the hearing, the aforementioned “administrative brokers” tell their plaintiffs that their case is complex and had they not bribed the judge, the sentence would have been worse (Béatrice Bada, April 2009; Observations, April and May 2009, AK).

Magistrates also make a difference between penal and civil law, between the prosecution and the bench. In the first instance, magistrates are in direct contact with litigants, and therefore considered more likely to be offered bribes. Legal professionals also mention the stakes: “When people are worried about their freedom, they are ready to do anything”, Rodrigue says (Cotonou, March 2013), which is in line with many other magistrates. He finally mentions the wider margin for interpretation in penal law whereas “civil law doesn’t lie, it is almost mathematical”, he states. As a matter of fact, it is up to the public prosecutor’s office to match the case to a legal category: whether it is theft, embezzlement, and therefore, whether the offence is an infraction or a crime, and how it should be tried. As far as the judge is concerned, he chooses the sentence – and once again, while the law sets boundaries, there is still some wiggling room. In civil law cases on the other hand, legal principles are a lot less flexible. When it comes to inheritance, for example, the law clearly states how the patrimony can be shared, who can ask for it to be divided, and how. Tobias Kakpo explains:

The only thing I can do, if a colleague comes see me when I am dealing with the case of a friend or a relative, is work faster than usual, or lag behind a bit in order to help him. (Cotonou, April 2013, SA).

But for most civil judges, swaying the decision is a risky business: if they go against the law, and someone notices, their whole reputation is at stake.

Finally, for many of the magistrates, whether or not you succumb to "temptation" is a matter of upbringing.

I would be lying if I said that during my whole career, no one ever gave me anything. At several occasions, people came to see me, when they were happy about a decision that I made, and they gave me a bottle of alcohol. I won't deny that I benefited from that. (Sotima Tossou, former public prosecutor, Porto-Novo, April 2014, SA).

Within the justice system, corruption is a public secret. Some of our colleagues take money under the table, but it mostly happens in penal cases, when the judge has the liberty to decide. (Rodrigue Dagnon, Cotonou, April 2013, SA).

In the judges' discourses, corruption is never denied, yet constantly displaced: it is always perpetrated by others, or used by intermediaries as an excuse. The issue of corruption is therefore always out of alignment.

### *Building up legitimacy*

"You have to be a role model", most of the Beninese judges say.

You can't go eat in random place. We basically live like the priests do. You can't walk around picking up women like everybody else does around here. You have to watch where you are going, nightclubs, no, excluded for your own safety. (Tobias Kakpo, Cotonou, April 2013, SA).

Despite feeling like their work is often underappreciated, Beninese judges take great pride in their role. They describe it as going way beyond interpreting the law, making a decision or settling disputes. In the magistrates' words, being a judge means being responsible for restoring social peace. It means finding a solution to problems, one that is both legal and legitimate. In the face of corruption rumours and recent public scandals, magistrates are trying to restore the image of the justice system that both legal professionals and ordinary citizens describe as inefficient and corrupted.

According to most of the magistrates that we met, a good judge has to be a model for ordinary citizens. They have to be integer, unbiased, humble, strict and courageous, respect professional deontology and above all, be discrete in public. This last principle even seems to apply to the magistrates' private life: informal norms and conceptions of "good behaviour" involve avoiding bars and staying home at night. To work within this tension between a high ideal of profession and the daily reality stays an enormous task and a big challenge.

## Conclusion

What does it mean to be a judge in Benin today? This paper aimed to look at the professional career of Beninese magistrates and at the aforementioned practitioners' discourses on their own profession. We looked at how they see their own social status and their professional duties. We looked at issues like careers and political infringement, corruption and working conditions, but also at the way in which magistrates still see their role as crucial in implementing the law.

Using qualitative methods, we offer a deep insight into their personal attitudes and self-perception of their profession and their *corps*. This paper therefore helps to understand both the functioning of the daily work of civil servants in Benin and their discourses on what "working for the state" entails. Looking at the micro level, we show that the Beninese judges and prosecutors get by, even if their personal and material working equipment sometimes is considered as insufficient and imperfect: Often heard buzzwords and references are "On se débrouille", and "on fait avec". We also show that most of them value their job and professional integrity. It is about making good decisions, and about trying to combine fairness with legality.

For many of the Beninese judges, their choice of profession is a result of different circumstances, sometimes even an accident rather than a first option. Most of them have tried applying for different programs of study. Their dream job has been a lawyer or medical doctor, and public service ended up being a safe and suitable "plan B". Magistrates therefore usually continue to educate themselves – confirming the fact that there is a definite *culture du diplôme* in Benin. They keep their options open by getting involved in different and often international activities. After all, there are only two exit options: one is the inner exile (then they feel like the state let them down), the other is the exit of the civil service. The aforementioned complaints and strategies, however, mostly apply to men. While women magistrates also mention the low pay and high workload, their income is often a complement to the one of their husband. Professional freedom and working hours allow more time for a family life, as compared to the private sector.

Judges and prosecutors developed multifarious strategies in order to adapt to insufficient personal and material working conditions and the instructions "from above". In their opinion, having a "strong personality" is a must. They also use different forms of subcontracting, such as private resources and assistants, to complete their tasks. Privatisation and informalisation are therefore strategies to compensate the insufficient equipment in material, staff and organisation (see Bierschenk 2004: 187-189). Judges and prosecutors try to save time by eating in their offices and working at home, which can also be interpreted as a form of privatisation, which of course, is far from specific to this profession. Judges also use stereotypes of decision and decision supports like the book of Michel Azalou (2014), which offers an oversight of possible infringements and corresponding punishments.

Finally, they highlight the importance of "being the hand of justice". While they describe being a judge as first and foremost "saying the law", their practices during hearings sometimes go way beyond settling a legal dispute. In family law cases, it is about finding a

suitable solution, “restoring order” within the families. Within that context, although the judicial system is often viewed negatively by legal professionals, the majority of the magistrates that we met said that given the chance, they would choose the profession again.

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