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# Money, morality and magistrates. Prosecuting and judging in the Republic of Benin

Sophie Andreetta<sup>a</sup> and Annalena Kolloch<sup>b</sup>

<sup>a</sup>Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle, Germany; <sup>b</sup>Department of Anthropology and African Studies, Johannes Gutenberg University Mainz, Germany

## ABSTRACT

Since 2012, 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 magistrates' social status and what their families expect from them. However, judges and prosecutors also insist on the importance of their work and on the ethics that goes together with it. This paper analyses the discourses and representations of the social and professional status of Beninese judges, showing that they are contingent upon gender, political and economic contexts. It delves into the magistrate's changing relationship to the state, as well as into their professional identities and daily practices.

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## Introduction

Since 2012, 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 (2012); their independence and fear of political infringement (2013); the most recent appointments (2014) and irregular punitive nominations (2015). In 2014 and 2017, magistrates even marched on the streets in their robes. Judges from the bench regularly complain about their substantial workload, low pay, and poor working conditions. They highlight the discrepancies between the magistrates' social status and what their families expect from them, explaining that their standard of living is commonly assumed to be higher than it actually is. However, they also insist on the importance of their work and professional ethics.

This paper explores the discourses of Beninese judges about their own social and professional status, analyse their contradictions and eventually reflects on the implications of these contradictions on magistrates' relationship to, and understanding of the state (Lentz 2014; Laszczkowski and Reeves 2018). Building on the idea that the

CONTACT Sophie Andreetta  [andreetta@eth.mpg.de](mailto:andreetta@eth.mpg.de)

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careers, social and political statuses of legal professionals should be examined together with political contexts and the different versions of “the state” (Dezalay 2015), we show that being a magistrate in Benin had different meanings over time and that magistrate’s discourses and relationship to the state have shifted after the introduction of democratisation and a market-based economy in the 1990s.

Beyond their changing relationship to the state, this contribution also looks at judges’ and prosecutors’ professional ethos and daily practices: how they describe their role in court, what “doing a good” job entails, and what the associated obstacles are. It shows magistrates’ commitment to “being the hand of justice”, by finding legitimate solutions for litigants and upholding exemplary moral standards in both their professional and their private life.

The theoretical contribution of this paper is therefore twofold: building on recent ethnographies of “the state”, it focuses on magistrates’ changing discourse, claims and expectations towards the state on the one hand, and it delves into the everyday practices of prosecuting and judging on the other hand, adding to recent reflections about African magistrates, their careers and working conditions.

For a long-time, African studies scholars indeed described the “typical” African state as clientelistic, neo-patrimonial, criminal, predatory, imported or kleptocratic (Médard 1991; Bayart 1989; Drabon 1990; Coolidge and Rose-Ackerman 2000). They focused on the nature of the African state rather than the way in which its administrations function on a daily basis. A small group of anthropologists advocated later on for a different perspective: the need to study how African states worked on a daily basis, through the ethnography of street-level bureaucracies (Olivier de Sardan 2009; Blundo and Le Meur 2009). They described the daily practices of civil servants, their relationship to public service users and how these contribute to the making and functioning of the state (Bierschenk and Olivier de Sardan 2014). Based on a similar perspective, this paper focuses on the discourses and everyday practices of Beninese magistrates, but it also explores their emotional relationship to the state (Laszczkowski and Reeves 2018) and to their role as a judge or a prosecutor.

In the social sciences literature, African courts were generally described as overstrained, poorly equipped, understaffed, and organisationally challenged (Bierschenk 2004, 187–189). Judiciaries were labelled as “in crisis”, failing or even breaking down (Fall 2003, 2; Sy 2003, 3), judges and prosecutors understood to be corrupt, incompetent and prejudiced (Fall 2003, 2) – a sentiment that, according to surveys, the majority of Beninese citizens seem to share (Afrobarometer 2013, 47). Only a handful of researchers have considered the magistrates’ careers and discourses, most often within the corruption paradigm. In their ethnography of the justice of the peace courts in Congo, Rubbers and Gallez (2015) investigated the judges’ professional trajectories. They detailed the reasons why they chose the profession, the importance of socialization through professional training and internships, and the (informal) politics of appointments. Verheul (2013) analyzed the implications of the politicisation of the Zimbabwean Attorney General’s office on prosecutors’ working conditions and daily practices, exploring the ways in which they responded to government control. In West Africa, Budniok (2014) focused on the social structure, career paths, self-images and practices of Ghanaian judges. 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 work force, said that they were doing their best to do their litigants justice. Taking that assertion as a starting point, we wondered what magistrates from different generations had to say about their own working conditions in Benin. We also explored the ways in which they handled cases and made legal decisions on a daily basis.

While a lot of the aforementioned research looked at magistrates' relationships with the state and their everyday practices as civil servants, there is also 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.

This paper was written from an emic and actor-centred perspective: we focused on the magistrates' discourses on the profession (Bierschenk 1999, 323; Olivier de Sardan 2008, 116–120; Schlehe 2008, 121). We combined data from our respective fieldworks in Benin, between 2009 and 2015: Andretta focused on the southern part of the country, especially in Cotonou, Kolloch also did fieldwork in Parakou, Abomey, Ouidah and Porto-Novo. Both of us used an ethnographic approach, combining 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 and went to trials. We asked them about their training, their professional path and their families. We also talked to lawyers, clerks, bailiffs, translators, police agents and executives from the ministry of justice.

In the first section of this paper, our combined data will allow us to analyse the reasons why young lawyers choose to become magistrates over other legal careers and the way they describe their working conditions, eventually explaining why they ended up marching on the streets. The second section will explore the way magistrates define their role in court: considering what legal professionals do on a daily basis will help better understand the functioning of Beninese judiciary, whose main task is to solve disputes and interpret the law.

### **“The state has let us down”: Being a magistrate in Benin**

For many young judges and prosecutors today, being a magistrate was not a vocation. Most of them initially wanted to be lawyers, public notaries or business law experts. They complain about their working conditions that are, in their opinion, not worthy of a magistrate, while the previous generations had a and more positive view of their position. This raises the question of the reasons why public service has been relegated to being many young lawyers' second choice, and what this tells us about their perceptions of and discursive engagements with the state and public services in Africa.

Young judges often feel like their work does not get the credit that it deserves. 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 of the one of most industrial countries: in Belgium and in France, magistrates are often former members of the bar who, after several years of experience, take and pass a challenging entry test (Magalie Molière, commercial law judge, Belgium, SA). In Benin, judges are often young law graduates, whose entry exam is considered easier than the one of the bar.

This situation can 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. In addition to adopting a democratic constitution, the 1990 national conference indeed introduced a market economy when most businesses had been nationalized by the previous regime. A few years later, working for the state certainly still means belonging to the upper middle-class, but it no longer matches the elite from the private sector'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 suggested to amend professional statues so that striking would be forbidden for magistrates. Led by the union of Beninese magistrates, 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 the parliament.

In general, the strikes showed outward solidarity from the population and the media. “Les magistrats béninois battent le pavé” (*The Beninese judges are walking on the streets*) writes Harit (2014), even if (only) one quarter of all magistrates took part in the protest. 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, which does not include public protests. 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.

Magistrate's relationship to the state therefore seems to have shifted from being about obedience and comfort – the state as a “nest” –, to the lack thereof and the need for accountability. The following sections will explore those changing ideas about what “working for the state” entails, and the way those are partly contingent upon gender, socio-economic status or political affiliation.

### **Before the 1990s, the state as a nest**

In 1892, when France decided to organize the judicial system in its colonies, western models of the state were introduced, people and resources exploited and controlled by the colonial and despotic state (Bierschenk 2010, 6–7). The legal system was mostly used as an instrument of colonial administration (Tidjani Alou 2006, 172). After independence, the legal organisation remained intact, and even though various reforms happened over the years, to this day, the Beninese judiciary is still largely based on its colonial heritage.

On 1 August, 1960, Dahomey (which became Benin in 1975) was declared independent. Between 1960 and 1972, the country was marked by high political instability: it counted 11 presidents and 6 different constitutions (Bierschenk 2009, 13). In 1972, Mathieu Kérékou organized a military coup, which let him to rule the country based on a socialist, Marxist-Leninist ideology until 1989, when the state fell into crisis and staff and salaries dramatically decreased (Houngan Ayemonna 2008, 81).

There were only a handful of magistrates in the 1960's, most of them French and male. Beninese magistrates then started integrating the judicial system, but until the 1980s, they were trained for two years within the French magistrate's school, *l'Ecole nationale de la magistrature*. Magistrates were then appointed within the eight *tribunaux de première instance* (first degree courts) in Abomey, Cotonou, Kandi, Lokossa, Natitingou, Ouidah, Parakou and Porto-Novo (Loi N°1964-028). In 1978, 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) (*Ecole nationale de la magistrature et de l'administration*).

In the 1980s, the first judicial reform post-independence created 23 *tribunaux populaires*<sup>1</sup> (popular courts), where professional judges worked together with lay judges, elected by citizens (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; there were no buildings to accommodate the 23 courts, not enough prisons, and insufficient financial resources to make them function. Most of the magistrates therefore gladly returned to the former system of eight *tribunaux de première instance* in 1990, when Benin took part in the democratic renewal and therefore also returned to a capitalist economic system.

Maximien Sagui<sup>2</sup> began studying law in 1973 at the University of Benin. In 1980, he passed the entry test that allowed him 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>3</sup>.

He started his career as a public prosecutor at the *tribunal de première instance* (High Court) of 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 military 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 its law department, where he stayed from

1993 to 2001. He was then appointed to the *cour d'appel* (Court of Appeal) in Cotonou. Four years later, he was moved again, and appointed as the president of Abomey's *cour d'appel*. He finally worked for the Supreme Court before retiring.

For this older generation of lawyers, being a civil servant was the most straightforward professional path and at least a stable one. Kérékou's socialist 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 (Cotonou, April 2012, SA). A lot of the law graduates were hired as teachers first, and then trained as magistrates. Their salaries started out at 47.000 FCFA<sup>4</sup>, to be increased to 90.000 when they integrated the legal system. The private sector was of course an option, 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 law firm" (Porto-Novo, April 2014, SA), especially in a context where private initiatives were discouraged.

Magistrates described their working conditions as not ideal, but nevertheless satisfactory. They sometimes had to work far away from home, housing benefits did not always match the cost of relocating but as Sotima Tossou phrases it: "the state hasn't quite done everything for us, but it has done enough" (Porto-Novo, April 2014, SA).

### **Public service as a second choice**

Today, young judges often underline that the bench was not their first career choice. Most of the recent law graduates explain that they first wanted to become barristers. Some of them failed the bar exam and then turned to public service, others 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 the prosecutor's office in Cotonou before being officially appointed somewhere. This transition period lasted two years: in 2015, he was finally sent to Abomey as a *tribunal de première instance* judge.

When this study was conducted, in order to become a judge or prosecutor, one had to study law and obtain a master's degree, pass the entry test organised by the state, and study for two years at the *Ecole nationale de la magistrature et de l'administration*. The magistrates' training was a general one, with no specialisation, which meant that the same lawyer could work as a judge or as a prosecutor. It also included a twelve months internship within a first degree court and a *cour d'appel*. The ministry of justice decided on the first position for young graduates. *Magistrats du siège* (judges and inquisitors) were independent and irremovable by law while *magistrats du parquet* (prosecutors) depended on the ministry of justice, which is why young graduates often hoped for the first option. From a handful in the 1960s, the number of Beninese magistrates has 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. International donors helped recruit 175 magistrates (including Rodrigue Dagnon) between 2005 and 2014, which doubled the number of working magistrates. With the help of the Millennium Challenge Account (MCA), six new *tribunaux de première 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 first degree courts. New laws were implemented, such as 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<sup>5</sup>. Magistrates were therefore hired to work within those new courts, and all members of the Beninese judiciary were to be regularly trained and informed of the recent legal changes – even if some of them are still waiting for that additional training.

Similarly to many other young judges, Rodrigue Dagnon explains 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 – while solicitors sometimes make millions of FCFA with 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 barrister 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. Experienced lawyers often answer their phones whilst the court is in session, 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 a decisive element in defining social hierarchies in Benin. Older members of the bar therefore define themselves as “senior” when interacting with young magistrates: “Aside from the president of the court, I have seen them all be sworn in”, Mamadou Seidou tells SA about Cotonou’s *tribunal de première instance* judges. This matter of income and social status is also an issue beyond the circle of legal professions, as judge Tobias Kakpo explains:

Everyone respects you in the Beninese society. 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 it 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, 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). 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.

According to the older members of the profession, young judges lack perspective, while the youngest generation argues that 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 (Porto-Novo, 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 2013, Cotonou’s *tribunal de première instance* had 3.531 pending criminal cases, 10.194 civil cases and 2.043 people in custody, divided between 32 magistrates. 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 – 400 km north of Cotonou – counted about 1.189 criminal and 2.003 civil cases, as well as 661 people in custody for 8 magistrates (MJLDH, unpublished). Privatisation and informalisation therefore make up for the insufficient equipment in material, staff and organisation (see Bierschenk 2004, 187–189).

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 criminal 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).

In 2002 and 2005, two judges were murdered, another one seriously threatened in 2013. All of these judges were involved in political and highly sensitive cases. It costed two of them their life, the third one was granted political asylum in the United States for two years before being able to return in 2015. In order to protect themselves, judges and prosecutors use various strategies: 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 magistrates highlight the importance of their faith in God, which brings them protection.

There are significant distinctions in the discourses of older and younger generations of judges and prosecutors, which we can trace back to the 1960's, when the first cohorts of magistrates were hired. Post-independence, there were only a handful of (French) magistrates. During the socialist regime, between 1972 and 1989, Beninese judges and prosecutors entered the bench, most of them immediately after finishing law school. Older judges therefore experienced a state who was caring for them by giving them positions, although they had to "suffer" – meaning they had no salary – before then. Their generation of magistrates often went to law school and were then trained together, they shared similar values and supported each other. "We used to be a close *corps*", explains the general prosecutor to the Court of appeal (Cotonou, March 2015, AK), "today, it is a mixture". Along with structural adjustment policies, recruitments were "frozen" from the 1990s onwards. Young lawyers worked as teachers, as police officers, within NGOs or even in the docks until international support funded – for the first time in the country's history – the selection of 40 trainees in 2005, then 45 in 2008, in 2009, 2011 and 2014. For this post-structural adjustment generation, being a magistrate is not a first professional experience: most of them come from various backgrounds and different cohorts in law school.

Young magistrate's discourses show that today's state has broken its "moral contract" to its magistrates (Lentz 2014), and strikes are partly about pressuring it to restore both moral acknowledgment and good working conditions. As a result, the minister of justice apologized for her speech (2012), and security has been improved: from 2014 onwards, judges and prosecutors in first degree courts were equipped with cameras' and release buzzers.

### ***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", although the women recruitment strongly decreased: 175 magistrates were recruited between 2005 and 2014, only 14 of whom were women.

In the social sciences 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, 25–26).

In Benin, both of those explanations seem to apply: “For our parents, judging was men’s business”, says Danielle Ahoosi, a supreme court judge (Cotonou, May 2009, AK). The first female judge working in Benin was appointed in 1965; the first female prosecutor in 1978 (Houngan Ayemonna 2008, 11). Looking at the magistrates’ social background, we also realised that most of the female magistrates that we met were from higher or middle class families. Out of 24 women, only five 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. The same reasoning could be extended to other west African countries, such as Ghana, where female lawyers are usually from middle and upper-class families, while their male counterparts come from middle or lower-class households (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 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 their 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 a former prosecutor 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 (Ludewig, Weislehner & Angehrn 2007,

Hassels & Hommerich 1993; Schultz & Shaw 2013), Beninese female magistrates do not feel discriminated against or discredited on the account of their gender, nor do they 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 (Kolloch 2014). They are, however, much more involved within civil society, promoting women’s rights, helping and informing ordinary citizens. Just like female barristers, 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. This is congruent with Rubbers and Gallez’s (2015) findings, who argue that in the Congolese context, judge’s strategies are contingent upon their position within the household: as the main breadwinners, men generally need more additional revenue than their female counterparts. In Benin, 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 by opinion of the *conseil supérieur de la magistrature* (Art. 3, Loi N°2001-35)<sup>6</sup>. Magistrates in Benin do not have any influence on their first appointment, and several categories of political actors can influence the path of their careers.

The minister of justice on the other hand exercises considerable discretion since he is deciding over the nomination of judges and prosecutors (Hamani 2008, 11) and assigning the magistrates’ first positions: they either can work within the ministry, or be appointed as a judge or public prosecutor in court. 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. Their position can change throughout their career, but if they are first appointed as judges, they always have the option of turning down their next assignment. Independent and irremovable, judges have a certain influence on their own career while prosecutors are bound 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).

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. 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) and presides over the CSM (Art. 129), while, 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. Magistrates also say that their advancement depends on the personal and financial politics of the ministry of justice. One fourth of the Beninese population does not consider the legal system as independent (Afrobarometer 2013, 77) – however, 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 Court of first instance in Porto-Novo, later on as a prosecutor in Cotonou, then as an inquisitor in Porto-Novo. Several years later, he was nominated as a prosecutor in Abomey, and was later appointed president of the Court of first Instance 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 their high level of mobility within the country: Pierre Ahinnou has worked in Cotonou and Porto-Novo, in the south, where all of his children were raised and where he built his house; then in Abomey, which is 150 km away, and finally in Parakou, which is about 450 km further north. Pierre, however, never worked at a Court of Appeal or at the Supreme Court: he was always asked to stay at the *tribunaux de première instance*.

Decisions to promote or relocate magistrates are 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 good morals and ideal behaviour at work, 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 of the 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 to 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 (Florent Quenum, Cotonou, April 2009, AK).

Public prosecutors are 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.

Lack of transparency when it comes their career path is mentioned by all generations of magistrates, however, only young magistrates seem to protest against it: on several occasions (2014, 2015), they have gone on strike, asking the state to play by its own rules when it comes to appointing judges and prosecutors.

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

Despite the downsides to their working conditions, Beninese judges still take pride in the work that they are doing. They mention the importance of making relevant decisions, but also underline their role as mediators, the need to be fair and to uphold exemplary moral standards. This section will focus on the ways in which judges talk and think about their everyday work.

#### ***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” for those who bring a case to court. 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. 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).

In some cases, magistrates also define their work as going beyond their official attributions: family law judges say that they often act as mediators, trying to find a solution or even reconcile opposing parties. Most of these judges therefore 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 start litigation, each of them telling the judge why they want to be separated. After gathering everyone's consent and justifications, the magistrate can 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 (Constant Gbediga, Cotonou, March 2012, SA).

In order to do this, family law magistrates usually 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 (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 therefore mediate, teach or even bend the rules in order to find a solution that is acceptable for all, especially when legal dispositions are at odds with family norms. In inheritance cases, for example, 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 (December 2013, SA). 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.

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 criminal case that she was deciding on, judge Angeline Vlavonou 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. What's the point when you know it can never be enforced? (Angeline Vlavonou, Cotonou, October 2013, SA).

The aforementioned examples show that magistrates often define their role as going 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. Being "a good magistrate" is therefore not about the state or about a civil servant's duties towards it. It's about a much broader understanding of public service, and about a certain definition of the judge's role – one that is entrenched in the everyday practices of Beninese magistrates, that they learn during their internship and their early days of practice. Judges indeed regularly share advice and opinions about deontology, they discuss cases in small groups, and debrief criminal trials.

### **Talking about corruption**

From the 1990s onwards, "good governance" and "corruption" have been the keywords of the majority of the reforms 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 and N'Daye 2004). 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 was corrupt.

In Cotonou, most of the judges see discourses around corruption as wrongful rumours that people spread when 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), where it is often analysed as linked to both formal and informal intermediaries helping users to navigate the courts. The first kind of intermediaries are lawyers, the second ones are clerks, interns, translators or former members of the judiciary (Blundo et al. 2003, 83, 141–146). Some of these intermediaries talk to people directly



at the entrance of the courthouse, offer their help and take money “for the judges”. They then go into the judges’ chambers, ask something irrelevant and then go back to the plaintiff, claiming to have given the money to the magistrate (see Blundo 2007, 133; Tidjani Alou 2006, 166). In some cases, they also come back saying that the judge needs more money because the case is a difficult one. Several magistrates told us about this common 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 (Béatrice Bada, Cotonou, April 2009, AK).

If the case goes “well”, these intermediaries are liked. If the case goes “badly” at the hearing, the administrative brokers (Blundo 2001) tell the 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 criminal 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 nature of the stakes in criminal proceedings: “When people are worried about their freedom, they are ready to do anything”, Rodrigue says (Cotonou, March 2013, SA), confirming the view of many other magistrates. He finally mentions the wider margin for interpretation in criminal law whereas, in his opinion, “civil law doesn’t lie, it is almost mathematical”.

When building a case, the public prosecutor’s office has to match the offence to a legal category: whether it is theft, embezzlement, and therefore, whether the perpetrator committed 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 wiggle room. In civil law cases on the other hand, legal principles are described as 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).

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. The aforementioned discourse is the exact opposite of the Ghanaian judge’s, who see civil cases as decided on the basis of “whatever is more likely to be true”, whereas criminal cases have to be based on a clear demonstration of how evidence leads to a guilty verdict (Budniok 2015, 83). In a civil law system such as the Beninese one, civil proceedings are based on written and irrefutable pieces of evidence, and criminal cases on various testimonies. Judges working within different legal systems therefore define their scope for

interpretation – and the room for doubt and suspicions that goes together with it – in different ways.

For many of the magistrates, whether or not you eventually 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).

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***

In the face of corruption rumours and recent public scandals, magistrates are trying to restore the image of the justice system. “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 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).

According to most of the magistrates that we met, a good judge has to be a model for ordinary citizens. They have to be 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. From his work with Ghanaian judges, Budniok (2014) highlights similar discourses and strategies in order to both avoid suspicions: the need to uphold exemplary moral standards, above those of their fellow citizens, and to keep certain boundaries even in their social life. “If you are a judge, there are things you can't do: you can't join public transport”, one of his informants states (Budniok 2014, 89).

Focusing on magistrates' careers and professional ethos helps nuance the idea that public services often function following informal dynamics (Bierschenk 2009, Blundo and Le Meur 2009). Rather than describing their work as embedded in social relationships, today's magistrates talk about boundary work, about complying with the law and upholding ethical standards. However, in a context where material resources are still insufficient and where the caseload is yet substantial, to work within this tension between a high ideal of professional practice and the reality stays an enormous task and a daily challenge for most of them.

### **Conclusion**

Over the last couple of years, justice systems across the African continent have been at the core of a number of “good governance” reforms (Rubbers and Gallez 2015,

Comaroff and Comaroff 2006). Focusing on the main actors of the judicial process, this paper explored the multifaceted dimensions of being a magistrate in the Republic of Benin. The different sections focused how judges and prosecutors see their own social status and their professional duties, addressed issues like careers and political infringement, corruption and working conditions, and showed that despite all of the above, magistrates still see their role as crucial in implementing the law.

We tried to understand both the functioning of the daily work of civil servants in Benin and their discourses on what “working for the state” entails. 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 tried applying for other programs of study. Their dream job was often being a lawyer or medical doctor, and public service ended up being a safe and suitable alternative. Magistrates therefore often keep their options open by getting involved in different and often international activities. They continue to educate themselves, which confirms the fact that there is a definite *culture du diplôme* in Benin. 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 their husband’s. They also insist on the compatibility of their work with a family life.

The historical background of Benin, especially the experience of French heritage, colonial justice and socialism had a lasting influence on the justice system, on the magistrates’ careers and on their relationship to the state. All of these political regimes had a very strong executive. Since the democratic renewal in 1990 and the development of the Beninese “model democracy”, the shape of the political debate has changed. While older judges supported the state, did not wish to be too political and did not march on the streets, younger ones identify with global norms such as the “rule of law” or “judicial independence” and are more militant in their fight towards these. Unlike other striking sectors in the country, magistrates use their expert knowledge of the law to advance their cause and to formulate their concerns to the government.

Even if their personal and material working conditions are sometimes considered as insufficient, this paper also shows that Beninese judges and prosecutors still manage to do a job that they are proud of: we often heard phrases such as “*On se débrouille*” or “*On fait avec*”. Most of them value their professional integrity, which is about making good decisions, and about trying to combine fairness with legality. They develop multifarious strategies in order to adapt to insufficient personal and material working conditions and the instructions “from above” (Verheul 2013). According to most of them having a “strong personality” is also necessary. They also work from home, eat in their offices, use assistants or stereotypes of decision and decision supports like Michel Azalou’s (2014) book on potential offenses and corresponding punishments. Magistrates finally highlight the importance of “being the hand of justice”: while they describe their role as primarily “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. A lot of them talk about the satisfaction to know they have written a “good decision” – one that is both useful and congruent with the law. For that reason, 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.

## Notes

1. 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.
2. We decided to anonymise all our informants, as some of them did not want their real names to be mentioned. All of the names used in this paper are aliases that we invented.
3. The citations in this paper were 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.
4. 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.
5. Until 2015 – and therefore, during most of our respective research – the Beninese justice system was based on a legal dualism inherited from colonial times: either local customary law or French law could apply, depending on the case and on the people involved (Houngan Ayemonna 2008, 26; Mangin 1990, 21).
6. This model also is practiced in France and Guinea (Dramé 2008, 15).

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