

Malian Rules of Judicial Ethics: A Comparative Study

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Malian Rules of Judicial Ethics: A Comparative Study

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SUMMARY This report examines the legislation governing judicial conduct in Mali, as compared to equivalent legislation in Côte d'Ivoire, Senegal, Burkina Faso, and Benin. Each of these countries has a specific statute governing the condition of judges, but Mali stands out as being the only country with a code of judicial ethics. These statutes, and Mali's Code of Ethics, contain measures aimed at preserving the independence of magistrates. This includes the independence of the judiciary as an institution, which is enshrined in these countries' constitutions as well as in their statutes, and the individual independence of magistrates. The statutes examined in this report also aim to promote the impartiality of magistrates, though they do so to varying degrees. The ideal of judicial integrity is promoted through the judge's duties of honor, sensitivity, and dignity. Competence is dealt with from a technocratic perspective rather than as an ethical duty. Mali appears to be the only country covered in this report to promote judicial diligence as an ethical duty.

I. Introduction

This report examines the rules governing judicial conduct in Mali, particularly as compared to the equivalent rules in Côte d'Ivoire, Senegal, Burkina Faso, and Benin. The American Bar Association Model Code of Judicial Conduct¹ and the U.N.-developed Bangalore Principles of Judicial Conduct² will also be used as points of comparison.

The report only focuses on provisions related to judicial ethics. Much of the Malian law on the status of magistrates, and of the equivalent laws of Benin, Côte d'Ivoire, Senegal, and Burkina Faso, deal with purely technical aspects of the judiciary: the different types of magistrates and their ranks, how they are recruited, how much vacation they are entitled to, their remuneration, the order of seating during ceremonies, etc. A few of these technical provisions have an impact on questions of judicial ethics, and these are discussed below. The provisions that do not have a substantial relation to ethical issues, however, are not discussed here.

Beyond the present introduction, this report is divided into four main parts. The first part (Part II) discusses rules that relate to judicial independence. The second part (Part III) examines rules about impartiality and conflicts of interest. The third part (Part IV) examines the judge's duty of integrity. Finally, Part V deals with the judge's duties of diligence and competence.

¹ ARTHUR GARWIN ET AL., ANNOTATED MODEL CODE OF JUDICIAL CONDUCT (2d ed., 2011).

² U.N.O.D.C., COMMENTARY ON THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT 23 (Sept. 2007), http://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf (providing text of Principles and drafting history); see also ECOSOC Res. 2006/23, Strengthening Basic Principles of Judicial Conduct (July 27, 2006), http://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf (setting forth Principles in Annex and inviting U.N. Member States to encourage their judiciaries to take the Principles into consideration).

A. Terminology

1. *The Concept of “Magistrat”*

The Malian judicial system, like that of other former French colonies such as Côte d’Ivoire, Senegal, Burkina Faso, and Benin, is strongly based on France’s legal traditions.³ These legal systems rest on certain concepts that are different than those with which an American lawyer might be familiar.

One such concept that is particularly relevant to the present discussion is that of *magistrat* (magistrate). Indeed, French terminology distinguishes between *magistrats du siège* (literally, magistrates of the seat), and *magistrats du parquet* (literally, magistrates of the floor). The former refers to judges in the usual English conception of the term: those who sit and hear cases in court, and render judgments. The latter refers to prosecutors and investigative judges. The Malian law governing judicial conduct generally applies to both types of magistrates, although certain specific provisions may only apply to one or the other. The term “magistrate” will be used in this report as it is used in Malian, Ivorian, Senegalese, Burkinabe, and Beninese law, which is to say that the term applies to both types of magistrates. The term “judge” will be used when referring to *magistrats du siège*, judges in the usual English conception of the word. Rules that apply exclusively to prosecutors and investigative judges will not be discussed in this report, since the intent is to focus on laws regulating the conduct of judges.

2. *The Conseil Supérieur de la Magistrature*

The main governing body for magistrates in Mali is the Conseil Supérieur de la Magistrature (Superior Council of Magistrates, abbreviated as CSM).⁴ The same is true in Benin,⁵ Côte d’Ivoire,⁶ Senegal,⁷ and Burkina Faso.⁸ The same name (Conseil Supérieur de la Magistrature) is used in all of these countries, even though each country’s council is obviously independent from the others. The abbreviation “CSM” is used throughout this report, but is preceded by the name of the country as necessary to avoid any confusion.

³ SEKOU FACO CISSOUMA, *DROIT CIVIL: LES OBLIGATIONS AU MALI* 17 (Bamako, 2011).

⁴ CONSTITUTION DE LA REPUBLIQUE DU MALI [CONSTITUTION OF MALI] art. 82 (1992), http://www.wipo.int/wipolex/en/text.jsp?file_id=193672.

⁵ CONSTITUTION DE LA REPUBLIQUE DU BENIN [CONSTITUTION OF BENIN] arts. 128–129 (1990), http://www.wipo.int/wipolex/en/text.jsp?file_id=195505.

⁶ CONSTITUTION DE LA COTE D’IVOIRE [CONSTITUTION OF COTE D’IVOIRE] arts. 104–106 (2000), http://www.wipo.int/wipolex/en/text.jsp?file_id=182203.

⁷ CONSTITUTION DE LA REPUBLIQUE DU SENEGAL [CONSTITUTION OF SENEGAL], art. 90 (2001), http://www.gouv.sn/IMG/pdf/constitution_sn.pdf.

⁸ CONSTITUTION DU BURKINA FASO [CONSTITUTION OF BURKINA FASO] arts. 131–134 (1991), http://www.wipo.int/wipolex/en/text.jsp?file_id=311722.

B. Rules Promoting a Fair and Independent Judiciary

The American Bar Association developed its Model Code of Judicial Conduct with the intention of “preserv[ing] the integrity and independence of the judiciary.”⁹ Developed over the course of several decades, the Model Code is now organized into four Canons, which “state overarching principles of judicial conduct,”¹⁰ and are themselves subdivided into more specific rules. These four Canons are:

- (1) “A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”¹¹
- (2) “A judge shall perform the duties of judicial office impartially, competently, and diligently.”¹²
- (3) “A judge shall conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.”¹³
- (4) “A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.”¹⁴

The Bangalore Principles of Judicial Conduct, developed and promoted by the UN Economic and Social Council, follow a comparable approach, and are organized into the following six “values”:

- (1) Independence¹⁵
- (2) Impartiality¹⁶
- (3) Integrity¹⁷
- (4) Propriety¹⁸
- (5) Equality¹⁹
- (6) Competence and Diligence²⁰

⁹ ANNOTATED MODEL CODE OF JUDICIAL CONDUCT, *supra* note 1, at ix (citing E. WAYNE THODE, REPORTER’S NOTES TO THE CODE OF JUDICIAL CONDUCT (1973)).

¹⁰ *Id.* at x.

¹¹ *Id.* at 21 (all translations by author, unless attributed otherwise).

¹² *Id.* at 89.

¹³ *Id.* at 329.

¹⁴ *Id.* at 441.

¹⁵ COMMENTARY ON THE BANGALORE PRINCIPLES, *supra* note 2, at 39.

¹⁶ *Id.* at 57.

¹⁷ *Id.* at 79.

¹⁸ *Id.* at 85.

¹⁹ *Id.* at 121.

²⁰ *Id.* at 129.

While there are differences between these two texts, they share the same spirit, and both aim to promote the same general principles: that the judiciary should be independent, and act with integrity, impartiality, competence, diligence, and propriety. The Malian law on the status of magistrates, described below, contains a number of provisions that aim to promote those same principles, as do the equivalent laws in Côte d'Ivoire, Senegal, Burkina Faso, and Benin, to varying degrees.

C. The Malian Law on the Status of Magistrates

In November 2002, the National Assembly of Mali adopted a law on the status, rights, and obligations of magistrates, which the President of Mali signed on December 16, 2002.²¹ This law did not fill a void, since this field was previously governed by Ordonnance No. 92-43/P-CTSP du 5 juin 1992 portant statut de la magistrature.²² The new 2002 law is very similar to the previous one, apart from the addition of a Code of Ethics (Code de Déontologie) for magistrates,²³ which is an important development. A few differences exist even besides the addition of this Code, and these differences are discussed below. However, the Code of Ethics is really the salient feature of the new law.

This Code of Ethics separates Mali from Côte d'Ivoire, Senegal, Burkina Faso, and Benin, none of which appear to have anything equivalent. France, from which the aforementioned countries inherited their modern legal systems, does not exactly have a code of judicial ethics either. Indeed, it was only in 2007 that France took a first, modest step in the direction of establishing a code of judicial ethics, when a law was passed requiring the French Conseil supérieur de la magistrature to draft a *compendium* of magistrates' ethical obligations.²⁴

Some voices in Côte d'Ivoire have been calling for an Ivorian code of judicial ethics. During the installation ceremony for new Supreme Court judges in February 2013, the head of the Ivorian Bar (Bâtonnier de l'Ordre des Avocats), Koné Mamadou, lamented the fact that there was no

²¹ Loi No. 02-054 du 16 décembre 2002 portant statut de la magistrature [Law No. 02-054 of December 16, 2002 on the Status of Judges] (Dec. 16, 2002), JOURNAL OFFICIEL DE LA RÉPUBLIQUE DU MALI [OFFICIAL GAZETTE OF THE REPUBLIC OF MALI], No. 36 (Dec. 31, 2002), p. 1415.

²² Ordonnance No. 92-43/P-CTSP du 5 juin 1992 portant statut de la magistrature [Executive Order No. 92-43/P-CTSP of June 5, 1992 on the Status of Judges], II CODES ET TEXTES USUELS DE LA RÉPUBLIQUE DU MALI [CODES AND COMMON TEXTS OF THE REPUBLIC OF MALI] 768 (2000).

²³ Loi No. 02-054 (Mali), Code de Déontologie annexe à la Loi No. 02-054 du 16 décembre 2002 portant statut des magistrats [Code of Ethics Annexed to Law No. 02-054 of December 16, 2002 on the Status of Judges] (Dec. 16, 2002), JOURNAL OFFICIEL DE LA RÉPUBLIQUE DU MALI [OFFICIAL GAZETTE OF THE REPUBLIC OF MALI], No. 36 (Dec. 31, 2002), p. 1424.

²⁴ Loi organique No. 2007-287 du 5 mars 2007 relative au recrutement, à la formation et à la responsabilité des magistrats [Organic Law No. 2007-287 of March 5, 2007, Regarding the Recruitment, Training, and Responsibility of Magistrates] art. 17 (Mar. 5, 2007), http://legifrance.gouv.fr/affichTexte.do;jsessionid=485275EA7E21CF7AC5F64E375E95FF8B.tpdjo15v_2?cidTexte=JORFTEXT000000646871&categorieLien=id.

code or charter of judicial ethics in Côte d'Ivoire.²⁵ No such code or charter appears to have been established as of yet, however.

That is not to say that the principles typically promoted by a judicial code, such as the independence, impartiality, and propriety of judges, are completely absent from the laws of Côte d'Ivoire, Senegal, Burkina Faso, and Benin. Indeed, as this report illustrates, these countries' laws attempt to promote these principles in their own way.

II. Independence of the Judiciary Branch

The importance of an independent judiciary appears to be widely accepted. "Independence" is the first Value listed in the Bangalore Principles,²⁶ and that same word appears in two of the four Canons of the Model Code: Canon 1 ("A judge shall uphold and promote the independence . . . of the judiciary")²⁷ and Canon 4 ("A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence . . . of the judiciary.")²⁸

The Bangalore Principles refer to two aspects of judicial independence: individual and institutional.²⁹ The former refers to the judge's state of mind and independence in fact, while the latter refers to the "relationship between the judiciary and others, particularly the other branches of government."³⁰

Malian law clearly seeks to address both of these aspects. The judiciary's independence is enshrined in Mali's Constitution, and Malian law attempts to shield judges from outside pressures. The same is true of the other jurisdictions studied in this report. Malian Loi No.02-054 and the equivalent laws of the other countries studied here also contain provisions to prevent magistrates from compromising their independence.

A. Institutional Independence

1. Constitutional Provisions

Article 81 of Mali's Constitution states that "the judiciary branch is independent from the executive and legislative branches."³¹ Article 82 of the Constitution provides an important

²⁵ *Koné Mamadou à la prestation de serment des Magistrats de la Cour suprême: "Juger ses semblables est une action divine"* [Koné Mamadou at the Oath Ceremony of the Supreme Court Magistrates: "Judging One's Peers is a Divine Action"], LE PATRIOTE (Feb. 19, 2013), <http://news.abidjan.net/h/452078.html>; *Cour suprême: de nouveaux magistrats installés* [Supreme Court: New Magistrates Installed], PORTAIL OFFICIEL DU GOUVERNEMENT DE COTE D'IVOIRE [OFFICIAL PORTAL OF THE GOVERNMENT OF COTE D'IVOIRE] (Feb. 18, 2013), http://www.gouv.ci/actualite_1.php?recordID=3235.

²⁶ COMMENTARY ON THE BANGALORE PRINCIPLES, *supra* note 2, Value 1, at 39.

²⁷ ANNOTATED MODEL CODE OF JUDICIAL CONDUCT, *supra* note 1, Canon 1, at 21.

²⁸ *Id.*, Canon 4, at 441.

²⁹ COMMENTARY ON THE BANGALORE PRINCIPLES, *supra* 2, at 39.

³⁰ *Id.*

³¹ CONSTITUTION OF MALI, *supra* note 4, art. 81.

safeguard for judges, by establishing that they cannot be removed from office.³² The same article also states that the “President of the Republic is the guarantor of the judiciary branch’s independence,” and that he is assisted in this task by the CSM, which is set up to supervise and discipline magistrates when needed.³³ Benin, Côte d’Ivoire, Burkina Faso, and Senegal have similar constitutional provisions.³⁴

2. Other Measures to Protect Judges from Outside Pressure

Besides these constitutional measures, Mali’s Loi No. 02-054 contains additional protections for the judiciary’s institutional independence. Article 4 provides that “magistrates are protected against threats and attacks of any sort” linked to the exercise of their duties, and that the government must repair any damage suffered by the magistrate or by his/her family.³⁵ The new Malian Code of Ethics, which is appended to Loi No. 02-054, contains an article essentially repeating the same thing.³⁶ Ivorian law has the same provision too, in essentially the same words.³⁷ The language of Benin’s Loi No. 2001-35 appears somewhat more comprehensive, as it states that judges should not be the subject of any “influence, incitement, pressure, threat, or undue intervention, whether direct or indirect, from anyone whatsoever or for any reason whatsoever.”³⁸ Burkina Faso’s law provides that “judges may not be bothered in any manner” in the exercise of their judicial office.³⁹ Senegal’s Loi organique No. 92-27, by contrast, does not have any equivalent language.

Article 3 of Mali’s Loi No. 02-054 reiterates the constitutional rule that judges cannot be removed from office.⁴⁰ Article 3 then adds that judges may only be moved to another position as a result of a disciplinary offense of the second degree, and requires that the CSM be consulted. Loi No. 02-054 thus improves on the previous law on the status of magistrates. Indeed, the version of article 3 prior to 2002 provided that judges could be transferred to another position as

³² *Id.* art. 82.

³³ *Id.*

³⁴ CONSTITUTION OF BENIN, *supra* note 5, arts. 125–129; CONSTITUTION OF CÔTE D’IVOIRE, *supra* note 6, arts. 101–107; CONSTITUTION OF BURKINA FASO, *supra* note 8, arts. 129–134, CONSTITUTION OF SENEGAL, *supra* note 7, arts. 88 & 90.

³⁵ Loi No. 02-054 (Mali), *supra* note 21, art. 4.

³⁶ Code de déontologie (Mali), *supra* note 23, art. 6.

³⁷ Loi No. 78-662 du 4 août 1978 portant statut de la magistrature [Law No. 78-662 of August 4, 1978, Establishing the Status of Magistrates] art. 17 (Aug. 4, 1978) (Côte d’Ivoire), http://www.loidici.com/Statutmagistrature/statuts_magistrat.php.

³⁸ Loi No. 2001-35 du 21 février 2003 Portant Statut de la Magistrature en République du Bénin [Law No. 2001-35 of February 21, 2003, Establishing the Status of Magistrates in the Republic of Benin] art. 4 (Feb. 21, 2003) (Benin), http://www.gouv.bj/sites/default/files/Loi_Num_2001_35_du_21_Fevrier_2003.pdf.

³⁹ Loi organique No. 36-2001/AN portant statut du corps de la magistrature [Organic Law No. 36-2001/AN Establishing the Status of the Magistrates’ Corps] art. 4 (Dec. 13, 2001) (Burkina Faso), http://www.justice.gov.bf/files/Documents%20en%20ligne/Textes%20juridiques/Codes%20et%20Lois/LOI_ORGANIQUE_N_-036-2001_AN.pdf.

⁴⁰ Loi No. 02-054 (Mali), *supra* note 21, art. 3.

a result of *any* disciplinary offense.⁴¹ The 1992 law also provided that, when the CSM found it necessary for the administration of justice, judges could be transferred by the nominating authority (which was, according to articles 30 and 43 of the same law, the president of the republic of Mali). The new version of article 3 adds the requirement that the CSM should agree to the transfer in a reasoned opinion. These changes clearly appear to be meant to limit the executive branch's ability to exercise pressure on judges.

Senegalese law and Burkinabe law also provide that “judges are unremovable.”⁴² In addition, the same laws provide that judges can be transferred when necessary for the administration of justice and upon the reasoned agreement of the CSM. However, the Senegalese and Burkinabe laws both add that the CSM is to establish a maximum duration for the transfer.⁴³ The laws of Côte d’Ivoire and Benin also provide that judges may not be removed, and simply state that they may not be transferred to another position without their consent, even if the transfer is a promotion.⁴⁴

Finally, these countries, with the apparent exception of Senegal, recruit most of their magistrates on the basis of an exam.⁴⁵ Thus, while the appointment of new judges is made by the executive branch,⁴⁶ the choice is supposed to be made on the theoretically objective basis of educational criteria. Similarly, magistrates are paid on the basis of an indexed pay scale defined by the law, as are other civil servants.⁴⁷ While the executive branch in each of these countries has an important role in establishing the pay scale, the system is set up to make it impossible—or at least very difficult—for the executive to give a pay raise or pay cut to any particular judge.

⁴¹ Ordonnance No. 92-43/P-CTSP (Mali), *supra* note 22, art. 3.

⁴² Loi organique No. 92-27 du 30 mai 1992 portant statut des magistrats [Organic Law No. 92-27 of May 30, 1992, Establishing the Status of Magistrates] art. 5 (May 30, 1992) (Senegal); Loi organique No. 36-2001 (Burkina Faso), *supra* note 39, art. 5.

⁴³ Loi organique No. 92-27 (Senegal), *supra* note 42, art. 5; Loi organique No. 36-2001 *supra* note 39, (Burkina Faso), art. 5.

⁴⁴ Loi No. 78-662 (Côte d’Ivoire), *supra* note 37, art. 6; Loi No. 2001-35 (Benin), *supra* note 38, art. 23.

⁴⁵ See the discussion on competence, *infra*, Part V(A).

⁴⁶ Loi No. 02-054 (Mali), *supra* note 21, art. 28; Loi No. 78-662 (Côte d’Ivoire), *supra* note 37, art. 5; Loi No. 2001-35 (Benin), *supra* note 38, art. 29; Loi organique No. 36-2001 (Burkina Faso), *supra* note 39, art. 27.

⁴⁷ Loi No.02-054 (Mali), *supra* note 21, arts. 69–70; Loi No. 78-662 (Côte d’Ivoire), *supra* note 37, arts. 33–34; Décret No. 78-697 du 24 août 1978, pris pour l’application de la loi 78-662 du 4 août 1978 portant statut de la magistrature [Decree No. 78-697 of August 24, 1978, for the Application of Law 78-662 of August 4, 1978, Establishing the Status of Magistrates] art. 16 (Aug. 24, 1978) (Côte d’Ivoire), http://www.loidici.com/Statut_magistrature/statutsmagistrat78697.php; Loi No. 2001-35 (Benin), *supra* note 38, arts. 44–49; Loi organique No. 36-2001 (Burkina Faso), *supra* note 39, art. 29; Loi organique No. 92-27 (Senegal), *supra* note 42, arts. 37–38.

B. Individual Independence

1. Rules Common in Mali, Benin, Côte d'Ivoire, Burkina Faso, and Senegal

In addition to the protections described above, the laws of the countries under discussion impose some obligations on magistrates to preserve their independence. Whereas the measures discussed above seem to principally be intended to protect the independence of the judiciary branch as an institution, the rules laid out here are meant to compel judges to keep an independent and impartial point of view. This is the individual independence referred to by the Bangalore Principles.

All of the countries studied in this report prohibit magistrates from engaging in certain outside activities, particularly when they are political in nature. Article 12 of Mali's Loi No.02-054 prohibits magistrates from exercising any political activity, and from having any other salaried activity in the private or public sectors.⁴⁸ The minister in charge of justice may grant individual exemptions to those who want to teach courses corresponding to their specialty, or to exercise activities that would not affect their dignity or their independence.⁴⁹ Furthermore, magistrates may engage in scientific, literary, and artistic work without prior authorization.⁵⁰ The law of Côte d'Ivoire is almost exactly the same.⁵¹ In addition to the restrictions mentioned above, Senegalese magistrates are not allowed to join a party or to form a union.⁵²

The law in Burkina Faso also prohibits magistrates from becoming members of a political organization or from otherwise engaging in political activities,⁵³ although they are explicitly permitted to form and join professional organizations and unions.⁵⁴ Burkinabe law also provides that a magistrate may request permission to resign his office, or request to be given inactive status, in order to run for a political office.⁵⁵ If this happens, the magistrate must leave his position at least three months before the election date, and can return to judicial office no sooner than two years after the end of his/her political term.⁵⁶ Burkinabe law also states that any remunerated activity by a magistrate's spouse must be disclosed to the minister of justice, who may (with the CSM's advice) take measures to protect the interests of the judiciary.⁵⁷

⁴⁸ Loi No. 02-054 (Mali), *supra* note 21, art. 12.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Loi No. 78-662 (Côte d'Ivoire), *supra* note 37, art. 10.

⁵² Loi organique No. 92-27 (Senegal), *supra* note 42, arts. 9, 11.

⁵³ Loi organique No. 36-2001 (Burkina Faso), *supra* note 39, art. 35.

⁵⁴ *Id.* art. 32.

⁵⁵ *Id.* art. 35.

⁵⁶ *Id.*

⁵⁷ *Id.* art. 12.

The law of Benin states that being a magistrate is “incompatible with the exercise of any political activity.”⁵⁸ A magistrate who wishes to engage in political activities must first inform his/her hierarchical superior immediately, and is to be automatically removed from his/her judicial office.⁵⁹

2. Mali’s Code of Ethics for Magistrates

The prohibition on certain outside activity seems to have been the only provision specifically dealing with individual independence in Mali prior to 2002. Since then, however, Mali’s new Code of Ethics has added some new language on that subject. Article 3 of that Code states that “the independence of magistrates is essential to the exercise of impartial justice” and that “the magistrate must respect the independence of the judiciary and favor the application of measures and guarantees aimed at preserving and increasing this independence.”⁶⁰ Article 4 states that the magistrate must “avoid any behavior that may shake the public’s trust in the primacy of law and the independence of the judiciary.”⁶¹ Somewhat more concretely, article 5 provides that “the magistrate has the obligation to defend his/her independence. Any pressures aiming to influence his/her judicial decision must be firmly rejected, regardless of where they come from.”⁶² Furthermore, the Code of Ethics contains language that tends to reinforce and clarify the prohibition on certain outside activities. This language reiterates the prohibition on political activity, and on having any other salaried activity in the private or public sectors,⁶³ but it adds more specific details. Article 18 of the Code of Ethics specifies that judicial office is incompatible with an elected political office, whether at the level of the National Assembly (Mali’s legislative body) or at the level of local government.⁶⁴ The following two articles are even more specific: article 19 states that “any political activity or deliberation is prohibited for magistrates,”⁶⁵ and article 20 stipulates that magistrates must especially abstain from

- joining political parties and collecting political funds;
- participating in political meetings and political financing activities;
- contributing to parties or political campaigns;
- publicly participating in political debates, except on questions that directly relate to the functioning of courts, the independence of the judiciary, or fundamental elements of the administration of justice; and
- signing petitions to influence a political decision.⁶⁶

⁵⁸ Loi No. 2001-35 (Benin), *supra* note 38, art. 12.

⁵⁹ *Id.*

⁶⁰ Code de déontologie (Mali), *supra* note 23, art. 3.

⁶¹ *Id.* art. 4.

⁶² *Id.* art. 5.

⁶³ *Id.* art. 17.

⁶⁴ *Id.* art. 18.

⁶⁵ *Id.* art. 19.

⁶⁶ *Id.* art. 20.

The Code of Ethics specifically permits magistrates to organize in “professional associations.”⁶⁷ It appears Malian magistrates are permitted to engage in union activity, as there are at least two magistrates’ unions in that country.⁶⁸ This is in contrast with the situation in Senegal, which, as mentioned above, prohibits such activity.

Magistrates may be required to perform public services outside of their normal judicial functions. Any measure requiring them to participate in the work of extrajudicial organizations or commissions, however, must be submitted to the CSM for review.⁶⁹

As a whole, these rules set Mali apart from the other countries studied in this report. As mentioned earlier, Benin, Côte d’Ivoire, Burkina Faso, and Senegal, do not appear to have anything equivalent to Mali’s Code of Ethics, and their laws do not cover the level of detail that is found in that Code.

III. Impartiality

A. Overlap Between the Concepts of Impartiality and Independence

Judicial independence and impartiality are closely-related concepts. Article 3 of the Malian Code of Ethics, mentioned in the previous chapter, recognizes this relationship when it states that “the independence of magistrates is essential to the exercise of an impartial justice.”⁷⁰ The commentary to Bangalore Principles Value 2 explains this idea further:

Independence and impartiality are separate and distinct values. They are nevertheless linked as mutually reinforcing attributes of the judicial office. Independence is the necessary precondition to impartiality and is a prerequisite for attaining impartiality. A judge could be independent but not impartial (on a specific case-by-case basis), but a judge who is not independent cannot, by definition, be impartial (on an institutional basis).⁷¹

It is therefore to be expected that there would be a significant amount of overlap between rules meant to enforce judicial independence and impartiality. Indeed, many of the legal provisions discussed in the chapter on independence could just as well fit under the rubric of impartiality.

⁶⁷ *Id.* art. 22.

⁶⁸ Abdrahamane Dicko, *Mali: Atmosphère délétère dans la magistrature - Trois syndicats déclarent la guerre au ministre de la Justice* [Mali : Deleterious Atmosphere Among Magistrates – Three Unions Declare War on the Minister of Justice], LES ECHOS, via ALLAFRICA (Mar. 4, 2014), <http://fr.allafrica.com/stories/201403041332.html>.

⁶⁹ *Id.* art. 23.

⁷⁰ Code de déontologie (Mali), *supra* note 23, art. 3.

⁷¹ COMMENTARY ON THE BANGALORE PRINCIPLES, *supra* note 2, Value 2, at 57.

B. Provisions in the Malian Code of Ethics

Much of the Malian Code of Ethics is devoted to impartiality. Article 7 of that Code lists impartiality as one of the magistrate's duties.⁷² Article 8 states that "the Magistrate must cultivate an image of integrity, impartiality, and behave in a way that earns him/her respect and consideration."⁷³ Articles 11 to 16 make up a section titled "On Equality and Impartiality," and go into more detail.⁷⁴ Article 11 states that magistrates must treat all parties "appropriately and without discrimination."⁷⁵ Article 12 repeats that "the Magistrate must be impartial," and states that he/she must ensure that parties are equal before the law.⁷⁶ Article 13 provides that magistrates must not only be impartial in their decision, but also during the whole process leading up to the decision.⁷⁷ Article 14 forbids magistrates from engaging in "activities such as joining a group or an organization, [or] participating in a public debate, when such activities might damage the image of impartiality of magistrates regarding questions that might be submitted to courts."⁷⁸

Articles 15 and 16 of the Code deal with conflicts of interests. Article 15 requires magistrates to recuse themselves from cases where they do not think they can remain impartial, or when they believe there might be a conflict between their judicial function and their personal interests (or the interests of close relatives or friends).⁷⁹ This article's language refers to the magistrate's own belief and perspective while article 16, in contrast, refers to a reasonable outsider's point of view, as it prohibits judges from hearing any case in which their impartiality might reasonably be doubted.⁸⁰ This latter approach is comparable to that of Model Rule 2.11, which states that "a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned."⁸¹ The commentary on that rule confirms that it "creates an objective test for the appearance of impartiality: whether the facts create reasonable doubt concerning the judge's impartiality, *not* in the mind of the judge."⁸² Article 16 of the Malian Code of Ethics is worded in a way that makes it clear it is based on a similarly objective assessment.

⁷² Code de déontologie (Mali), *supra* note 23, art. 7.

⁷³ *Id.* art. 8.

⁷⁴ *Id.* arts. 11–16.

⁷⁵ *Id.* art. 11.

⁷⁶ *Id.* art. 12.

⁷⁷ *Id.* art. 13.

⁷⁸ *Id.* art. 14.

⁷⁹ *Id.* art. 15.

⁸⁰ *Id.* art. 16.

⁸¹ ANNOTATED MODEL CODE OF JUDICIAL CONDUCT, *supra* note 1, Rule 2.11, at 217.

⁸² *Id.* at 229.

There is also some language in the Code on specific commercial transactions: article 21 prohibits a magistrate from being a purchaser, lessee, or transferee, of rights or property in litigation, or of rights or debts that he/she is asked to pursue or authorize the sale of.⁸³

C. Malian Law Prior to 2002

Prior to the adoption of Mali's Code of Ethics in 2002, there were only two provisions that were related to the idea of impartiality. One was the prohibition on having another job,⁸⁴ which still exists under article 12 of the Loi No. 02-054 and is discussed in Part II, above. The other was a provision prohibiting a magistrate from working on a case where he/she was related to the representative of one of the parties.⁸⁵ This latter provision was retained in the 2002 law on the status of magistrates.⁸⁶ However, it appears that prior to 2002 there was no language on conflicts of interests and impartiality other than these two prohibitions.

D. Benin, Côte d'Ivoire, Burkina Faso, and Senegal

The laws of Benin, Côte d'Ivoire, Burkina Faso, and Senegal regarding impartiality are comparable to Mali's law as it existed before 2002. It could be argued that some of these countries' laws are more complete than pre-2002 Malian law on this issue. Current Malian law, however, is at least as comprehensive in its promotion of impartiality and treatment of conflicts of interests, and probably more so in many cases.

Senegalese law requires judges to "impartially render justice" without considering the person(s) or interests involved.⁸⁷ They may not render judgment based on the personal knowledge they may have of a case, nor can they defend or advise on any cause other than one in which they are personally involved.⁸⁸ Senegalese law also prohibits magistrates from working on cases where they are related to the representative of one of the parties.⁸⁹

Beninese law prohibits magistrates from representing or defending the interests of any parties in any court.⁹⁰ Magistrates are also prohibited from working on cases in which they are related to the representative of one of the parties,⁹¹ and from being a purchaser, lessee, or transferee, of rights or property in litigation in his/her jurisdiction, or of rights or debts that he/she is asked to pursue or authorize the sale of.⁹² Finally, Benin's Loi No. 2001-35 requires magistrates to

⁸³ Code de déontologie (Mali), *supra* note 23, art. 21.

⁸⁴ Ordonnance No. 92-43 (Mali), *supra* note 22, art. 11

⁸⁵ *Id.* art. 13.

⁸⁶ Loi No.02-054 (Mali), *supra* note 21 art. 13.

⁸⁷ Loi organique No. 92-27 (Senegal), *supra* note 42, art. 13.

⁸⁸ *Id.*

⁸⁹ *Id.* art. 10.

⁹⁰ Loi No. 2001-35 (Benin), *supra* note 38, art. 13.

⁹¹ *Id.* art. 15.

⁹² *Id.* art. 16.

recuse themselves from any procedure involving their interests, or the interests of a relative or someone for whom they are an agent or legal representative.⁹³

Magistrates in Burkina Faso are prohibited from representing or defending the interests of any parties in any court.⁹⁴ They are also required to recuse themselves from cases in which a relative has acted in the capacity of magistrate, attorney, expert witness, bankruptcy trustee, or bankruptcy administrator.⁹⁵ More generally speaking, a Burkinabe magistrate must “abstain from any behavior that may damage trust in his/her independence and impartiality.”⁹⁶

The law in Côte d’Ivoire prohibits magistrates from working on any case in which one of the parties is represented by a relative of the magistrate.⁹⁷ Ivorian law also contains a provision prohibiting magistrates from being purchasers, lessees, or transferees of rights or property in litigation in their jurisdiction, or of assets, rights, or debts that they are asked to pursue or authorize the sale of.⁹⁸ Finally, Ivorian magistrates may not participate in any procedure concerning their own interests, or that of one of their relatives, or the interests of someone for whom they are a legal representative or agent.⁹⁹

IV. The Duties of a Magistrate’s Status, Honor, Sensitivity, and Dignity: Preserving the Image of the Judiciary

Malian Loi No. 02-054 contains a fairly broad provision that appears designed to preserve the image of the judiciary. Indeed, article 71 of that statute states that “any breach, by a magistrate, of the duties of his status, of honor, of sensitivity, or of dignity, constitutes a disciplinary offense” (“Tout manquement par un magistrat aux devoirs de son état, à l’honneur, à la délicatesse ou à la dignité constitue un faute disciplinaire”).¹⁰⁰ Senegalese law has the same provision, in exactly the same words,¹⁰¹ as do the Ivorian¹⁰² and Beninese laws.¹⁰³ The law of Burkina Faso is essentially the same, except that it adds *reserve* (discretion) to the list of virtues that a magistrate must keep.¹⁰⁴

⁹³ *Id.* art. 17.

⁹⁴ Loi organique No. 36-2001 (Burkina Faso), *supra* note 39, art. 13.

⁹⁵ *Id.* art. 14.

⁹⁶ *Id.* art. 34.

⁹⁷ Loi No. 78-662 (Côte d’Ivoire), *supra* note 37, art. 13.

⁹⁸ *Id.* art. 14.

⁹⁹ *Id.* art. 15.

¹⁰⁰ Loi No.02-054 (Mali), *supra* note 21, art. 71.

¹⁰¹ Loi organique No. 92-27 (Senegal), *supra* note 42, art. 15.

¹⁰² Loi No. 78-662 (Côte d’Ivoire), *supra* note 37, art. 35.

¹⁰³ Loi No. 2001-35 (Benin), *supra* note 38, art. 57.

¹⁰⁴ Loi organique No. 36-2001 (Burkina Faso), *supra* note 39, art. 50.

The French law on the status of magistrates, which originally dates from 1958 (and therefore at a time when Mali was still under colonial rule), contains exactly the same phrase,¹⁰⁵ and it appears clear that Mali and the other countries discussed here took this provision from French law. Two French legal scholars, writing of the French law, have explained that the three basic concepts of honor, sensitivity, and dignity point to the importance of maintaining the credit, authority, and prestige of the judiciary as an institution.¹⁰⁶ The purpose of this rule, they said, beyond the prevention of wrongdoing on the part of individual magistrates, is to preserve the “sacredness” of the judicial system.¹⁰⁷ One could reasonably assume that this view also applies to the Malian, Senegalese, Ivorian, Burkinabe, and Beninese laws.

Article 71 of Malian Loi No. 02-054 is comparable to certain aspects of Canon 1 of the Model Code, which provides that “[a] judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”¹⁰⁸ Specifically, the values of integrity and propriety, and the appearance of propriety, are essentially the same in the Model Code as in article 71. Rule 1.2 of the Model Code, which falls under Canon 1, requires judges to “act at all times in a manner that promotes public confidence in the . . . integrity . . . of the judiciary, and avoid impropriety and the appearance of impropriety.”¹⁰⁹ The title of Rule 1.2, “Promoting Confidence in the Judiciary,”¹¹⁰ is simply a more down-to-earth expression of the idea of preserving the “sacredness” of the judiciary. Similarly, Value 3 of the Bangalore Principles is “Integrity,”¹¹¹ and includes the principle that “the behavior and conduct of a judge must reaffirm the people’s faith in the integrity of the judiciary.”¹¹²

The comments to Rule 1.2 note that “this principle applies to both the professional and personal conduct of a judge.”¹¹³ The Bangalore Principles require that a judge be seen as being above reproach in both private and public life.¹¹⁴ Similarly, the French magistrate’s obligation to act with honor, sensitivity, and dignity also applies to his/her personal as well as professional life.¹¹⁵ Although no text was found that confirms this interpretation, it seems reasonable to assume that article 71 of the Malian law is similarly interpreted to encompass both public and private life .

¹⁰⁵ Ordonnance No. 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature (Ordinance No. 58-1270 of December 22, 1958, Establishing an Organic Law Regarding the Status of Magistrates) art. 43 (Dec. 22, 1958), http://legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19581223&pageDebut=11551&pageFin=11556&pageCourante=11553.

¹⁰⁶ EDOUARD DE LAMAZE & CHRISTIAN PUJALTE, L’AVOCAT, LE JUGE ET LA DEONTOLOGIE [THE LAWYER, THE JUDGE, AND ETHICS] 221 (Feb. 2009).

¹⁰⁷ *Id.*

¹⁰⁸ ANNOTATED MODEL CODE OF JUDICIAL CONDUCT, *supra* note 1, Canon 1, at 21.

¹⁰⁹ *Id.*, Rule 1.2, at 30.

¹¹⁰ *Id.*

¹¹¹ COMMENTARY ON THE BANGALORE PRINCIPLES, *supra* note 2, Value 3, at 79.

¹¹² *Id.*, Principle 3.2, at 83.

¹¹³ *Id.*

¹¹⁴ *Id.*, Application 3.1, Commentary 103, at 80.

¹¹⁵ DE LAMAZE & PUJALTE, *supra* note 106, at 222.

V. Diligence and Competence

The Model Code’s second Canon states that a judge must perform his/her duty “competently and diligently,”¹¹⁶ and Rule 2.5(A) states that “a judge shall perform judicial and administrative duties, competently and diligently.”¹¹⁷ Similarly, Value 6 of the Bangalore Principles states that “competence and diligence are prerequisites to the due performance of judicial office.”¹¹⁸ The commentary for these provisions contains almost the same phrase in both sources: “competence in the performance of judicial duties requires legal knowledge, skill, thoroughness, and preparation.”¹¹⁹ (The Model Code comments add “reasonably necessary to perform a judge’s responsibilities of judicial office.”¹²⁰)

A. Competence

Neither the Malian law on the status of magistrates nor the related Code of Ethics directly mention a duty of competence. The only possible exception might be in the provision regarding the magistrate’s oath of office, which includes the phrase, “I swear and promise to fulfill my function well and faithfully, . . . and to always behave like a worthy and faithful magistrate.”¹²¹ Fulfilling one’s function “well” and behaving like a “worthy” magistrate imply at least a certain degree of competence. Otherwise, this concept appears to be treated in a more technocratic manner under Malian law: rather than an ethical obligation, it is an administrative matter to be managed as a factor in the judge’s career.

The majority of Malian magistrates are recruited by way of an entrance exam.¹²² A small number of them are recruited on the basis of their education (doctors at law) or professional experience (lawyers and notaries with at least fifteen years of practice).¹²³ Recruits must follow a two-year training curriculum, concluded by a final exam, before they can be appointed as full magistrates (they are called *auditeurs de justice*—“auditors of justice”—during the two-year training period).¹²⁴ Benin,¹²⁵ Côte d’Ivoire,¹²⁶ and Burkina Faso¹²⁷ follow similar procedures.

¹¹⁶ ANNOTATED MODEL CODE OF JUDICIAL CONDUCT, *supra* note 1, Canon 2, at 89.

¹¹⁷ *Id.*, Rule 2.5(A), at 129.

¹¹⁸ COMMENTARY ON THE BANGALORE PRINCIPLES, *supra* note 2, Value 6, at 129.

¹¹⁹ *Id.*

¹²⁰ ANNOTATED MODEL CODE OF JUDICIAL CONDUCT, *supra* note 1, at 129.

¹²¹ Loi No. 02-054 (Mali), *supra* note 21, art. 31.

¹²² *Id.* art. 19.

¹²³ *Id.* arts. 19 & 23.

¹²⁴ *Id.* arts. 24 & 27.

¹²⁵ Loi No. 2001-35 du 21 février 2003 Portant Statut de la Magistrature en République du Bénin [Law No. 2001-35 of February 21, 2003, Establishing the Status of Magistrates in the Republic of Benin] arts. 27–35 (Feb. 21, 2003).

¹²⁶ Loi No. 78-662 du 4 août 1978 portant statut de la magistrature [Law No. 78-662 of August 4, 1978, Establishing the Status of Magistrates] arts. 20–26 (Aug. 4, 1978) (Côte d’Ivoire).

Senegal does not seem to have an entrance exam, but nonetheless recruits magistrates on the basis of educational criteria.¹²⁸ It therefore appears that these countries principally rely on recruitment standards and initial training to ensure that magistrates are competent.

Malian magistrates are subject to a yearly evaluation based exclusively on “behavior, work, and competence” over the course of that year.¹²⁹ The grade from this evaluation is a major factor in determining whether a magistrate may be promoted or not.¹³⁰ Furthermore, whereas magistrates are automatically promoted to higher pay scales on the basis of seniority,¹³¹ promotions to higher rank are “essentially governed by professional merit.”¹³² Promotion can also be obtained on the basis of continuing training and education.¹³³ It therefore appears that, while the maintenance and development of competence is encouraged throughout a judge’s career, there is little protection against incompetence after the judge completes his/her initial training.

B. Diligence

Mali appears to be the only country of the five studied in this report to mention diligence in its law on the judiciary. Indeed, Mali’s Code of Ethics has a provision stating that “integrity, diligence, equality, and impartiality are duties that the magistrate must follow.”¹³⁴ This is followed by a section entitled “On integrity and diligence,” which contains three articles. The first and second ones deal more with the concept of integrity, but the third article requires that the magistrate “fulfill his/her professional obligations within a reasonable timeframe and use all necessary means to tend towards efficiency.”¹³⁵ This emphasis on time and efficiency is comparable to the way in which diligence appears to be understood in Rule 2.5 of the Model Code. The comments for that rule, which explain in more detail how “diligence” should be interpreted, clearly stress that a judge should dispose of matters “promptly and efficiently.”¹³⁶

Article 71 of the Malian law on the judiciary contains a provision that “any serious violation of the rules of procedure, any manifest abuse of law, and any recognized failure of diligence in accomplishing [the magistrate’s] mission” constitutes a professional offense.¹³⁷ This text did not appear in the prior Malian law regulating the judicial profession. Notably, while the legislators

¹²⁷ Loi organique No. 036-2001/AN portant statut du corps de la magistrature [Organic Law No. 036-2001/AN Establishing the Status of the Magistrates’ Corps] arts. 15–16 (Dec. 13, 2001) (Burkina Faso).

¹²⁸ Loi organique No. 92.27 du 30 mai 1992 portant statut des magistrats [Organic Law No. 92.27 of May 30, 1992, Establishing the Status of Magistrates] art. 47 (May 30, 1992) (Senegal).

¹²⁹ Loi No. 02-054 (Mali), *supra* note 21, art. 85.

¹³⁰ *Id.* arts. 92, 93.

¹³¹ *Id.* arts. 88, 89.

¹³² *Id.* art. 91.

¹³³ *Id.* art. 97.

¹³⁴ Code de déontologie (Mali), *supra* note 23, art. 7.

¹³⁵ *Id.* art. 10.

¹³⁶ ANNOTATED MODEL CODE OF JUDICIAL CONDUCT, *supra* note 1, Rule 2.5, at 129.

¹³⁷ Loi No. 02-054 (Mali), *supra* note 21, art. 71.

who formulated the 2002 law found it useful to add this language, they did not expressly state that a violation of the Code of Ethics constitutes a professional offense. The closest they came to specifying this is in article 15 of the 2002 law, which states that “magistrates must, additionally, ensure that the Code of Ethics annexed to the present statute is respected.”¹³⁸ The legislators clearly wanted to establish that a magistrate’s failure of diligence should have adverse professional consequences for him/her. This again makes Mali stand out as compared to Senegal, Côte d’Ivoire, Benin, and Burkina Faso, none of which appear to have any similar language in their laws on the status of magistrates.

¹³⁸ *Id.* art. 15.