"WE MAKE DO AND KEEP GOING!" INVENTIVE PRACTICES AND ORDERED INFORMALITY IN THE FUNCTIONING OF THE DISTRICT COURTS IN NIAMEY AND ZINDER (NIGER)

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INTRODUCTION: HOW TO MANAGE A PUBLIC SERVICE IN CHRONIC NEED OF RESOURCES?

If you insist that you need this and that to work, they will end up saying that you do not do your work!

This statement by a Vice President of the Higher District Court of Niamey, Niger’s most important court in terms of the volume of cases processed, is indicative of the functioning of its jurisdiction and of the judicial system in general. It reflects the scale of dysfunction within the courts. Nonetheless, the courts continue to more or less meet the needs of service users. How do they manage to do this? Taking the concept of ‘practical inventiveness’ (débrouillardise) as its starting point, this chapter explores the mechanisms by which these services function. These inventive practices are often overlooked in the research carried out on African public administrative systems. An ethnography of the operation of two district courts in Niger will not only provide insights into the state’s everyday functioning ‘from below’ but will also demonstrate that practical norms and ordered informality (see Olivier de Sardan in this volume) are not always negative and can contribute, in some cases, to making the state work.1

To ensure the production and delivery of public services in a context of state weakness, civil servants rely on a wide range of practices which are, themselves, based on equally diverse logics. They face organizational constraints in the decisions they make: they must deal with problems, and build strategic relations with local political authorities whose support they depend on for the completion of certain tasks. This constant quest

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1 The term “ordered informality” is inspired by Evans-Pritchard’s (1940, repr. 1987: 296) analysis of the working of segmentary societies. See also Olivier de Sardan (in this volume). Special thanks to Susan Cox for translation into English.
for resources to facilitate the running of the courts shapes the magistrates’ image of the state.

These practices are often out of step with what is set forth in the official documents; however, they sometimes produce unexpectedly positive results which are currently of interest to both the development community and social science researchers (Jütting et al. 2007). If these practices help to strengthen the production and delivery of public services by the state, particularly in local contexts, the potential offered by the analysis of their emergence and embedding in public administration practices is considerable. In the context of the judicial system, such an analysis raises the question of the ‘independence’ of the judicial system and the capacity of the state to control a service that relies—at least in part—on non-state resources in order to function.

Addressing the concept of practical inventiveness is to bring to light certain practices—sometimes hovering on the limits of legality—which facilitate the functioning of the judicial system on a daily basis. It also means re-examining the level of commitment among magistrates in relation to the state they serve (Lentz in this volume). Contrary to the claims of Das and Poole (2004), this is not limited to the “margins of the state”. This consideration concerns the very heart of the judicial structure; it endeavours to give substance to the concept of ‘practical norms’ as put forward by Olivier de Sardan (in this volume). There is a significant discrepancy between the inventive practices referred to here and the official functioning and the formulated policies of the state. However, far from impeding the operations of state justice, much like the oil that lubricates an engine, these practices sometimes act as a catalyst for functionality. ‘Practical inventiveness’ adds to the notion of the plurality of norms already recognized as existing in public administrations. In an analysis of this plurality of norms in the implementation of public policy, Chauveau, Le Pape and Olivier de Sardan (2001: 150) maintain that ‘unofficial’ norms develop as a result of an incapacity on the part of the state to formulate rules and regulations and ensure their acceptance (see also Olivier de Sardan 2009; Titeca and De Herdt 2010). I will argue here that the emergence of unofficial rules could also arise as a result of the state’s incapacity to provide sufficient resources to its administrations.

In the sphere of justice, unofficial practices raise a very specific question: to what extent does the emergence of informal practices affect the independence of the judicial system? The literature on the subject of judicial independence (in francophone Africa) focuses on political interference in the treatment of court cases (Badara Fall 2003; Du Bois de