



NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

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STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (NDI) PRE-ELECTION ASSESSMENT DELEGATION

Cotonou, February 26, 1996

I. THE DELEGATION AND ITS WORK

A four-member international pre-election assessment delegation organized by the National Democratic Institute for International Affairs (NDI) visited the Republic of Benin from February 20 through February 25, 1996. The purposes of the delegation were to demonstrate the interest of the international community in the democratic process underway in Benin and to examine conditions prior to Benin's March 3 presidential elections.

The delegation's work was part of NDI's election-related activities in Benin, which will also include international observer delegations to the March 3 election and to the March 17 run-off, if a second round of voting is necessary. NDI staff will remain in Benin until the final results of the election are determined. Additional statements will be released by the NDI election observer delegations, and NDI will release a final report after the definitive election results are announced. NDI's international observer delegation for the March 3 election is arriving in Cotonou on Wednesday, February 28, to continue monitoring the election process. The delegation is comprised of members from Africa, Europe and North America.

This pre-election assessment delegation included election experts and political and civic leaders from the United States and West Africa. Delegation members have participated in numerous electoral assessments and international election observer delegations around the world. The members of the delegation included: Edith Coliver (United States), a former leader of the League of Women Voters and participant in numerous election-related programs in Asia; Honore Guie (Cote d'Ivoire), professor of constitutional law at the University of Abidjan and President of the Study and Research Group on Democracy and Economic and Social Development in Africa (GERDDES-Afrique), Cote d'Ivoire chapter; Yaovi Crespin Leguede (Togo), co-secretary general of GERDDES-Afrique; and Patrick Merloe (United States), leader of the delegation and NDI's senior official for electoral programs. The delegation was assisted by NDI program staff.

The delegation was charged with several tasks: (1) to assess the legal framework for the elections and the election campaign environment in light of international standards for fair electoral competition; (2) to review the state of preparedness of the electoral administration; and (3) to gauge the degree to which voters and the public generally are being notified about the electoral process and about the candidates so that they may make an informed choice, feel free to exercise that choice and have confidence in the electoral process to determine accurately and respect the will of the electorate.



The pre-election delegation conducted meetings in Cotonou with members of the Autonomous National Electoral Commission (CENA), the Constitutional Court, the High Authority for Audiovisual and Communication (HAAC), representatives of the presidential candidates, leaders of nongovernmental organizations (NGOs) working on fair election processes, journalists and others concerned with the presidential election. The delegation divided into two teams, which traveled respectively to Abomey and Parakou. The teams also met with election and government officials, candidate representatives, local traditional and civic leaders, journalists and others involved with the upcoming elections. In addition, the team received information from NDI staff who traveled to other places in the country in preparation for NDI's election observer delegations, including the cities of Lakossa, Natitingou, Kandi, Djougou, Banikoara and Malanville.

II. FINDINGS AND OBSERVATIONS

A. Legal Framework for the Elections

In addition to its meetings noted above, the delegation reviewed the Constitution of the Republic of Benin and laws, decrees and decisions relating to the 1996 Presidential election. The delegation observed that, in general, the legal framework for the elections compares favorably to the legal structures in other transitional democracies. In particular, the delegation noted the following points.

1) The constitutional provisions for the creation of the CENA as an independent body responsible for conducting elections provide a basis for increased public confidence in the election process. Those with whom the delegation met almost uniformly emphasized that CENA's actions in the 1995 elections reinforced public confidence. In addition, members of the CENA and its subsidiary bodies presently functioning (CEDs and DELs) appear to be conscientiously approaching their work.

2) The Constitution and election laws confer jurisdiction for determining final election results and for resolving most election disputes to the Constitutional Court. The delegation noted that the Constitutional Court has acted with a great sense of diligence and independence in approaching its election-related mandate. The Court ordered repeat elections for 13 National Assembly seats in 1995 due to irregularities in the validation of tally sheets. It ruled unconstitutional certain aspects of the election law passed in December 1995, and it has taken a vigorous approach to resolving election complaints presented to it thus far in the pre-election period. The Court's reputation for independence adds significantly to public confidence in the election process.

3) The delegation found those with whom it met were in general agreement that the press is free to publish what it chooses, within the limits of Benin's law on defamation. The Constitution provides the HAAC with authority to develop procedures for fair media access and news coverage for candidates during the official election campaign period. The HAAC has

provided free access to each presidential candidate, including three 15-minute spots per candidate during the campaign period and one five-minute spot each on the day before the election, on radio and television. The HAAC also has attempted to develop rules for balanced news coverage of the presidential candidates during the campaign. The delegation noted the seriousness with which the HAAC appears to be approaching its election mandate. It observed, however, that it is difficult to distinguish between newsworthy official tasks carried out by incumbent candidates during the campaign and electioneering by those same candidates and that there have been complaints of imbalance in news coverage favoring the incumbent President.

4) The delegation observed that the Constitution and other laws do not provide for delay of the election results or a method of determining who should occupy the Presidency if the presidential mandate ends without the determination of the presidential election. This legal gap could pose a serious problem if such circumstances were ever to develop. The delegation noted that this issue merits consideration in due course.

B. Electoral Organization

As mentioned above, the delegation noted the serious and diligent approach being taken in preparing for the elections. The CENA conducted elections in 1995, and a number of persons were trained and gained experience as election officials at that time. The CENA also is looked to as an example in the region by those concerned with developing independent electoral authorities.

The delegation noted the substantial and positive contribution to electoral preparations being made by national nongovernmental organizations, such as the Association of Women Lawyers, Centre Afrika Obota and the GERDDES-Afrique Benin chapter and others. Their activities include civic and voter education about the need for peaceful conduct during the elections and instruction about voting procedures. National NGOs also are playing a vital role in training election officials and political party pollwatchers for the polling places throughout the country. This demonstrates the importance of cooperation between election authorities, political parties and NGOs.

In addition, national NGOs are preparing to conduct nonpartisan election monitoring throughout the country, which can reinforce public confidence. The election monitoring activities of these NGOs as well as of international election observers is proceeding without interference.

Benin's law stipulates that ballots are to be counted at the polling stations, that political party agents may be present in the polling stations, and party agents may sign and should receive copies of the tally sheets. Party agents may also have their written observations included in the record of election day events. The delegation noted that each of these features helps election organization, deters fraud and increases public confidence in election results.

The delegation also observed several important shortcomings in the organization of electoral preparations at this time.

1) The CENA was appointed at a late date, January 17, 1996, leaving very little time to organize itself and to accomplish its work. Uniformly, those with whom the delegation spoke emphasized that the late appointment of the CENA created problems in conducting voter registration, issuing voter cards, updating voter lists, training election officials, identifying polling stations and preparing and distributing election materials. The delegation noted that CENA's budget is provided by the government rather than voted on by the National Assembly and that CENA does not have a permanent secretariat. In addition, the CENA must rely on mayors, prefects and sub-prefects for many resources. Each of these features could hinder CENA's independence and effectiveness and should be addressed before future elections.

2) Only two of CENA's 17 members served on the body during previous elections. This lack of continuity makes it more difficult for the CENA to accomplish its task. The same problem seems also to affect the CEDs and DELs to a significant degree.

3) A number of people with whom the delegation met complained that several of the CENA members appear to be approaching their work as advocates for the interests of their political parties rather than as independent actors, as envisioned by Benin's legal framework.

4) In some areas the CEDs and DELs are dependent on the Prefecture and mayor's offices for communications and logistics facilities, which could cause confusion as to the lines of authority on electoral matters.

C. Election Campaign Environment

As noted above, election officials with whom the delegation met are proceeding with their tasks despite difficulties created by the shortness of the preparation period. Political activists are enthusiastically campaigning for their candidates. National NGOs are playing an active and important role in electoral training, monitoring preparations and confidence building. The press is giving active election coverage, and civic and voter education programs are taking place in the rush toward election day.

The delegation was impressed that the election campaign environment for the most part is peaceful and that nearly everyone with whom it spoke was preparing enthusiastically for the elections. The delegation especially noted that the candidates have been able to travel to all parts of the country and campaign openly without disturbances. In some of the places visited the delegation also observed the active participation of women and young people in the election campaign.

At the same time, the delegation noted several reasons for concern, especially regarding the security situation. Several events have taken place that threaten security, and the government has taken measures in light of these events to prevent further incidents. A significant number of people with whom the delegation met expressed the view that the events and countermeasures combine to create unease or insecurity toward the elections. In particular, the delegation noted the following.

Many persons with whom the delegation met expressed deep concern over reports that some presidential candidates have formed private militias. Such actions were seen as intimidating voters and as potential threats to security. The existence of private militias reportedly causes apprehension about violence and potential civil strife among segments of the population.

In Tangieta government officers attempted to arrest a person who was associated with former military figures wanted in connection with a failed coup attempt and who had escaped prison some time ago. The individual shot and killed an officer during the arrest attempt and was shot and killed by other officers as a result. A crowd protesting these developments forced the sub-prefect for the area to leave his car and enter the car of the prefect. The crowd pursued him, and the prefect's bodyguards shot and killed someone in the crowd. While the events may not be politically motivated, the timing so close to the election has caused concern throughout the country. In addition, an alleged kidnapping with potential political overtones also has raised concerns in the population.

The government has taken measures to increase the presence of security forces in some areas as a result of the two incidents. In Parakou, for example, a curfew was imposed until after the elections and security force reinforcements were dispatched to enforce the curfew. Citizens protested actions by these forces, and the prefect subsequently curtailed the forces' activities. This shows that government officials are trying to respond to citizen concerns and to potential security threats during this sensitive period.

In an environment of even temporarily heightened tensions of this type, smaller incidents that came to the delegation's attention, such as tearing down signs of opposing candidates, an apparently politically motivated firing, problems with distribution of voter cards, potential confusion over where to vote due to the increase of polling stations or similar matters can prompt more serious incidents.

III. RECOMMENDATIONS

The delegation noted the many positive elements of the pre-election environment, electoral organization and the legal framework for the elections. In addition, the delegation appreciated the openness and serious attitude of election officials, party and candidate representatives and NGO leaders with whom it met. In the spirit of international cooperation and in light of these positive factors, the delegation offers the following recommendations.

1) **Electoral Lists:** The delegation received reports of problems in issuing voter cards and delays in revising electoral lists. Articles 10 and 16 of Law No. 94-013 relate to the electoral lists. Neither these nor other legal provisions set a deadline for posting of the final electoral lists, nor are political parties, candidates or NGOs explicitly given the right to review the final electoral lists before election day. The delegation recommends that the final electoral lists be made publicly available as far in advance of March 3 as possible. The delegation also recommends that in the future the political parties, candidates and NGOs concerned with fair elections be provided access at a sufficiently early date to allow them to verify their accuracy.

2) **Lists of Polling Places:** The number of polling places has been increased for the upcoming election. Many voters therefore will cast ballots in new locations. The delegation recommends that the process of identifying polling places be completed and lists of polling places be published as many days as possible before the March 3 election.

3) **Ballot Envelopes:** Articles 46, 53 and 55 of Law No. 94-013 relate to the ballot envelopes. These provisions leave certain ambiguities or omissions that could be corrected by the CENA or Constitutional Court before the March 3 election. The delegation recommends that the following be provided:

- * That the number of ballot envelopes provided to the polling stations should exceed the number of eligible voters by a reasonable number in order to account for the possibility of spoiled ballot envelopes during the voting period.

- * That each ballot envelope be signed by a polling station official at the table before giving it to the voter to prevent the smuggling of illegal ballot envelopes into the voting booth and depositing of multiple envelopes and ballots into the ballot box. Envelopes taken from the ballot box would therefore require a valid signature.

- * That, in addition to the provisions of Articles 46 and 52, the tally sheets require the entry of (a) the number of ballot envelopes present at the opening of the polling station, (b) the number of ballot envelopes that were spoiled during the voting; (c) the number of ballot envelopes that were unused; (d) the number of ballot envelopes that were found in the ballot box. The total of b+c+d should be reconciled with a.

- * That polling station officials be required to return all unused ballot envelopes along with the tally sheets and used and spoiled envelopes.

4) **State Resources:** The delegation received reports from several persons that state projects were used less than three months before the election to gain the support of voters, in violation of the provisions of Article 31 of Law No. 94-013. While the delegation could not investigate these allegations, it recommends that the CENA and Constitutional Court pursue any complaints filed in this respect.

5) **Complaint Mechanisms:** Article 57 of Law No. 94-013 provides that the Constitutional Court is to verify the regularity of the election and declare the final results in a maximum of four days from the election date. Article 95 of the law states that all election-day disputes are to be brought before the Court. These provisions could cause difficulty for the Court to complete its work within the time required. The delegation therefore recommends that adequate resources be made available so that the Court can avoid congestion at this critical juncture of the election process.

6) **Civic and Voter Education:** The delegation noted a variety of civic and voter education programs being carried out in the mass media and by NGOs. All political party and candidate representatives, traditional leaders and others concerned with the election process stressed the value and continued need for such activities. The delegation therefore recommends continued and heightened efforts to conduct education campaigns concerning the importance of voting, voting procedures and the need for peaceful electoral competition.

7) **Public Assurances:** Events have transpired in the country and in the subregion that appear to have brought about apprehension among segments of the population. In such circumstances public confidence in electoral procedures needs to be heightened. The delegation therefore recommends that the CENA, other governmental bodies, candidates and other political and civic leaders take further effective steps to assure the people of Benin that the elections will take place in a calm and peaceful environment.

The delegation greatly appreciates the hospitality extended to it by representatives of the CENA, the Constitutional Court, HAAC, other governmental officials, presidential candidates, nongovernmental organizations, mass media, traditional and civic leaders and others who received it. The delegation could not have accomplished its tasks without the generous cooperation of those with whom it met. NDI remains committed to assisting those who are working to advance the democratic process in Benin. NDI will continue its activities in Benin through the work of its international election observer delegations and staff presence throughout the election and immediate post-election periods. Further reports will be issued as part of these efforts.

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**BENIN PRESIDENTIAL ELECTIONS
MARCH 3, 1996**

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