

NDI Electoral Law Assessment Mission to Mali

Preliminary Report

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INTRODUCTION

In February 1996, the National Democratic Institute for International Affairs (NDI) organized an international delegation to review and assess the electoral system of Mali. The delegation set out to offer recommendations for electoral law reform and suggestions for implementing these reforms as the country prepares for its next series of elections. Mali's electoral calendar currently envisions municipal elections in late 1996, legislative elections in February 1997 and presidential elections in April 1997. NDI undertook this program at the invitation of the government of Mali; the mission was welcomed by opposition parties as well. The assessment mission visited Mali from February 11 to 22.

The four-member international delegation of electoral law experts comprised: Anne-Emmanuelle Deysine, professor of political science at the University of Paris-X, Nanterre, France; Jonathan Gould, assistant director of the International Human Rights Law Institute, DePaul University, United States; Richard Stephenson, member of the Election Finance Commission of Ontario, Canada; and Agnès Zanouvi, professor at the University of Benin and former vice president of Benin's National Independent Electoral Commission (CENA). The delegation was joined by NDI staff members, including: Christopher Fomunyoh, regional director for West Africa; Linda Maguire, program assistant for West Africa; and Benjamin Feit, NDI field representative in Niger. Kenneth Wollack, NDI president, and Patrick Merloe, senior associate for election processes, did not join the delegation but provided substantial support to its work. Collectively, this group represents broad electoral, legal and political expertise as well as different nationalities, democratic systems and political tendencies.

Over the course of their stay in Mali, the delegation members met with Malian government officials, political party leaders, representatives of nongovernmental organizations (NGOs) and officials from a number of judicial and administrative bodies. During these meetings, the delegation found that political party leaders, including the president, agree on a variety of electoral

reform issues, including the need to create an independent election commission to administer the upcoming elections. Such a commission, however, remains to be created.

Through its consultations the delegation sought to:

- ! examine the election laws and practices of Mali and their applicability in a competitive, multiparty context;
- ! assess preparations for elections scheduled for 1996 and 1997;
- ! assess the purview of the election administration authority; and
- ! make recommendations to the Malian government, political parties and others concerning electoral reforms that could strengthen the electoral process.

The delegation consulted with representatives of 15 political parties, among them were the *Alliance pour la Démocratie au Mali* (ADEMA), *Comité National d'Initiative Démocratique* (CNID), *Parti pour le Renouveau National* (PARENA), *Union des Forces Démocratiques* (UFD), *Mouvement pour l'Indépendance, le Renouveau et l'Intégration Africaine* (MIRIA), *Union Soudanaise-Rassemblement Démocratique Africain* (US-RDA), *Bloc Démocratique pour l'Indépendance-Union pour la Démocratie et le Développement* (BDIA-UDD), *Parti Soudanais Progressive* (PSP), *Rassemblement pour la Démocratie et le Travail* (RDT), *Parti Malien pour le Développement et le Peuple* (PMDP), *Mouvement Patriotique pour le Renouveau* (MPR) and *Parti Malien pour le Développement et le Renouveau* (PMDR). In addition to political parties, the delegation met with representatives of four of Mali's largest and most active civic organizations, including the *Association Malienne des Droits de l'Homme* (AMDH), *Observatoire des Droits des Femmes et de l'Enfant* (ODFE), *Association des Juristes Malienne* (AJM) and *Centre d'Etudes et de Recherche sur la Démocratie et de Développement Economique et Sociale* (CERDES). These meetings provided delegation members with insights into political and civic life in Mali. They also provided exposure to the interests and views of various political parties and civic organizations. In addition, the delegation met with representatives of the Supreme

Court, the Constitutional Court, the Superior Communication Council, the Committee for Equal Access to State-owned Media and the Decentralization Mission.

The delegation was given access to Malian institutions and individuals concerned with the electoral process. The cooperation of the government and the parties enabled the delegation to complete its review during the visit. Political party leaders engaged in substantive discussions with the delegation. Most of them took advantage of NDI's invitation to prepare documentation in advance concerning their suggestions for electoral law reform.

The delegation found that Malians are interested in suggestions and clarifications on various aspects of electoral systems, especially those that relate to the election administration body, the electoral system (i.e., majoritarian versus proportional representation), civic and voter education and the training of polling officials. The delegation was encouraged that all of the Malian political actors agreed that organizing the upcoming elections in a fair and transparent manner would facilitate the consolidation of the country's new, democratic system.

This report presents the findings of NDI's delegation. Chapter One discusses areas of general consensus among Malian political actors. Chapter Two addresses issues over which opinion is still divided and where consensus needs to be developed. Chapter Three makes suggestions concerning ambiguities, omissions and contradictions in some provisions of the electoral code. Finally, in the spirit of international cooperation and in light of the positive climate of political discourse in the country, Chapter Four offers comments and recommendations concerning several possible changes to the electoral framework. The suggestions and recommendations are presented in the hope of making a positive contribution to the electoral reform debate. The delegation also hopes that these suggestions and recommendations will help to increase voter confidence and participation in the upcoming elections.

The delegation appreciated the sensitivity of the role it was expected to play and undertook the responsibility with humility. Delegation members were heartened by the willingness of the

government and the opposition to engage in discussions on election law reform. This is a clear indication of the positive development of democratic processes and institutions in the country. The delegation sought to expose the parties to various reform options that could promote confidence and participation in the electoral process. In making changes to its election system, Mali is not alone among democracies. The four nations represented on the international delegation have all made such modifications in recent years.

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! CHAPTER I: AREAS OF CONSENSUS

The delegation found that discussions on Mali's electoral framework are already taking place. Even though encounters among parties of different political tendencies concerning electoral reform have yet to occur, the representatives of the various political groups have given considerable thought to some of the most important aspects of the electoral process in Mali. The delegation noted a convergence of viewpoints among these groups on some of the major issues that need to be addressed in order to strengthen democratic electoral processes in the country. The broad outlines of political consensus appear to exist in the following areas:

A. *Commitment to Democracy*

Delegation members noted a strong commitment among political leaders on advancing the democratic process in Mali. The Malian leaders stated a conviction that elections are the only legitimate means through which political power changes hands in a democracy. They underscored the point that the upcoming elections represent only the second set of multiparty elections in the history of the country. Nearly all the political figures with whom the delegation met recognized that Mali's democratic process is still fragile. Consequently, they noted that measures need to be taken to increase the understanding by political parties and civil society of the functioning of democratic institutions. They noted that the elections therefore must be organized in as transparent a manner as possible in order to advance further democratic institutions and practices in Mali.

To illustrate their desire to build consensus on decisions that affect the process of democratic consolidation, a number of representatives of political parties, non-governmental organizations (NGOs) and the government stated that, following the 1992 elections, they did not petition the courts regarding all of their electoral complaints. Their reticence was explained as an effort to avoid litigation that could have heightened political tensions.

All of the Malians with whom the delegation met asserted that genuine multiparty politics is the only means of advancing a democratic political climate. While admitting that some aspects of one-party culture still exist in Mali, the political leaders all expressed the desire to eradicate autocratic tendencies. They recognized the need to seek consensus on modifications to the electoral law and to carry out the 1996/97 elections on schedule. They noted that such a consensus would foster respect for the laws and procedures that would govern the electoral process and promote social harmony. They also stressed the need for the early consideration of electoral reforms by political parties and the government so that the National Assembly can review and enact them during its spring session (April-July 1996).

The discussions revealed that all of the leaders felt it would be important for Malians to view elections as a process that offers each citizen the opportunity to make policy choices through his or her vote. The discussions also revealed that most of the Malian interlocutors view elections as an important political dynamic in the democratization process rather than simply as a technical or administrative exercise.

B. Low Voter Turnout in the 1992 Elections

The 1992 national elections were marked by an extremely low voter turnout. Explanations from Malian political and civic leaders pointed to factors such as voter fatigue resulting from a series of elections that took place in rapid succession. The presidential elections were the last of the series and thus were most affected by this apparent apathy. The proliferation of political parties was also mentioned as contributing to low voter turnout. According to some observers, it was difficult for some voters to distinguish among the many different parties, candidates and platforms. Several Malians argued that after years of single-party rule, voters did not appreciate the stakes involved in the elections and, therefore, showed considerable disinterest in the entire electoral process. Other problems were cited that could have contributed to the low voter turnout. These included: the long distance of some polling sites from the residences of voters, especially in rural areas; the high number of registered voters per polling site, which caused long lines and

delays; and the mismanagement of election day activities in some of the mobile polling sites, which limited the number of prospective voters who used these sites. Other Malians said that many illiterate citizens did not fully comprehend certain aspects of the electoral process and therefore stayed away from the polls. A number of Malians noted that some citizens confused the voter registration process with the tax census, which they sought to avoid. These individuals may have not attempted to vote because of their failure to register.

Voter participation percentages in the 1992 elections were as follows:

January 12, 1992, Referendum : 40.56%

Legislative Elections:

March 8, 1992, First Round: 22.38%

March 22, 1992, Second Round: 21.16%

Presidential Elections:

April 12, 1992, First Round: 23.59%

April 26, 1992, Second Round: 20.87%¹

Malians of all political tendencies stated that low voter participation could present problems for the future of Mali's nascent democracy. They also agreed that Malian citizens must view themselves as the "stake holders" of the democratic process in order to reinforce their desire to make political and policy choices through the ballot box.

Malian political leaders seem to have clearly understood the likely negative effects of low citizen participation, especially for young Malians. According to the official statistics, 60 percent of the population is under 20 years of age. This underscores the need for higher participation of Malian youth in the political process. All of the Malians with whom the delegation met acknowledged that concrete steps would need to be taken to address the various causes of low voter turnout.

¹ Source: Ministry of Territorial Administration.

C. Need for Civic and Voter Education

Directly linked to the problem of voter participation is the need for greater civic and voter education. This can be done through various media, including: television; radio; print; town criers; and other traditional channels. Malians agreed that the responsibility for civic education rests not only with the government but also with political parties, professional associations and civic organizations, even though some political figures question whether civic groups can assume a truly nonpartisan role.

D. Need for Transparency and a Consensual Approach to Electoral Reform

The delegation was impressed by the political good will of Malians who sought to address and openly debate issues related to the organization of elections. All of the Malian interlocutors, including government officials and opposition leaders, repeated on numerous occasions their desire to see the upcoming elections organized in the fairest and most transparent manner possible. They agreed that regime change through the ballotbox is a central tenet of the democratic process. The president and the prime minister emphasized the need to adhere to the electoral timetable -- and above all not to postpone the elections -- so as not to cast doubt on the integrity of the electoral process.

Political party representatives, particularly those of the opposition, expressed the desire to engage in deliberations on electoral reforms. They noted that multiparty participation in the reform process is necessary to enhance confidence in the institutions that will be called upon to help organize the upcoming elections. The Malians recognized that steps should be taken to increase the credibility of the process to avoid problems created by perceived or actual partisanship. They argued that the issue of partisanship has been raised because political figures hold positions in administrative and judicial authorities that perform election-related functions.

E. Creation of an Independent Election Commission

A consensus among political leaders has clearly emerged on the need to create a neutral body, such as an independent election commission, to administer the elections. In Mali, as in other multiparty democracies, political parties want to ensure that elections are administered impartially so that the legitimacy of the elections and of the resulting government are not challenged. As a result of discussions among Malians prior to the arrival of the delegation, there appears to be agreement on the desirability of establishing an independent commission prior to the upcoming elections.

Although differences of opinion still exist as to the composition and attributes of an independent election commission, there is agreement regarding the broad outline of its structure, its representation at regional and local levels and some of its prerogatives. Malians agreed that the commission would have to organize its activities through regional and local commissions, with these decentralized units relying in turn on the *communes* (newly created local councils) that will be set up through the decentralization process. According to Malian authorities, the decentralization process should be completed before the next elections.

! CHAPTER II: AREAS IN WHICH CONSENSUS NEEDS TO BE FURTHER DEVELOPED

A. *Composition of an Independent Election Commission*

Although party leaders across the political spectrum agree on the need to create an independent commission to administer elections, they still disagree on how it should be constituted. The electoral code currently provides for a commission that is convened only 30 days before an election. (Article 53.) The commission comprises the Minister of Territorial Administration, who acts as chairman, the ministers of Finance, Communication, Foreign Affairs, Education and Transportation, as well as the director of Postal Administration. Political party activists and other observers expressed concern regarding the impartiality of a commission run by government officials who, in most cases, are members of the ruling party.

Some Malians suggested the independent election commission be relatively small to ensure efficiency. Others suggested a larger body, the chairman of which would be the Presiding Judge of the Bamako Court of Appeals. Under this scheme, the commission would include: representatives from legal and professional bodies, NGOs, the Territorial Administration; representatives from political parties presenting candidates for the various elections (two representatives from each political party with candidates for legislative elections and five representatives from each political party with candidates for presidential elections); and officials from the various ministries and commissions.

Some Malians propose a permanent commission. Others prefer a commission that is established only during elections. The delegation also heard from those who point to prohibitive costs associated with an electoral bureaucracy distinct from that of the Ministry of Territorial Administration with agencies in various parts of the country. They suggest that ways be found to maximize the use of available resources in order to avoid overlapping jurisdictions.

After consultations with representatives of the Malian government, various political parties and non-governmental groups, the delegation concluded that two potential problems should be avoided in planning the structure of the commission: partisanship and excessively large membership.

i) Ensuring the Impartiality of the Commission. The commission must perform its functions impartially. Members must accept and implement this principle. Members who represent political parties will understandably protect their respective party's rights, but they must also appreciate the overriding need to cooperate in order to develop a fair and open election process. Commission membership must be structured to ensure that, if party members are included, no party or block of parties can exercise control over the commission.

ii) Ensuring Efficient Commission Size. The size of the commission should be structured to maximize its efficiency. Requiring that all political parties be represented on the commission could result in an unwieldy body that is unable to effectively perform its work. There are currently 58 registered political parties in Mali. Thirty parties are active and 11 are represented in parliament. Some of the political parties have proposed a plan that would lead to a 100-member commission. Even assuming a majority was required for decisions, the possibility of stalemates and inefficiency in such a large commission would be high. Moreover, leaders of major parties would likely advocate a weighted voting system, which could further complicate the commission's operation.

Because of these concerns, objective and verifiable criteria should be used to determine the conditions that political parties must meet in order to be represented on the commission. An example of such criteria would be the number of votes obtained in the last elections or the number of seats occupied in the National Assembly. In addition, a number of seats on the commission could be filled by a lottery among small parties who do not meet the threshold of votes or seats.

Some commission members could be drawn from NGOs and professional associations in order to provide nonpartisan representation on the commission and thereby enhance the role of civic organizations in the administration of the elections. The commission may also want to consider setting up a political party liaison committee to meet regularly with parties. This would increase transparency and improve communication between the commission and the parties, thereby increasing public confidence in the election process.

In addition, the delegation noted that constituting the commission just 30 days before an election may not provide sufficient time for it to accomplish all of its tasks effectively. Time may be the most valuable resource for an election commission. Consideration should therefore be given to constituting the commission at an earlier date with due regard to its responsibilities for overseeing all aspects of the election process.

B. The Electoral System

The present electoral code provides for two distinct electoral systems: proportional representation for municipal elections; and a majoritarian system in two rounds for the legislative and presidential elections. These systems are only partially accepted by the leaders of the various political parties.

According to Article 154 of the electoral code, legislative elections are conducted on a majoritarian list system with two rounds of voting needed to obtain an absolute majority to be elected. Some “lists” present one candidate for a single-member district, while others present candidates for each seat in a multi-member district on a “winner-take-all” basis. Municipal counselors, alternatively, are elected through proportional representation. Some of the political parties argue that the majoritarian system helps promote stability by preventing a fractionalized party system. Others would prefer that the majoritarian system for the election of deputies be replaced by the proportional system. Advocates of proportional representation argue that this

system would be more inclusive, facilitating representation of more political tendencies in the political process.

Presently, the 113 deputies in the Malian National Assembly were elected from a total of 55 electoral districts. The 55 electoral districts comprise the six *communes* of Bamako and the 49 administrative *cercles* in the eight regions of Mali. The number of *cercles* in each region varies from four to eight. Some electoral districts have only one or two deputies. Others have five or six, depending on the population or number of registered voters. In 1992, deputies were elected with more than 50 percent of the vote in the first round in 11 districts. In the remaining 44 districts, a second round of voting was necessary to determine the list of winning candidates. In all electoral districts which had multiple seats, the party that came in first won all of the seats.

For example, in one of the electoral districts not far from Bamako, the party list that was victorious won all six legislative seats, although it had only garnered 2,000 more votes than the party list that came in second. For the municipal elections in the same electoral district, the 37 council members were elected through proportional representation: 11 were from the party that came in first, seven were from the party list that placed second, and 19 council members represented other political parties.

Some of the parties are satisfied with proportional representation, which allows more political minorities to be represented at the local level. Others complain that, through the organization of alliances following the local elections, the party that obtains the greatest number of votes without obtaining the majority is often prevented from administering the municipality. The complainants in this case would prefer a system that rewards the parties having won the plurality of the votes in the first round by granting them half of the seats in the municipality before distributing the rest of the seats to the other parties in proportion to the votes obtained. This, they claim, would be more equitable, and could produce greater stability within the councils.

It is often argued in Mali and elsewhere that municipal polling is the most important electoral exercise, since local government is closest to the people. With the implementation of the decentralization scheme in Mali and the creation of approximately 600 communes or municipalities, every citizen of voting age will have the opportunity to influence decision-making within the municipality by voting for his or her local representatives. All of these factors further heighten the importance of the electoral system adopted for municipal elections.

C. Voter Registration

According to the code, electoral rolls are drawn up initially and revised in each *commune* and electoral district by an Administrative Commission. Inaccurate listings or omissions by the Administrative Commission can be appealed before the *commission de jugement* (“Judgment Commission”). The Judgment Commission is an administrative entity. Decisions of this Commission may be appealed to a civil judge, who may receive complaints in the form of a simple statement to the clerk of the court. Appeals can be lodged by applicants, interested third parties and administrative officials or by the *cercle* commanders. The judge must issue a decision within 10 days. The judge’s decision can be appealed to the Constitutional Court within three days of the date on which the interested party was notified.

In practice, the government periodically conducts administrative censuses, which have served to establish electoral rolls. While there are Malians who do not register anywhere, others are sometimes registered in two or three different locations where they have family members, even though the electoral code states that a person may not appear on more than one electoral roll. (Article 13.) This results in inflated electoral rolls. It also explains, in part, reported low turnout rates because turnout is calculated by comparing the number of those who actually voted to the total number of citizens registered in the census.

For reasons that can be attributed to culture and past practices, some family heads register all of their children in the village of birth even when these children become adults and no longer

reside in the village. Also, in polygamous families, heads of households may have multiple family residences, with one located in the city and others located in their villages of origin. In such cases, the administration defines registrants as “present” or “absentee” residents. If such data is input to the electoral rolls without verification or corrections, the voter rolls are further inflated.

Article 15 of the electoral code provides for revision of the electoral rolls from September through December of each year, a process that in principle should help maintain the accuracy of electoral rolls. The delegation noted considerable disappointment expressed by political leaders because electoral lists had not been revised since the 1992 elections.

Some party leaders also claim that voluntary registration and the issuance of voter cards, which could help resolve problems of inaccurate numbers, would be inadequate. According to statistics from the Ministry of Territorial Administration, for example, approximately 50 percent of the population is of voting age. Representatives of the Ministry speculated, however, that only about 10 percent of the population would register voluntarily.

Party leaders expressed the view that the majority of the population still needs broad voter and civic education. This would help them to better understand the importance of voter registration in particular and the new, democratic system in general. Also, party leaders complained that political parties, despite their good intentions, are not yet sufficiently organized to provide civic and voter education programs for their supporters and others throughout the vast national territory.

D. Voting by Court Order

Article 72 of the electoral code provides Malian citizens the option of seeking a court order that requires election officials to enter the person’s name on the electoral rolls and to allow the person to vote. Many Malians allege that court orders were misused in the last elections. The

process of voting with court orders would need to be resolved in a way that minimizes irregularities but that still allows those who legitimately belong on the electoral rolls to vote.

E. Mobile Polling Sites

Article 64 of the electoral code stipulates that, if communication difficulties are likely to prevent voters from traveling to the polling sites, the governor of the region can decree that a mobile polling site be installed at specifically designated times in the villages or towns within the governor's jurisdiction. This provision seeks to facilitate the participation of nomadic voters who live in geographically large but sparsely populated areas.

In addition, Article 70 of the electoral code provides that the governor of a region can establish by decree the opening dates, the itinerary and the hours of operation in each town or village for the mobile polling sites. These could vary from one region to another and from one town or village to another in the same region. This provision raises the question of how to convey information to voters regarding the operation of mobile polling sites. Criticisms of the way in which mobile sites functioned in 1992 have led some political party leaders to suggest that they be abolished; others recommend retaining a limited number. If the mobile polling site procedure is to be retained in the electoral process, mobile sites should be carefully regulated.

F. Media Coverage of Political Party Activities/Access to State Media

A key factor in creating fair electoral competition is equitable (and, in some cases, equal) access by all competing parties and candidates to the State media. Also crucial is unbiased news coverage of the activities of parties and candidates.

Equitable or equal access to and unbiased coverage by the State media can influence how the fairness of the election process is judged and whether the results are accepted by the citizenry. According to the electoral code in Mali, the State media is managed by several institutions. The

National Committee for Equal Access to the Media and the Superior Communication Council are responsible for political and electoral activities. In addition, the electoral code stipulates that a decree from the Minister of Territorial Administration will establish guidelines regarding the use of radio, television and loudspeakers during the election campaign. Duplication of responsibilities on the part of these different institutions could result in jurisdictional conflicts and disagreements.

Media related concerns raised by Malians who met with the NDI delegation included:

- C how to guarantee meaningful and equitable access to the State media for all political parties and candidates;
- C how to allow the development of private television stations (as is already the case with private radio and independent newspapers); and
- C how to provide professional training to journalists and assistance to the political parties in using the media, such as writing better press releases that are free of diatribes or insults likely to be considered a legal offense.

NDI delegation members discussed these issues with officials of the State media and received further clarifications that shed light on the coverage of political discourse in Mali. For example, informed observers acknowledged that the professional expertise of public radio and television personnel in Bamako does not necessarily carry over to private, rural radio stations. The quality and accuracy of information broadcast on private radio could influence considerably voter attitudes toward political contestants. Approximately 50 rural radio stations now operate in Mali. The State-owned national television in Mali covers between 6 and 10 percent of the national territory and is accessible to about 50 percent of the population. State radio is accessible to between 70 and 80 percent of the population. Equitable access to and unbiased coverage of State media therefore present critical issues in developing fair electoral competition in Mali.

Opposition leaders claim that they have limited access to the State media and that news coverage favors the ruling party. Government officials in charge of regulating State media explained that these complaints were due in large part to poor communication between themselves

and the complainants. As an example of this poor communication, officials cited the differing perceptions of the basis for the cancellation of a popular broadcast of political activities on national radio and television. According to representatives of opposition parties, the program had been canceled in response to political pressure from the government or the ruling party. The journalists responsible for the program however, stated that the cancellation was a professional, not a political, decision. The State media officials argued that the opposition parties were simply speculating as to the reason for the program's cancellation because they were uninformed or misinformed. They also conceded that they had not adequately explained the reasons for the cancellation to the public.

Opposition parties also questioned the editorial requirements for publishing press releases and other announcements via State media, claiming that the regulations are often imposed arbitrarily or in a biased manner. Another issue raised by some opposition parties was the possibly biased coverage by State media of political events. According to State media officials, the same professional rules are applied to all parties. The State media officials cited the need for professional training of political party staff responsible for writing press releases. At the same time, they acknowledged that there may be a perception of bias in the coverage of activities by various political parties. This perception is reinforced by the fact that some government officials are also leaders of political parties. Because of the ambivalence created by the multiple functions of these government officials, it is sometimes difficult for State media officials to determine whether activities being covered on State media relate to the governmental or partisan functions of such leaders.

! CHAPTER III: OTHER ELECTORAL CODE ISSUES

In reviewing the Malian electoral code and in discussing its provisions with Malian political and civic leaders, the delegation was able to identify a number of problems that could be resolved prior to the upcoming elections. This need for reform is even more acute because the 1997 elections will likely be more competitive than the 1992 polling.

An assessment of the 1992 elections reveals that about 30 electoral petitions or complaints were filed with the Supreme Court, which was vested with jurisdiction over electoral disputes at the time. The disputes related to a number of issues, including: the nationality of some candidates; campaigning after official deadlines; voting by proxy; misuse of court orders; election results in some electoral districts; and registrations on voter rolls. By several accounts, the matters brought before the Court represented only a small fraction of the irregularities that actually occurred during the election period. The litigation could be attributed to two main factors: ambiguities, omissions and contradictions in some provisions of the election law; and misunderstandings by political party leaders and candidates of the electoral process and the role of institutions involved in conducting elections.

Hopefully, parties have now become more familiar with provisions of the law and have learned about the electoral process and related institutions. Early identification of shortcomings within the code will permit time to remedy imperfections before the next set of elections. Some of the shortcomings relate to the electoral process, while others relate to the composition and function of some of the bodies that administer various aspects of the elections.

A. *Timetable of Elections and Submission of Candidacies*

According to Article 44 of the electoral code, the presidential and legislative campaigns begin 30 days prior to election day. Paragraph 3 of Article 56 provides that candidacies must be

submitted to the Ministry of Territorial Administration also within 30 days of the elections. The Ministry then has four days to issue an acknowledgment of receipt. That leaves 26 days until election day. If a dispute arises regarding the Ministry's decision, the Ministry or the political organizations concerned must petition the Administrative Court within 24 hours. According to Article 58, the Court must issue a decision within three days. It is therefore conceivable that litigation concerning some candidacies could be pending three weeks before election day, while other candidates would already be campaigning.

Article 137 stipulates that candidacies for presidential elections must be submitted at latest 21 days before election day, and a provisional receipt must be issued by the president of the Supreme Court. The definitive receipt would be issued after payment by the candidate or by the candidate's party of a contribution towards the declaration fee, which must be paid within two days of the declaration. (Article 141.) If a dispute arises concerning the submission of candidacies, parties can petition the Constitutional Court, which must resolve the question definitively. However, no deadline is stipulated for the Court's resolution. (Article 140.)

Article 152 gives the Constitutional Court eight days before the election date to rule on the validity of the candidacies for the National Assembly. It is possible that the election campaign could have begun more than 22 days before the Court's ruling. The campaign could therefore be proceeding actively while some candidacies are rejected by the Court eight days before election day. This situation could lead to charges of partisanship concerning actions taken by administrative and legal authorities. Moreover, nullifications so close to election day could be the source of tensions during the electoral period.

The delegation would suggest that the code be modified so that submissions of candidacies and all related issues should be resolved before the official start of the campaign. In this way, parties and candidates would be provided with equal opportunities during the official campaign period.

B. Provisions for the Replacement of Deputies in the National Assembly

Article 151 of the electoral code stipulates that by-elections will be held each time a seat is vacated in the National Assembly, but it provides no further details as to the balloting method to be used. If the Assembly member in question had appeared on a multi-candidate list in the prior election, questions could be raised as to whether all seats on the list should once again be contested or whether only one candidate would contest for the vacant seat in a multi-member district. The delegation referred to the Constitution for guidance and found that Article 63, paragraph 2, stipulates that implementation legislation (*loi organique*) should define the conditions for the election of replacement deputies. However, legislation implementing Article 63, paragraph 2, has not been enacted to date. The delegation concluded that formal procedures could be instituted to avoid future litigation or even deadlock in the National Assembly concerning this point.

C. Independent Candidacies

Another issue raised by some of Malians related to the role of political parties in presenting candidates and, by extension, to the question of whether the candidacies for the presidential and legislative elections are personal (e.g., in single member districts). Article 56 of the electoral code stipulates that only “legally recognized” parties or political groups may present candidates or lists of candidates. At the same time, Article 137 of the code stipulates that candidacies are to be declared *personally*. This could imply that once designated by a party, a candidate must automatically distance himself or herself from his or her political group. A question was raised by some Malians about the difference between such a candidate and an “independent” who fulfilled all of the other conditions of Article 137. The ambiguity of the electoral code on this issue has clearly led to differing interpretations of the law. The delegation would suggest that the code be modified to clarify this issue.

D. Invalidation of Candidacies on Party Lists

Article 57, paragraph 2, of the electoral code stipulates that *in the case of the death* of one or several of the candidates on a list already filed and registered, the party or political group in question is required to complete the list before the start of polling. A question, however, arises as to what would be the consequences for the party and the other candidates remaining on the list of an invalidation that is not the result of a death. If there is an invalidation after the closing date for the submission of a list of candidacies in a multi-member district, a question could be raised as to whether this makes the entire list invalid or only the candidate in question. In addition, if the Administrative Court invalidates a candidate shortly before the election, there may not be sufficient time for the Court to review the declaration of a new candidate and for the candidate to campaign. The delegation believes that this lack of specificity in the code can be corrected prior to the next round of elections.

E. Candidate Security

The electoral code does not mention candidate security during the election period. It is commonplace that security is provided for presidential candidates in competitive elections. This gives each candidate the opportunity to campaign without constant fear for his or her personal safety. Instituting such provisions in Mali would decrease the likelihood of a security incident that could destabilize the election process. The electoral code might include security provisions that the State would implement during the election campaign, especially for presidential candidates.

F. Voting by Malians Living Abroad

Two important issues relate to Malians living abroad: voting in the elections and representation in the National Assembly.

According to the provisions of Article 7 of the electoral code, an electoral roll is kept at each embassy and consulate. Article 12, paragraph 2, states that in order to vote while living abroad Malians must be legally registered at the consulate or at the embassy of the Republic of Mali in their country of residence, and their names must appear on the electoral roll there. No other information is given about where these Malians actually vote. The question therefore arises as to whether such persons must vote at the diplomatic missions or whether they may vote by proxy, as allowed for in Article 85, paragraph 5, or by mail, as allowed for in Article 81. In these cases, their ballots would be cast in the district of their last residence in Mali, as they would be on the electoral roll in that location. Article 13 provides, in contradiction of a strict reading of Articles 12 and 85(5), that no one may appear on more than one electoral roll.

One solution to this problem would be to require Malians residing outside the country to vote in Malian embassies and consulates abroad or to vote by proxy. They would then be removed from the election rolls inside the country and registered on the election rolls at the consulates and embassies at the time of their arrival in the host country. A second option would be to require these Malians to vote by proxy in their last residences. The diplomatic missions would not need to organize any polling activity except perhaps to legalize the proxy before it is sent to Mali.

The second issue relates to the reservation of National Assembly seats for Malians living abroad. (Article 145.) This provision could prove difficult to enforce if, for example, foreign countries challenge parliamentary immunity extended to such persons living in their territory. Because the code gives these Malians the option of keeping their original registrations at their last place of residence in Mali (Article 12) and authorizes them to vote by proxy (Article 85(5)) or by mail (Article 81), some Malian political leaders contend that such persons could vote for and would be legitimately represented by the elected officials from their last electoral districts within the national territory. It appears that further consideration of the reservation of National Assembly seats is warranted, given the financial and administrative problems inherent in reserving seats for

Maliens living outside the country and given that this group of citizens can be represented through other legal mechanisms.

G. Overlapping Jurisdictions of Various Institutions

The electoral code does not clearly define the powers of various institutions. For example, Article 137 provides that candidacies for the presidential elections are filed at the Supreme Court, with the possibility of appeal to the Constitutional Court as a last resort (Article 140.) In the case of a dispute regarding the registration of candidacies for the legislative elections, the Minister of Territorial Administration or a political group must present a complaint to the Administrative Court (Article 58, paragraph 2.) Article 117 of the electoral code, however, is in line with Articles 86 and 87 of the Constitution, which stipulate that the Constitutional Court has jurisdiction over electoral disputes. This confusion could lead to jurisdictional conflicts between the Supreme Court and the Constitutional Court or between the Supreme Court and the Minister of Territorial Administration or eventually between the Supreme Court and the independent election commission. One way to resolve these potential conflicts is for all the nonjudicial disputes, petitions or formalities to be addressed to the independent election commission with all appeals and other judicial acts or litigation reserved for the Constitutional Court.

H. National and International Observers

The electoral code does not mention the presence of national or international observers. Malian governmental and political leaders expressed a strong desire for observers to contribute to the electoral process in order to increase public confidence in the process, deter election fraud and encourage participation. The civic work of well trained and impartial national observers would contribute positively to the conduct of elections, and would lead to greater citizen participation in the political life of the country between elections. While it is true that the participation of observers has never posed a problem in Mali, including a provision for observers

in the code would encourage and facilitate their activities, as is the case in other emerging democracies.

I Other Areas of Possible Conflict or Misinterpretation

In addition to the above-mentioned issues, the delegation noted that certain provisions of the electoral code could be revised to ensure better organization of the upcoming elections. The provisions are listed in the order that they appear in the electoral code.

Article 28: According to the provisions of Article 28 of the Code, complaints made by voters concerning the establishment or revision of the electoral rolls are addressed to the “Judgment Commission.” The Judgment Commission is presided over by the chairman of the Administrative Commission, the body that was originally responsible for developing the electoral rolls. Although two individuals are designated by the chairman to sit on the Judgment Commission, this structure presents a conflict of interest. The delegation believes that consideration should be given to having different persons chair these two bodies.

Article 45: Article 45, paragraph 2, provides that *a decree from the Minister of Territorial Administration will determine the conditions for the use of the radio, television and loudspeakers during the election campaign.* This stipulation appears to contradict the provisions of Article 7 of the Constitution, which stipulate that *equal access for all to the state media is assured by an independent instrument, the status of which is established by an organic law.* The fact that the Committee for Equal Access to the State Media now exists fulfills the provision set out in Article 7. The present circumstances therefore may lead to future jurisdictional conflicts. These conflicts could be resolved by clearly delegating jurisdiction over State radio and television to the Committee for Equal Access to the State Media. Private media would fall under the purview of the Superior Commission for Communication, and regulations for loudspeakers could be left to the Minister of Territorial Administration.

Article 54: Article 54 stipulates that 48 hours following the filing of a candidacy, *each list* must pay into the public treasury a nonrefundable contribution towards election costs. The amount of the contribution is to be fixed by an order of the Minister of Territorial Administration in consultation with the political parties. Because Article 141 provides for a nonrefundable contribution of FCFA 5,000,000 towards costs for presidential candidates, it can be inferred that Article 54 applies only to candidates for legislative and municipal elections. Consideration should be given to stipulating the amount of the contribution for all candidates. This would prevent the possibility of an arbitrary decision by the Ministry and avoid charges of partisanship.

Article 66: The provisions of Article 66 entrust the chairmanship of polling sites to mayors or their assistants and other municipal council members. These are elected officials whose political affiliation would be well known and who could also be candidates during the municipal elections. This situation creates a potential conflict of interest. To avoid this problem, an independent election commission at the national, regional and local levels could designate polling officials based on their impartiality and ability to carry out their electoral tasks. In addition, the election commission should plan special training sessions or seminars for polling officials before election day.

Article 71: Article 71, paragraph 2, stipulates that envelopes must be distributed to mayors and district heads at least 15 days before polling. While a lead time helps to guarantee a supply of envelopes by election day, 15 days could be considered too long. Any suspicions that these materials are being misused or that damage could arise because of inappropriate storage should be avoided. At the same time, provisions must be made for the security of excess ballots and envelopes as well as for an accounting of their numbers.

Article 119: Article 119 deals with time limits within which election results can be petitioned to the Constitutional Court. Any interested party can petition the Court *within fifteen days after the announcement of the provisional results*. This time limit for petitioning the Court coincides with the 15 days between the first and the second rounds of presidential elections and

legislative elections. (Articles 131 and 157.) This implies that a complaint could be filed with the Court 14 days after the announcement of the results of the first round. If that were to happen, it could have negative effects on the organization of the second round, especially since the Court has three days, according to Article 117, to rule on any electoral dispute. It would be advisable to reduce the time limits for filing complaints to a reasonable time given the need to review the consolidation of vote counts and other matters. The Court could then review and deliberate on all election disputes or petitions before the second rounds in both presidential and legislative elections.

Articles 131 and 157: The provisions of Articles 131 and 157 call for the second rounds of the presidential and legislative elections to be held 15 days after the first rounds. This timing could become difficult to implement. Based on the experiences of other countries, the centralization of first round results, the settlement of all election related disputes and the preparation of materials for the second round could take more than 15 days. To avoid these time constraints, the second round of elections could be scheduled for 15 days after the definitive pronouncement of first round results by the Constitutional Court. If this were done, the time to file complaints under Article 119 may not need to be shortened.

Article 137: Article 137, paragraph 3, relates to independent candidacies. It gives rise to the question of whether a presidential candidate designated by a political party or legally recognized group of parties should still be required to have his or her candidacy supported by *the signatures of at least one hundred locally elected representatives in each of the regions*. A strict application of this provision could weaken the political parties by minimizing the party nomination process. If the provision was meant to assure the viability of independent candidacies, a distinction could be made between such candidates and those chosen by political parties.

While the provision for signatures may have been designed to eliminate candidates with solely regional support, it raises other problems. According to figures published in the Official Gazette of October 15, 1991, there were only 751 municipal councillors in the entire country

during the last elections. With each candidate required to secure 100 signatures of municipal councillors from each of the eight regions, no candidate would have been able to acquire the needed 800 signatures. With the implementation of the decentralization scheme, there will certainly be more locally elected representatives, but a determination needs to be made to ensure that the number of locally elected representatives in each of the regions is equal to or higher than the number of signatures required. The delegation suggests that consideration be given to revising the signature requirement to meet clearly stated objectives.

Article 153: The provisions of Article 153, paragraph 2, require the Constitutional Court to present the final election results for the legislative elections at a session of the outgoing National Assembly. Since some deputies would not have been reelected, the National Assembly leadership may be unavailable or unwilling to call a plenary session. This could lead to a political crisis or conflict with the Court and a delay in releasing the official results. The delegation suggests that serious consideration be given to modifying this requirement in order to ensure that the final election results are released.

Article 164: Article 164 limits the degree of kinship of members serving in the same municipal council. It would be desirable to more clearly define the degree of kinship or affinity for “the allied,” who the provisions of this article prevent from serving on the same municipal council.

Articles 165 and 168: Articles 165 and 168 bestow sole authority upon mayors to verify the candidate lists for municipal elections and to set the times for the opening and closing of polls. Because most mayors would be elected officials -- and in some cases candidates for reelection -- these provisions raise conflict of interest issues. The mayors in effect would be expected to verify the candidacy of their potential competitors. The creation of the election commission will hopefully lead to the harmonization of the candidate selection process for candidates for all elections in a manner that removes real or potential conflicts of interest.

! CHAPTER IV: KEY RECOMMENDATIONS

The current Malian electoral framework clearly reflects the democratic intentions prevalent during the transition of 1991/92. The electoral laws are generally consistent with international standards, specifically universal suffrage and direct, equal and secret voting. The roles of political parties are recognized. Malian men and women who are over 18 years of age on polling day are allowed to vote, under conditions provided in the electoral code. The eligibility age for deputies is set at 21, which indicates a desire to incorporate youth into the political life of the country.

There is more to evaluating an election system, however, than comparing it to international norms or accepted standards. An election process serves very practical functions in a democratic society. Popular confidence in the system is critical if a democracy is to survive and grow; thus, in certain instances, changes may be necessary, not necessarily because they are required by an international norm but to increase public confidence in the election process.

The delegation observed a strong commitment by leaders of all political tendencies to democratic principles. This was characterized by a positive attitude towards promoting open political discourse in the country. In view of this attitude and in the spirit of international cooperation, the delegation offers the following recommendations. These recommendations reinforce and supplement many of the comments and suggestions set forth in Chapter III of this report. The delegation offers its recommendations in the hope that they will contribute to discussions already underway among ruling and opposition parties alike concerning the desirability of increasing public confidence and voter participation in the upcoming elections.

A. Composition of an Independent Election Commission

A consensus exists at the present time for the creation of a neutral body, such as an independent election commission, to administer fair and transparent elections. Experiences

elsewhere have shown the importance of such a commission to help ensure that the electoral process is not only administratively correct, but free of the perceptions of partisanship.

General measures should be taken to guarantee the autonomy and effectiveness of an independent commission in any country:

- C the commission must be respected by the parties and candidates and by the general public as an impartial and effective body that will ensure that the will of the electorate is expressed and respected;
- C if political parties have voting representatives on the commission, no party or potential block should hold the majority of votes on the commission;
- C the commission should not include members who hold a leading position, such as president or secretary-general, in a political party or occupy high-level public office;
- C the commission must be provided with all the resources, financial and human, to ensure an efficient and fair electoral process; and
- C the commission must be capable of acting effectively and quickly when conducting its duties or when handling election related disputes, which arise before, during or immediately after the elections.

It may be advisable to create an independent election commission small enough to be efficient but at the same time representative of the various political tendencies and different layers of civil society, including those who are not part of the governing coalition. Given the large number of political parties in Mali, not all parties can be expected to be represented on the commission. In this case the criteria used in nominating and selecting individuals to serve on the commission is an issue of primary importance. If party affiliation is allowed, it is essential that the party affiliation of a commission member be known.

A mechanism could be implemented to help ensure that a broad cross section of parties have confidence in the commission members. For example, a pool of potential members could

be created based on suggestions from all parties; each party could then be allowed to object to a small number of nominees, thereby removing these persons from the pool. Final appointment could be contingent upon a super-majority vote of the legislature, thus ensuring that all members have multi-party support.

Should Malians reach agreement on an election commission that does not include representatives of political parties, care should be given to ensure that members are seen as strictly nonpartisan and that mechanisms are developed that enable the commission to consult regularly and frequently with political parties, as well as with civic groups engaged in the election process.

Other emerging democracies in the sub-region have found a national independent election commission of between 15 to 25 persons to be a workable size. While large, a commission of this size might be advisable for Mali if the commission is to be representative of various political tendencies. A commission of this size could be composed of a small executive bureau and could also include smaller sub-committees with jurisdiction over specific functions. The institution of sub-committees could increase efficiency and not detract from the commission's overall work.

The criteria used in selecting commission members should take into account the technical skills that members may need to bring to the commission. If members are nominated who are identified with political parties, a balance of political tendencies will be needed to ensure the commission's ability to act impartially. Some members of the commission could be nominated by the executive branch; others could be nominated by the legislative branch; and a third category of members could be proposed or designated by representatives of civil society from among the members of professional associations and those nonpartisan NGOs that play an important role in the political process of the country. Many of the individuals with whom the delegation met stated emphatically that there are a number of key nonpartisan figures in Mali who are recognized for their integrity by officials across the political spectrum and could provide a valuable pool of potential commission members.

It is recommended that serious consideration be given to amending Article 53 of the electoral code to provide that the election commission be constituted more than 30 days before election day. The commission should be constituted in time to organize the various stages of the electoral process, beginning with revising the voter lists, establishing polling sites and appointing polling officials. For example, the commission could be given a time limit of one or two months from its inception to present a work plan, which would immediately be made public, and three months at the latest after the elections to produce an evaluation and a report on its activities. Such a report would be widely publicized.

Once constituted, the members of the commission often are empowered to elect their own leadership or *bureau*. *Bureau* membership should require unanimous agreement or a supermajority vote of commission members. Such a provision can further ensure the commission's impartiality. The commission would also be empowered to create subordinate election commissions in the regions, *cercles*, districts or communes. Membership on the subordinate commissions could be structured to reflect the composition of the national election commission.

Some of the following guidelines could also be applied to the commission:

- C Commission members should not be candidates for elections while serving on the commission.
- C The commission's work should be transparent to the political parties, candidates, the media and the public.
- C Commission members should be provided privileges and immunities in order to move freely throughout the country and discharge their official duties.
- C The government should provide the needed financial and material support as soon as the commission is instituted and assist the commission in preparing a budget that takes into account all of the expenditures and costs inherent in the electoral process.

- C The commission's budget should be approved directly through the legislature rather than through a ministry in order to ensure its autonomy and impartiality. The commission should adopt financial regulations to govern the management of resources earmarked for organizing the elections.
- C The government should provide the commission and its branches or decentralized units with appropriate premises (offices, stores, press room, results centralization room, etc.).
- C The commission should be empowered to recruit a sufficient number of temporary support staff to discharge obligations at the head office and at the regional and local levels.

In addition, the election commission has a valuable role to play in liaising with political parties. For example, the commission could convene consultations among the political parties in order to encourage parties to adopt codes of conduct. The election administrators could also set up party liaison committees at the national, regional and local levels in order to facilitate communication among the parties and between the parties and election authorities.

B. Powers of an Independent Election Commission

The body charged with administering the elections must be independent and competent to effectively administer the electoral process. If this is not the case, the public and the political competitors will not have confidence in the elections, nor will they have confidence in the resulting government. The independence of electoral authorities is vital in ensuring public confidence in the electoral process and, ultimately, the legitimacy of those who are elected.

It is important that an independent election commission is provided authority to interpret election laws and to adopt regulations and implementation procedures in conjunction with the powers reserved to the legislature and the courts. Responsibilities of election commissions vary among countries and may include: promulgating the election law; registering political parties, candidates and voters; preparing electoral materials; carrying out voter and civic education

campaigns; recruiting and training election officials; selecting polling places; developing voting and ballot-counting procedures; tabulating and announcing election results.

Election commissions as well as the legislature and the courts must be able to take independent and effective action to protect the integrity of the election process. Appropriate due process guarantees should be present in every aspect of the election process. These guarantees include legislative, regulatory and judicial procedures that provide notice, hearings and appeals and that protect against arbitrary or biased rulings. Enforcement of the commission's powers require legal sanctions. Fines, ordering a correction or right of reply in the news media, imprisonment and suspension or cancellation of a party or candidate qualification for election are among the sanctions that should be available and applied appropriately.

C. The Electoral System

It must be recognized at the outset that there is no such thing as a perfect electoral system. What is most important for political leaders in any country is to adopt a system that enjoys the confidence of the electorate. In addition, there should be broad consensus among political actors that the laws governing the electoral system represent "the rules of the game" that the political contestants actually intend to follow. While there is agreement in Mali on the electoral system for presidential elections, consensus still needs to be developed on the systems that are used for legislative and municipal elections.

For the legislative elections, some Malians with whom the delegation met advocated retaining the majoritarian system, while reducing the number of multi-member districts. This adjustment would provide smaller parties with greater opportunity to win single-member districts where their support is concentrated rather than standing little chance in large, multi-member districts. Another possibility would be to employ a mixed system with a number of majoritarian seats from single-member districts and an additional number of seats from proportional representation constituencies or a national list.

Another alternative suggested to the delegation would be to devise a qualified proportional representation system that requires a party to reach a threshold for winning seats in a given district (for example, between 5 to 10 percent of the votes cast). Such a qualified proportional system would eliminate the second round of the legislative elections (with all of the related expenditures) and would limit the number of parties represented in the legislature.

Modifications to Mali's electoral system could provide an opportunity for inclusion of certain political minorities without simultaneously opening the system to small, splinter groups. It is possible that the application of one of these systems to the municipal elections could also be advantageous. As noted in Chapter III, a number of Malian political leaders emphasized a need to work out a compromise to adjust the municipal election system to insure that the party with the greatest number of votes, if it does not obtain an absolute majority, is not excluded from power by the formation of "false or negative" alliances.

D. Increasing Voter Participation

Genuine political pluralism requires that citizens freely choose the party or candidate that they believe will best promote their interests. Civic and voter education programs are needed to inform citizens about electoral issues and processes so that voters can make informed choices on election day. Exposure to divergent views also helps voters understand that disagreements on public policy issues do not necessarily breed hostility or conflict.

Improving civic and voter education. The need to improve existing civic education programs and to begin voter education programs early are points upon which the delegation found a strong consensus. The first stage of civic and voter education could consist of explaining the purpose and the stakes involved in the municipal, legislative and presidential elections, the importance of the right to vote and voting procedures themselves (i.e. identification of voters, privacy of the polling booth, etc.).

The task could be undertaken by the government, NGOs and political parties. The electoral administrators could use the State radio and television. NGOs and political parties should be provided opportunities to use State media as part of their civic and voter education programs. Informational advertisements and programs translated in the various national languages should be prepared and broadcast, as was the case during the last elections.

Political parties and their leaders have an important role to play in making the platforms and programs of their parties known, and motivating voters to register and vote. NGOs should also encourage eligible citizens to participate.

Increasing the number of polling sites. There is already agreement in Mali on the need to increase the number of polling sites and to eliminate or reduce the use of mobile polling sites, which have proven difficult to manage in a transparent manner. It would be helpful for each voter to be assigned well in advance of election day to a clearly identified polling site. This should also contribute to increased voter participation.

Expanding the number of polling sites poses financial and logistical burdens and necessitates the recruitment and training of more polling officers. The advantages, however, appear to clearly outweigh these disadvantages. Helping to increase voter turnout and overcome the dissatisfaction of voters who are unable to identify or reach their designated polling sites could benefit greatly Mali's electoral process.

Considering how much time is used by each voter to cast his or her ballot on election day, it is important to limit the number of voters per polling site, perhaps keeping it to as low as 500 voters, as is the case in many emerging democracies, as opposed to the 1,500 voters per polling site provided for in Article 63 of the electoral code. Reducing the number of voters per polling site would shorten the lines at the polling sites, and reduce the amount of time needed to count ballots. It would also increase the number of polling sites.

Improving the census and voter registration. As highlighted in Chapter II, creating voter rolls on the basis of the administrative census has led to inaccuracies in the rolls, especially when the census is performed during a period of population mobility. It may be advisable in the immediate future to continue the system of automatic registration on the electoral rolls based on the census despite the problems associated with this system. Nonetheless, additional involvement of the political parties in the registration process is advisable in order to foster greater transparency. The parties could then explain to the citizens their role and the stakes involved both in the census and in voter registration.

The delegation would recommend publication of the electoral lists as soon as the electoral rolls are completed. Publication should be combined with offering citizens the opportunity to register if their names do not appear on the registry and to identify deletions that need to be made from the electoral rolls. This approach has the added advantage of heightening voter awareness and would require a large-scale effort to educate the citizenry about the registration process.

E. Building Trust Among Political Leaders and Their Supporters Across Party Lines

During its consultations, the delegation noticed a lack of trust among political party leaders. This attitude, a legacy of a one-party state, leads opposition parties to doubt the motives of the ruling party. Such distrust is exacerbated by the lack of inter-party dialogue.

If allowed to persist, these attitudes of suspicion and mistrust could weaken the electoral process as well as nascent democratic institutions. It would therefore be helpful to institute a mechanism for inter-party dialogue regarding elections and other political issues. This could take place through multiparty roundtable discussions instituted at the national, regional and local levels. Upon the creation of an independent election commission, such discussions could be continued or supplemented through the organizations of the political party liaison committees mentioned above.

F. Opening and Closing of the Polls

The provisions of Article 71 of the electoral code stipulate that *polls open in principle at 8 o'clock in the morning and close at 6 o'clock in the evening. However voters who are present in front of the polling site at closing time will be allowed to vote.* A strict implementation of this provision can pose problems concerning security at nightfall and the rate of participation. The delegation would recommend an earlier opening time, with polling taking place between the hours of 7 a.m. and 5 p.m.. This change would allow polling site officials to more efficiently attend to late voters, close the polls, count the votes and complete the tally sheets before nightfall. Reducing the number of voters per polling site also would reduce the amount of time required to complete the voting and counting processes.

G. Mobile Polling Sites

While mobile polling sites are useful in facilitating the participation of geographically dispersed voters, the dissemination of information concerning the function and whereabouts of these sites should be improved to enable party and candidate representatives as well as observers to monitor their operation. An increase in the number of permanent polling sites and a reduction in the number of registered voters per site would help reduce the number of mobile polling sites.

H. Voting by Court Order

There was a consensus among the Malians with whom the delegation met that the system of obtaining court orders to permit an unregistered voter to cast his or her ballot has been misused. If political parties are given the opportunity to participate fully in the registration process, and if parties and citizens are provided the opportunity to correct the electoral rolls, the need for voting by court order should diminish. The delegation would suggest that consideration be given to eliminating such court orders or imposing strict limitations on their acquisition and use.

Consideration might also be given to adopting another method of providing for persons to vote who are mistakenly omitted from the electoral rolls. One such method is the use of “tendered” ballots. Tendered ballots refer to votes that have been cast but are set aside for some specific reason (for example, the voter's name did not appear on the registration list or the voter's registration card was lost). Usually, a tendered ballot is segregated from other ballots by placing it in an envelope, which is then placed inside a second envelope along with available voter identification and registration information. The use of two envelopes helps ensure that the voter's ballot remains secret. In most cases, once a ballot is marked as tendered, it is sent for final determination to authorities other than polling place officials. The ruling may be rendered on election day itself or in a short period (for example, within 48 hours). Tendered ballots ruled valid are added to election totals. In some jurisdictions tendered ballots are only processed if their number could affect the outcome of the election.

A second method for establishing that certain persons should have been listed on the electoral rolls is for them to bring two witnesses who are listed on the rolls to verify under oath that the person's identity and claim to be included on the rolls is valid. If this is done then the person is allowed to vote, and their name and other pertinent information is recorded. This method can take place at the polling place on election day, or it can be combined with the tendered ballot process.

I Voting by Malians Living Abroad

Legal provisions should be clarified regarding the participation in the elections of Malians living abroad, as is indicated in the discussion of this topic in Chapter III. One solution would be for Malians living abroad to register in embassies and consulates and vote at such facilities in national referendums and presidential elections only. For legislative and municipal elections, however, polling sites would not be available in diplomatic missions; instead, Malians living abroad could vote by mail or by proxy in their last districts of residence in Mali.

J. Access to State Media

Given the diversity of State institutions authorized to administer communications, it is essential to clearly delineate the respective jurisdictions of these institutions. For example, broadcasting authorizations are granted by the Ministry of Communication and the Ministry of Territorial Administration, while frequencies are allocated by the Committee of Frequency Management (which plays a solely technical role). There is also the Superior Communication Commission and the National Committee for Equal Access to State Media (the latter of which was created by Law 01 of 1993). According to Article 3 of Law 01, this Committee ensures balance and “pluralism of information,” taking into consideration the various political, economic, social and cultural influences within the country.

To help bring about a more effective management of access to State media, special emphasis needs to be placed on the equitable treatment of the candidates and political parties during the election period. The impartiality of the State radio and television broadcast services must be achieved in practice as well as in law and regulation.

In this critical consolidation phase of Mali’s democratic process, exceptional measures should be taken to ensure an equitable management of the time on radio and television devoted to the candidates and political parties during -- and even before -- election campaigns. The Committee for Equal Access to State Media has not yet begun to function fully. Although its members come from diverse backgrounds (i.e. professors, journalists, territorial administration officials), they are just beginning their work and lack logistical support. This Committee should adopt detailed guidelines for equitable access for political contestants and balanced, impartial coverage of these contestants and issues of national interest that are relevant to the elections. The Committee should receive the resources needed to carry out its mandate.

Measures likewise appear to be needed to facilitate and encourage better communication between the officials responsible for the State media and leaders of political parties and NGOs.

Such communication could include explanations to political parties and NGOs for why some of their press communications are modified by State media. The parties and NGOs, for their part, would benefit from learning to express their viewpoints clearly and concisely to the media. It would be equally beneficial to include parties of all political tendencies and nonpartisan groups in preparing civic and voter education programs.

K. Involvement of Mayors and Potential Conflicts of Interest

Most of the bodies mentioned in the electoral code, such as “Judgment Commissions” and “Administrative Commissions,” are chaired by mayors, who are usually political party leaders and who could themselves be candidates. The delegation recommends that this structure be revised in order to avoid creating conflicts of interest that could eventually undermine public confidence and impede the election process. When the regional and local branches of the independent election commission are created, electoral code provisions should be amended to insure that no commission member, regardless of the type of commission in question, is a candidate for elective office.

L. Involvement of Political Parties in Civic and Voter Education

The electoral code authorizes political parties to be present at all stages of the electoral process, beginning with registration of voters and continuing through the counting of votes and the proclamation of results. Parties should also conduct and participate in civic and voter education programs. In addition, political parties have the responsibility to educate their supporters to respect the rights of other parties and candidates. The delegation recommends therefore that the political parties adopt a code of conduct and that individual parties establish internal disciplinary measures for members who violate the code. It is also recommended that parties educate their supporters about and make use of complaint procedures to protect their rights and avoid the use of any violence during or after election campaigns.

M. Role of NGOs

The delegation would like to emphasize the importance of including NGOs in civic and voter education activities, as well as the critical role of NGOs in conducting nonpartisan election monitoring activities. Several groups in Mali have the capacity to conduct these functions, including the *Association Malienne des Droits de l'Homme* (AMDH), *Observatoire des Droits des Femmes et de l'Enfant* (ODFE), *Association des Juristes Malienne* (A.M), *Centre d'Etudes et de Recherche sur la Démocratie et de Développement Economique et Sociale* (CERDES) and others with whom the delegation did not have the opportunity to meet. It is recommended that these groups intensify their efforts at the grassroots level.

It is the delegation's experience that substantial benefits can be realized if NGOs are engaged actively in the electoral process. As noted above, NGOs could serve as representatives of civil society on the independent election commission.

N. Active Participation of Women

Several problems that limited the participation of voters in 1991/92 apply to men and women alike. However, as is the case in many other new as well as traditional democracies, women are under represented in political life. Some women have been appointed to high positions within the executive branch and the judiciary, and three women deputies presently sit in the National Assembly. The delegation encourages the political parties to increase the number and positions of women on their lists of candidates for elective office, at both the national and local levels. Special steps should also be taken to heighten the awareness of prospective female voters so that they can participate more actively in the political process.

CONCLUSION

This delegation has had the opportunity to review and assess certain features of Mali's election system. It is hoped that its efforts will contribute to the democratic process in Mali and to the development of an improved election system. The government and the political parties expressed the desire to resolve their differences and recognized that an evaluation of the election system by an impartial international delegation would be useful. In this context the Malian initiative should serve as a model for resolving contentious issues before they become intractable as has happened in other countries.

The delegation members would like to express their deep appreciation to the government officials, political party and civic leaders and others whom met with the delegation. Without their support the delegation could not have accomplished its objectives. NDI looks forward to discussing this report with Malian political and civic leaders, and to continued cooperation with Mali as it builds upon the accomplishments of its democratic transition.