



**NATIONAL DEMOCRATIC INSTITUTE  
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**AN ASSESSMENT  
OF THE SENEGALESE  
ELECTORAL CODE**

*March 1991*

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**INTERNATIONAL DELEGATION REPORT**

**NATIONAL DEMOCRATIC INSTITUTE  
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The National Democratic Institute for International Affairs (NDI) conducts nonpartisan political development programs overseas. By working with political parties and other institutions, NDI seeks to promote, maintain and strengthen democratic institutions and pluralistic values in new and emerging democracies. NDI has conducted a series of democratic development programs in more than 35 countries, including Argentina, Bangladesh, Brazil, Bulgaria, Chile, Czechoslovakia, Haiti, Hungary, Namibia, Nicaragua, Northern Ireland, Pakistan, Panama, the Philippines, Poland, Romania, Senegal, South Korea, the Soviet Union, Taiwan, and Uruguay.

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## *OVERVIEW*

It has been said that if democracy were a religion, the ballot box would be sacred. Democracy, of course, is not a religion, but it is a unique, value-laden process based on the principle that the will of the people must be periodically expressed through elections and reflected in a system of representative government. An electoral process is fundamental in a successful democracy because it is the mechanism by which "the people" express their will and determine the form and character of their governmental system.

At a minimum, a democratic electoral process produces that largely ethereal article of faith called "legitimacy." Stable and strong democracies, however, seek more than legitimacy from an electoral process. They seek representative government — a government that not only reflects the will of the majority but also gives meaningful voice to significant minorities.

Senegal, as one of the few multi-party democracies in Africa, long ago accepted these principles. A nation with a history of participatory democracy, Senegal has experienced a positive evolution in its system. In the 1970s, it recognized the importance of party competition and then, through various reforms, sought to broaden and deepen the participation of its citizens.

In making changes in its electoral system, Senegal is not alone among modern democracies. The five nations represented on the international delegation whose report is presented herein have all made such modifications within the past five years.

After reviewing the Senegalese electoral system, the international delegation concluded that Senegal's law meets

international standards for free and fair elections. However, the delegation also determined that certain aspects of the code, when combined with practice, have raised issues of fairness. Confidence in an electoral system and the perception of fairness are as important as the letter of the law. The delegation, therefore, was less concerned with the soundness of the election law than with seeking ways to enhance confidence in the overall process.

The delegation took note of the fact that Senegal's electoral system is the subject of harsh and highly polarized national debate. This is a source of great frustration on the part of some in the ruling party who believe the opposition is using the issue to destabilize the country, destroy confidence in the government and deny it international legitimacy. Opposition parties almost universally described the system as lending itself to fraudulent practices and lacking in fairness.

Efforts have been made to negotiate these contrary positions but to little avail. The missing dimension in breaking this impasse appears to be trust. This is especially true given the fact that the ruling party has been in power since independence. Its longevity in power imposes a special responsibility on the party, and through it the government, to ensure that the electoral process is not only administratively correct, but free of the perceptions of partisanship.

The delegation is aware that the absence of trust seriously colors the debate over specific electoral reforms. Concern for the future of Senegal's democracy reflected in the comments of representatives of both the ruling and opposition parties, however, gives us confidence that solutions can be found. We hope that the recommendations of an impartial international delegation will help the parties overcome their differences so that future debates in Senegal will concentrate on national policy rather than the electoral process.

When serious doubts are raised about the fairness of an electoral system, additional safeguards — an added measure of transparency — should be introduced even if the law meets an otherwise acceptable standard. It is with this concept in mind that the delegation, in the concluding section of the report, offers several recommendations for

reform. Many of these are based on the electoral reform experiences of the delegation members in their respective countries.

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## *Chapter 1*

### *INTRODUCTION*

Senegal is one of the few multi-party democracies in Africa, a nation with a proud tradition of democratic rule and pluralism dating back to the colonial period. At various times since its independence from France in 1960, Senegal has undertaken to broaden and deepen its democratic roots. The invitation by the government of President Abdou Diouf to an international delegation sponsored by the National Democratic Institute for International Affairs (NDI) was extended in the spirit of this commitment to democratic government.

The invitation came at a time when the international community of democracies has been interacting on an increasingly frequent basis to offer outside support when aspects of electoral systems are challenged. It was the hope of the Senegalese government that an objective international delegation comprised of experts from friendly nations could assist in resolving peacefully an internal debate concerning the electoral system that had grown more serious in recent years.

The delegation appreciated the extreme sensitivity of the role it was expected to play and undertook the responsibility with humility. Its stated desire was to expose the parties to various reform options that could form the basis for renewed trust in the system.

Issues relating to the campaign environment and the balloting and counting procedures are technical in nature and relate directly to the most serious controversies that have arisen. Structural issues such as the form of government and the balance of powers among branches of government were, for the most part, treated as being



beyond the purview of the delegation's work. Comments and options are offered based on the experiences of the delegation members, but these comments and options should be seen simply as informing the debate in Senegal.

While non-electoral issues influence the political environment in Senegal today — economic conditions, a dispute over the northern border and a separatist movement in the south — the debate regarding the fairness of the electoral system is paramount. President Diouf's invitation to the delegation was extended at a time when the political system was suffering from an impasse that had developed between the ruling Socialist Party (PS) and a group of opposition parties led by the Senegalese Democratic Party (PDS) concerning the conduct of elections in Senegal. The delegation listened to all sides in this dispute and attempted to assess the situation in an objective and impartial manner. The delegation was aided by the fact that the sponsoring organization, NDI, had established good relations with both the PS and PDS, having involved representatives of both parties in its democratic development projects.

The delegation visited Senegal from September 28 to October 3, 1990. According to terms of reference agreed to in advance by the government of Senegal (Appendix I), the purpose of the visit was to "analyze Senegal's election laws and practices and to share the experiences of their own nations with Senegal's political leaders." It was also agreed that the "final report..., which would be made public, will be offered solely for the purposes of clarifying the debate in Senegal."

The delegation was given free and open access to all the institutions and individuals in Senegal who participate in the electoral process (Appendix II). The cooperation of all parties was excellent; this cooperation enabled the group to complete its review during the visit.

NDI, a political development institute affiliated with the United States Democratic Party, sponsored the delegation and provided background and support. The five-member international team, however, was independent and guided only by the agreed terms of reference. The integrity of the delegation and its effort to develop a

consensus view was vital to the success of the mission. Collectively the group represented broad electoral, legal and political experiences, and different nationalities, democratic systems and political tendencies. Its unanimity on this report is therefore all the more significant.

The team was led by **Ambassador Donald McHenry** of the United States, currently University Research Professor of Diplomacy and International Relations at Georgetown University in Washington. Ambassador McHenry has served as U.S. Permanent Representative to the United Nations and has considerable diplomatic experience in Africa. The other members of the delegation were: **Sooroojnundum Moosun**, Chief Election Commissioner of Mauritius who is serving as an advisor to the U.N. Secretary General in establishing an electoral system in the Western Sahara; **Olga Blanc-Uchan** of France, a professor of French and European constitutional law at the University of Paris II; **Senator Peter Stollery** of Canada, a member of the Liberal Party and an advisor to the party on African affairs; and **Deputy Yvan Mayeur** of Belgium, a member of the Socialist Party who serves on the parliamentary committee dealing with constitutional and legal issues. Acting as advisors to the delegation were: NDI President J. Brian Atwood; NDI Senior Consultant for Election Processes Larry Garber; NDI Program Coordinator Edward McMahon; and NDI Program Assistant Gabriel Hutter.

By prior agreement, the delegation reviewed three aspects of Senegal's election system: 1) the campaign environment; 2) the balloting and counting procedures; and 3) the structure of the system. Great care was taken during the visit to remain within the confines of the agreed terms of reference, to be sensitive to the particular history and cultural traditions of Senegal, and to understand the causes for the loss of trust in the system.

Before leaving Senegal, the delegation met with President Diouf and members of his cabinet to present a preliminary assessment. The president expressed his gratitude for the delegation's effort, and promised to review carefully the final report and its recommendations.

As agreed in the terms of reference, this report was submitted to President Diouf on January 30, 1991 for comments by the government prior to publication (Appendix III). The government responded on March 8, 1991 (Appendix IV). After making some minor factual corrections, NDI published this report (Appendix V), which represents exclusively the views of the delegation.

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## *Chapter 2*

### *CONSTITUTIONAL FRAMEWORK*

The Senegalese constitution, which has been amended several times since it was first promulgated in March 1963, provides for a presidential system of government. The president is elected by direct universal suffrage for a five-year term. A majority of the votes cast is required for election, with a second round necessary if no candidate obtains more than 50 percent in the first round. Candidates may be nominated only by legally constituted political parties. There is no vice president and the president of the National Assembly succeeds the president in case of death, resignation or incapacity.

The constitution also requires elections by means of universal suffrage for members of the National Assembly. The number of members in the National Assembly, the qualifications for candidacy and the system of elections, however, is governed by an organic law, which was most recently amended in October 1989.

There are now 120 members in the National Assembly, half of whom were elected on the basis of a nationwide proportional representation system and half of whom were elected on the basis of a winner-take-all departmental list system. The reforms enacted in 1989, however, establish that for future elections all National Assembly members will be elected through a proportional representation system with departmental lists. It is the government's view that this change enhances the chances of minority parties to be represented in the National Assembly.

Candidates for the National Assembly must be 25 years or older and must be designated by a legally constituted political party. The formation of coalitions for electoral purposes is prohibited.

The Supreme Court is given broad authority to decide the constitutionality of laws and international commitments, and to resolve conflicts between the executive and legislative branches. As discussed below, it is also given an important role in administering and supervising elections. The Supreme Court justices are appointed by the president and may not be removed from office.

Townships are governed by a mayor and several deputies, who constitute the municipal office. The mayor and deputies are elected by a municipal council comprising 20 to 90 members, depending on the township's size. Rural communities are governed by the president and vice-president of a rural council, who are elected by the members of the rural council, which ranges from 16 to 28 members.

Local officials are elected every five years. A winner-take-all party list system is used with no preferential votes permitted. No coalitions may be formed for purposes of contesting local elections.

### **Elections in Senegal**

In the period immediately following independence, Senegal's constitutional system did not encourage the formation of alternative parties. Existing parties were successively brought into the ruling Progressive Senegalese Union (UPS). In 1964, a law was adopted requiring parties to obtain approval from the minister of interior before they could carry out their political activities. By the 1968 elections, the UPS was the only party presenting candidates.

In 1974, the government recognized the formation of the Senegalese Democratic Party (PDS). Two years later, the constitution was amended to permit three parties: liberal democratic; social democratic; and Marxist. The UPS chose to become a social democratic party, renamed itself the Socialist Party (PS), and was soon admitted into the Socialist International. The PDS became a liberal democratic party, eventually joining the Liberal International. The Party of African Independence (PIA) was recognized as the Marxist party. In 1978, the Senegalese Republican Movement (MRS)

was recognized as a conservative party. This change placed Senegal ahead of most other African countries in developing a pluralist party system.

Multi-party elections were conducted in 1978. President Leopold Senghor, Senegal's internationally recognized leader, poet and scholar was overwhelmingly reelected as president with 81 percent of the vote. His party, the PS, won 82 seats in the National Assembly. The PDS won the remaining 18 seats in the Assembly.

In 1981, soon after Abdou Diouf succeeded Senghor as president, restrictions on the number of parties were lifted. Elections were held in 1983, with Diouf winning 83 percent of the vote. The PS won 111 seats in the expanded National Assembly, while the PDS won nine seats and the National Democratic Assembly (RND) one seat. Serious allegations of irregularities were raised by the opposition parties, and election reform became a major political issue.

The most recent national elections were held in 1988. While several small parties boycotted the process, the PDS and several other opposition parties participated. According to the official results, the PS vote total in the legislative elections was reduced to 71.3 percent nationwide and was considerably lower in the major urban areas. In the days following the elections, opposition parties alleged fraud in the balloting and counting processes, and organized street demonstrations in Dakar. In some cases, these demonstrations turned into riots, requiring a show of force to quell them. The government responded by arresting PDS leader Abdoulaye Wade and other leading opposition supporters.

Local elections for municipal and rural councilors were held on November 25, 1990. The government reported a turnout of 73 percent, claiming that the opposition effort to promote a boycott had failed. The opposition responded by charging that the government had rigged the results and that turnout in the capital and several other regions did not exceed 15 percent.

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## *Chapter 3*

### ***THE ELECTION SYSTEM***

This section describes the election system and procedures currently in force. It is based on a review of the election law, and on information presented by interior ministry officials.

#### **A. Election Administration**

The minister of interior oversees the election administration process. He supervises the governors and prefects, who are appointed by presidential decree. The governor and prefects, in turn, select polling place presidents. As the chief internal security officer, the minister is responsible for ensuring security during the electoral process. The interior ministry also provides the materials required for the elections, except for the ballots in municipal elections which must be paid for by the parties.

The Supreme Court is given a broad mandate in electoral matters. It is responsible for assuring that the election campaign is conducted in a proper manner, for resolving complaints related to the balloting process, for tabulating the tally sheets and for announcing the results.

The chief justice of the Supreme Court appoints members of the court, which currently has 27 justices, as delegates to assure the correct functioning of the electoral process for presidential and national assembly elections. These delegates have complete access to polling places and the electoral process at all stages. Each delegate must report to the chief justice within 24 hours after the closing of the polls.

## **B. Preparations For Elections**

### *1) The electoral register*

All Senegalese 21 or older are eligible to vote, unless they have lost the privilege of voting due to conviction for certain kinds of crimes. Soldiers are ineligible to vote, as are certain public sector employees, depending upon their position.

A prospective voter must be listed on an electoral register, which are prepared for all urban and rural communities. The interior ministry has responsibility for the electoral registers.

A voter must live in a locality for at least six months to be included on the registry; however, Senegalese residing overseas may be registered on the list of their home locality. Lists are revised annually and also before a general election.

The registers are established by commissions comprised of the mayor, a representative of the local prefect (representing the central government), and a representative from each of the legally recognized political parties. To register, a prospective voter must appear before a commission and present one of the following means of identification: passport; national identity card; military service card; drivers' license; pension card; student card; or artisan's card. A voter in a rural area who does not have the prescribed identity card may instead present two witnesses attesting to his or her identity. These witnesses must be older than the voter and must be registered voters. After reviewing the validity of the registration request, the registration commission gives the voter a receipt showing his inscription number on the electoral list.

Electoral registers are published according to conditions stated by administrative decree, and copies are sent to the relevant municipal offices. When a voter dies, his or her name is taken off the electoral register. When a voter is found to be on more than one register, the most recent inscription is considered the currently valid one. If a voter is listed more than once on a register, all but one listing are eliminated.



Anyone may object to the omission of voters on the list during a period of five days subsequent to the publication of the list. If the request is denied, this decision is communicated to the applicant with an explanation. Complaints about decisions made by the commission are addressed to the president of the departmental tribunal.

A number of reasons are permitted for inscription on electoral registers outside of normal registration times. These include: individuals who have attained the age of 21 since the last registration; those who have recently changed addresses; Senegalese returning from overseas; former government employees; and military officials who did not have the right to vote when registration last took place.

Late registration requests are made to the president of the departmental tribunal no more than 10 days before the voting day. Late registration lists are published no later than five days before the vote.

## *2) Voting cards*

Once an election is scheduled, the governor, prefect or sub-prefect creates a commission to distribute the electoral cards, which must be presented by the voter at the polling site on election day. The commissions are composed of a civil servant who serves as president, and representatives of the legally constituted political parties.

The commissions travel in their assigned regions distributing the cards during the four-week period preceding the beginning of the electoral campaign (i.e., beginning six weeks prior to the elections). Voters claim their voting cards by presenting an accepted identification document. The commissions also may give the cards to village chiefs or delegated representatives for distribution to the voters. Voters may also claim their cards on the day of the voting.

The commissions keep the cards that have not been distributed until the day of voting. They have responsibility for the security of unclaimed cards during the distribution period. If any cards are lost or missing, the commission must inform a senior civil servant. If the commission provides cards to village chiefs or designated representatives for distribution, it must ensure the integrity of the

distribution of cards to voters. At the end of the distribution period, unclaimed cards are given to the chief administrative officer of the constituency for safekeeping. At the conclusion of the electoral process, the unclaimed cards are sent to the minister of interior.

### *3) Conditions of candidacy*

A Senegalese may be a candidate and be elected so long as he or she meets the age and qualification criteria set forth in the law. Military and certain government officials are not allowed to run for office.

For presidential elections, any Senegalese eligible to vote and nominated by a legally constituted political party may present his candidacy to the Supreme Court. The Supreme Court makes public the list of candidates 29 days before the first round of the election.

For National Assembly elections, legally constituted political parties must present declarations of candidacy with the names of their candidates and supporting documentation. These papers must be delivered to the interior ministry 50 days before the election. Governors and prefects and their deputies are ineligible, as are other government officials who, due to their positions, are proscribed from participating in electoral activities. One month before the election the interior ministry publishes the lists of candidacies. No changes can be made after the lists have been published, unless candidates die or are ruled ineligible.

National Assembly members may not hold any other government or parastatal employment, with the exception that they may be elected as mayors or members of local or municipal councils. This rule does not apply to university teachers and under other limited conditions. Lawyers may not practice while in parliament, and deputies may not have their names used for advertising purposes. Any eligible voter may be a candidate for municipal council elections, except again under a limited number of circumstances.

Every legally constituted political party wishing to present candidates for municipal and rural elections must send in its list of candidates 45 days before the vote. No later than 35 days before the

vote, the governor or prefect publishes these lists. The cost of electoral publicity is undertaken by the candidates.

At least 60 days before the elections, the minister of interior determines the amount of money political parties must provide as a deposit. This amount is related to electoral costs undertaken by the government. The deposit is returned if the party wins at least one parliamentary seat, or if the presidential candidate wins at least five percent of the vote. There is no such provision on the municipal and rural levels, although winning candidates receive reimbursement for the cost of printing ballots.

### **C. Election Campaign**

Voters are notified of an election at least 60 days before the vote. The presidential electoral campaign begins 14 days before the first round. The Supreme Court is responsible for ensuring equality in terms of news coverage among the candidates. It fulfills this function by monitoring the media and reviewing complaints presented by the parties. In addition, the information ministry may ask the Supreme Court to forbid the broadcast of a campaign advertisement if it violates Article 3 of the constitution, which concerns respect for the state and public order.

The campaign for the National Assembly also begins 14 days before the election day. Access to the electronic media is apportioned to provide 50 percent of the broadcast time to the ruling party, while the remaining 50 percent is divided among all the opposition parties. The Supreme Court has responsibility for assuring that this rule is observed.

Election advertising may be placed only on sites approved by the local authorities following a request by a political party. Equal space is given to each candidate or list of candidates. Sites are selected in order of receipt of the requests. It is illegal to post campaign posters outside of the designated areas.

During the campaign it is forbidden to advertise in the print or electronic media (i.e., radio and television), other than as prescribed by law. It is also forbidden, on the day of voting, to distribute ballots or campaign publicity.

There are various criminal offenses for different types of electoral fraud and intimidation. Criminal sanctions range from fines of 10,000 CFA (\$40) to 10 years imprisonment.

#### **D. Balloting Process**

Voting takes place on a Sunday. Polling places open at 8 a.m. and close the same day at 6 p.m. The governor and prefect have the discretion to vary the poll hours should the situation warrant.

##### *1) Polling place administration*

There is one polling place per 1,000 voters, with more than 3,300 polling places established nationwide for the last elections. Each polling place is administered by a commission — composed of a president, an assessor and a secretary — designated by the prefect or regional governor. The commission members, who may be active or retired, are chosen from the ranks of "state agencies, local government officials, the public sector, and nationalized or parastatal enterprises." They must be inscribed on the voting list from the region where the polling station is located.

The commission president is responsible for security in the polling place. If needed, he can call on security forces to restore or maintain order. Entry into the polling place is forbidden to anyone carrying a firearm, unless he or she belongs to security forces requested by the commission president. The commission president may expel an individual only in the case of egregious behavior personally witnessed. At least two members of the commission must be present during the voting process.

Each candidate has the right to observe the operation of the polling place from the opening of the polls until results are announced. The observation also can be done by representatives of the candidates.

Observers are designated by candidates at least eight days before the vote. This designation is delivered to the prefect or governor of the region, who provides a receipt. The receipt serves as identification and authorization for the observer. Observers may be assigned to more than one polling place within a single constituency,

but must be listed on an electoral register for the community within which they are performing observation duty.

Commission presidents may not make decisions designed to impede representatives of candidates from functioning as observers. If a representative is expelled, he or she should be replaced immediately by another representative of the candidate. The president must report the reasons surrounding the expulsion of a party representative to the governor or prefect.

• Before the polling place is opened, the president shows the commission members and the observers that the ballot box is empty. The president also makes sure that the requisite materials are ready. For presidential and National Assembly elections, the cost of the envelopes, blank ballots, tally sheets and paper, as well as the expense of installing polling places and voting booths are borne by the state. Ballots for every party/candidate must be printed in quantities equal to the number of registered voters plus an additional 50 percent.

## *2) Casting a ballot*

Upon entering the polling station, a voter must present his or her voter ID card. Voters in the urban areas must also show a proper identification card. A copy of the electoral register is maintained by the commission, and when a voter has been properly identified this is noted on the register.

After establishing proof of identification, the voter takes an envelope and ballots, which are available for every party and candidate. Without leaving the room, the voter places the selected ballot in the envelope. This may be done, if desired, in a part of the room cordoned off to give the voter privacy when casting the ballot. There may be more than one of these voting booths per polling place. The voter then shows the commission president that he or she has only one envelope and places the envelope in the ballot box. After voting, the voter card is stamped with the date of the vote.

All complaints about the functioning of the polling place and decisions of the commission are written on the tally sheet. The

president decides the precise time balloting ends. No votes may be cast after this time.

### **E. Vote Counting at the Polling Site**

After balloting ends, the vote counting begins. The ballot box is opened and the number of envelopes is counted.

The commission designates from the voters present a number of literate individuals to serve as vote counters. These individuals are divided into groups no larger than four. If representatives of candidates are present, they are permitted to designate vote counters so long as they are equally divided between the groups. In each group one vote counter takes the ballot out of the envelope and passes it unfolded to a second vote counter, who announces the choice on the ballot, which is noted on a list by two vote talliers.

Immediately after results are tabulated, they are entered onto the tally sheet, along with any notations regarding the voting. The president announces the results, which are then posted. Two copies of the tally sheet are signed by all the members of the commission. If anyone refuses to sign, this fact and the reasons for it are noted on the tally sheet. The president gives copies of the results to representatives of those candidates who request them.

The commission president then prepares two envelopes: one addressed to the chief justice of the Supreme Court, which contains a copy of the tally sheet and any other attachments; and a second envelope addressed to the prefect, which also contains a copy of the tally sheet. Both envelopes are sent to the prefect of the department, who then transmits the envelope addressed to the chief justice by the fastest means available. The prefect's copy is placed in the departmental archives.

For municipal elections, votes are counted in an official location by a commission headed by a magistrate. The composition of the commission is decided by the minister of interior. The results are announced by the president of the commission and the tally sheet is sent to the governor or the prefect.

## **F. Validation of the Vote and Announcement of the Results**

For national elections, the Supreme Court examines the tally sheets before validating them. If no complaint regarding the election of a candidate is received within 48 hours of the closing of the polls, the election is officially declared valid not later than five days after the vote. Complaints that, even if upheld, would not result in a change in the electoral result are not accepted. The Supreme Court has five days from the day a complaint is filed to render its decision. If the Court believes that the results are the consequence of fraud, it should declare them void. If a vote is annulled, a new election must take place within three weeks.

A candidate can contest the overall election administration by making a request to the chief justice of the Supreme Court. The complaint is sent to other candidates, who have 24 hours to comment upon the complaint. The Supreme Court responds to the complaint within the five-day period stipulated by Article 29 of the constitution.

With respect to municipal and rural elections, any voter or candidate may request annulment of the electoral results. This request must be presented within five days after the election to the court of appeals, either directly or via the prefect. Those candidates who may be affected by the ruling have five days in which to present their views to the court. Any complaint which would not result in a change in the election results is not heard by the court.

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## *Chapter 4*

### ***ANALYSIS OF ISSUES PRESENTED FOR CONSIDERATION***

This section offers the delegation's perspectives on the issues presented by representatives of the different Senegalese parties regarding the election system. The first part presents the framework of analysis used by the delegation in considering these issues, while the second part deals specifically with election system issues. The third part discusses, in a more general manner, some options that Senegal may wish to consider in building a more effective election system.

#### **A. Framework For Analysis**

The delegation recognizes that there is no ideal election system. Moreover, an election system must be evaluated in a historical, political and cultural context. Given the above, the delegation evaluated the Senegalese election system according to the following standards:

- Is there an international norm, set forth explicitly or implicitly in human rights or other internationally-recognized instruments, that governs the subject matter?
- Is the law or practice such that it calls into question the overall fairness of the election process?

The delegation examined the Senegalese election system against the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples Rights that deal with the right of



political participation. The delegation also considered the interpretations of intergovernmental organizations, such as the United Nations, and the practices of democratic countries.

The international norm requiring a "genuine" election suggests consideration of not only what happens on election day but also the campaign environment and the aftermath of the elections. Thus, questions regarding the ability of parties to organize and to hold rallies, the degree to which the media is free to report on the campaign and the extent to which there is violence or intimidation directed against party activists or prospective voters are all relevant in evaluating an election process.

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

The five nations represented by the members of this delegation have all made changes in their election systems during the past few years. This is common in democracies because: new situations arise; there are demographic changes in the country; opportunities to broaden the franchise arise; technology evolves; and new methods are found to introduce more fairness. A perfect electoral system has never been devised, but healthy democracies are always striving to reach that goal.

The question of what constitutes a healthy democracy is also an open question. One approach focusses exclusively on the formal indicators: multi-party elections; a free press; respect for human rights; and an independent judiciary. Using these standards, Senegal's record is a positive one.

A second approach focusses on the degree of responsiveness that the political system has to the popular will. Thus, it is not sufficient that the system permits multi-party elections; the participating political parties also must have the means to compete effectively and

the system must tolerate, even facilitate, changes in government if that is the will of the electorate. For example, in France after 21 years in opposition, parties of the left won the 1981 presidential and parliamentary elections.

To be sure, one party has reigned for lengthy periods of time in established democracies; in Sweden for example, the Social Democratic Party ruled from 1926 until 1977, when it lost its parliamentary majority. Such longevity in power places a special burden on the party to show that it allows the electorate to make a free and fair choice. Indeed, the ultimate test for a democratic system occurs when power is peacefully transferred from one political party to another as a result of a free and fair election process. It is the delegation's belief that this principle is generally accepted in Senegal. Acceptance of the principle, of course, need not detract from the effort of a party or candidate to compete vigorously within the established rules.

## **B. Laws and Practices At Issue in Senegal**

The political party representatives and other independent observers with whom the delegation met offered specific comments on aspects of the election system both from the perspective of the law and its implementation. Using the framework outlined above, this subsection highlights some of the more salient issues raised in the current debate over the electoral system. The delegation's observations on these matters also are recorded.

### *1) Election system*

There are many types of election systems used in democratic countries: national proportional representation; departmental proportional representation; majority/winner-take-all systems; and various combinations of the above. While each system has its advocates, the choice of election systems is more often than not based on a country's history, culture and traditions. In these circumstances, there is frequently an unwillingness to tamper with an election system because changes inevitably will be viewed as politically motivated, particularly by those in opposition. The consequence of changes, however, cannot always be predicted. In France, for example, a

1985 law introduced a system of proportional representation; surprisingly, the opposition won the subsequent elections.

Senegal has seen several changes not only in its election system but also in its constitutional framework. The changes, according to ruling party representatives, reflect an attempt to make the system more democratic and more inclusive. In this context, it remains to be seen whether the most recent change — eliminating national lists — will increase opposition representation in the National Assembly.

Both opposition party representatives and some members of the ruling party were critical of the system for electing municipal councils. In their view, the majority system severely limits the ability of opposition parties to obtain any representation on the local councils. Under such circumstances, councils run the risk of becoming stale bodies, in which policy is seldom debated. More significantly, it is said that such a system does not allow the opposition parties to use municipal elections and local government as a vehicle for building their parties and providing a training ground for future national office-holders. Consequently, opposition parties have difficulty establishing roots in towns and villages.

Alternate forms for electing municipal and rural councils might address some of the concerns cited above. For example, using a proportional representation system for electing municipal councils would serve to reflect the range of party affiliations that exists at the local level and to increase confidence in the electoral system.

The election law also precludes the formation of coalitions for electoral purposes. While it does not prevent one party from absorbing other groups, this law could be interpreted under current democratic principles as unduly restricting the right of individuals, who are collectively organized as parties, to exercise their freedom of association. A strong rationale, therefore, is required to justify the existence of such a law.

It is suggested that this provision of the law is needed to promote stability in government. However, few would argue that stability would be unacceptably compromised if political parties were to form a coalition government in the aftermath of an election in

which no party obtained an absolute majority. Indeed, while the law prevents parties from joining together to take advantage of political circumstances, nothing prevents parties from reforming themselves to broaden their membership prior to an election. In the context of Senegal, where one party has dominated the political system for a lengthy period of time, a system in which parties can unite for electoral purposes may permit more effective competition.

## *2) Election administration*

In a country where there has been periodic change in government from one party to another, there is likely to be considerable confidence in the objectivity of those administering the election process. In Senegal, the situation is the contrary. The continued success of the PS makes it necessary to ensure that the administration of elections not only is fair, but also is perceived by the parties, candidates and citizenry to be fair. Thus, while the delegation noted nothing inherently wrong with the manner in which Senegal's elections are currently administered, additional safeguards may be required to promote confidence in the process.

As is true with electoral systems, there are several different methods for administering elections. Broadly, they divide into two types: 1) elections administered on a nonpartisan basis; and 2) elections administered on a party basis.

The former category includes elections administered by independent election commissions and those administered, as is the case in many francophone countries, by civil servants. While not formally involved in administering the elections, political parties may still play an important role in monitoring the different phases of the election process, from the initiation of the campaign through the proclamation of the results.

Providing political parties with a direct role in administering elections adds credibility to the process, but the cost often is efficiency. Moreover, some parties may not be able to designate qualified representatives for duty as election administrators, and identifying capable representatives may divert the party's attention from organizing an effective political campaign.

Senegal uses the former system. The minister of interior is responsible, in the first instance, for administering the elections. His ministry prepares the ballots and voter registries. The minister is ultimately responsible for ensuring that the materials are distributed to local election officials on election day.

Under the constitution, the Supreme Court is also given an important role in the administration of elections. This extensive use of the Supreme Court, a theoretically non-political body, appears to be aimed at providing an extra dimension of protection for a fair election process. However, in present circumstances, this use of the Court has become highly questionable and may have undesirable effects.

One objection raised concerns the Court's capacity to undertake the administrative burdens placed upon it. The election process is complicated and would be difficult to administer by the most efficient and well-staffed bureaucracy. In this context, some have suggested that the Supreme Court simply does not have sufficient infrastructure and personnel to perform the several election-related tasks assigned to it by the constitution and electoral law. The Court, for example, is asked to certify aspects of the ballot count but it cannot certify the chain of possession of the tally sheets, a prerequisite to certification of the ballot count.

A second objection raised concerns the Court's ability to perform effectively and objectively its juridical role, given the responsibilities placed upon it in helping administer elections. There is a danger that the integrity of the Court will be undermined not only in the election process but also in its essential role as guardian of the constitution.

In addition, some opposition parties, but certainly not all, suggested that the justices of the Court, all of whom have been appointed by the president, are perceived as being partisans of the ruling party. Thus, the argument goes, complaining to the Court is not much help. On the other hand, some opposition parties urge that the justices be given even greater responsibilities in the election process.

The issue at hand is confidence in the election system. Greater confidence could perhaps be achieved if opposition representatives were given some formal role in the process. This could be accomplished by establishing, as several opposition parties have urged, an independent election commission whose members would be nominated by the political parties. The commission, and not the minister, would then be responsible for administering all aspects of the process. This is a far-reaching change, requiring the establishment of another permanent bureaucracy.

More practical as a short term solution would be the creation of an election advisory council. It could include several members, perhaps even half, who would be designated by the opposition parties. The council would provide a forum for debating issues pertaining to the implementation of the election law. The council also would review the activities of those administering elections and, where appropriate, offer suggestions regarding changes in practices and personnel. In addition, the council could propose regulations designed to ensure an equitable and transparent election process. If established, such a council should have full access to the Minister of Interior and other senior government officials, and its deliberations should be public.

By including party representatives as members of an officially sanctioned advisory council, confidence in the election process undoubtedly would increase. Further, this could be accomplished without the major constitutional and bureaucratic overhaul that would be required if an independent election commission were established.

### 3) *Voter eligibility*

The general principle is that suffrage should be as inclusive as possible. Limitations based on race, religion or gender are *prima facie* unreasonable. Limitations based on age, residence and pre-registration, however, are generally considered acceptable.

The current voting age in Senegal is 21. Some opposition party representatives seek to extend the franchise to 18-year-olds, which, given the median age of Senegal's population, would increase considerably the size of the electorate.

Lowering the voting age would be consistent with the worldwide trend. In many countries, the voting age has shifted downward during the last two decades. Nonetheless, several longstanding democratic countries retain the 21 year voting age.

There is no right or wrong rule on this matter. In determining whether to extend the franchise, one consideration might be the obligations imposed on those between 18 and 21 (e.g., military service, responsibility for contracts, etc.). A second consideration might be the degree of political involvement evidenced by 18-21 year olds. A final consideration is the cost of denying the franchise to this age group in terms of disaffection and involvement in activities that undermine the political process.

Another category of Senegalese citizens currently impeded from participating in elections are those living abroad. The law stipulates that Senegalese overseas may register to vote in their former community, where they were born or where their parents or children are currently residing. However, the registration must take place at an embassy. According to some Senegalese, many embassies are simply not facilitating the process.

Absentee balloting raises both philosophical and practical questions. Should those no longer living in the country be afforded the same opportunity to participate in elections as those who will be directly affected by the results of the elections? Will vague absentee ballot procedures increase suspicions of fraud, particularly if opposition parties are less likely to be in a position to monitor this process effectively?

For these reasons, several democratic countries do not provide for absentee balloting or allow only those abroad on official government business to vote by absentee balloting. In countries where absentee balloting is permitted, strong safeguards designed to prevent multiple voting and ensure ballot secrecy (such as use of multiple envelopes) are included in the system to prevent cries of foul after the elections. In addition, some countries do not permit voters to cast absentee ballots if they have been outside the country on nongovernmental business for more than a set period of time.

#### 4) *Voter registration*

In general, pre-registration enhances the overall integrity of the election system. It provides an accurate basis for determining the materials needed at each polling site and for election officials to determine voter eligibility on election day.

In Senegal, a citizen is registered in the interior ministry files as a voter upon turning 21. The ministry then prepares computerized lists of all eligible voters. A prospective voter must be included on this list if he or she is to be afforded an opportunity to vote on election day. At present, voters have the principal responsibility for ensuring that their names are included on the lists. To improve this process, political parties could be provided computerized copies of the lists, which they could review for mistakes.

In addition, the prospective voter must possess a voting card. This requirement, according to many in the opposition, is the source of many problems, including: partisanship in the card distribution process; fraudulent use of voting cards; and the lack of uniformity in requiring possession of the voting cards in the countryside.

The delegation understands that the distribution of the voting card serves to remind people that an election is imminent; to inform a voter of his or her assigned voting place; and to facilitate the identification of voters on election day. However, the process is complicated and fraught with the potential for abuses. While all parties are invited to designate representatives to participate in the distribution of the cards, the better organized and better financed parties are at a considerable advantage. In addition, the names on the unclaimed cards are not posted in the constituency of the voter. There is thus no proper check to ensure that the unclaimed cards are not improperly used.

More important, the cards do not appear essential as a fraud-prevention device. Voters are already required to present their national identification cards and they must be listed on the electoral registry. To the extent that multiple voting is a problem, as suggested by opposition party representatives, it can be addressed by the application of indelible ink to a voter's finger as is done in many



countries, including some with longstanding democratic traditions such as Chile. Thus, requiring a voting card as a means for preventing multiple voting could be eliminated entirely.

The final matter raised by opposition party representatives as impeding prospective voters from casting their ballots involves the assignment of polling places. This allegedly is done in a partisan fashion in many instances. As a general rule, voters should be assigned to the polling place nearest their place of residence. Moreover, the government should assume the responsibility for ensuring that all voters are informed as to where they are assigned to vote.

#### *5) Party eligibility*

At present, there are no restrictions on parties participating in Senegalese elections. However, some in the opposition argue that requiring the payment of a deposit for ballot printing, which is reimbursable only if the party obtains a certain percentage in the election, is unfair for parties with little funding.

Many countries require political parties to meet certain thresholds before they are registered, appear on the ballot, and obtain public financing and free media time. Such requirements are necessary to ensure that the ballots are not crowded with parties that exist more on paper than in reality. However, in the context of a relatively poor country where foreign assistance for political purposes is restricted, it seems inappropriate to use a deposit provision to limit party participation. Alternative means — such as obligating parties to submit lists containing a designated number of party members or requiring a minimum percentage of votes nationally or departmentally for representation in the legislature — are available to accomplish the purpose of eliminating parties with truly marginal support.

#### *6) Election campaign*

The goal of an election campaign period is to provide the contesting parties an opportunity to communicate their respective messages to the public through media, rallies and other forms of political activity. A question that emerged during the delegation visit relates to the campaign period. In some countries, the period is quite

short and campaign activity quite concentrated. In other countries, the campaign period is a lengthy, open-ended affair. While a longer period affords the relatively unknown candidate an opportunity to explain his or her platform to voters, the disadvantages are that a greater emphasis is placed on raising the funds necessary to conduct a sustained campaign. Increasingly, voters become bored and uninterested in the messages being communicated.

In Senegal, the prescribed period for campaigning is 14 days. Opposition parties contend this is too short a period to permit them to overcome the ruling party's advantages in terms of candidate recognition. To the extent that campaigning in Senegal is conducted through rallies and meetings, a more extended period, for example an extra two weeks, would seem appropriate to assure all candidates the opportunity to establish themselves as viable leaders in the eyes of the public.

It is critical that parties not be arbitrarily denied permission to hold rallies. Decisions by local officials in this regard should be immediately reviewable by the Supreme Court or some other body established for handling election complaints. Similarly, complaints that government officials are using their positions for partisan advantage should be given a high priority by courts, which should have an adequate investigative capacity for handling these matters.

### *7) The role of the media*

The print media in Senegal operates with a great deal of autonomy and freedom, although there is a law against printing "false information." This law was used, for example, to prosecute a journalist who published an article containing what were purportedly the true results of the 1988 elections.

The electronic media, as is the case in many countries, is government controlled. The access it provides to political parties during the campaign period and its news coverage of political events are controversial matters in Senegal.

Opposition parties argue that the law governing access to the media during the campaign is inherently unfair in that it provides the ruling party with 50 percent of the time and requires all opposition

parties to share the remaining 50 percent. With 16 opposition parties, this allocation can result in a major opposition party receiving as little as 3 percent in free media time. The ruling party responds that this division is necessary to respond to the cumulative attacks of all the opposition parties.

To bridge this gap, a formula could be developed whereby electoral strength is taken into account in allocating time. For example, 50 percent of the total available time could be divided equally among all the parties. The remaining 50 percent would then be allocated based on performance in the previous elections, with no party obtaining more than 25 percent of the total. This formula would assure all parties of some access, but would benefit the parties that have a proven track record. This is only one of many techniques that could be used to distribute media time more fairly.

In addition, there are other ways to counter the effects of imbalance in the media, including:

- Increase the total time allocated for campaign broadcasting;
- Increase the quality of time by providing access during those periods when the majority of the population is most likely to be listening or watching; and
- Ensure the fairness of campaign coverage on news programs, perhaps by establishing a neutral body to monitor this issue.

#### *8) Balloting process*

The integrity of the balloting phase of an election is critical if public confidence in a political system is to be sustained. To accomplish this goal, election officials must be well-trained and act impartially. According to the opposition parties, however, the structure of the polling site commissions, which no longer include representatives of different parties or candidates, leads to a pro-government bias. Party representatives were eliminated from the commissions pursuant to a 1982 amendment to the election code. According to government officials, this change was made in response to opposition complaints that, under the prior system, ruling party representatives dominated the commissions.

The current system is based on the French model in which the nonpartisan civil service has responsibility for administering the elections. Many countries rely on a similar approach, although some countries allow political parties to designate representatives as polling site officials.

In many countries, polling officials are responsible for maintaining order at the polling site. Thus, the polling officials have the authority to request the assistance of security forces. While the presence of security forces can be intimidating to some voters, they are essential in deterring disturbances and in reestablishing order if a disturbance occurs. A request for security forces to enter the polling site should be noted in the record kept by the polling officials and should be for a limited duration. Ultimately though, it is the level of civic education, the presence of the party representatives and the secret ballot that overcome whatever intimidation might exist at a polling site.

Where political party representatives are not included as polling officials, they should be afforded access to all aspects of the balloting process as observers and their complaints should be registered by the polling officials. The election law in Senegal permits party representatives to observe all phases of the balloting process. Nonetheless, the role of party observers was described as weak. According to the opposition parties, their representatives do not sign the tally sheet and frequently have been denied copies of the tally sheets.

It also was suggested that the rule requiring observers to be named eight days in advance and to reside in the community in which they are performing observation duty inhibits country-wide observation, especially in areas where the opposition is weak. Government officials stated that the latter provision is necessary to ensure that observers can identify voters. However, in the first instance, identification should be based on the voter register. Moreover, to promote confidence in the process, political parties should be given as much leeway as possible in assigning observers to polling sites.

Many countries, recognizing the critical importance that the presence of party representatives at the polling sites play, permit political parties to designate observers even on election day. The party is given credentials by the election commission in advance of election day. These are then distributed as party volunteers materialize, and allows the party the freedom to react quickly on election day to unexpected problems.

### 9) *Secret ballot*

In providing for a free election, the balloting process must be organized so that voters are confident they will not suffer retribution for casting a ballot for the party/candidate of their choice. This inevitably means guaranteeing voters an opportunity to cast a secret ballot. While Senegal's election code permits the use of a secret ballot, many voters apparently do not exercise their right to cast a secret ballot.

The delegation recognizes that the question of a secret ballot has become quite controversial in Senegal. The argument, however, is not whether a secret ballot should be allowed — the constitution provides that suffrage "shall always be universal, equal and secret" — but whether it should be required in practice. The opposition parties contend that by not mandating a secret ballot, a voter might feel obliged to cast his or her ballot publicly and would be less likely to feel completely free in the choice he or she is making. Ruling party representatives respond that the current law reflects the practice preferred by a majority of the population, that demonstrating one's partisanship at the voting place (by wearing clothing with party colors, for example) is an accepted element of the Senegalese political culture, and that by affording the option of casting a secret ballot Senegal is complying with its international obligations. Indeed, as a Supreme Court justice noted, the practice of not using a voting booth is well-entrenched in the psyche of Senegalese voters.

The use of a secret ballot as an expression of a voter's will was introduced during the late 19th century and the practice spread quickly. By 1948, when the Universal Declaration of Human Rights was adopted, the practice was so widespread that the phrase "secret

vote or by equivalent free voting procedures" was included in the provision guaranteeing a citizen's right to participate in periodic and genuine elections.

Eighteen years later, when the International Covenant on Civil and Political Rights was adopted, the reference to "equivalent free voting procedures" was deleted. The United Nations today appears to view a secret ballot as critical to a fair election. (See, e.g., Resolution 435 concerning elections in Namibia.)

A major cause of the dispute in Senegal over the fairness of the electoral system is the optional nature of the secret ballot. Intimidation, of course, cannot be envisioned by those in the majority, but they might ask themselves how willing they would be to vote for an opposition party, if everyone knew for whom they were voting. The very fact of voting secretly when most vote openly in the presence of others may raise serious doubts about the loyalty of the voter. The delegation, therefore, believes that a mandatory secret ballot is essential. The delegation recognizes that this change cannot be introduced without a major voter education program to explain the new procedure and to convince voters that they should vote in secret no matter how openly they wish to demonstrate their preference in other ways as an expression of their right to free speech.

In this context, the delegation noted the practice of individual ballots being used per candidate and party. Many countries, including some with lower literacy rates than Senegal such as Haiti, place all candidates and/or party choices on a single ballot. Using a single ballot would provide additional security for the secrecy of the ballot, prevent the misuse of excess ballots and also reduce ballot printing costs.

#### *10) Vote counting process*

While fraud is possible during the balloting process, wholesale fraud that affects the outcome of an election is most likely to occur during the counting phase. Thus, in principle, an election law should provide for procedures whereby the results are recorded accurately at the polling sites, and are transmitted expeditiously to the officials

responsible for tabulating and announcing the final results. Further, if the results are not accurately reported, the procedures should facilitate the detection of any manipulation.

In Senegal, the opposition parties contend that fraud occurs between the time that votes are counted at the polling place and the time that the Supreme Court announces the results. The focus is on the actions of government officials who transmit allegedly fraudulent tally sheets to Supreme Court delegates. By relying on these tally sheets, opposition party representatives claim, the Supreme Court appears as an accomplice in a fraud that may have occurred at an earlier stage in the process. In meetings with the delegation, Supreme Court justices expressed reservations over their ability to ensure adequately the integrity of the chain of possession from the polling site to their hands. The Supreme Court's failure to issue complete polling site results, which could be compared with results announced at the polling place, also contributes to concerns about the fairness of the counting process.

To increase public confidence in this critical stage of the process, party representatives should be present during the counting of the ballots at the polling sites. Tally sheets containing the polling site results should be signed by all polling officials and given to the party representatives at the conclusion of the polling site count. Party representatives should be permitted to accompany the polling officials as they bring the tally sheets to the next level of election administrators.

The process of tabulating the results, whether by the Supreme Court at the national level or at some intermediate stage, also should be open to monitoring by party representatives and the polling site results should be released. Finally, the Supreme Court should have the capacity to investigate effectively allegations of fraud; this could be accomplished by allowing the Supreme Court, where a serious allegation of fraud has been presented, to recount immediately the ballots or to question the polling officials responsible for preparing the tally sheets. To this end, ballots and the original tally sheet must be preserved for a pre-determined period.

The onus in this matter, however, is not only on the government. The political parties also must assume the responsibility of designating representatives for each polling site. If this proves impossible, then consortiums of parties or neutral observers should work together to ensure that tally sheets from all polling sites are obtained by party representatives who are present during the count.

The parties then must develop a mechanism whereby they are in a position to verify the official, announced results and to detect any fraud that occurs. Parallel vote tabulations, whereby the parties use the tally sheets obtained by their representatives to tabulate the results independent of the official tabulation, are an effective device that has been used in many countries to enhance confidence in the process. Indeed, in some countries, not only do the political parties perform parallel vote tabulations but, as an added form of insurance, nonpartisan groups also organize such operations as well.

Whether performed by political parties or by independent groups, whether done manually or by computer, and whether based on results from all polling sites or from a statistical sample, the goal of such operations is to permit a verification of the results. If there are discrepancies, further inquiry will be necessary. Consideration should be given to withholding the official announcement of the election winners until the discrepancies are resolved.

### *11) Adjudication of complaints*

Another aspect of the post-election phase that is critical for developing public confidence in an election system involves the mechanism for handling complaints. The mechanism must provide for complaints registered at the polling site or during the tabulation phase to be reviewed by an independent body. In some countries the courts play this role, while in other countries jurisdiction for resolving election complaints lies with the independent election commission.

The Senegalese system for registering complaints, according to critics, is cumbersome and unsatisfactory. To present formal complaints to the Supreme Court, *huissiers* (special lawyers) are required. Moreover, the Court is limited in its ability to acquire the



information needed to make a just decision on the merits of the complaint.

To increase public confidence, several steps would appear appropriate. The complaint procedure should be simplified and the handling of election-related complaints should be given priority by the courts (or by an independent body, if one is established). The government should ensure that all relevant information regarding a complaint is available to the reviewing body. Finally, the reviewing body should seek to issue prompt decisions in all cases involving election complaints. This recommendation would be facilitated if the administrative role of the courts were to be reduced or eliminated.

### **C. Promoting Public Confidence**

The preceding subsection considered some of the changes in law and practice that might instill greater confidence in Senegal's election system. Confidence in the election system can not, however, be obtained by executive or legislative fiat. All parties must demonstrate a commitment to developing an election process that is an integral part of a democratic political system. This subsection reviews three matters that are relevant to these broader concerns.

#### *1) Participation v. nonparticipation*

The question of election boycotts was raised with the delegation several times during its visit. Opposition party representatives argued that boycotts were the only effective way to ensure that their concerns regarding the election system would be taken seriously. By threatening to boycott elections, the opposition hopes to deprive the ruling party of the internal and international legitimacy that it seeks.

The delegation recognizes that there may be a political element in these threats, and in some of the concerns from which they stem. Nonetheless, should these threats be carried out over a period of time, the credibility of elections in Senegal would inevitably be called into question.

As a general proposition, the delegation believes that all parties should participate in the electoral process even when legitimate questions regarding its fairness can be raised. Every effort should be

made to use democratic procedures, including public debate, to resolve differences. Boycotts and threats of boycotts increase public cynicism regarding the efficacy of the electoral process. Thus, they should be avoided unless there is no hope that a valid and credible election can be held now or in the future.

The delegation further notes that participating in an election provides an opportunity to test the process. The political parties should develop mechanisms for independently verifying not only the vote count but also the accuracy of the voter lists. Parties should file complaints where appropriate and should make sure that there are at least two party representatives present at every polling site. Indeed, the development of strong political parties is critical for the survival of a democratic system.

## 2) *Civic education*

As noted above, democracy can be defined in very formal terms: fair elections; a free press; and multiple parties. However, to establish a pluralist system requires more than mere formalism. An environment must exist in which the values of democracy are understood and acted upon by the population.

Such an environment is not something that simply emerges. It is a consequence of actions by people in leadership positions. The government can play an important role in stimulating activity in this area through nonpartisan civic education programs that promote democratic values among the adult population and that form an essential part of the general education curriculum. Political parties, civic organizations and the media have an important role to play in this connection.

In developing a civic education program, Senegal can look to its proud history. However, in discussing pluralism, the overriding theme should be that the will of the people, as expressed through the election process, is sovereign. The value of pluralism should be emphasized and juxtaposed against the disinclination of any party or individual to cede power.

On a more technical level, civic education programs should inform prospective voters about the mechanics of voting: what the

ballot looks like; how the ballot should be marked; the significance of casting a secret ballot; who is present at the polling site; what should be done in case a name is not included on the voter list; and related matters. Another important function that civic education can perform is to educate voters regarding the need to balance partisan displays of support for candidates with the need not to act in ways that could be construed as intimidating, particularly on election day. For example, the presence of large numbers of people wearing clothing bearing a candidate's image or party color at or near a polling place may dissuade voters from casting alternative votes.

Reviewing the experiences of other countries would be quite helpful in developing such a program for Senegal. The delegation believes that such a program could be funded by contributions from foreign governments or nongovernmental organizations working in the field of democratic development.

### *3) International observers*

In recent years, the presence of international observers for national elections in different regions of the world has become increasingly common. International observers are now welcome, and have played supporting roles, even in established democracies. For example, former U.S. President Jimmy Carter led an international delegation, co-sponsored by NDI, to the May 1990 Dominican Republic elections. The delegation, which was invited by the election commission, helped alleviate tensions in the days following the elections. Carter suggested procedures to resolve disputes over contested tally sheets and the delegation maintained an in-country presence while the disputes were being considered by the election authorities.

In June 1990, the 34 countries that are parties to the Conference on Security and Cooperation in Europe (CSCE) adopted a resolution, which includes the following provision:

The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. *They therefore invite observers from any other*

*CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law (emphasis added).*

Four of the members of this delegation are nationals of countries that are party to the CSCE.

In the context of Senegal, the delegation believes international observers can serve several purposes. First, the presence of observers would enhance confidence and encourage participation in the process. Second, the presence of observers might help to deter any misconduct. Third, the observers would be able to report in an objective manner to the international community on the quality of the election process in Senegal. Fourth, observers from countries in the region currently adopting multi-party election systems may be able to learn a good deal from the Senegalese election system. Finally, those committed to a fair election process can only benefit by this observer presence as it would highlight Senegal's respect for the right of political participation and for human rights in general.

Some in Senegal have suggested that inviting international observers would be an affront to Senegalese sovereignty. As discussed above, the delegation believes that international law and practice are now such as to mitigate concerns regarding a supposed violation of national sovereignty resulting from the mere presence of international observers. It also should be noted that in 1984 NDI invited a number of international leaders to observe the U.S. elections, including a member of the government of Senegal.

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## *Chapter 5*

### *REFLECTIONS ON THE MISSION*

This delegation has had the unique opportunity to review and assess certain features of Senegal's election system. It is hoped that the effort will contribute to the democratic process in Senegal and to the development of an improved election system. However, Senegal's initiative in inviting this delegation to visit the country has even broader implications given recent developments and the growing interdependence among nations.

The mission occurred during a 12-month period in which there has been considerable international attention focused on free elections and democratic forms of government. The November 1989 elections in Namibia represented a watershed, not only because it resulted in the independence of Africa's last colony but also because the international community played such a critical role in supporting a free election process. In Nicaragua, free elections in February 1990, which an extensive international observation effort helped make possible, resulted in the resolution of a longstanding civil war. Multi-party elections in six of the countries of Central and Eastern Europe between March and June 1990 reflected the dramatic transitions that occurred in the region.

The growing interdependence among nations in the last decades of the 20th century has been noted by many observers. This interdependence is not limited to economic matters, but extends also to political concerns. What happens in one country is of concern to those living in other regions of the world.

Even in this fast-changing world, the principle of state sovereignty remains intact. Yet, as this delegation's efforts hopefully demonstrate, there are instances where an international group can help resolve seemingly intractable conflicts without constituting an unwarranted intervention.

The Senegalese initiative is important and timely. Recent municipal elections, though lacking the participation of opposition parties, were conducted without violence. There are no continuous, massive protests in Senegal. Nor are there gross abuses of human rights. Nor have opposition voices been silenced. The government and all 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 Senegalese initiative should serve as a model for resolving contentious issues before they become intractable and erupt into violence as has happened in so many other countries.

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## *Chapter 6*

### *RECOMMENDATIONS*

There were many positive aspects of the system identified by the delegation, including several that resulted from changes implemented in response to complaints. Opposition party representatives and nonpartisan observers, however, expressed serious concern that deficiencies in the system may produce election results that do not fully reflect the will of the people. This belief, whether accurate or not, has led to widespread questioning of the system and threats to boycott future elections.

The delegation recognizes that some of the concerns regarding the election system stem from inefficient procedures or the failure to carry out the procedures set forth in the electoral law. In some cases, the procedures, while devised with good intentions, lend themselves to possible misuse. Given these conditions, significant improvements can be made that would achieve the objective of increasing confidence in the system. These improvements are largely of an administrative nature and, while resulting in simplification, require time and financial resources. In addition, certain institutional changes, which may require constitutional or major legislative amendments (e.g., the voting age and the election system for local government), should reflect a broad consensus of support and thus should perhaps be debated only after confidence in the administrative process has increased.

With these factors in mind, and in the spirit of the government's invitation, the delegation recommends the following points for serious

consideration by all those interested in improving the Senegalese election system:

1) There is a need to facilitate greater participation by opposition parties in municipal and rural councils. This can be accomplished by changing the system for electing councilors to one based, at least in part, on a form of proportional representation. See pages 22-24.

2) Given the mistrust regarding the conduct of elections in Senegal, the political parties should be given a substantive role, even if only an advisory one, in monitoring the administration of national elections. See pages 24-26.

3) In view of the worldwide trend toward expanding the franchise and given Senegal's demographics, consideration should be given to lowering the voting age in Senegal. See pages 26-27.

4) Given that the system for distributing voting cards has added to the lack of confidence in the system and that their role as a fraud prevention device is not essential, consideration should be given to not requiring them at the polling place and to adopting an alternate means, such as indelible ink, to protect against multiple voting. See pages 28-29.

5) To facilitate voter access to the polling sites, voters should be assigned to the polling site nearest their home. See page 29.

6) A slightly longer campaign period would be helpful in assuring that voters are better informed about candidates and issues. Laws governing the campaign should be implemented in an impartial manner, with immediate review to the courts or an independent body if a problem develops. See pages 29-30.

7) An equitable formula should be devised that ensures all parties an adequate opportunity to communicate their positions to the electorate through the media. See pages 30-31.

8) The important role of party representatives in the balloting and counting processes should be recognized through civic education programs, through training programs for election officials and through rules that facilitate the presence of pollwatchers at the polling sites. See pages 31-33.



9) Mandating a secret ballot would contribute significantly to ensuring voters that their vote is indeed free and can be cast without fear of retribution, and hence deserves the most serious consideration. Listing the names of the candidates and their party affiliations on a single ballot, as opposed to having individual ballots for each candidate, would facilitate the process of guaranteeing a secret ballot. See pages 33-34.

10) The integrity of the counting process would be strengthened by ensuring that party representatives obtained signed copies of the polling site tally sheets, by releasing the results from all polling sites and by political parties developing independent means for verifying the election results. See pages 34-36.

11) The complaint process should be simplified and the handling of complaints should be given priority by the body responsible for adjudicating these matters. The role of the Supreme Court, in particular, should be clarified to ensure that the justices are not given responsibilities that they cannot fulfill. See pages 36-37.

12) To ensure a positive electoral climate, nonpartisan civic education programs should be implemented in a serious manner and should identify political pluralism as a positive value. See pages 38-39.

13) The potential role of independent Senegalese and international observers in promoting confidence in the electoral process should be considered. See pages 39-40.

14) Finally, to ease the financial burden imposed by some of these recommendations, foreign governments committed to strengthening democratic processes should seriously consider funding programs that result from the implementation of these recommendations. However, this should not extend to the funding of party campaigns by foreign governments. See pages 38-39.

**APPENDICES**

**TERMS OF REFERENCE****SENEGALESE ELECTION ASSESSMENT MISSION**

The National Democratic Institute for International Affairs (NDI) is organizing a five-member multi-national mission that will visit Senegal September 23-28 to study the Senegalese election system. While in Senegal, the mission will meet with government officials responsible for administering national and local elections, representatives of political parties and others with relevant information regarding the Senegalese election system. The delegation will be based in Dakar.

The mission is technical in nature; its members are elected political leaders, election officials and election experts with experience in electoral matters relevant to the Senegalese situation. The mission does not presume to interfere in internal Senegalese matters, but welcomes this opportunity to analyze Senegal's election laws and practices and to share the experiences of their own nations with Senegal's political leaders.

The mission has been assured of the cooperation of government officials responsible for implementation of the election laws. The mission also has received assurances that the leaders of the major political parties in Senegal will meet with the delegation.

Prior to the conclusion of the mission, the delegation will present an interim report to the government of Senegal. A final report will then be issued within two weeks of the mission's departure from Senegal. Both the interim and final reports, which will be made public, will be offered solely for the purposes of clarifying the debate in Senegal. The report will also help the international community to better understand the Senegalese electoral system. At the end of the mission, delegation members will be prepared to discuss relevant electoral practices from personal experiences in their respective countries with a selected group of government representatives and party leaders.

In accordance with past NDI practice, the mission should consider the major components of the election process: laws governing elections in Senegal; campaign practices; information to voters regarding the mechanics of voting; the actual balloting procedures; and the system used to guarantee the integrity of the counting, tabulation and announcement of the results. In evaluating these matters, the mission should also take into account Senegal's prior electoral history. While NDI recognizes that there is no perfect election system, it is our hope that the perspectives of a multi-national group of diverse electoral experiences will contribute in a constructive manner to the discussions in Senegal regarding electoral matters.

**DELEGATION MEETING AGENDA****SENEGALESE ELECTION ASSESSMENT MISSION**

September 28 - October 3, 1990

***Friday, September 28***

7:00 pm          Delegation arrives at Hotel Teranga

***Saturday, September 29***

9:00 am          Meeting with delegation of the Democratic League/Movement for the Workers Party (LD/MPT) led by Dr. Abdoulaye Bathilly.

11:30 am        Meeting with Socialist Party delegation at PS headquarters. The PS delegation will consist of:

Abdoul Aziz Ndao - President of the National Assembly

Djibo Ka - Minister of Education

Ousman Tanor Dieng - Minister, Secretary of the Cabinet, Office of the Presidency

Mamadou Faye - Permanent Secretary, PS

Khalifa Sall - Vice President, National Assembly

Jacques Baudin - Minister of Tourism

Lamine Djack - 1st Vice President of the National Assembly

Mamadou Diop - Mayor of Dakar

1:00 pm        Lunch offered by PS

3:00 pm        Meeting with Pape Samba Kane (Cafard Libéré) and Abdourahamane Camara (Wal Fadjiri) at hotel

4:30 pm        Meeting with Louis Thomas Ciss, University of Dakar, at hotel

Meeting with Babacar Diagne, Director of National TV, at hotel

7:00 pm        Dinner with Babacar Touré (Sud Hebdo) and Mamadou Oumar Ndiaye (Le Témoin)

***Sunday, September 30***

- 7:30 am Delegation departs for Thies
- 9:00 am Meetings with PS, Senegalese Democratic Party (PDS), and election officials
- 1:00 pm Delegation departs for Dakar
- 4:00 pm Meeting with PDS officials headed by Babacar Sall, deputy leader, and Ousmane Ngom, chief of PDS parliamentary delegation at hotel
- 7:00 pm Dinner with political scientist Babacar Kante and law professor Khadre Boye at University of Dakar

***Monday, October 1***

- 8:30 am Meeting with Minister of the Interior Famara Sagna and Interior Ministry election officials
- 12:30 pm Delegation working lunch
- 4:00 pm Meeting with Ousmane Camara, President of the Supreme Court  
Also attending: Youssoupha Ndiaye, Secretary General of the Supreme Court
- 6:00 pm Reception at U.S. Ambassador's residence

***Tuesday, October 2***

- 11:00 am Meeting with Ely Madiodo Fall, leader of the National Democratic Assembly party (RND), and other RND representatives at hotel
- 2:00 pm Meeting with Babacar Niang, leader of the People's Liberation Party (PLP) at hotel
- 4:30 pm Meeting with PS at PS headquarters
- 6:00 pm Delegation working dinner

***Wednesday, October 3***

- 9:00 am Visit to Gorée
- 11:00 am Meeting with Workers and Independence Party (PIT), represented by Amath Damsokho, Secretary General, and Semou Pathe Gaye at hotel
- 3:00 pm Meeting with President Diouf
- 9:00 pm Delegation departs

**DRAFT REPORT TRANSMITTAL LETTER  
TO PRESIDENT ABDOU DIOUF**  
*{Translation of original document}*

February 5, 1991

President Abdou Diouf  
President of the Republic of Senegal  
Dakar, Senegal

Dear Mr. President:

I have the honor of transmitting to you a draft of the report prepared by the international assessment team on the Senegalese electoral code. This report reflects the consensus of the five member team which, as you know, represents different democratic political systems and viewpoints. I greatly regret that the preparation of this report took longer than expected; this was due to the necessity to coordinate its drafting with the members of the delegation on three continents and the time needed to ensure an accurate translation.

I hope that this report will be seen as a constructive effort by the international community of democracies to provide a useful perspective on the steps your government has taken to increase confidence in the Senegalese electoral system and ways in which it might be further improved.

We have asked Minister Sagna to provide us with comments on the report by the end of February. We would hope that a final report could be issued soon after receiving the comments of your government.

On behalf of the delegation, I would like to express our deep and sincere gratitude for the cooperation we have received from your government and the Parti Socialiste. We look forward to hearing from Minister Sagna and hope that there may be additional ways in which we can continue to assist in your efforts to strengthen the democratic system in Senegal.

Ambassador Donald McHenry  
Chief of Delegation



**SENEGALESE GOVERNMENT RESPONSE  
TO DRAFT REPORT**

Dakar, March 5, 1991

His Excellence  
Ambassador Donald McHenry  
National Democratic Institute  
for International Affairs  
Washington, DC

Mr. Ambassador:

It is with real satisfaction that I received the NDI delegation's report evaluating the Senegalese electoral code.

I understand the reasons for the belated submission of the report. The ideas expressed therein are regarded as a positive contribution to the strengthening of democracy in Senegal.

I am delighted by the work the delegation has accomplished in our country, and would like to suggest that it might be improved in parts where it does not accurately reflect the historical realities of Senegal.

The observations made by my Minister of the Interior with regard to the report are contained in the attached document which I am honored to present to you.

Sincerely,

Abdou Diouf

**COMMENTS OF THE GOVERNMENT  
OF THE REPUBLIC OF SENEGAL  
ON THE DRAFT REPORT PRESENTED BY  
THE INTERNATIONAL DELEGATION  
OF THE NATIONAL DEMOCRATIC INSTITUTE  
REGARDING THE SENEGALESE ELECTORAL CODE**

**INTRODUCTION**

The delegation of the National Democratic Institute, which visited Senegal between September 28 and October 3, 1990, consisted of six members of different nationalities who were all specialists in constitutional law, as well as three technical advisors.

According to the report, the delegation had free access to all necessary legal documentation and was able to interview all involved parties: ministers, officials, magistrates, members of the opposition and of the majority. At the end of the visit, the President of the Republic met with the entire delegation.

All this testifies to "a spirit of commitment to democratic principles."

This report, which has been submitted to the Senegalese government for a preliminary review, must, in its final version, be made public in accordance with the provisions described on page 6\* of the report.

The purpose of the government's review of this document is to verify that the evaluation of the Senegalese Electoral Code and the description of practices related to election procedures accurately reflect Senegalese laws and regulations. Accordingly, the report's recommendations will be reviewed taking into account the provisions of the current Electoral Code, thus allowing the government and

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\* The page number citations refer to the original French version of the report that was submitted to the Senegalese government.

then the legislators to give their opinion with a full knowledge of the issues.

## I. OVERVIEW

The overview is quite favorable. In fact, in its introduction, the report unequivocally states the democratic character of Senegal's laws and institutions, which, according to this document, conform to the international standards for "free and fair elections."

This idea is emphasized at several points in the report to emphasize that Senegal can be considered a modern democracy.

Nevertheless, the delegation, following a thorough review, feels that certain practices and certain aspects of the Electoral Code raise the question of impartiality.

In several instances, the delegation compares the administrative systems of the anglo- and francophone countries. Of course, the Senegalese Electoral Code takes much of its inspiration from the French model, and consequently the civil service, considered *neutral*, plays a key role in the organization of the elections. Similarly, the judiciary is an independent authority, given the separation of the legislative, executive, and judiciary powers. These principles explain the role the Electoral Code assigns to the civil service and the judiciary.

The delegation also emphasizes the necessity of strengthening the population's confidence in the laws that govern the electoral system, such confidence being as important as the laws themselves.

## II. THE CONSTITUTIONAL FRAMEWORK - OBSERVATIONS

The delegation's description of Senegal's institutions is a fair representation of our laws. Nevertheless, in the section on townships and rural communities - page 10, line 3 - the following sentence:

"Municipal and rural community governments include mayors and seven or more council members."

should be replaced with:

"Townships and rural communities are governed, respectively, by a mayor and several deputies (the municipal office) and a president of the rural council and his vice-president, who are elected by a municipal council comprising 20 to 90 members (depending on the size of the township) elected through universal suffrage and by a rural council of 16 to 28 members also elected through universal suffrage."

Also, on page 10:

"No coalitions may be formed for purposes of contesting\* local elections."

Technically, the Electoral Code does not foresee this possibility; however, article L.202 stipulates that "in a municipal election, each voter and each candidate may demand the cancellation of the elections."

Page 12, line 11:

Replace "the opposition effort" with "the opposition's call".\*\*

#### A - Administration of the Elections

Page 12: "The minister of interior... appoints the governors and prefects," is not quite accurate, since all [administrative] offices are appointed by presidential decree.

Page 14, line 7: strike "the president of the municipal... council", this function having been made obsolete by the 2nd municipal reform of October 1990.

Page 15: Voting cards. The commissions distributing the cards are headed by a member of the *civil service*, not the "government".

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\* This point seems to have arisen from the original translation of the English into the French. The French verb *contester* means *to dispute, to challenge*, not *to compete*.

\*\* Similar point here: French version of the report translates effort with *attentat*, which has violent, criminal implications.

Again, on page 16, line 12: "If any cards are lost or missing, the commission must inform a superior administration official", not "government official".

Page 17, line 5 from the bottom: regarding the eligibility of deputies. The rule specifically does not apply to university teachers, rather than exempting "teachers" in general (L.134).

Page 19: access to "electronic media" - this should include both radio and television.

### **B - Polling Place Administration - page 20:**

The formulation, "the commission members are chosen from the ranks of local government officials" seems inappropriate. It would be preferable to adhere more closely to the text of article L.44:

"The members are chosen from the ranks state agents, local governments, public establishments, nationalized enterprises, and semi-private enterprises, *whether still active or already retired.*"

Page 21: Rephrase this sentence to read: " The number of ballots for each party or candidate must equal the number of registered voters plus 50 percent."

Page 23, 2nd sentence: The law (L.55) foresees two vote counters for each group. The report should therefore read, "In each group one of the vote counters takes the ballot out of the envelope and hands it unfolded to the other counter, who reads out the information on the ballot and files it. The name written on the ballot or the list designation is entered on the tally sheets by *two* vote counters."

Page 23\*: Validation of the vote. Article 29 of the Constitution stipulates that candidates may dispute the regularity of the elections before the Supreme Court during the 48-hour period after the polls have closed. The report should therefore read: "If no complaint regarding the election of a candidate is received during the 48 hour period, the election is officially announced within five days

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\* Actually, page 24.

of the closing of the polls... The Supreme Court has five days from the moment the complaint is submitted to render its decision." Also, in the same paragraph, it would be preferable to put, "If the Court believes that the results are the consequence of fraud, it will declare them void" (strike *may*) (article LO.111 of the Electoral Code, 3rd paragraph).

### III. ANALYSIS OF QUESTIONS PRESENTED FOR CONSIDERATION - Page 25

In its analysis, the delegation recognizes that no electoral system is ideal. Following a thorough analysis taking into account the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples Rights, it concluded that *Senegal's record is positive* with respect to the following:

- multi-party elections;
- freedom of the press;
- respect for human rights; and
- an independent judiciary.

Nevertheless, the delegation asserts that it is not sufficient to permit multi-party elections.

The political parties taking part in the process must also *have the means to be competitive*, and the system must tolerate, or even, *facilitate*, a change of government if that is the electorate's wish.

### IV. RECOMMENDATIONS MADE BY THE DELEGATION

After examining the institutions and procedures inherent in the Electoral Code, the delegation interviewed all parties involved in the process, notably, the Supreme Court magistrates, government officials, and especially the members of the opposition. In order to enliven the country's democratic life and to provide all political parties with greater opportunity to participate in local and national affairs, the delegation recommends the following reforms or changes:

## 1 *The Electoral System:*

### a) Establishing a proportional vote in local elections

According to the delegation, the systems currently in place for the election of the president and the deputies were not subject to opposition criticism. *On the other hand, the single-round, majoritarian system used for municipal council elections and rural council elections in accordance, respectively, with articles L.168 and L.192 of the Electoral Code* is rejected by the opposition parties and even, as the delegation noted, by members of the ruling party (see page 29 [p. 26]).

The delegation believes that the majoritarian system, especially if limited to one round, does not allow an *opposition party that lacks a strong central organization* to be represented in the local assemblies.

Thus, the delegation proposes an unspecified form of proportional representation.

We believe that in the present context the implementation of such a system could harm the effectiveness of the municipal and rural councils as a result of potential alliances that could destroy elected majorities. Therefore, the system should be both modest and objective.

### b) Forming coalitions for the purposes of elections:

The delegation recommends allowing the parties to run joint slates of candidates during elections.

This recommendation requires a change in articles L.119, L.168, and L.192 of the Electoral Code.

We believe that making these changes might permit a coalition of minority parties to win elections. However, this coalition might in turn break apart, thus causing instability, which would present a serious problem for a developing country.

## 2 *Election Administration:*

a) Give the political parties a direct role in administering the elections.

The delegation several times noted the preeminent role played by the Minister of Interior and the civil service in the organization of the elections.

To reduce this role, the delegation proposes the creation of an independent electoral commission, in which the political parties would be represented, to administer the elections.

We should point out that the current system is used in all the francophone countries; the civil service, considered *neutral*, is responsible for organizing the *elections*.

b) The delegation also underlined the administrative function of the Supreme Court, especially in certifying the results. According to the delegation, some Supreme Court judges have acknowledged that they do not possess the materials or personnel to carry out the election-related responsibilities placed on the Court by the Constitution and Electoral Code. Notably, the Court does not have the oversight to certify the chain of possession of the tally sheets.

c) In the short term, in order to involve the political parties in organizing the elections, the delegation proposes the creation of an election advisory council which would draw half its membership from opposition parties.

We believe that the organization of elections is first and foremost the responsibility of the state, although the political parties have the right to examine this process in its entirety. The *National Election Council*, which is assembled for each election, has shown that it can do the job, even though it is made up solely of technical experts. The presence of political party representatives would risk undermining the legal and material organization of the elections.

Our Code is based on the principles described above which give the primary responsibility for the legal and material organization of the elections to the civil service. Nevertheless, the parties are involved each time their presence is needed in safeguarding the impartiality of the election. It should be recognized, however, that the political parties have not always taken full advantage of the possibilities the law offers them with respect to verifying the conduct of the elections.



The current Electoral Code involves the political parties in the following procedures:

- revision of the electoral registers, L.15;
- distribution of the voting cards, L.41;
- verifying the regularity of the elections, from the opening of the polls to the announcement and publication of the results, through representatives designated by the parties or the candidate (L.43);
- the vote count, by designating vote counters;
- Finally, each candidate may register a complaint regarding the outcome of the elections with the competent judicial authority.

If we are to maintain the basic principles inherent in our Code, the involvement of political parties in the *organization* of the elections is not desirable, even in the context of an advisory council, which could be a source of conflicts or lead to sterile debates. The organization of the elections must take place in an atmosphere of tranquility, outside of any political disputes, in order to adhere to the timetable set by law.

### 3 Voter Eligibility:\*

- **Lowering the voting age:** The delegation recommends lowering the current voting age of 21 to allow young people to participate in the country's politics. This has been done in several other developed countries (18).

In the case of Senegal, however, 18 would seem too young, since at that age young people are still attending secondary school. Changing the voting age to 20, the age at which the majority of young people enter university, could be considered.

- **Participation of Senegalese living abroad and absentee ballot:** The Electoral Code permits Senegalese citizens living abroad to register in their place of birth or most recent residence. It does not appear desirable to expand this option by adopting, for example, an

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\* The French text has *equality*, which must be a proofreading error.

absentee ballot, whose implementation would be difficult to oversee.

- **Voter registration:** The delegation suggests providing each political party with a computer printout of the electoral register.

We would like to point out that the Electoral Code provides for the involvement of the political parties, authorities, and notables at each step during the revision of the electoral registers. Furthermore, the political parties are represented within the commission (L.15); they are therefore informed and able to call on those responsible to defend their actions.

In addition, as provided in article L.22, each voter may ask to copy the electoral register, which is stored in the archives of the prefecture, as long as they attest that copies of the register will not be used for commercial purposes.

**Voting cards:** The delegation paid considerable attention to the voting cards, describing them as the principal source of multiple-vote fraud.

— The delegation proposes eliminating the cards and instead marking the voters' index fingers with indelible ink.

We believe that this suggestion is unacceptable as it would return Senegal to the level of countries without any administrative tradition and possessing no democratic practices.

Specifically, the voting card has the necessary function of informing the voter of the place where he will go to vote. It also helps officials at the polling site in locating the voter's name on the register. Furthermore, the card allows a voter whose name has been omitted from the list due to "material error" to be able to reregister up to the day of the elections by obtaining a judicial order (cf. L.27).

— The delegation has expressed doubts regarding the effectiveness of the commission responsible for distributing the voting cards (L.41 and L.42) as well as the role of the village chiefs and delegates from each neighborhood.

However, if the parties were to take full advantage of the Electoral Code's provisions, such as the presence of political party

representatives in each township, they would be able to verify more effectively that the voting cards are properly distributed.

- **Assigning voters to polling site closest to their place of residence:** The delegation suggests that this would facilitate the balloting process.

Article L.40 of the Electoral Code assigns a maximum 1,000 voters to each polling site. However, it has been shown that in practice this figure is too high. It would be necessary to increase the number of polling sites to address this problem. The creation of additional sites, however, poses security and material problems.

- **Party eligibility:** The delegation believes that the requirement of a deposit can discourage candidates. It prefers the solution of determining a minimum percentage of votes.

We would like to point out that the current deposit requirement for presidential elections helps *eliminate* candidacies that are not serious.

- **Election campaign:** In order to allow each candidate or political party to make itself better known to the electorate, the delegation proposes increasing the campaign period by two weeks.

This recommendation does not appear justified, since access to the media should enable the parties to make their programs well known to the public prior to the elections, which would seem to be NDI's concern in this case.

Also, it should be noted that the Senegalese political parties are able to hold rallies and meetings outside the campaign period.

Furthermore, extending the campaign period could encourage a climate of adversity, provoke disturbances, and make voters tired of the process.

- **Role of the media:** The delegation proposes the following formula:

- dividing 50 percent of air time among all the parties.
- dividing 50 percent of air time proportionally based on the results of the preceding elections (no party would receive more than 25 percent of the total).

A more equal distribution based on party representation could be studied.

- **Balloting process:** The delegation recognizes that the current system is based on the French model in which the civil service is responsible for organizing the elections. Nevertheless, the delegation advocates giving the parties a free rein in designating their representatives. Currently, article L.43 foresees that representatives must be designated eight days before election day. They must be registered in the township or rural community for which they are responsible.

The political parties would thus be able to designate all their representatives throughout the country as late as election day.

We believe that the current system of designating representatives for the candidates or parties guarantees greater transparency in the administration of the elections. Representatives are designated to perform their function in districts they supposedly know well (L.43 of the Electoral Code).

- **Secret ballot:** The delegation understands that the current practices cannot be changed overnight. For that reasons it believes that it will be suitable first to educate the voters in this practice (article L.50 permits the voter to use an isolation booth if he so desires).

— The delegation believes that the use of a single ballot featuring the names of all the candidates would prevent fraud.

This suggestion cannot be implemented due to the level of education of the electorate as a whole.

- **Vote count:** The delegation recommends having the tally sheets signed by everyone responsible for conducting the count and giving one copy to each political party representative.

This suggestion implies that political party representatives should have the same status as election officials, while in reality they are only observers.

Nevertheless, the Electoral Code contains provisions that respond to the delegation's concerns regarding the role of representatives of the candidates or political parties.

Article 57 stipulates that "the president announces the results *which are then posted.*" The results are noted on the tally sheet which is signed afterwards by all polling site officials. *The president hands a signed copy of the posted results to any representatives of candidates who ask for one.* Furthermore, article L.43, 2nd paragraph, states that "the representatives of candidates or political parties are free to enter the polling sites to which they have been assigned and *insist that any observations or complaints they might have be noted* on the tally sheets. *They will then sign their names under their observations and complaints.*"

A proper application of the Electoral Code's provision thus allows the political parties to participate actively in verifying the regularity of the elections.

— The suggestion that a political party representative should accompany the transfer of the tally sheets seems unrealistic. Nevertheless, it may be feasible to send the envelopes to the Supreme Court along with the officials the court has assigned to each region to verify that the elections are proceeding smoothly.

- **Adjudication of complaints:** The delegation proposes the creation of an independent body instead of the Supreme Court to settle disputes.

We are convinced that the Supreme Court holds a crucial role in settling disputes relating to presidential and legislative elections. Nevertheless, it will be necessary to strengthen the Court's means of accomplishing this important task, since otherwise it will be vulnerable to controversy.

- **Promoting public confidence:** Nothing to report.

- **Civic education:** The delegation believes that in order to strengthen the credibility of the electoral system, the citizens must receive extensive civic education. Such a program could easily find funding and would be administered by the public authorities outside the election campaign period.

We have no objection to this proposal.

- **International observers:** Finally, the delegation recommends that Senegal invite international observers to its next elections. NDI recalls that in 1984 it invited a member of the Senegalese government to the U.S. presidential elections.

We think that it is plausible that Senegal will select a group of credible individuals to be invited for the elections; however, it will not have any observers imposed on it.

- **Foreign financial assistance toward implementing these recommendations:**

No particular objection.

\* \* \* \* \*

These are the observations of the Senegalese government on the recommendations contained in the report on the Electoral Code.

On the whole, the report seems to us to make a useful contribution toward strengthening democracy in Senegal and reestablishing confidence among the players in the political scene.

However, to be genuinely objective, it will have to be revised in those parts that do not reflect the historical realities of Senegal.

By incorporating the government's observations, or including them in the form of an appendix, the report will better meet NDI's objectives.

**LETTER FROM NDI PRESIDENT BRIAN ATWOOD  
TO PRESIDENT ABDOU DIOUF  
TRANSMITTING FINAL REPORT**

*{Translation of original document}*

April 2, 1991

The Honorable Abdou Diouf  
President of the Republic  
Dakar, Senegal

Dear Mr. President:

I have the honor of transmitting to you the final report of the international delegation evaluating the Senegalese electoral code. It is our strong hope that this report will assist in the development of a national consensus regarding the conduct of elections in Senegal. You, Mr. President, are to be congratulated for the leadership you have in shown in focussing domestic and international attention on ways of strengthening Senegal's democracy.

Please be assured, Mr. President, of my highest sentiments.

J. Brian Atwood