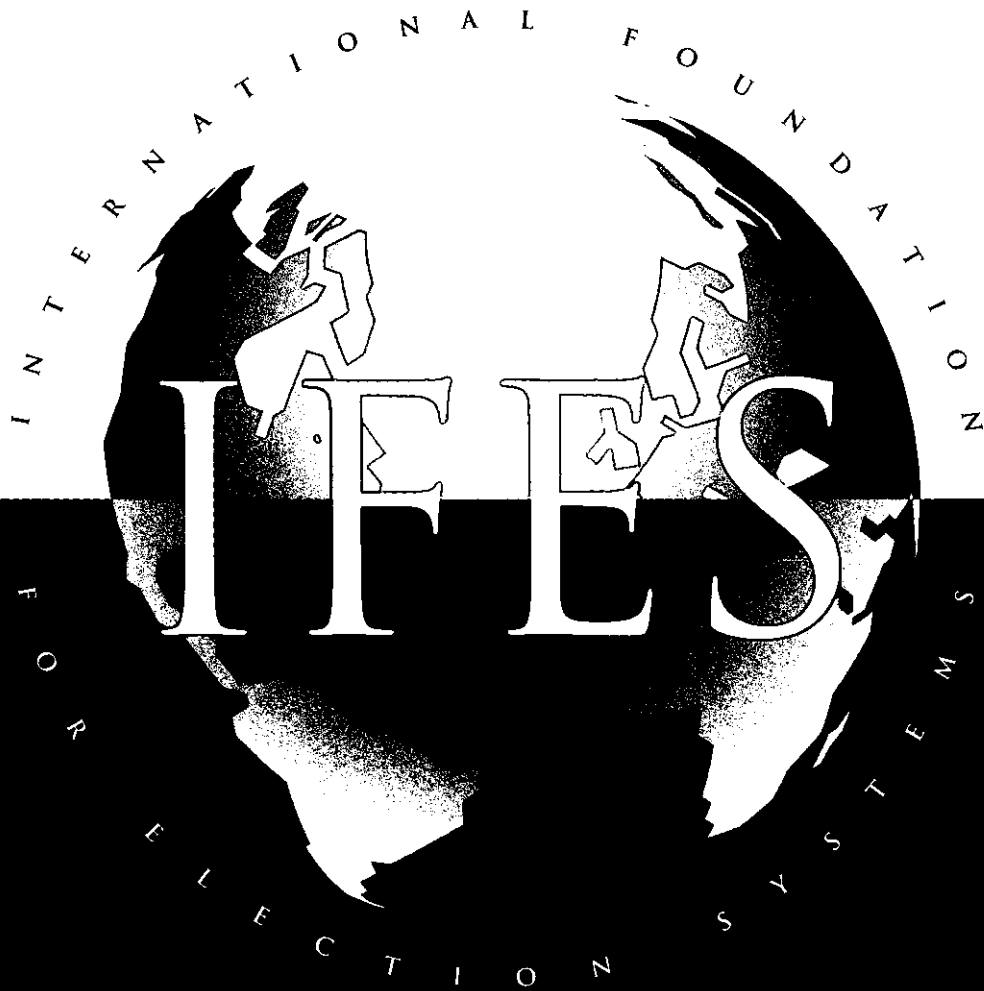
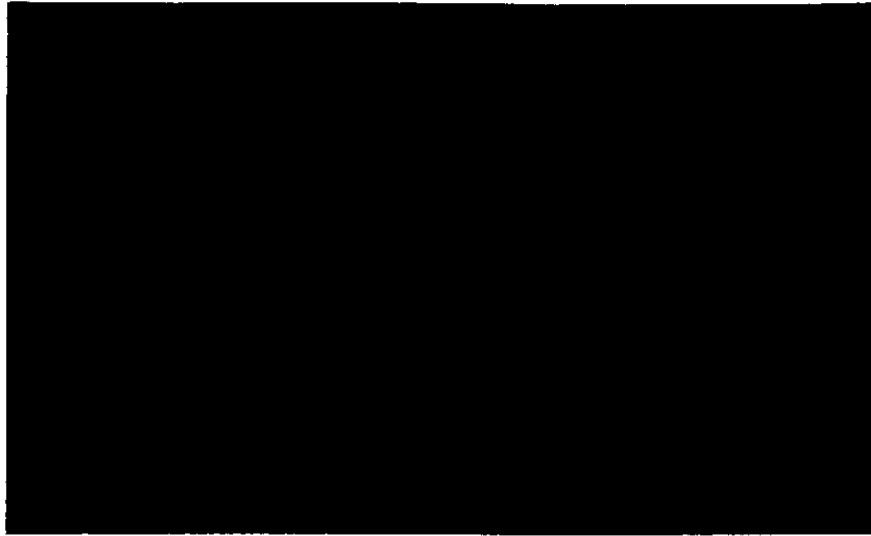


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BLAZING THE PATH TO DEMOCRACY

A REPORT ON THE NATIONAL CONFERENCE OF MALI

29 JULY TO 12 AUGUST 1991

Prepared for the
U.S. Agency for International Development
and the Government of Canada by

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Bamako, August 1991

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INTRODUCTION: BACKGROUND TO ASSIGNMENT

In June 1991, the United States Agency for International Development (US-AID) contracted with the International Foundation for International Systems (IFES) for the purpose of sending a four-person team in Mali, to prepare a technical assessment of the electoral process scheduled to take place over the following months in this country, and to recommend some modalities of assistance thereto. Elections Canada agreed that two members of their staff would be included in the team.

The IFES team, headed by Ms. Hilary Whitaker, included Ms. Linda Edgeworth, Mr. Louis Lavoie and myself. We stayed in Mali from 9 to 20 June 1991. Among numerous meetings, we had one on 13 June with Professor Mamadou Lamine Traore and Me Mamadou Dante, both members of the Comité de transition pour le salut du peuple (CTSP), the civilian-military group acting as the country's Parliament during the interim period. During that meeting, the National Conference process and the draft Constitution were outlined in detail to us. A few days later, we were supplied privately with copies of the draft Constitution and Charter of Political Parties, and our comments thereon were requested. On June 19, after having discussed those drafts with my fellow team members, I met privately with the members of the two CTSP committees which had prepared those drafts, the Comité politique and the Comité des affaires institutionnelles et juridiques. At

this meeting, chaired by Me Demba Diallo, president of the Association malienne des droits de l'Homme and a member of the CTSP himself, I made an oral presentation outlining our comments and suggestions on the two documents. More details on the substance of my comments can be found in the IFES report. I deliberately refrained from questioning the basic structure of the documents, and I rather kept my comments at a more technical level, pointing out ambiguities or possible unintended consequences.

Encouraged by favourable reactions later expressed by some participants, my colleagues then suggested that the sending of a constitutional expert for the duration of the National Conference might be one of the recommendations of the report. At my request, the recommendation was broadened so as to include the preparation by this expert of a report summarizing the proceedings and the decisions of the Conference and analyzing the consequences those decisions would entail for the comprehensive assistance program proposed in the IFES report. It must be borne in mind that none of the three documents which together will form the legal infrastructure of the democratization of Mali had been finalized when we left the country and proceeded to write our report. Indeed, no draft Electoral Code had been shown to us.

This recommendation was accepted by US-AID. At the request of IFES, in view of the tight schedule, US-AID dealt directly with Elections Canada. After discussion, it was agreed that I would be sent to Mali for three weeks to attend the National

Conference, that my salary would continue to be paid by Elections Canada, while my travel and living expenses would be borne by US-AID. Both governments would have access to my report, in keeping with the spirit of cooperation that both had shown on this issue.

On July 26, I left Ottawa. This is my report. Part I will expose the background to the National Conference. Part II will summarize the proceedings of the Conference, whose decisions - and their impact on the IFES project - will be discussed in Part III. A general assessment will be offered in conclusion.

I. THE ROAD TO THE NATIONAL CONFERENCE (March-July 1991)

A. The Revolution of March 1991 and its Aftermath

On March 26, 1991, the Armed Forces of Mali arrested President Moussa Traore, and a group of military officers headed by Lt. Col. Amadou Toumani Toure assumed power as a Comité de réconciliation nationale (CRN). This was not a standard military coup: the army was arresting a military dictator who for months had been resisting widespread popular demonstrations calling for democracy. Those demonstrations had been organized by various movements such as the Union nationale des travailleurs maliens (UNTM), the Association malienne des droits de l'Homme (AMDH), the Association des élèves et étudiants du Mali (AEEM), etc., loosely co-ordinated within the Comité de coordination des forces démocratiques (CCFD). The brutal repression by the army of those

demonstrations (some 200 people were killed) sounded the death knell of the regime.

Once in power, the CRN made clear its commitment to democratization by creating within 5 days a new provisional power structure, the Comité de transition pour le salut du peuple (CTSP). Representatives of all the organizations included in the CCFD (except the Bar) were granted 15 of the 25 seats in the CTSP, all others being held by military men. This was officialized by a provisional constitution known as the Acte fondamental, which made Lt. Col. Toure Head of State for the transition period and set up a government responsible to the CTSP, with Soumana Sako as Prime Minister.

Sections 28 and 29 of the Acte fondamental obliged the CTSP to summon a National Conference which would prepare a draft Constitution, to be ratified by referendum, as well as drafts Electoral Code and Charter of Political Parties.

B. Was a National Conference Indispensable?

One may wonder whether or not the holding of a National Conference was indispensable in Mali. As Africa-watchers are well aware, a National Conference has become the slogan of supporters of democracy throughout this continent since the successful Conférence des Forces vives de la Nation in Bénin in early 1990. Since then, National Conferences have been or are being held in Congo, Togo,

Zaire and Niger, and have been demanded in many other French-Speaking African countries. But in all those countries, such Conferences were convened, following popular pressure, by military dictators. For example, the Conférence in Benin met 19-28 January 1990, proclaimed itself sovereign and effectively transferred power from President Kerekou to an interim government headed by Prime Minister Soglo. Then, the Conference created a smaller body, the Haut Conseil de la République, to act as the country's interim Parliament: later, the Haut Conseil (and not the Conference, which had dissolved) adopted a draft Constitution and promulgated a Charter of Parties as well as a set of laws providing for referenda, presidential and legislative elections. In other words, the essential output of the National Conference of Bénin, the transfer of power from the military to a civilian body, was already fait accompli in Mali.

The CTSP nevertheless decided to convene a National Conference. Indeed, such a Conference had been demanded by the organizations represented in the CCFD before they assumed power: one of those organizations, the CNID, claims it was the first, on October 18, 1990, to call for a SOVEREIGN Conference (Danbe No. 7, p. 4). It was difficult for those forces to renege on an earlier commitment, now that they were in a position to implement it. They also felt that such a Conference would allow for wider participation and thus broaden the legitimacy of the new Constitution.

The CTSP therefore acted quickly to give momentum to the transition to democracy by establishing a deadline - January 20, 1992 - and by enacting Ordinance No. 2, which allowed for the immediate creation of political parties while abolishing the monopoly position hitherto held by the Union démocratique du peuple Malien (UDPM).

The preparation of the National Conference proceeded on two fronts: organizational and political, which will be examined in turn.

C. Organizational Preparation of the Conference

Decree No. 91-19/PM-RN (Appendix D), dated April 28 1991 created, under the authority of the Prime Minister, the Commission de réflexion préparatoire de la Conférence nationale, to be chaired by Mr. Amadou Mody Diall, Minister delegate to the Prime Minister, chargé de mission. (Journal officiel, 1991, p. 323). In addition to 6 Cabinet Ministers, this committee included representatives of labour, business, agricultural, religious, women, youth and Tuareg organizations, as well as 11 personalities, mainly senior bureaucrats. Its mandate was to advise the Prime Minister on all measures concening the organization, the selection of participants and the conduct of the proceedings of the Conference.

Ordinance No. 91-017/CTSP (Appendix E), dated June 19 1991, later convened the National Conference in Bamako between 29 July and 12 August (J.O. p. 431).

Under decree No.91-163/PM-RN (Appendix F), dated July 12, 1991 (J.O. p. 504) an inter-departmental committee of Cabinet Ministers and officials was created to take charge of the material organization of the Conference. Chaired by Minister of Planning Bakary Mariko, this committee was subdivided into 6 subcommittees: Accueil et orientation; Transport, hébergement et santé; Presse, animation, communication et insonorisation; Reprographie et documentation; Sécurité, énergie; and Finances (J.O. p. 504).

D. Political Preparation of the Conference

As emphasized in the IFES report, convening a National Conference entailed some political risks for the CTSP. The Conference might drag on for months as in Congo, thus delaying the holding of democratic elections. This would be more likely if the Conference was allowed to examine issues beyond the originally limited terms of reference set out in the Acte fondamental. Some participants to the Conference might also challenge the machinery of provisional government or the people who ran it by claiming for themselves a legitimacy greater than that of a de facto power. Finally, the sheer preparation of three legal documents within a few weeks might prove technically impossible due to lack of expertise and focus.

The CTSP overcame those pitfalls by thinking hard about what some of those documents might be. Ordinance No. 3/CTSP, dated

April 6, 1991 (J.O. p. 315) set up five committees within the CTSP, including the Commission politique, chaired by Professor Mamadou Lamine Traore, and the Commission des Affaires institutionnelles et juridiques, chaired by lawyer Demba Diallo. Those committees prepared rough drafts of the Constitution and of the Charter of Parties, which, as mentioned above, were shown to us privately by mid-June. I later found that many of our suggestions had found their way into the draft Constitution that was presented to the Conference, though there is no evidence that our influence was decisive. For example:

- Clause 107 of the draft, which prohibited challenging the republican form of the State, thus potentially encroaching on freedom of expression and opinion, was later amended so as to prohibit only challenges by illegal means;
- The number of candidates allowed to stand at a run-off presidential election was specified;
- It was made clear that the proposed Haut Conseil des Collectivités had no executive authority over administrative subdivisions of the State;
- The term of members of the Constitutional Court was made longer, so as to guarantee a more stable composition;

- Former Presidents of the Republic were no longer granted life membership of the Constitutional Court, a move which emphasized the judicial rather than political nature of that body;
- The right to ask the Constitutional Court to check the constitutional validity of a statute or decree was extended to one-tenth of members of the Assembly, rather than to be restricted to the Prime Minister and the Speakers of the Assembly and of the Haut Conseil;
- Provision was made for an annual update of the statements of personal property to be filed by the President upon assuming office.

I was later informed that other foreign experts, including Professor Jean du Bois de Gaudusson, Dean of the Law Faculty of the University of Bordeaux, were given the opportunity to comment on the draft Constitution. The President of the French Constitutional Council, Mr. Robert Badinter, was quoted as having made a positive, if general, assessment of the proposed Constitution.

The CTSP further sounded public reaction by setting up, under Decree No. 91-143/P-CTSP (Appendix G), dated June 26, 1991 (J.O. p. 474), a Commission préparatoire de la Conférence

nationale, which included representatives of 32 political parties, 51 associations and of the legal community, in addition to professionals, journalists and officials. The Commission préparatoire, really an Early Conference, held numerous sittings in early July and examined the draft Constitution and Charter as well as the proposed rules of order of the Conference. The draft Electoral Code, not being available at that time, was not so examined, though it would no doubt have benefitted from this treatment. For reasons which are unknown to me, the draft Code was made public only one week before the opening of the Conference.

E. Political Developments Between our Visit in June and the Opening of the Conference

Before turning to the Conference itself, mention must be made of three developments which occurred during the weeks preceding the opening of the Conference and which, each in their own way, held the potential to threaten the prospects of democracy in Mali. First, in late June, two military members of the CTSP, including Commandant Anatole Sangare, permanent secretary of the CTSP, were arrested on criminal charges relating to corruption under the Traore regime and had to be replaced. Second, Major Lamine Diabira, a personal friend of President Toure, who had appointed him as Minister of Territorial Administration, was arrested on July 14 on charges of plotting the downfall of the CTSP

and a return to military dictatorship. Though this incident at first suggested how fragile the prospects for democracy in Mali remained, it must be mentioned that huge popular demonstrations by soldiers and civilians against any coup immediately followed the unveiling of the plot, leaving no doubt as to what the people wanted. Finally, on July 26, 22 of the 45 registered parties suddenly announced that they intended to coordinate their action in the future. As the spokesman for this group had been associated with the former regime, many CTSP supporters suggested that some people were trying to hijack the Conference scheduled to start three days later, through dummy parties created for the sole purpose of gaining strength at this meeting. The effort had, in the end, no significant impact on the Conference.

II. THE NATIONAL CONFERENCE (29 July to 12 August 1991)

A. Overview of proceedings

The Conference was opened at the Palais de la Culture on July 29 by a speech by the Head of State and the presentation of a report on the State of the Nation by the Prime Minister. Procedural problems followed, as the rules of order had not been adopted before the election of a Presidium. Such rules were passed the following day (Appendix I). They provided that the Conference would be chaired by the Head of State, and the 9 Vice-Presidents,

the Rapporteur général and his two deputies were elected or appointed on the evening of July 30. Next, the drafts for the Constitution, the Code and the Charter were in turn summarized to participants, and the Conference set up four Working Commissions: Commission constitutionnelle, Commission Code électoral, Commission Charte des Partis and Commission État de la Nation. Starting on August 1, plenary meetings were suspended and the four Commissions sat at the Centre islamique Hamdallaye for the next five days. Plenary meetings were resumed on August 6: the reports of the various Commissions were then debated as follows: the Charter on August 6, the Electoral Code on August 7 and the Constitution on August 8 and 9. The Commission État de la Nation and its five sub-committees were able to report on August 11 only and their work was discussed in plenary meeting on August 12. At the end of that day, the Conference formally adopted the three legal documents and dissolved.

B. Composition

One week before the opening of the Conference, the CTSP decided what the criteria for participating to the Conference would be. In general, participants had to be Malians aged at least 18, fully enjoying their civic rights, never having been condemned for a serious offence and not having stood prominently for a blocking of the democratic process. Parties registered under Ordinance

No. 2 were entitled to three representatives each, while registered associations were allotted one each.

The financial estimates prepared in June by the Department of Planning envisaged about 500 participants. However, in a move apparently motivated by the desire to counter possible manipulation of the Conference by its political opponents, the CTSP unilaterally decided at the last minute that the representation of the ten associations represented in it would be increased from 1 each to 20 each. In the end, 1086 participants filled individual registration sheets. Recorded votes in plenary meetings never showed an attendance over 700.

According to the report of the Commission de vérification des mandats, the only reliable source (see appendix H), the bulk of delegates (slightly less than 40%) represented associations, while 11% came from political parties and 12% from cercles (administrative subdivisions). Also included were members of the CTSP and of the interim government, some 18 Ambassadors of Mali abroad specially recalled for that purpose, representatives of Professional Orders (Bar, Notaires, etc.), of the Army and gendarmerie, journalists, provincial governors. More than 10% were classified as 'others' in official statistics.

The Conference could not - and did not - pretend to be a sociological mirror of the Nation. Peasants, stock-breeders and fishermen, who form the bulk of the country's population, numbered

only 165. The single best represented profession was the teachers (261) while officials numbered 224. The contingents from law (99), trade (89) and health (60) were also numerically important. One may also be surprised to discover no less than 43 airline pilots and hostesses in a meeting of that nature. In total, no less than 48 occupational categories were identified. It is clear from those figures, however imprecise the categories may be, that most delegates came from the educated classes, known in Mali as 'les intellectuels', which incidentally tends to be a characteristic of most parliamentary assemblies. The prevalence of educated people may account for the fact that though not more than 30% of the population of Mali speaks French, the debates were conducted mainly in that language. Occasionally, some speakers, encouraged by the presence of interpreters provided by Radio-télédiffusion Mali, made colourful interventions in native languages, but French undoubtedly prevailed, especially within the Working Commissions. Incidentally, no effort was made to translate the Constitution, Code and Charter into native languages: the sheer preparation of those documents in French itself strained the technical capacities available.

Though present, women were under-represented, with less than 5% of participants. Indeed it is revealing that the size of the female contingent was disclosed only at the insistence of one of them. Delegates were aged 18 to 78, with an average of 48,

which is about the life expectancy of the average Malian. The bulk of delegates were therefore men in their thirties and forties, and the young, arbitrarily identified as those aged 18 to 30, made about 10% of the total only. Finally, a casual look at the Conference participants suggested that they were more prosperous than the average Malian.

Though the Conference was not therefore a perfect image of the Nation, it must be borne in mind that the overwhelming evidence about Parliaments in the World points to similar biases in favour of educated and older men. This did not prevent other voices from being heard, as the active participation of peasants, the young and women, amply confirmed throughout the Conference. For example, when the issue of State subsidies to political parties was discussed in plenary meeting, peasants made it clear they would not accept that their taxes be used to finance a multitude of parties, and won.

In the Palais de la Culture, delegates were seated according to the category they represented. To the right of the President sat representatives of organizations, while party delegates sat to his left.

C. Organization

The Presidium was composed of ten Members: One President and 9 Vice-Presidents. However, the rules of order provided that

the Head of State would ex officio preside over the Conference and that the CTSP would appoint 2 Vice-Presidents, while the Conference would elect the other 7 Vice-Presidents by a show of hands at a simple majority. The Conference also elected a Rapporteur and two Rapporteurs adjoints, whose role - a difficult one - was to summarize the remarks made by speakers on a given issue and to frame those issues so that the Conference could vote on them. An effort was made so that the Presidium included a religious leader (Roman Catholic Bishop Mgr Sidibe), two women and a Tuareg leader. However, plenary meetings were invariably chaired by the Head of State, whose presence necessitated huge security precautions within and outside the hall of the Palais. By all accounts, Lt. Col. Toumani Toure performed very well, steering the Conference towards the fulfilment of its mandate, while allowing for full debate over the issues, which he understood invariably well. His authority was respected by participants throughout.

Not all Working Commissions were as fortunate, though only one was chaired in a totally inefficient way. The Commission Etat de la Nation played a most useful role not only by debating crucial issues but also by attracting in a huge hall of the Centre islamique about 600 participants who otherwise would have crowded the smaller rooms where the other three technical Commissions were working. Nevertheless, those three Commissions normally attracted about 100 people each, and sometimes more. By watching them, one

could appreciate the value of the principle stated by the late Canadian Cabinet Minister Brooke Claxton, that the efficiency of a committee is inversely proportional to the number of members it includes beyond 15. In committee rooms, ventilation was poor and sonorization initially worse. The quality of the proceedings within each Commission was uneven. I would give without hesitation the highest rating to the Commission Charte des Partis, which proceeded in an orderly way and completed in two days the study of a 58-clause document, while debating crucial and emotional issues like the prohibition of religious parties, in an exemplary way. The poorest performance was that of the Commission Code électoral, where too many (though by no means all) participants were talking and shouting at the same time. The only way to come up with a Code was to suspend plenary meetings of the Commission: the chairman then sat with a few members and Malian experts who de novo drafted a new Code, which was briefly debated for a few hours, in a very disorderly way, before its submission to the Conference. The Commission constitutionnelle fared in-between those two extremes. It was chaired with authority, but suffered from uncertainties as to the procedure to be followed. Its main contribution was the deletion of the clauses dealing with the Constitutional Court, which were later reinstated. Each Commission was assisted by Malian experts drawn from the bureaucracy or the Ecole nationale d'administration.

Complaints were heard throughout the Conference against the poor quality of its material organization. Newspaper headlines as well as the National T.V. may have unfairly highlighted some shortcomings, but there is hardly any doubt that most delegates were disappointed by the unavailability of documents, delays in starting meetings, small rooms, delays in paying per diems to delegates from outside Bamako, poor accommodation or lack of it, the high prices of food and drink on the premises of the Conference. There is absolutely no reason to believe the Conference was a party held at the taxpayers' expense for a tiny elite, and the luxurious hotels of Bamako did not experience any significant upsurge in their occupancy rate, as delegates were invited to find accommodation at relatives' homes. The high rate of attendance registered throughout the Conference despite all those organizational shortcomings is therefore even more admirable.

In my view, most organizational problems stemmed from the general lack of resources within the Malian government and from the last-minute decision to increase the number of delegates well beyond the size initially envisaged. Their most serious consequence may be that the three documents adopted by the Conference got a final approval while most participants had not received yet a copy thereof (though of course their detailed contents had been earlier agreed on).

Though secret voting was initially envisaged by the

organizers of the Conference, the rules of order provided wisely for voting by show of hands. When the majority in favour of an option was overwhelming, votes were not counted. When they were, there were enough scrutineers in the hall for the operation to be completed in about ten minutes. At least one crucial decision, that of allowing CTSP members to be candidates at a presidential election, was reached by a slim majority (333 to 331).

Plenary and committee meetings were held each day from about 9 A.M. to 2 P.M.. After a recess, sittings resumed around 5 P.M. and often lasted beyond 9 P.M.

D. Public Impact

The Conference was granted a heavy coverage by the local media and attracted interest within the population. Daily and weekly newspapers reported the main debates extensively. Two weeklies, Aurore and Les Échos, switched to daily editions for the duration of the Conference. The daily T.V. news bulletin was also largely devoted to those proceedings, and did not hesitate to point out organizational deficiencies though RTM is State-controlled. The biggest impact of the Conference came through the radio, as plenary meetings (but not sittings in committee) were broadcast live while they were taking place. On the streets, in restaurants and shops, one could see people following the debates thanks to portable radios. In addition, the contents of the debates were

summarized in this medium on a daily basis. The intensity of public interest may also be ascertained by the fact that the day the Conference was opened, which had been declared a public holiday, huge cheering crowds rallied around the Palais de la Culture.

E. My Own Involvement

Upon my arrival, I secured an appointment with Mr. Amadou Mody Diall, Minister in charge of institutional reforms and of relations with the CTSP, who immediately handed me a badge guaranteeing free access to the Conference premises, as well as copies of the documents to be examined by participants. I explained that I had come to observe the proceedings, to report thereon and, upon request, to provide comments and suggestions, preferably in private. I attended all plenary meetings except that of August 11 (where the topic was the State of the Nation), and, in the Centre islamique, I went from one of the three technical Commissions to another, giving only perfunctory attention to the Commission État de la Nation in view of my terms of reference. I introduced myself to Chairmen of Commissions but no request for advice came from them. I later heard that when the Commission constitutionnelle started its deliberations, the presence of two French professors of Public Law raised the comment that Malians needed no foreign expertise, however excellent it might be (Appendix J). The two professors then went out of the room. It is

possible that this incident incited Minister Diall to direct the Commission Code électorale to rely on Malian expertise only. Nevertheless, on my own initiative, I supplied Minister Diall with some written comments in which I reiterated notably the recommendation found in the IFES report on a single ballot. I was thanked for that. On 17 August, before leaving for Guinea, I wrote a letter to Minister Diall in which I congratulated him for the success of the Conference, while pointing out two omissions in the Electoral Code that might be altered before promulgation.

In addition to this, I gave two interviews to the media. On 10 August, I spoke with journalist Soumanou Salifou, of the Voice of America radio network, and our conversation was broadcast five days later. Aurore No. 68, published on August 22, printed an interview I had given eight days earlier to journalist Moussa Tofana, who kindly agreed that I review the written transcript before publication (Appendix K).

III. THE OUTPUT OF THE CONFERENCE

A. The Constitution

1. Summary

Mali adopted Constitutions (or basic laws) in 1959, 1960, 1968, 1974 and 1991 (the last one being the Acte fondamental). The Constitution of the Third Republic (Appendix A) is therefore the sixth basic law of the country in 32 years. It provides for

basic rights and duties of the citizens. Executive power will be entrusted to a President of the Republic, to be elected directly by the people for a five-year term which will be renewable only once. There will be no Vice-President and the death or resignation of a President will be followed by a new presidential election. The President will be assisted by a Prime Minister, whom he will appoint, and by a government. The Prime Minister and other members of the government will be responsible to the National Assembly, to be directly elected by the people for a term of five years, but for the Assembly to censure the government, a two-third majority of its membership is required. The President will have the right to dissolve the Assembly and to call new legislative elections, but may not do that more than once a year. Ministers may not be members of the Assembly and deputies appointed to the Cabinet must therefore resign their seat. Two representative bodies with advisory powers will be created: the Haut Conseil des collectivités, to be elected by indirect suffrage and to represent the collectivités territoriales of the country (regions, cercles, arrondissements and communes), and the Conseil économique, social et culturel to represent economic and cultural forces.

The most innovative part, at least by Malian standards, of the new Constitution pertains to the judiciary power. There will be a Supreme Court with three distinct benches (section administrative, section judiciaire and section des comptes), but the power to decide constitutional issues has been given to a

Constitutional Court of nine members to be appointed by the President or by the Assembly for 7-year terms renewable only once. Only politicians like the President, the Prime Minister, the Speakers of the Assembly or of the Haut Conseil or one-tenth of Members of the Assembly, may refer a statute before its promulgation, or a regulation. This is likely to give greater meaning to the rights and freedoms listed in the Constitution. However citizens affected by a law cannot refer to the Court a statute or an executive order so as to check its conformity to the Constitution, though an earlier draft would have allowed that.

2. Main Issues Debated

The draft prepared by the CTSP emerged unscathed in its essentials from the Conference. There were attempts to strike out the Constitutional Court and to grant to the Haut Conseil des collectivités the status and powers of a second legislative chamber, but these proved unsuccessful. The creation of a Haute Cour de Justice, which will have the duty to judge the former President, occasioned a fuzzy debate before being accepted. And of course there were numerous attempts to expand or alter the list of basic rights, freedoms and duties.

3. Alterations Needed in the IFES Report.

The Conference confirmed that there would be direct

presidential and legislative elections every five years, or sooner if the President dies or resigns or dissolves the Assembly. There is no need to include elections to the Haut Conseil as part of the project, as nothing more than before is known about the exact composition and mode of election of that body, except that the election will be by indirect suffrage. As promised, a referendum will be held in September or October to ratify the draft Constitution, but little opposition should be expected in view of the strong support the final draft received at the end of the Conference.

B. The Electoral Code

1. Summary

The Electoral Code (Appendix B) is a complex 185-clause document which is likely to be fine-tuned over the next weeks before being promulgated by an ordinance of the CTSP. It sets out the mechanics for holding presidential, legislative and municipal elections, as well as referenda and elections to the Conseils de village ou de fraction. It includes provisions applicable to all categories of elections (Title I) as well as provisions specific to only some of them.

As mentioned the President will be elected by a majority of the people. Candidates to the Presidency must pay a high (5 million Francs CFA, or about US\$ 17,000) non-refundable deposit,

and be 35 years of age. If none obtains more than half of the vote (an absolute majority) on the first round, there will be a run-off election two weeks later where only the two strongest candidates (after possible withdrawals) will be allowed to stand.

Members of the Assembly will be elected within the 46 cercles. Only parties will be allowed to present lists of candidates. To be elected, a list must get more than half of the votes on the first round. In case none reaches that majority, a second round will be held two weeks later, though the Code specifies neither which lists of candidates will then be allowed to stand, nor the majority needed for election. The total number of seats in the Assembly is not known, for another law will determine the number of seats for each cercle, as well as the exact number of seats reserved for Malians abroad, which may not exceed one-tenth of the total. The latitude thus given to the CTSP makes it possible, but not certain, that each cercle will be represented proportionately to the size of its population, but manipulation of district boundaries is impossible because cercles are already existing administrative boundaries and because the political leanings of each community are unknown at this time. Precedents suggest that the size of the Assembly will be at least 90, and there were hints that it might hover around 120.

Members of Municipal Councils throughout the country will be elected every 5 years, within each commune, by proportional

representation (with seats unallotted following division by the quotient going to the lists having the highest remainders). This method will provide smaller parties with greater chances to get seats.

Members of Conseils de village ou de fraction will be elected every 5 years by block vote within each village or fraction, though the Code is silent as to the number of rounds to be held and the majority required.

Electors must be at least 18 years of age, and the military, as well as Malians living out of the country, will be allowed to vote. Lists of electors will be prepared on the basis of registers held locally by chefs de famille (for details, see IFES report), and will be revised each year. Each elector on the list will be issued a voter's card to be shown at the poll.

Members of the interim government may not be candidates at presidential, legislative and municipal elections. CTSP members may be candidates at presidential and municipal elections, provided they resign their position within 15 days following the adoption of the Code by the Conference, this is before August 27. Members of the Armed or Security Forces must resign their position 6 months before the opening of the campaign if they wish to stand as candidates for the Presidency.

Polling day will be on a Sunday, with polling stations being opened from 8 A.M. to 6 P.M.. Voting will follow the French

pattern, with electors being provided with one ballot for each candidate and putting in secret one of them in an envelope to be put in turn into a ballot box. Polling stations will include a maximum of 1500 electors and be headed by a chairman appointed by local administrative authorities, to be assisted by assessors designated by the various competing parties. Counting of the vote will be made locally and immediately after the close of the poll. It was wisely decided that should an elector have inadvertently inserted into an envelope two ballots for the same candidate, these would be counted as a single vote for that candidate rather than being voided.

Proxy voting will be allowed for some categories of electors like civil and military servants assigned outside of their residence on polling day, ill or handicapped people, electors absent from the country on polling day and Malians living out of the country. The result of elections may be challenged in the Constitutional Court, though the Supreme Court will play that role pending the installation of the Constitutional Court after the completion of the democratic transition.

2. Main Issues Debated

The preparation of the Code was the most difficult task of the Conference. As explained above, the first draft was made public only one week before the opening of the Conference. Upon

closer scrutiny, it was then found deficient by a committee of civil servants, whose recommendations were almost as impressive in size as the Code itself. Nevertheless, this admittedly flawed document was distributed to delegates, together with a two-page list of errata. When the Code was to be summarized for delegates in plenary meeting before its referral to a Commission, the speaker, instead of outlining the document, announced that 14 entirely new clauses had to be added to it, and thereupon proceeded to dictate the wording thereof to a stunned 1000-people meeting. After one day of debate, the Commission Code électorale threw in the towel and requested experts to build a totally new document. The result was a compromise Code. About 120 sections were taken verbatim from the Mali Electoral Code of 1963, which was undoubtedly superior to its successor adopted in 1979 for single-party elections. The other provisions, covering matters not regulated by the 1963 Code like referenda, presidential elections, etc., were taken from the first draft distributed to delegates. In this process, single-member electoral districts were discarded in favour of multi-member cercles, and proportional representation was introduced for municipal elections. This operation lasted three working days, only one day was devoted to a discussion of this second draft, and the morning sitting was consumed by mere proofreading. Despite that difficult birth, the debate on the Code went surprisingly well in plenary meeting, largely thanks to an

able and articulate rapporteur. The rejection of single-member districts for legislative elections was justified by the fear that local wealthy notables rather than party men would be elected, and by the necessity of using existing administrative boundaries rather than to create new ones for electoral purposes. Proportional representation, which had the preference of numerous party delegates, was rejected for fear of instability, and the Conference confirmed that verdict by a huge majority, as it maintained the 35-age limit for presidential contenders and the non-refundable 5 million Francs CFA deposit for presidential candidates. In Commission, after a confused debate, opponents to the CTSP barred by 39 to 32 the members of the CTSP from being presidential candidates, but this was reversed by a slim majority of two votes (out of over 660) in plenary meeting. The Conference agreed however, by a large majority, to oblige presidential aspirants to resign from the CTSP within 15 days of the adoption of the Code by the Conference. Widespread fears that people in government would use the perks of office so as to bolster their candidacies accounted for such restrictions.

3. Alterations Needed in IFES Report

The final Code, subject to last-minute alterations that might be brought to it, is much similar to the 1963 Code on which our report was largely based. There will be two rounds for

presidential and legislative elections, but only one for municipal elections. There is doubt as to when elections to the Conseils de village ou de fraction will be held: they are not mentioned in the estimates of financial needs prepared by the Government of Mali, but the Code provides for such elections. A new timetable will certainly be devised in light of the various deadlines found in the Code.

Malian authorities will have to deal with the administrative difficulties that the retention of multiple ballots at all levels will entail. In all fairness, however, I am inclined to believe that other decisions of the Conference will help to solve this problem insofar as they are likely to reduce the number of candidates at most levels (except the municipal). First, political parties will not be financed by the State, and therefore many of the 45 parties now registered might remain the empty legal shells they seem to be. Second, the huge non-refundable deposit for presidential candidates will discourage freak candidates, or at least the less wealthy of them. And finally, the rejection of proportional representation for legislative elections darkened the prospects of any but the strongest and already best organized parties. The only consolation they might derive from the Conference is the guarantee that all parties will have equal access to State media, found in clause 33 of the Charter of Parties, to which we will now turn our attention.

C. The Charter of Political Parties

1. Summary

The Charter (Appendix C) is possibly the most original output of the Conference. Its objective is to regulate the creation, fusion and dissolution of parties as well as to regulate in detail their activities, including demonstrations and financing. It was denounced as a straightjacket by some, while its proponents present it as a code of good conduct. Section 52 provides that the Charter has both a moral as well as a legal meaning ("une portée morale et juridique"), but further specifies that parties must abide by the Charter or be dissolved. A party may be suspended for a maximum of three months by the Minister of Interior if it threatens public order, the security of people and property or breaks the laws of the land. Only the Judiciary, on the other hand, may dissolve a party, for major causes: threat to democracy or national unity, or terrorist activities.

A key provision of the Charter is section 40, which prohibits parties based on an ethnic group, a religion, a language, a region, a sex or a profession. This re-enacts a similar provision already found in the present Ordinance on Political Parties.

2. Main Issues Debated

Some 15 clauses out of 58 were altered by the Commission, mostly on minor aspects. The most hotly debated topics were clause (now section) 10 and clause 44 (now section 40). Section 10 as finally adopted prohibits magistrats from being party activists ("militer"). The other section, which prohibits religious parties, was attacked by Moslem intellectuals as discriminatory, and as encroaching freedom of thought and opinion. They argued that religion is not the only force likely to endanger social peace. Opponents of religious parties maintained that religions in general, and Islam in particular, fostered intransigence and intolerance, thus threatening the social peace in Mali. Fears were expressed that powerful Moslem parties would impose (as in Iran) or try to impose (as in Algeria) Islam as the sole law of the land. Proponents of religious parties stimulated such fears by arguing they disagreed with a provision which precluded the possibility of the ultimate triumph of Islam. The restrictive position prevailed largely (65 to 13) in Commission following a most interesting debate, and was upheld later in plenary meeting. It must be noted that representatives of the Catholic Church strongly backed the notion of a secular State and did not object to the prohibition of religious parties. Nothing indicates however that the Republic is intended to wage war against religions: indeed, three religious leaders were invited to address the Conference before it closed, and the Moslem priest even sang prayers.

3. Alterations Needed in IFES Report

The number of parties registered under Ordinance No. 2 swelled from 33 in June to 45 when the Conference started. Judging however from their presence and activities, three political parties seem to dominate the scene for now: the Union Soudanaise - Rassemblement démocratique africain (US-RDA) is the oldest, having been founded in Bamako in 1946. It held power under Modibo Keita from 1957 to 1968, most of the time as a de facto single-party. It derives strength from a network of former officials of the Keita regime who were persecuted throughout the Traore dictatorship. The other two parties are offsprings of the March revolution. The Association pour la démocratie au Mali (ADEMA) and the Centre national d'initiative démocratique (CNID -pronounced Cénidde) are both organizations now represented in the CTSP which have evolved as political parties. Aside from US-RDA, they are the only registered parties to have held founding conventions and to print monthly or bi-monthly liaison bulletins: Le Réveil for US-RDA, Alternance for ADEMA and Danbe for CNID. I am inclined to believe that the multiplicity of parties will be less serious a danger for the emergent Malian democracy than we earlier assumed.

IV. CONCLUSION

My general impression of the National Conference is very positive. In African history, it might not be considered in the future as a landmark as important as the Bénin Conference, for it did not transfer power to new and different-minded rulers. For other African countries who might be inclined to follow the same path, the Malian Conference will stand as the prototype of a representative gathering with more modest terms of reference, which nevertheless accomplished a tremendous quantity of work while respecting the deadlines originally planned. For Mali, there are reasons to believe this Conference will go down in history as a major achievement.

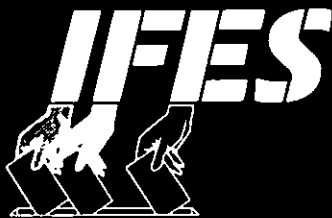
The main lesson I personally derived from it is that democratization in Mali is far more than the pet project of a tiny elite, that there exists in that country a real commitment, reinforced by decades of rule by single-party regimes, to the building of an "État de droit", this is, a Republic based on the rule of law, and to party pluralism on the Western model. That Malians insisted on implementing themselves the basic principles of democratic constitutionalism augurs well for the future.

The three major laws adopted by the Conference are not perfect, and one of them will probably be bettered prior to its promulgation. I need not emphasize that no document of that kind is beyond reproach. Only the test of time will determine the worth of each. None can be described as authoritarian or unfair, and

elections held under them, if the letter of the law is respected, should respect commonly accepted democratic standards. None seems likely to engender difficulties that could not be overcome. The success of the Conference should encourage foreign governments to contribute to the organization of the referendum and elections to be held over the next five months.

The main cause for concern that remains is the Tuareg issue. By now, whole areas of the country are paralyzed by rebel actions. A Conference on this issue has been scheduled for next November. The prospect opened by the persistence of this rebellion over the next months is that Malian authorities might be faced in the future with the following quandary: either they will hold elections before next January as planned, but only in those parts of the country where their authority is respected, thus acknowledging de facto the partition of the country; or they will postpone the holding of those elections until the rebellion is quashed, a decision which will upset public opinion, necessitate an extension of the term of office of the CTSP and delay the democratic transition. That the latter alternative was proposed, if unsuccessfully, during the last minutes of the Conference, indicates that such a scenario is not to be discarded out of hand.

Having been involved in democratization processes in six countries, I would conclude that the case of Mali is one of the most promising I have seen. There is a democratic potential here, which deserves encouragement from the international community.



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