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USAID MALI
AMBASSADE AMERICAINE

Program No. 688-0246

PD-ABE-369



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AMENDMENT NO. 1
TO THE
PROGRAM GRANT AGREEMENT
BETWEEN
THE REPUBLIC OF MALI
AND
THE UNITED STATES OF AMERICA
FOR
THE POLICY REFORM FOR ECONOMIC DEVELOPMENT PROGRAM

Dated: August 27, 1992

PROGRAM GRANT AGREEMENT NO. 688-0246
POLICY REFORM FOR ECONOMIC DEVELOPMENT

PROGRAM GRANT AGREEMENT
AMENDMENT NO.1

Dated: August 27, 1992

Between:

The Republic of Mali ("Grantee")

And

The United States of America, acting through the Agency for International Development ("A.I.D.")

WHEREAS, the Grantee and A.I.D. entered into the Policy Reform for Economic Development Program Grant Agreement on August 27, 1991, (the "Agreement"); and

WHEREAS, the Grantee and A.I.D. desire to amend the Agreement to increase the total Life-of Project funding by \$7.0 million and to add new conditions precedent to disbursement of the \$7.0 million;

NOW THEREFORE, the Parties hereto hereby agree that the Agreement shall be amended as follows:

1. Article 1 of the Agreement is amended by deleting it in its entirety and substituting the following in lieu thereof:

"ARTICLE 1: The GRANT:

To assist the Grantee in carrying out the Policy Reform for Economic Development ("PRED") Program, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Grantee under the terms of this Agreement an amount not to exceed Seven Million United States Dollars (\$7,000,000), which supplements the \$7,000,000 previously obligated, for a total amount obligated to date of Fourteen Million United States Dollars (\$14,000,000) (the "Grant"). The PRED program will promote economic development in Mali, as further described in Article 2: Program Description."

2. The third Paragraph of Section 2.3 of the Agreement is amended by deleting it in its entirety and substituting the following in lieu thereof:

"The Project component, which provides for operational support and the acquisition of goods and services is described and financed through a separate PRED Project Grant Agreement that will be signed concurrently with this Program Grant Agreement. Subject to the availability of funds, A.I.D. will contribute **Nine Million United States Dollars (US\$9,000,000)** under the Project Grant Agreement and **Fourteen Million United States Dollars (US\$14,000,000)** under the Program Grant Agreement for a combined total A.I.D. contribution for PRED of **Twenty Three Million United States Dollars (US\$23,000,000)**. An amplified Program/Project description is set forth in Annex 1 Attachment II.

The resources provided by the Grantee for the Program will be not less than the equivalent of **US\$7,667,000**, including costs on borne on an "in-kind" basis."

3. Article 2 of the Agreement is amended by adding the following new Section 2.4:

"Section 2.4 Program Assistance Completion Date:

(a) The "Program Assistance Completion Date (PACD), which is August 31, 1998, or such other date by which the Parties estimate that all Program activities and objectives contemplated under the Agreement will have been accomplished; all services financed under the Grant will have been performed; and all goods financed under the Grant will have been furnished for the Program, as contemplated in this Agreement.

(b) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of the Grant for Program activities carried out or policy objectives accomplished subsequent to the PACD; for services performed subsequent to the PACD; or for goods furnished for the Program subsequent to the PACD.

(c) Requests for disbursement, accomplished by necessary supporting documentation prescribed in Program Implementation Letters, are to be received by A.I.D. no later than nine (9) months following the PACD or such other periods as A.I.D. may agree to in writing. After such period, A.I.D., giving notice in writing to the Grantee, may at any time or times reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Program Implementation Letters, were not received before the expiration of said period.

4. Section 4.1 of the Agreement is amended by deleting it in its entirety and substituting the following in lieu thereof:

"The Grant funds provided by the Grantee shall be converted into local currency for use by the Grantee as general support."

5. Section 4.4 of the Agreement is amended by deleting it in its entirety and substituting the following in lieu thereof:

"Section 4.4 Audits, Information and Inspections:

(a) The Grantee shall furnish to A.I.D., in form and substance satisfactory to A.I.D., such information relating to the Program and to this Agreement as A.I.D. may reasonably request.

(b) The Grantee will maintain or cause to be maintained in accordance with generally accepted accounting principles and practices consistently applied, books, records and underlying documentation as necessary and adequate to assure, without limitation, compliance with this Agreement. Such books and records will be audited regularly in accordance with generally accepted auditing standards and will be maintained for at least three (3) years after the date of the last disbursement of Grant funds by A.I.D.

(c) The Grantee will afford authorized representatives of A.I.D. the opportunity at all reasonable times to inspect the books, records and other documents relating to this Agreement, and the Grantee's use of Grant funds provided herein."

6. Article 5 of the Agreement is deleted in its entirety and the following new article 5 is substituted in lieu thereof:

"ARTICLE 5: CONDITIONS PRECEDENT TO DISBURSEMENT:

"Section 5.1 Conditions Precedent to Disbursement of First Tranche:

Prior to the disbursement of the first tranche of \$7.0 million under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) an opinion of counsel acceptable to A.I.D. that the Program Grant Agreement has been duly authorized and/or ratified and executed by and constitutes a valid and legally binding obligation of the Grantee in accordance with all of its terms;
- (b) a statement representing and warranting that the named person or persons have the authority to act as the representative (s) of the Grantee specified in Section 9.2, together with a specimen signature of each person specified and certification as to its authenticity;
- (c) evidence that the Grantee has, concurrently with the signing of this Program Grant Agreement, signed the Project Grant Agreement;
- (d) , a statement designating the U.S. bank and providing the number of the separate Dollar account into which disbursements under the Program Grant Agreement are to be made;
- (e) notification of the number of the special account to be established in the Bamako branch of the BCEAO into which local currency deposits under this Program Grant Agreement are to be made pursuant to Section 4.2 hereof; and
- (f) evidence that the Grantee has abolished all exports taxes.

Section 5.2 Conditions Precedent to Disbursement of Second Tranche:

Prior to the disbursement of second tranche of \$2.0 million under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee will, except as the Parties might otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) A statement confirming that Account Number 36-062-094 opened at Citibank, New York remains active for U.S. Dollar deposits under this Program and that Account Number 305-072 opened at BCEAO branch, Bamako remains active for local currency deposits under this Program.
- (b) Evidence that the Commercial Courts are functional and competent to adjudicate cases within their jurisdiction.
- (c) Evidence that the Grantee has created a Commercial Court Commission, and Administrative Court Commission and a Civil, Commercial and Social Procedures Code Commission (CCCSP) and that these Commissions are functional.

Section 5.3 Conditions Precedent to Disbursement of Third Tranche:

Prior to the disbursement of the third tranche of \$2.0 million under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

(a) Evidence that the Grantee has, through the newly established Commissions listed in Section 5.2 developed recommendations regarding the following:

- (1) the establishment of Administrative Courts;
- (2) the definition of Commercial Court jurisdiction;
- (3) the application of the Washington Convention and ratification of the New York Convention;
- (4) the utilization of arbitration.

- (b) Evidence of Grantee's approval of intermediate Commercial Code procedures.
- (c) Evidence that the Grantee has implemented recommendations regarding changes in court consignment fees.

Section 5.4 Conditions Precedent to Disbursement of Fourth Tranche:

Prior to the disbursement of the fourth tranche of 3.0 million under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- a. Evidence that the jurisdiction of the Commercial Courts jurisdiction has been defined, Administrative Courts have been established and action has been taken regarding the application and ratification of international conventions listed in Section 5.3.
- b. Evidence that the Grantee has received legislative approval of the CCCSP Procedural Code.

Section 5.5 Notification:

When A.I.D. has determined that the conditions specified in Section 5.1 have been met, it will promptly notify the Grantee.

Section 5.6 Terminal Dates for Meeting Conditions Precedent To Disbursement:

If all conditions specified in Section 5.1 have not been met within 90 days from the date of this Agreement, or such later date as A.I.D. may specify in writing, then A.I.D., at its option, may terminate this Agreement by written notice to the Grantee."

7. Line 4 of Article 6 of the Agreement is amended by deleting the word "Section 3.1" and substituting in lieu thereof the word "Section 5.1".
8. Article 10 of the Agreement is amended by deleting it in its entirety.
9. Attachment 1 of Annex 1 of the Agreement is amended by deleting it in its entirety and substituting in lieu thereof the "Revised Financial Plan" attached hereto as Attachment 1.
10. Annex 1 of the Agreement is amended by adding the following new "Attachment 2, Amplified Program/Project Description".

Except as specifically amended hereby, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Governments of the Republic of Mali and the United States of America, each acting through its duly authorized representatives, have caused this Amendment No.1 to be signed in their names and delivered as of the day and year above written.

UNITED STATES OF AMERICA

Signed by:

Herbert D. Gelber

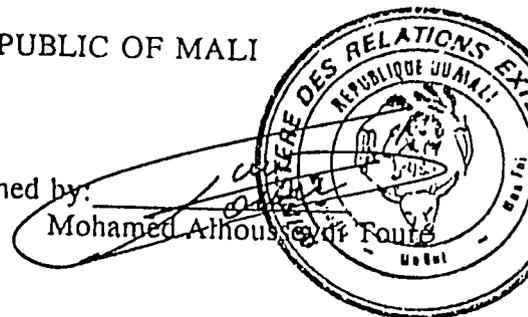


Title: Ambassador

REPUBLIC OF MALI

Signed by:

Mohamed Athoussof Fofé

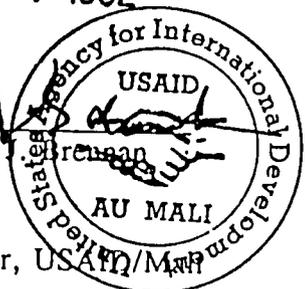


Title: Minister of External Affairs

Date: **AUG 27 1992**

Signed by:

Dennis J. Brennan



Title: Director, USAID/MALI

Date: **27 AUG 1992**

Date: **AUG 27 1992**

Appropriation : 72-112/31014

BPC : GSS2-92-31688-KG39

Amount : \$7,000,000

Attachment 1
Annexe 1

POLICY REFORM FOR ECONOMIC DEVELOPMENT
688-0246

Plan Financier Révisé
(milliers de dollars)
Revised Financial Plan
(US\$000)

Rubrique Item	Engagements Antérieurs Prior Obligations	Cet Amendement This Amendment	Engagements Futurs Prévus Anticipated Future Obligations	Vie du Projet Life of Project
Program Assistance (Export Tax Elimination)	7,000	7,000	0	14,000
Assistance au Programme (Suppression des Taxes à l'Exportation)				
Total =	<u>7,000</u>	<u>7,000</u>	<u>0</u>	<u>14,000</u>

ATTACHMENT 2

POLICY REFORM FOR ECONOMIC DEVELOPMENT
AMPLIFIED PROGRAM/PROJECT DESCRIPTION

Overview: USAID's assistance provided under the Policy Reform for Economic Development (PRED) activity will be used for both program and project interventions, designed to facilitate the rapid and reliable resolution of commercial disputes in Mali. By December 1993 the GRM, working in close coordination with Mali's business community, will have put in place a series of measures that together will ensure the long-term viability and integrity of the Commercial Courts; promote timely settlement of disputes, both in and out of court, by competent jurists and assessors; provide Mali's private sector additional legal means to enhance domestic and international business dealings; and facilitate interaction among the business community, the administration, and the courts. From a broader perspective, these measures will also improve the business climate in Mali, by engendering confidence in judicial institutions; increase investment and employment generation, by freeing up litigated funds for further investment; reinforce the rule of law, by passing non-discriminatory laws and regulations that are equitably enforced; and strengthen an independent judiciary, by creating a functional and fair judicial system. Program assistance will be disbursed in three tranches over a 15-month period.

A. The Program

The specific measures to be put in place address issues involving jurisdictional authority, procedural codes, access to the courts, application of international conventions, professionalism among court officials, and additional private sector support mechanisms, as follows.

1. Jurisdictional Authority

Resolving the conflict of jurisdictional authority among Commercial Courts, Administrative Courts, and Courts of First Instance, and the complicated juxtaposition of separate and unified jurisdictions that this engenders, will require three measures:

Measure 1: A declaration by the Ministry of Justice that Commercial Courts are functional and competent to adjudicate all cases within their current jurisdiction.

This declaration, which would require issuance of an Executive Circular that addresses Article 13 of Law 88-38 ANRM, would make Commercial Courts the courts of first resort for all commercial matters not involving prosecution. It would also necessitate a ruling from the Appellate Court to the effect that the Commercial Courts of Bamako, Kayes and Mopti are fully competent to rule on commercial matters.

- Target date for the declaration and ruling: September 1992.

Measure 2: Definition of the location and geographic jurisdiction of Commercial Courts over the next five years.

Though at present there are no conclusive judicial or economic statistics that would allow the Ministry to determine the demand for Commercial Courts in other regions, preliminary soundings indicate that such a demand exists -- particularly in Segou and Sikasso. What is needed is to establish a Commercial Court Commission to study (1) whether existing Commercial Courts in Kayes, Mopti and Bamako District are capable of handling commercial litigation throughout Mali; (2) whether current jurisdictions should be given wider geographic authority, as in the Appellate Court structure; or (3) whether additional jurisdictions should be established, as in the Court of First Instance structure.

The recommendations of this Commission will be forwarded to the Ministry of Justice for review and action. Actions that would alter current jurisdictions would require at a minimum an Executive Ordinance, which would be issued on recommendation of the full Council of Ministers; and eventual legislative approval.

- Target date for establishing the Commission: September 1992
- Target date for recommendations to the Ministry: June 1993
- Target date for Ministry of Justice Action: September 1993.

Measure 3: Establishment of functional Administrative Courts in jurisdictions specified in Article 5 of Law 88-40 ANRM.

Functional Administrative Courts will provide a judicial mechanism for resolving business claims and civil disputes with the State. This is not only a necessity for traders, but a fundamental civil right of all Malians. Litigation with the State was not a priority under the previous regime, as seen by the small number of cases reaching Administrative Chambers of the First Instance and

Appellate Courts. It had been a priority under the transitional government, however, as witnessed by the creation of an Administrative Court working group within the Ministry of Justice.

Getting Administrative Courts from paper to practice will require setting up a separate Administrative Court Commission to define the organization, modalities, and geographic jurisdiction of the three proposed courts; to set the terms and conditions of those serving on the courts; to secure premises, operating funds, and personnel; and to work with the Commission responsible for revising procedural codes (see below), in order to ensure that any additional procedures or laws needed for the proper functioning of Administrative Courts are addressed. The recommendations of this Commission will be implemented in the same way as those of the Commercial Court Commission.

- Target date for establishing the Commission: September 1992.
- Target date for recommendations to the Ministry: June 1993
- Target date for Ministry of Justice Action: September 1993.

2. Procedural Codes

Also helping to resolve the jurisdictional conflicts described above, but going beyond them in terms of providing a modus operandi for the court system and its proceedings, is:

Measure 4: Revision of the Code of Civil, Commercial and Social Procedure (CCCSP).

Revising codes is a complex and time-consuming process, as could be seen in the recent two-year revision of the Commercial Code -- the seven volumes of which will be completed and published this summer. Revising the CCCSP will require creating a separate multi-faceted Commission, comprised principally of jurists, members from the business community, and concerned Government Ministries. The work of this Commission should proceed in two phases. First, and in close collaboration with Commercial and Administrative Court Commissions, is to establish intermediate procedures allowing critical questions of judicial competence to be resolved with minimal delay. This can be accomplished quickly through Executive Ordinance. Second is to proceed with the full revision of the Code which, along with the intermediate steps, will require legislative approval.

- Target date for establishing the Commission: September 1992.
- Target date for intermediate procedures: December 1992.
- Target date for ministerial approval of the Code: September 1993.
- Target date for legislative approval of the Code: December 1993.

3. Access to the Courts

It has been proposed that reducing the 7% deposit fee, or deferring a portion of its payment until a case is decided, could result in the more equitable access to Commercial Courts by Mali's business community. Also, in terms of covering recurrent court costs at a level that could promote increased access, all or a portion of the fees collected could be dedicated directly to court operations, as opposed to the Central Treasury. Putting these two together, a lower initial deposit could increase overall use of the courts, the fees collected, and the potential for financing operational costs. Finally, eliminating this fee completely, and identifying other taxes or fees to pay for court costs, could open the courts to all. These are only some of the options being discussed that warrant:

Measure 5: Review and detailed analysis of the 7% consignment fee required for adjudication of suits involving claims.

This review can be carried out by the Commercial Court Commission, in coordination with the Ministry of Finance's Tax Administration. Any recommendations to adjust or eliminate this fee would require legislation to amend the current tax laws, as well as laws on the use of fees collected by the judiciary.

- Target date for recommendations to the Ministry: March 1993
- Target date for Ministerial Action: June 1993.

4. International Dispute Resolution

Resolving commercial disputes efficiently for Mali's domestic and international business communities, whether by judicial means or through non-judicial options, will require two measures, both of which will be implemented through the Commercial Court Commission:

Measure 6: Review and analysis of Mali's position regarding adherence to international Conventions for dispute resolution.

The Commission, working with the Ministries of Justice, External Affairs, Finance, and the Chamber of Commerce and Industry, needs to (a) examine the application of the Washington Convention, with recommendations on how it can be integrated into contracts between Malian and international businessmen at the time of negotiation; and (b) examine issues involving the ratification of the New York Convention, paying close attention to the Ivory Coast's raison d'être for filing documents in 1991 in preparation for adopting this Convention. The Commission might also pursue, in coordination with other West African and Sahelian countries, establishing a

regional arbitration center with statutes and procedures adapted to the realities and practices of the area.

- Target date for CCC recommendations on DC Convention: March 1993.
- Target date for CCC recommendations on NY Convention: June 1993
- Target date for Inter-Ministerial action on both: December 1993

Measure 7: Analysis of arbitration procedures as an alternative means for commercial dispute resolution.

The Commission, working with the Chamber of Commerce and Industry, other private businessmen and the National Direction of Judicial Affairs (DNAJ), should examine the desirability of creating a local institution or group to serve as an arbitral body in support of the local business community. As this would be a private body, no Ministerial approval is necessary. Regarding international arbitration, any recommendation by this group would depend on the Commission's deliberations on ratification of the New York Convention.

- Target date for recommendations on local arbitration: March 1993.
- Target date for recommendations on intern. arbitration: June 1993.

5. Professionalism

Engendering professionalism in the nascent Commercial Court system is a long-term affair that will require significant investment in human resources, infrastructure, and operations. Over the next 18 months, however, six measures can be taken that in the short-term will reinforce the professional environment of these courts and the professionalism of those who preside. These measures fall in the areas of training, recruitment, reinforcement of the mixed system, accountability, compensation, and documentation.

a. Career Development and Recruitment

Mali's judicial specialists -- judges, lawyers, judicial advisors, notaries -- have been trained well in judicial theory and standard courtroom procedures, but not for the practical world of business or the negotiating table. Mali's traders are knowledgeable in commercial dealings, but in a personalized, traditional, and for the most part non-judicial sense. All have been joined together in an institution designed to resolve commercial disputes, one with no experience, no precedents, and few resources. To make it work one must first have:

Measure 8: An approved human resource development program for professional judges, assessors, and others taking an active role in commercial dispute resolution.

Practical training for career judges, assessors, government legal advisors, and private lawyers is needed to help Mali achieve self-reliance in business dealings, both domestic and international. The Commercial Court Commission, working with the DNAJ, jurists and private operators, must develop a continuing education program that gives legal professionals and lay jurists the basic knowledge of business law, dispute resolution, and arbitration; as well as an understanding of banking, credit, international financing, joint ventures, liquidation and bankruptcy, and other aspects of business and commerce subject to court proceedings.

A preliminary training plan, to be implemented beginning September 1992, indicates the most urgently needed courses, workshops, seminars and tours during the initial phase of assistance. A more thorough analysis of mid- and longer-term needs will be carried out by the Commission early on during the period.

- Target date for the human resource development program: March 1993
- Target date for Ministry of Justice approval: June 1993
- Target date for implementation (Phase II): December 1993

Training and human resource development serve little purpose if there is insufficient manpower to dispense justice and implement the proposed judicial reforms. There is thus the need for:

Measure 9: Analysis of staffing patterns, recruitment, and career development needs of judges and other court personnel; and

Measure 10: Analysis of the 'profile' of assessors needed for the Commercial Courts, and their source(s) of recruitment.

The Commercial and Administrative Court Commissions, working with the Ministry of Justice and Civil Service Administration, need to develop recommendations leading to the long-term viability of the courts' human resources. With regard to permanent court personnel, though focus will be on staff of these two courts, attention should also be given to other elements of the judiciary, especially staff in other courts dealing with commercial disputes (i.e., the First Instance, Appellate, and Supreme Courts).

As for the assessors, there is concern that the present practice of recruiting exclusively from the Chamber of Commerce and Industry (CCIM) does not encompass the extensive profile of traders,

manufacturers, bankers, transport workers, artisans, and others needed for the Commercial Courts to be representative of that portion of the business and trading community most likely to use the courts. A working group within the Commercial Court Commission needs to address this issue and recommend whether the CCIM should retain exclusivity and, if not, how recruitment could be expanded. Note that any change in recruitment would require an Executive Decree amending 88-147 PGRM, and revisions in the CCCSP.

- Target date for recruitment recommendations: March 1993
- Target date for Council of Ministers approval: June 1993
- Target date implementation of recommendations: December 1993.

b. Compensation

It is critical to the Commercial Courts that professional judges be remunerated at a level commensurate with their responsibility, and that lay assessors have incentives that motivate them to participate in courtroom proceedings in a reliable and professional manner. These are issues of integrity and presence, aspects of professionalism without which the courts cannot function properly. Inadequate salary-benefit packages for judges, and compensation and accountability for assessors, are an insufficient foundation for an effective court system. Also, assessors have businesses to run, and extensive unpaid court time could rapidly erode the 'moral and professional solidarity' that exists among traders, creating disincentives for courtroom participation. What is needed is:

Measure 11: Examination of remuneration-incentive policies and laws for career judges and lay assessors.

This measure needs to be addressed by the Commercial Court Commission, in coordination with the Justice Ministry's National Directorate for Judicial Affairs, the Ministry of Finance's Budget Directorate, the CCIM and the Civil Service Administration. Any recommendation to adjust remuneration would require legislation amending compensation for the judiciary, and an amendment of Article 10 of Law 88-38 ANRM for the assessors.

- Target date for compensation recommendations: March 1993
- Target date for Ministerial action (as necessary): June 1993
- Target date for legislative action (as necessary): December 1993.

c. Accountability

Adequate compensation goes hand-in-hand with accountability and transparency of courtroom decision-making. The business community in Mali is relatively small, characterized by multiple convergences of interests, relationships, and solidarities. Though this is an asset, it also contains the potential for compromising the

discipline of the courts. In effect, by itself, this context could have detrimental consequences for the judicial process. Given the importance of choosing assessors from among those who are the most respected and trusted by their peers, once chosen they should be subject to penalties, sanctions, and disciplinary measures faced by judges. At present there is no disciplinary code for assessors, no measures that would reinforce accountability and neutrality of the mixed court system. What is needed is:

Measure 12: Establishment of a disciplinary code for Commercial Court assessors.

The Commission for revising the Procedural Code (CCCSP), assisted by the Ministry of Justice and perhaps the Superior Council of the Magistrature, is in the best position to write this code. It would need to be formally incorporated into the CCCSP, for eventual adoption by the legislature.

- Target date for establishing the disciplinary code: June 1993.
- Target date for ministerial approval of revised CCCSP: Sept. 1993.
- Target date for legislative approval of revised CCCSP: Dec. 1993.

d. Documentation

Jurists and lawmakers need to be informed of the law, and of all executive, legislative and judicial proceedings. These are the essential tools of their trade, without which professionalism is unattainable. They need to be able to access court cases, judicial precedents, laws, decrees, acts, ordinances, codes, regulations, and other documents essential for writing and administering the law. Needed in the immediate term is:

Measure 13: A mechanism giving those involved in the resolution of commercial disputes access to timely and relevant legal materials.

The Justice Ministry's National Directorate for Judicial Affairs, working with the Commercial and Administrative Court Commissions, must (1) inventory existing documentation relevant to commercial matters, and the procedures for obtaining and disseminating it; (2) recommend the documentation needed for judicial and legislative decision-makers; and (3) establish mechanisms for the timely and accurate recording, analyzing, publishing and distributing of legal proceedings and other kinds of judicial information and statistics.

Decisions or recommendations for housing these materials in some central location (e.g., a central repository, legal library, documentation center, etc.), and the priority to be given to the eventual inclusion of non-commercial kinds of documentation, will be part of this same process.

- Target date for establishing an inventory: December 1992
- Target date for establishing mechanisms: March 1993
- Target date for implementing the mechanisms: June 1993

6. Private Sector Support

There are two remaining measures that will help the private sector deal better with the administration, the courts, and themselves, while at the same time increasing the efficiency and productivity all three. One involves:

Measure 14: The establishment of model contracts for the most common types of business dealings.

The use of model contracts will encourage regularity in commercial dealings, and a more efficient functioning of the court system. The single most difficult and time-consuming problem mentioned by Commercial Court judges is the assessment and enforcement of oral contracts. Though legally binding and widespread throughout Mali, oral contracts are nonetheless becoming less reliable as business transactions become more complex and international. What is needed is for the National Direction of Judicial Affairs, in collaboration with the CCIM and others in Mali's business community, (1) to draft and approve a series of model contracts; (2) to publish them in French and, depending on the nature of the transaction, local languages as well; and (3) to publicize and distribute them, with workshops to make traders familiar with their content and use.

- Target date for model contract working group: September 1992
- Target date for approved model contracts: March 1993
- Target date for publication and dissemination: September 1993

The second measure, designed to reduce administrative tasks and promote efficiency in public-private sector dealings, is:

Measure 15: The establishment of a single, unified system of identification for commercial firms.

Currently there are three separate registration systems for private traders, each of which yields a different number. One is housed in the National Directorate for Economic Affairs; another in the Chamber of Commerce and Industry; and the third in the Treasury Department. This is a most uneconomical way to register businesses, either for licensing, taxing, judicial or other purposes. To resolve this problem the Ministries of Justice and Finance, along with the CCIM and Notaries Public, need to devise a 'one-stop registration process' whereby businesses are recognized by a single identification number.

- Target date for unified registration working group: December 1992
- Target date for recommendations: June 1993
- Target date for implementing the system: December 1993

B. Program Conditionality and Project Support

Program assistance for carrying out the above measures will consist of a \$7 million cash grant, with accompanying project support totalling \$2.1 million. This level of program assistance is justified on three grounds. First is the economic impact. Increasing the efficiency of and access to the Courts will, by Year 5 of the program, free up an estimated \$7-10 million annually that have been tied up in dispute or non-payment. The reinvestment of these funds will create an estimated 15,000 new jobs and additional annual income averaging \$5.5 million.

Second is the increased level of investment the GRM will make in support of these reforms. Financing some of the potential increases in staffing levels, civil service compensation, remuneration for assessors, human resource development and training, special commissions and task forces, legal documentation and publications, and the overall operations and maintenance of the judicial system, are costs which PRED, through its project support component, can for the most part absorb during the initial stages of implementation. These are all substantial costs, however, which the GRM will assume within the next three years. The level of program and project assistance will encourage the GRM to make this investment.

Finally is equity, which at this stage in USAID's development assistance to Mali, is important. In 1991, the first year for PRED support, USAID disbursed \$7 million for reforms that lead to the elimination of export taxes. Part of the reasoning for that level was fiscal -- to defray the cost of future uncollected export taxes. Equally important, however, was the statement the U.S. Government was making in support of the economic, social, and democratic initiatives launched by Mali's nascent transitional government. The hallmarks of this transition - stability, free and open elections, political pluralism, continued economic reform, and a Constitution anchored in an independent judiciary - made the birth of the Third Republic possible. That statement has equal force for this beginning of the Third Republic.

Fulfilling the reform measures outlined above will require both program and project assistance. Seven of the measures are of a programmatic and policy nature so critical to the reform effort that they are best accomplished through time-bound conditionality and periodic cash disbursements. The other eight are accompanying measures, the completion of which will require more continuous but flexible kinds of project support (technical assistance, studies and analyses, training and procurement). Regarding the six areas targeted for support:

- o Jurisdictional Authority, Procedural Codes, Access to the Courts, and International Dispute Resolution (Measures 1-7) will be achieved through program assistance; and

- o Professionalism and Private Sector Support (Measures 8-15) will be achieved through project support.

Grouping all of these measures by anticipated target dates yields six sets of actions during the September 1992 - December 1993 period. On the program assistance side, August-September 1992 is a period during which the three principal Commissions will be created and the declaration on the competence of Commercial Courts will be issued. The October 1992-June 1993 period will produce recommendations from the three Commissions, approval of interim procedures by the Ministries, and the implementation of recommendations on consignment fees. Finally, the July-December 1993 period will witness the culmination of critical program measures, i.e., an approved CCCSP Procedural Code, functional Administrative Courts, and actions on International Conventions. This is a performance-based beginning-middle-end scenario which lends itself to a three-phase tranche release, as shown in the Conditionality Schedule on the following page.

Before disbursing funds for any of the three tranches, or issuing documentation that would lead to disbursement, the GRM will provide AID satisfactory evidence that the above measures have been accomplished.

The measures to be implemented through project assistance show a parallel set of actions during this timeframe:

- (1) The creation of a Working Group for Model Contracts (target: September 1992).
- (2) Recommendations on staff projections for the judiciary, a system for the unified registration of businesses, compensation for Commercial Court judges and assessors; approval of model contracts, a human resource development program for court personnel, and a disciplinary code for assessors; and the distribution of legal documentation (target: June 1993).
- (3) Implementation of the human resource development program, judiciary recruitment recommendations, and a unified business registration system; action on compensation recommendations; and publication and distribution of model contracts (target: December 1993).

PRED PROGRAM CONDITIONALITY SCHEDULE

Measures	Tranche Amount	Target Date
(1) A declaration by the Justice Ministry that Commercial Courts are functional and competent to adjudicate cases within their jurisdiction; and	\$2 million	September 1992
(2) The creation of Commercial Court, Administrative Court, and CCCSP Procedural Code Commissions.		
(1) Recommendations for (a) establishing Administrative Courts; (b) defining Commercial Court jurisdiction; (c) applying the Washington Convention and ratifying the New York Convention; and (d) utilizing arbitration.	\$2 million	June 1993
(2) Approval of intermediate Commercial Code procedures.		
(3) Implementation of recommendations on consignment fees.		
(1) Action on Commercial Court Jurisdiction; Administrative Court Establishment; and International Conventions.	\$3 million	December 1993
(2) Legislative approval of the CCCSP Procedural Code.		

Project support to Commercial Courts will be provided over a four-year period and will consist of technical assistance, training, operating expense support, and commodity procurement.

Technical assistance to Commercial Courts will be provided in part through an institutional contract with a private U.S. firm, and otherwise through direct contracting by the USAID. Short-term assistance will focus on putting selected measures in place and carrying out special studies on judicial support for the private sector. USAID has already on staff a local PSC legal specialist, who will be contracted under PRED to work fulltime on implementing and monitoring the proposed reforms.

Training will be in the form of specialized short courses, seminars, workshops, and tours -- to be offered in Mali and selected offshore sites. Maximum use will be made of local jurists and other legal specialists, both as principals in the training program and as collaborators with other institutions. Emphasis will be on providing training in basic legal skills (i.e., resolving disputes, drafting, and negotiating); substantive information (contracts, banking and finance, credit, joint ventures, arbitration); legal problem-solving; and training-of-trainers. The last is particularly important for building local capacity and creating a sustainable program of human resource development.

Operating expenses will be provided to help implement the above measures. Support to Commissions (Commercial Courts, Administrative Courts, Procedural Code) will be critical in assuring smooth functioning and timely completion of tasks. Additional assistance will be provided in such areas as codifying arbitral procedures; publishing model contracts and legal documentation; and supporting compensation and incentive packages in the short-term, with provisions to cover these costs through a revised fee system or tax structure. Funds will also be used for modest renovations and maintenance in buildings where Commercial Courts are housed.

Commodity procurement will focus initially on equipping Commercial Courts, selected Administrative Courts, and the commercial chambers of the Appellate and Supreme Courts with computers, to enable them to record and track court cases; access precedents and other judicial statistics and business registrations; and generally manage data and information more efficiently. Modest support for office equipment and transportation will also be provided.

Finally, neither the Commercial nor Administrative Courts operate in isolation. They are part of a judiciary who often share the same premises and equipment. No priorities addressing these two courts will be adequate unless they take into consideration the judiciary context, including Appellate. Accordingly, the project will also assist a parallel review by the Ministry of Justice of relevant limited needs for the other elements of the judicial structure. Participation in training, as evidenced in the annexed training plan, is an obvious and immediate candidate, documentation support another, and selected equipment and commodity aid may be a third. The question has to be addressed and at least the beginning of a response expressed in the context of this program.