

XD-ABF-410-A  
ISN 81147

**POLICY REFORM FOR ECONOMIC DEVELOPMENT (PRED)**

688-0245/0246

**PROGRAM ASSISTANCE APPROVAL DOCUMENT (PAAD)**

**AMENDMENT NUMBER 1**

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CLASSIFICATION: UNCLASSIFIED

AGENCY FOR INTERNATIONAL DEVELOPMENT  PROGRAM ASSISTANCE APPROVAL DOCUMENT (PAAD)		1. PAAD Number 688-K-608A	
		2. Country MALI	
		3. Category Cash Transfer	
		4. Date	
5. To Dennis J. Brennan Director		6. OYB Change Number N/A	
7. From Jon Breslar Program Officer		8. OYB Increase N/A To be taken from:	
9. Approval Requested for Commitment of \$7,000,000		10. Appropriation Budget Plan Code 72-112/31014 BPC GSS2-92-31688-KG39	
11. Type Funding <input type="checkbox"/> Loan <input checked="" type="checkbox"/> Grant	12. Local Currency Arrangement <input type="checkbox"/> Informal <input checked="" type="checkbox"/> Formal <input type="checkbox"/> None	13. Estimated Delivery Period FY 92-93	14. Transaction Eligibility Date N/A
15. Commodities Financed  N/A			

16. Permitted Source U.S. only	17. Estimated Source U.S.
Limited F.W.	Industrialized Countries
Free World	Local
Cash	Other

18. Summary Description

The purpose of the Mali Policy Reform for Economic Development Program (PRED) is to assist the Government of Mali (GRM) to create an environment conducive to increased economic growth and employment generation in the private sector and to reduce the burden of the public sector on the economy. To achieve this purpose, USAID/Mali identified a series of regulatory, legal and institutional reforms which could be addressed in stages with non-project assistance. The first of these reforms, elimination of export taxes, has been accomplished and initial results are encouraging. This program amendment focusses on a second reform area, the creation of a functional commercial and administrative court system that is supportive of the private sector in Mali.

This amendment consists of program interventions designed to facilitate the rapid and reliable resolution of commercial disputes in Mali. The GRM, working close coordination with the business community, will have put in place reforms which 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 reforms measures will improve the business climate in mali by engendering confidence in judicial institutions; increasing investment and employment generation, by freeing up litigated funds for further investment; reinforcing the rule of law, by passing non-discriminatory laws and regulations that are equitably enforced; and strengthening an independent judiciary, by creating a functional and fair judicial system.

(Continued on the following page.)

19. Clearances	Date	20. Action
DD: AVGetsop	8-25-92	<input checked="" type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED  Authorized Signature:  Title: Mission Director
CONT: RScrabtree	25 August 92	
MGT: NLHoffman	8/25/92	
PA/FM/A/PNP: See STATE 189625		

*h*

Conditions Precedent to Disbursement (Program Conditionality)

A.I.D will provide \$7,000,000 in non-project assistance grant funds to the Government of Mali. The dollars provided under the grant will be deposited in the GRM's West African Monetary Union account and will generate local currency to be used by the GRM for general budget support. The program dollar funds will be disbursed in three tranches based on the following substantive conditionality:

Tranche No. 1: Prior to the first disbursement of \$2,000,000 in program funds, the Government of Mali will submit in form and substance satisfactory to A.I.D.:

1. A statement of the names and titles of the persons who will act as representatives of the Grantee together with a specimen signature of each person named in such statement.
2. A statement confirming that Account Number 36-062-094 opened at Citibank, New York remains active for dollar deposits under this program amendment and that Account Number 305-072 opened at BCEAO branch, Bamako remains active for local currency deposits under this program.
3. Evidence that Commercial Courts are functional and competent to adjudicate cases within their jurisdiction.
4. Evidence that the GRM 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.

Tranche No. 2: Prior to the second disbursement of \$2,000,000 in program funds, the Government of Mali will submit in form and substance satisfactory to A.I.D.:

1. Evidence that the GRM through the newly created court commissions has developed recommendations regarding the following:
  - a. the establishment of administrative courts;
  - b. the definition of commercial court jurisdiction;
  - c. the application of the Washington Convention and ratification of the New York Convention;
  - d. the utilization of arbitration.

2. Evidence of GRM approval of intermediate Commercial Code procedures.

3. Evidence that the GRM has implemented recommendations regarding changes in court consignment fees.

Tranche No. 3: Prior to the third disbursement of \$3,000,000 in program funds, the Government of Mali will submit in form and substance satisfactory to A.I.D.:

1. Evidence that Commercial Court jurisdiction has been defined, administrative courts have been established and action has been taken regarding the application and ratification of international conventions.
2. Evidence that the GRM has received legislative approval of the CCCSP Procedural Code.

Other Conditions and Covenants: The conditions and covenants included in the original PAAD, unless modified by this amendment, remain in full force and effect.

## I. RECENT DEVELOPMENTS

*Overview: During the past year Mali has made great strides on the political and economic fronts. After a 15-month transition, the Third Republic and a popularly-elected government is now in place, with a new Constitution that emphasizes the protection of human rights, the separation of powers, the empowerment of local populations, and the independence of the judiciary. Mali continues to implement a reform program designed to stimulate private sector growth and improve the efficiency of public sector operations. The elimination of export taxes in 1991, which was the first reform carried out under the Policy Reform for Economic Development (PRED) program, is already having a positive effect on the economy. The environment is now favorable for additional reforms that will promote private entrepreneurship, create jobs, and advance Mali's democratic initiatives. This will be done through measures that strengthen mechanisms and institutions for resolving commercial disputes, especially the Commercial Courts.*

### A. The Political Context

Since the approval of the PRED PAAD a year ago, Mali has gone through an event-filled year which has seen the emergence of a multi-party civil democracy. But this did not come easy. Last June, calm had barely been restored. Malians were apprehensive, wondering whether the new transitional civil-military government (CTSP)<sup>1</sup> would work, whether stability could be maintained, whether peace could be brought to the North, whether there indeed existed the social and political will to support pluralism and install democracy in Mali. Destruction of infrastructure, property, and some \$30 million of the productive industrial capacity cast a shadow on hopes for economic recovery and reform.

The donor community was also on edge, speculating whether Mali would 'stay the course' and honor its commitments. The atmosphere was one of concern, but also optimism sustained by the conviction that Mali had the will to make it work. There were risks, but those risks seemed worth taking, for the Malians themselves and for the donors. The events over the past year have more than justified that judgement, with Mali making a fine start on the road of this democratic experiment.

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<sup>1</sup> The *Comité de Transition pour le Salut du Peuple* (CTSP), or 'Transitional Committee for the People's Salvation'.

## Program Conditionality and Disbursements

Reforms will be carried out through a mixture of program (\$7 million) and project (\$2.1 million) assistance, the former of which will be disbursed in three tranches over a 15-month period, upon satisfaction of the following conditions:

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 Commercial, Civil, and Social CCSP 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 will be used for technical assistance, training, and operational expenses in the Ministries of Finance, Economy and Plan (MEFP), the counterpart Ministry for the policy reform program; and for the Ministry of Justice and Human Rights (MJHR), the technical Ministry for court reforms.

## Feasibility and Impact

The various economic, political and social reforms undertaken during the past year, coupled with the highly collaborative nature of the PRED program and project design, reflect the feasibility of this program and the "will" of the Malian people to make it succeed. The impact of USAID's \$9.1 million of assistance will be measured in gains in employment and income. By 1997, reform measures will have produced an estimated 15,000 new jobs and generated an average of \$5.5 million of additional annual income. The immediate and direct beneficiaries will be first the jurists and traders within the current jurisdiction of the Commercial Courts. Over time, however, the major share of benefits will accrue to what is now the informal sector, in rural and urban areas.

### **Project and Program Implementation**

The Mission will take an active role in implementing PRED, focusing on monitoring and developing the policy reform program in coordination with the MEFP's Project Coordination Unit (PCU), and with various administrative and judicial sections in the MJRH. Contracting for long-term technical assistance through an institutional contract is in the final stages. For this amendment, however, in working with the MJHR, USAID will primarily use specialized technical assistance through various Africa Bureau projects and initiatives and, for expertise in training and human resource development, the Africa Bureau legal reform and judicial administration IQC (Checchi/Howard University) and the International Development Law Institute (IDLI). Mission support will be furnished by a USDH program economist, and two highly qualified Malian PSCs (a legal specialist and a macroeconomist).

### **Monitoring and Evaluation**

At the macroeconomic and policy levels PRED will monitor GRM compliance with the conditionality, overall impact of specific reforms, and performance of structural adjustment policies. For this particular amendment M&E will focus on tracking (1) the viability and efficiency of Commercial Courts, through the kinds of businesses engaged in litigation; the nature of disputes and the amount of claims; the time it takes to resolve disputes, and the decisions of the court; (2) consumer confidence and customer satisfaction, through interviews with litigants and a core group of Malian medium and large firms, microenterprises, and informal operations representing a cross-section of the business community; (3) non-judicial mediation and arbitration, as a counterweight to the court system; and (4) employment and income, particularly in relation to the re-investment of funds freed from litigation.

### **Financial Plan**

Of the 1991 authorized \$14 million, the Mission to date has disbursed the entire \$7 million in program assistance, through a FY 1991 cash transfer; and has obligated \$4 million in project assistance, \$2 million each in FY 1991 and FY 1992. This amendment will authorize an additional \$9 million (\$7 million NPA, \$2 million PA), for a new LOP total of \$23 million. Additional project assistance is needed essentially to meet requirements for technical assistance and training, and for equipment, facilities and other expenses for Commercial Court activities identified during the course of preparation of this amendment. Funds to be applied for program and project activities under this amendment total \$9.1 million, of which \$2.1 million is for project activities. Banking mechanisms are in place for cash transfers and for local currency project support.

## EXECUTIVE SUMMARY

### Background

USAID/Mali's program for economic policy reform began in 1985 under the Africa Bureau's Economic Policy Reform Program (AEPRP). Over a six-year period (1985-1991) EPRP, working closely with the GRM and other donors in the context of Mali's policy reform framework, brought about a number of reforms that liberalized the economy and promoted private sector development. This effort continued with the Policy Reform for Economic Development (PRED) program, designed to promote economic growth by increasing private sector participation in the economy and improving the efficiency of public sector management. PRED was authorized in 1991 at an LOP level of \$14 million, with \$7 million each obligated for program (NPA) and project (PA) assistance. PRED's first reform initiative, the elimination of all export taxes, culminated in November 1991 with the disbursement of the \$7 million in NPA. With this accomplished, and with the environment bolstered by AID's and the GRM's efforts in advancing democratic initiatives, there is an opportunity to institute additional reforms that together will promote private sector growth and the rule of law. Targeted for reform will be institutions and mechanisms that lend themselves to the efficient, fair and reliable resolution of commercial disputes.

### Recent Developments

During the past year Mali has made great strides on the political and economic fronts. After a 15-month post-coup transition, the Third Republic and a popularly-elected government is now in place, with a new Constitution that emphasizes the protection of human rights, the separation of powers, the empowerment of local populations, and the independence of the judiciary. Mali continues to implement a reform program to stimulate private sector growth and improve the public sector operations. Eliminating export taxes is already having a positive effect on the economy, in savings and employment. The environment is favorable for additional reforms that will promote private entrepreneurship, create jobs, and advance Mali's democratic initiatives, particularly those that strengthen culturally accepted mechanisms for settling disputes among businessmen and traders.

### The Malian Legal and Judiciary System

Analysis of Mali's legal system shows that there is no one 'rule of law' governing legal proceedings and business in Mali. Rather, there are spheres of influence formal and informal, traditional and modern, that intersect and inter-relate. Post-independence witnessed the creation of a variety of courts, all of which were strengthened with the Third Republic's Constitution. In actual functioning, however, the judicial system has neither the resources nor the legislative and procedural tools needed for good performance. Commercial Courts, which have jurisdiction for adjudicating non-criminal commercial disputes, were created by law in 1988 but made operational only in 1991. Though there is a high demand for their services, these courts are hampered by jurisdictional disputes, ineffective legal procedures, inadequately trained judges and lay assessors, costly court fees, and perceptions of state interference in private business affairs. This fragile beginning nonetheless leaves many openings for improvement.

### Program Description

USAID assistance will be used 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 measures in place that 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. These measures will also improve the business climate, by instilling 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.

A major milestone last August was the politically risky but indisputably successful National Conference, which assembled a true Malian cross-section of officials, politicians, associations, unions, organizations, and almost every other interest that needed to speak. The forum was open to everyone, and the intense two weeks of debate which ensued produced the following democratic foundations: a draft Constitution for the Third Republic; a law for municipal, legislative, and presidential elections; and a charter for political parties. An equally significant result was the message from the uniformed-side of the CTSP that the military would be back in the barracks and out of the government with a year. A popularly-elected civilian government was to assume leadership as soon as possible.

By early October some 45 political parties had formed and announced platforms and candidates. Three months later, in a flurry of electoral cards and lists, campaign speeches, and media spots on civic responsibilities and rights,<sup>2</sup> the Malians were ready to go to the polls. Over the next three months they would go to the polls six times.

First was the January 12 referendum on the Constitution for the Third Republic, whose 122 articles give shape and meaning to Mali's democratic institutions. Key elements are empowerment of local populations, separation of powers, protection of human rights, and independence of the judiciary. Ratification was virtually unanimous. They returned to the polls a week later to elect municipal leaders, specifically Mayors and Town Councils. Nine of the initial 45 political parties remained in the running. Nineteen municipalities (13 rural and six urban "*communes*") elected 751 officials, with 214 seats or 28% going to the first-place party ADEMA; 122 or 16% going to the second-place USRDA; and 74 or 10% going to the third-place CNID.<sup>3</sup> Six other parties shared the remaining 46% of the seats.

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<sup>2</sup> Donors provided the bulk of the \$5 million needed to carry out the elections. USAID's contribution came through the bilateral "Democratization Support Project" (688-0265), for which the initial \$1.1 million funding was allocated under a 116(e) appropriation.

<sup>3</sup> ADEMA, headed by Alpha Konaré, is the "*L'Alliance pour la Démocratie au Mali*", the Malian Democratic Alliance. USRDA, whose factions are led by Baba Akhib Haidara and Tiéoulé Konaté, is the "*Union Soudanaise du Rassemblement Démocratique Africain*", the Sudanese Union for a Democratic African Assembly. CNID, headed by Mountaga Tall, is the "*Congrès National d'Initiative Démocratique*", the National Congress for Democratic Initiative.

Local balloting was followed by legislative elections on February 23 and March 8, which resulted in a 115-member National Assembly. ADEMA claimed 75 seats or 65% of the total; CNID nine seats; USRDA eight seats; and the six other parties claimed the remaining 23 seats. This overwhelming support for ADEMA was equally reflected in the presidential elections, with Alpha Konaré capturing 69% of the vote in the April 26 run-off with USRDA candidate Tiéouké Konaté.

The government of the Third Republic was inaugurated on June 8. Three weeks later there is every indication that the Malians are reassured by the process and the results, as are donors. To give but one example relevant to this amendment, on June 10, when the Prime Minister announced his Cabinet appointments, what we knew before as the Ministry of Justice became the Ministry of Justice and Human Rights. Also, co-existing with the Ministry of the Economy, Finance and Plan, and reporting directly to the Prime Minister, is a new Ministry charged with the Promotion of Private Initiatives. These two changes send a clear message that law and justice are indeed for the Malian people, and that the private sector is unquestionably viewed as the motor for economic development. They are not symbolic acts, but a statement of the beliefs, values, and priorities of the Malian people.

Reinforcing these democratic initiatives is the emergence of a responsive and lively free press, one that not only carries the news and political debates, but has been a prime catalyst for Malian civic education. Mali's first three private radio stations are now operational, with a score of new tabloids in several local languages appearing all over the country. Among the many 'firsts' for the press was a request by the GRM to the World Bank for a training session for Malian journalists to inform them on the mechanics of economic policy reform so that they can better inform the Malian people.

Most important has been the government's commitment to involving a broad range of civic and democratic institutions, ethnic and economic groups, into a 'national dialogue' about the future of Mali. In addition to the National Conference, the past several months have witnessed a series of conferences and debates on health and children, education, rural life, women, commerce and industry, and land tenure. These are forums which for the

first time have brought all major non-governmental constituencies into the decision-making process. This is participatory development at work, with positive signs that Bamako rhetoric will be put into action at the local level.

On transparency, the transitional government's creation of an independent Inspector General's (IG) Office with ministerial status (since attached to the Presidency) sent clear signals that corruption and mismanagement would be seriously addressed. Some 58 audits of public agencies and parastatal firms have already been conducted under the new IG, four times as many as in any previous year. Many of these will be referred to the judiciary for action. The CTSP, during its last weeks of operation, also sought assistance from the United States and Canada on ways to strengthen the GRM's audit and investigative capabilities over the long-term. This bodes well for improving the management of public resources, restoring integrity to the civil service, and boosting confidence among Mali's private sector.

The last element in this equation for economic development is peace, order and security. Peace in Mali's more populated and accessible areas was re-established almost right away. But the issue which threatened to subvert these new initiatives was the continued instability in Mali's remote northern areas. The failure of the agreements negotiated by the former regime with a coalition of Touareg groups fueled widespread insurrection and the mass exodus of an estimated 125,000 Malians across the Mauritanian, Algerian and Nigerian borders. After a year of intense negotiations, the CTSP and the 'Unified Front of Azawad' concluded *Le Pacte National*. Signed on April 11, this Pact underscores national unity and territorial integrity, while at the same time recognizing Mali's cultural and geographic diversity. Decentralization and economic development fuse in a framework of immediate emergency assistance to resident and refugee populations (e.g., food aid, health clinics, financial help for civil and military victims), with a variety of mid-term measures for recovery and sustained development. Donors are committed to supporting the Pact; there is optimism that it will work.

## B. The Economic Context

On the economic front, this past year has seen Mali recovering from the destruction in the wake of the of March 1991 coup, while at the same time reinforcing its policy reform efforts amidst considerable pressure to retreat from some of the more politically sensitive elements (i.e., civil service wage and employment caps, parastatal reforms, and secondary school scholarships). That the transitional government continued this reform agenda instilled confidence among donors, resulting in stable and in certain cases increased 1991-1992 development assistance.

### 1. The Economy

Over 80% of Mali's population is rural; over 80% of Mali's work force is in the primary sector, relying on food and industrial crops, livestock, forestry and fishing for their livelihood. More than 60% of Mali's economic activity takes place in the informal economy. During the most recent period for which we have data (1984-1989), the primary sector has contributed an average 48% of Mali's output while the secondary (industry, mining, handicrafts, construction and public works) and tertiary (transportation, trade, public administration and other services) sectors contributed 20% and 32%, respectively. To the extent that a trend can be discerned, the primary sector's share was essentially stable while the secondary lost some ground in favor of the tertiary. Livestock contributed the most output with 19%, followed by food crops and essential cereals (17%) and commerce (16%). Industry contributed 12% while cotton, the most important export, contributed most of the 4% of industrial crop production.

Per capita income reached \$270 in 1990, following an annual average growth rate of 1% in recent years. GDP growth, which averaged 5% over the past five years and 4% over the decade, saw a slight 1991 decrease of 0.2% in comparison to a 2.4% increase in 1990. One reason for this was a decrease in agricultural production, which normally accounts for half of GDP. Vagaries of rainfall lowered cereal production (millet, sorghum, corn) by 15%, though this was counterbalanced in part by a 15% increase in cotton production.

Another reason was the coup. Some \$30 million of destruction of government and private property slowed down investment. Hardest hit was the industrial sector, whose production decreased 20% in one year after enjoying the highest annual growth rate of any sector (5% of GDP) during the previous five years. Businessmen for the most part adopted a wait-and-see posture during the transition, which largely accounted for the decrease in private investment from 12.8% of GDP in 1990 to 11.2% 1991. Reconstruction, however, was the main factor contributing to the 9.4% to 11.4% increase in public investments. This not only benefitted the construction sector, which grew by 15.6%, but the trade and transportation sectors as well. The mining sector also grew by 5.2%, the result of continued expansion in gold mining.

Gross domestic investment averaged 23% of GDP during 1985-1989 and 20% during 1980-1989. Public sector productivity is expected to improve, primarily through improved management of investments in the rural sector and infrastructure, and in the privatization and liquidation of state-owned companies. In 1990 four firms were privatized and fifteen liquidated; 1991 saw seven more privatized. This is expected to continue with another 25 firms. The net result will be reduced governmental presence and a larger private sector role. Projections now show private sector investment averaging 12.4% of GDP in the next five years, with the public sector at 9-10%.

The government budget deficit (excluding donor grants) had dropped to 8% in 1990, but rose to 11.3% in 1991 due to damage incurred from the coup. In this same two-year period government revenues dropped from 17% in 1990 to 15% in 1991, a modest decline given the circumstances. The current account deficit of 13.7% in 1991 is a marked improvement on the 14.2% of 1990. Export volumes increased at an average annual rate of 6% in the last five years, with an increase of 8.7% in 1991 despite a decrease in the unit prices of the principal export products (cf. Analysis of the Export Tax Elimination below). Imports, which increased at an average annual rate of 2% during the 1980s, grew by 7% in 1991 due to the doubling of cereal imports, and the rebuilding of stocks and infrastructure. The balance of payments continued to record a surplus in 1991, with public debt exceeding 108% of GDP at the end of 1990. The debt-service ratio, which had declined to 21.8% in 1990, is expected to show a further drop to 17.3% for 1991.

## 2. The Policy Framework

Mali continues to implement a policy reform program designed to stimulate private sector growth and improve the efficiency of public sector operations. Adjustment efforts since 1982 have included measures to reduce budgetary deficits, public enterprise operating losses, and public sector arrears. Initial reforms also entailed market liberalization and price incentives intended to increase the efficiency of resource allocations. Government budget and public enterprises were addressed first, followed by financial sector and internal trade liberalization measures and, finally, external trade reform.

Ten years later, with broad donor assistance, including the USAID Economic Policy Reform (1985-1991) and Policy Reform for Economic Development (1991-) programs, the GRM has recorded good progress. By 1991 there was an impressive array of reform instruments in place: a 12.7 million SDR standby agreement and a 15.2 million SDR structural adjustment facility, both with the IMF; and a structural adjustment loan of \$50.3 million, a public enterprise privatization project of \$49.5, a \$53 million rural reform program and a \$26 million educational reform project, each with the World Bank. Agreement was reached with the IMF for an extended structural adjustment facility (ESAF), which was scheduled to go to the IMF Board in May 1991. The events of March 1991 intervened, however, and the issue of additional IMF or World Bank assistance was essentially put on hold.

Much of the political debate in the succeeding months centered on economic issues, with the GRM giving priority to keeping public finances in balance. It was also able to maintain an open and constructive dialogue with labor, students, and numerous other constituencies on such issues as salary increases, payment of arrears, privatization of parastatals, and dismissal rights of employees and subsidies for students. This strategy was successful, due to adherence to principles of austerity, public accountability and transparency.

After the coup, the GRM was able to restore the fiscal and customs administrations, which resulted in 1991 revenues estimated at 25% above 1990. This was achieved through closer control of budget procedures and greater

integration of the national budget. It was a significant achievement, especially in light of the damage done to tax and customs infrastructure. Salary ceilings continued to be respected, despite the payment of cash bonuses and three (of five) step increase arrears unpaid since 1986. Salaries continued to be paid without delays. The early departure program was strengthened with the retirement of 3500 additional civil service and military employees. Progress was also made in privatization, enabling the World Bank to disburse \$25 million in the second half of 1991.

Since 1988 reforms have been undertaken in the context of annual Policy Framework Papers (PFP). There have been three program (non-project) disbursements under the World Bank's Structural Adjustment Loan (SAL), Agricultural Structural Adjustment Program and Public Enterprise Restructuring Program. Preparations for the private sector (industrial) support project have continued and are nearing completion. The most recent PFP, negotiated in February 1992, sets the following targets for the 1992-1994 period: annual real GDP growth rate of 4.7%; annual inflation rate of 2.2% or less; and a balance of payments current account deficit, excluding public assistance, of 12.9% of GDP in 1992, 11.7% in 1993, and 11.1% in 1994.

In this context, the GRM will continue to liberalize the price and regulatory environment, strengthen the public enterprise reform program, privatize the cotton sub-sector, and give priority to public investments in productive sectors. It will also increase the GRM share of expenditures in the social sectors, and reduce the share of public salaries in all sectors. These objectives are reflected in the current ESAF negotiated with the IMF in March 1992, which awaits signature by the new government. The three-year ESAF will provide \$85.5 million,<sup>4</sup> one-third of which to be available at signature. It will be reinforced by payments under the World Bank SAL approved in December 1990, by bilateral assistance and by debt rescheduling. Annex A (Table 1) shows Mali's revenue and expenditure picture for the next three years with and without the ESAF.

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<sup>4</sup> Computed using the rate of 385.9 FCFA (*Franc de la Communauté Financière Africaine*) per SDR (Special Drawing Right). All financial figures are at US \$1 = 275 FCFA to calculate dollar equivalent.

The urgency is clear. Signing the ESAF will enable the GRM to obtain long-term loans and grants averaging \$144 million per year during the 1992-94 period. These include annual contributions of \$28.5 million from the IMF, \$68 million from the World Bank, and an estimated \$47 million from bilateral donors. It is unclear, however, how much of this funding would materialize without the ESAF in place. The same is true for the \$2.5 million per year in rescheduling, as well as the \$8 million to be renegotiated in 1992.

The GRM has already adopted a budget compatible with the ESAF (Annex A, Table 2). Criteria established for June 1992 consist of ceilings on internal banking system credit and net bank credit to the State; minimum cumulative amounts of State revenues; cumulative limits on non-concessional external loans to or guaranteed by the State; and a minimum reduction of internal arrears. These financial variables will also serve as benchmarks for September and December 1992 performance. Structural benchmarks consist of (1) the adoption of revised Commercial and Labor Codes; the extension of the value-added tax to resales; the verified settlement of liquidated or privatized public enterprise debt; the liquidation of SEPEMA and TAMALI; and the privatization of COMATEX<sup>5</sup> (target date: June 1992); (2) development of Action Plans for improving the social security and retirement systems (target date: July 1992); and (3) completion of an operational program for the Office du Niger, Mali's largest irrigated rice production system.

### 3. The Effects of Export Tax Elimination

The 1991 PRED program targeted the elimination of export taxes as a condition to disbursement of \$7 million in program assistance. This reform was selected for its potential to increase revenues from exports within the context

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<sup>5</sup> SEPEMA is the peanut oil manufacturer (*Société d'Exploitation de Produit Arachidières*); COMATEX the main textile company (*Compagnie Malienne de Textiles*); and TAMALI the state-owned slaughterhouse and tannery (*Tannerie du Mali*). The Mission and the Africa Bureau's Office of Market Development and Investment (MDI) have been studying the privatization of TAMALI, which has recently been appraised by delegations of American businessmen with a view toward a joint venture.

of ongoing structural adjustment and efforts to stimulate private sector growth. Export taxes were abolished in February 1991, and the disbursement was made. Since then the GRM has adopted other measures (e.g., a *guichet unique* or one-stop window) to facilitate and promote Malian exports.

Though it is too soon to observe any conclusive effects of this reform on export behavior, there are nonetheless some encouraging signs. Since 1985, the share of exports in GNP has been remarkably stable at 13%, reaching \$364 million in 1991. Between 1985 and 1990 the average growth of exports was 3%, with a low of minus 11% in 1985-1986. This rose to 15% in 1988-1989, with 1990-1991 growth estimated at 9%. In the 1992-1994 period exports are expected to grow by an average of 8%, with higher rates expected as the economy responds to an improved policy environment.

A detailed analysis of the elimination of export taxes, which responds to concerns expressed STATE (91) 259776, is presented in Annex B. This analysis summarizes Mali's exports, imports, production, consumption and comparative advantages, focusing on Mali's three main exports: cotton, livestock and gold. These three, whose 1990-1991 export earnings increased by 12%, 11% and 14%, respectively, comprised 90% of all exports in 1991, with cotton having a 49% share, livestock 27%, and gold 14%.

Groundnuts are also analyzed for their past importance as a cash crop. Coarse cereals are included as critical to domestic production and consumption, to export in surplus agricultural years, and because the projected increased productivity of livestock will likely result in increased demand for coarse cereals for animal feed. Mali's principal imports (textiles, leathers and milk) are retained as possible import-substitution candidates. On the basis of comparative advantages agricultural equipment is also selected. This was recently identified in a microenterprise study as a potentially promising activity.<sup>6</sup>

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<sup>6</sup> See "Mali Microenterprise Sector Assessment and Strategy: Strategic Options for USAID". GEMINI. Development Alternatives, Inc. October 1991.

The major conclusions of this analysis are as follows.

- o The impact of the elimination of export taxes on Mali's economy is positive. The internal rate of return (IRR) is 55 %, and the net present value (NPV) \$24.5 million using 12% as the discount rate. Alternative simulations show project benefits to be stable.
- o Cotton is expected to benefit the most from the elimination of export taxes. Tax savings of 8% result in an initial transfer of over \$9 million to producers and marketers. Cotton exports will generate additional income worth an estimated \$6 million.
- o Textile and leather exports are expected to reach \$1.7 million annually, which through import substitution will create additional income of \$1.4 million. Agricultural machinery will generate \$270,000 in additional revenue, with a subsequent \$160,000 in derived income.
- o Finally, and most significant in terms of overall impact, export tax elimination will create approximately 15,000 jobs -- most of which will go to rural Mali's small farmers and herders.

### C. Opportunities for Further Policy Reform

What do these political and economic developments mean in the context of GRM and AID. priorities? Is there a need for further policy reform under the PRED program? Are there sectors where continued program and project assistance could have a significant impact? Are there reforms which could advance private sector and democratic initiatives at the same time? Could they be designed and implemented in ways that would achieve maximum benefit with respect to increased employment and income?

## 1. Agency and Host Country Priorities

To answer these questions we need first to look at Mali in the context of AID and especially Africa Bureau strategies and priorities. Two initiatives undertaken this past year are instructive in this respect. First, as a response to the AID Mission Statement<sup>7</sup> and as a way of maximizing the use of resources under the DFA, the Africa Bureau revised its system for allocating funds from the Development Fund for Africa.<sup>8</sup> Whereas in the past allocations were based on economic output as well as humanitarian criteria, the new system gives priority to results and performance-based criteria. Though "need" and the objective of alleviating poverty is a major attribute in the new rankings, the focus is on:

- o Economic Policy Performance, with the objective of supporting countries committed to market-based growth and effective management of their economies; and
- o Democracy and Governance, with the objectives of (a) promoting decentralization, the rule of law, and an independent judiciary; and (b) controlling corruption.

How did Mali fare in this ranking? Mali's score was the 7th highest among 45 Sub-Saharan countries, and 4th highest among 14 countries selected as "Focus" countries for DFA allocations. For these and other reasons Mali's Operational Year Budget (OYB), in comparison to other Focus Countries, is the 4th highest for FY 1992 and the 3rd highest for FY 1993. Mali's allocations continue to be the largest in the Sabel.

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<sup>7</sup> This statement advocates six principles for AID development programs worldwide: (1) support for free markets and broad-based economic growth; (2) concern for individuals and the development of economic and social well-being; (3) support for democracy; (4) responsible environmental policies and prudent management of natural resources; (5) support for lasting solutions to transnational problems; and (6) humanitarian assistance to those who suffer from natural or man-made disasters. (September 1990)

<sup>8</sup> This system is described in three separate cables: "A Revised System for Allocating the DFA" (STATE 071688); "Economic Structural Adjustment Performance Ratings for Countries for over 5 Million Population" (STATE 071884); and "Democracy/Governance and A.I.D. Budget Allocations" (STATE 073590). These cables were all issued in March 1992.

One could say that in comparison to the rest of Africa, Mali is doing pretty well. It is. But are these the only criteria by which we measure success? Regarding performance, perhaps even more telling than the comparative rankings above is the way in which Mali is responding to the standards and observations set forth in the Africa Bureau's paper entitled "Beyond Policy Reform" (December 1991). This candid and provocative paper argues that while "top-down" policy reform was appropriate at one time, especially for initiating change and effecting "front-end" macroeconomic and sectoral reforms, it is less well-suited for today's institutionally complex and longer-term sector assistance activities.

What is needed instead? If African economies are to grow and new investment is to take place, a combination of three ingredients is needed -- non-governmental entities, entrepreneurs, and dialogue:

*"Non-governmental entities must be drawn into assessing, formulating and implementing development strategies in all sectors. This creates an indigenous constituency for policy implementation and reduces the importance of donors as strategists and watchdogs."*

*"Special attention must be given to promoting private entrepreneurship. Without an expanding economic base created by entrepreneurship, the resources needed to sustain human development will not be generated and poverty will not be alleviated."*

*"AID needs to enhance the private sector role in policy development, and create mechanisms that bridge the private sector, other non-governmental groups, and the government. There needs to be a lasting policy dialogue between governmental and non-governmental entities."*

These conclusions are timely in the Malian context. As discussed above, the change of government in 1991 triggered a heightened appreciation for the needs and aspirations of many previously neglected elements of society. There is a new and very practical interest in democratic consensus and participation, especially within the indigenous nongovernmental sector. Another key element in the new scenario is the GRM's increasingly serious effort to privatize and liberalize the economy, and to promote transparency. The liquidations of State-owned enterprises mandated under the World Bank's Public Enterprise Restructuring Program (PASEP) have increased, with additional opportunities for investment in areas once subject to State control. Finally is the issue of unemployment, and the

evolving views on how to address it. It is encouraging that the transitional and newly-installed governments have begun to adopt the proposition, long held by donors, that stimulating the private sector is the only long-term solution to employment.

USAID's program and project efforts support these GRM initiatives and Bureau priorities. The PRED program is grounded in a market-lead growth strategy designed (a) to increase private sector participation in the economy, and (b) to increase incomes in areas of high productive potential. On the project side, agribusiness and other small and micro-enterprise activities, livestock marketing, and the construction and operation of community health clinics and local schools are examples of USAID-supported activities which promote local-level entrepreneurship and non-governmental organizations.

Regarding the need to establish a dialogue with the private sector, with a view toward gaining information and integrating the business community into decision-making at the program and policy levels, this year the Mission began a consultative process with Mali's commercial and voluntary sectors. The immediate purpose was to gain a better understanding of business in Mali, especially the opportunities for and constraints to investment. In the context of the PRED program Mission personnel held discussions with 27 Bamako-based medium and large firms operating in both the commercial and industrial sectors. The results were revealing -- particularly on issues involving taxation and government regulation, the behavior of government officials, and the challenges of making investments work in Mali.<sup>9</sup> In the future these discussions will be expanded to other regions in Mali, and to the informal sector as well.

Regarding the voluntary sector, a key part of the Mission's program with Mali's PVO/NGO community is the establishment of PIVOT groups in three priority sectors: natural resources management, child survival, and microenterprise development. These groups, which are brought together under the auspices of Mali's PVO/ONG

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<sup>9</sup> See Annex C "Private Sector Interviews" for a detailed discussion and analysis.

Coordinating Committee,<sup>10</sup> have a mandate to coordinate analyses, activities, and in time strategic planning for non-governmental organizations working in these sectors. Continuous dialogue with them has been an essential part of the Mission's learning-process, a way to check the pulse of community activity in rural and urban areas.

The microenterprise PIVOT is one of the more active groups, and is currently targeting field activities within the six sub-sectors identified in the recent GEMINI analysis.<sup>11</sup> Recognizing that many of Mali's microenterprises are in the formal sector, we still agree with the "Beyond Policy Reform" view that

*"while microenterprise is important in ensuring that economic growth is equitably distributed, enhancing entrepreneurship in the formal economy, and building strong linkages to the world economy, are the most important factors in generating growth."*

It is precisely for this reason that USAID's strategy for private sector development approaches the problem at both levels, so that business opportunities can occur across the economy. In the longer-term this will advance the existing dialogue between the governmental and non-governmental sectors, such that the latter -- the commercial and voluntary, the formal and informal -- have a more powerful voice in future policy decisions.

## 2. Resolving Commercial Disputes

Creating an environment in which the private sector can flourish is complex affair. It is not just a matter of restoring macroeconomic stability, putting the right structural changes in place, and assembling the most dynamic and representative group of people for discussions. Rather, it is also and primarily a matter of getting the business community to invest in Mali, and to invest with confidence. For this to happen there must be good opportunities for investment, available financing, and a fiscal and regulatory environment that will help guarantee (or at least not

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<sup>10</sup> The CCA-ONG, or *Comité de Coordination des Actions des Organisations Non-Gouvernementales*.

<sup>11</sup> GEMINI, *op.cit.* (cf. Footnote 6).

prevent) a profit. Finally, there must be the knowledge that when things go wrong, when deals go sour, when agreements are not honored and payments are not made, that fair and reliable redress is available

Maliens, embedded in a center of trade and commerce for centuries, do not need to be told how to do business or how to settle their differences. They have a variety of mechanisms for the latter, mostly traditional and informal. Preference is always given to working out one's grievances one-on-one, amicably and directly. When this is not possible, elders and others of status will be called in to mediate. What is paramount in resolving disputes is fairness and discretion, driven by the need to keep one's position in the business community and society intact. The problem, however, is that these mechanisms cannot put all the cases to rest. As the cost of information and doing business increases, as markets begin to diversify, as liberalization and privatization take hold, as migration and urbanization increase, as Mali becomes more integrated into the formal regional and world economies, and as foreign investment becomes more promising -- all this makes doing business in Mali much more complex and impersonal. It changes the rules, or at the very least adds a new dimension to existing ones.

How can the business community adapt to these changes and make certain that business is conducted smoothly? When conflicts arise, can they be resolved by other-than-traditional mechanisms? For the moment there are two. One is the formal judicial system, comprising the Civil and Appellate courts and, since 1991, more specialized Commercial Courts.<sup>12</sup> Another is formal arbitration, which at times takes place in Bamako's Chamber of Commerce and Industry. The problem is that neither of these alternatives works very well. Courts in the past have been less than "market friendly" and, when pronounced competent to rule on a case, often avoided the issue or leaned toward the State. They are also too understaffed and poorly equipped to be effective. As for Chamber of Commerce and Industry mediation, this is largely viewed as selective and not impartial justice.

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<sup>12</sup> In 1988, under pressure from the World Bank, the GRM passed laws creating the Commercial Courts. At that time it was largely a paper exercise, for they were given no resources. It was only beginning in November 1991, under the transitional government, that these courts were housed and staffed in the three areas (Bamako District, Kayes and Mopti regions) where they have legal jurisdiction.

As private sector interviews have shown, businessmen vary considerably in their use and perception of the court system. On the one hand many reject it, seeing it as a tool of the State and the privileged, something from which very few of them have benefitted. Though at times they have no choice but to use the courts, they characterize them as slow, expensive, and inconvenient. Many find the courts intimidating, due to their unfamiliarity with the law and unwelcome thought of public exposure. For them the current judicial system, commercially and culturally, is not a viable way to settle disputes. On the other hand, many recognize the need for a strong and effective judiciary, and perceive it in their interest to support it. There is certainly a demand for the courts' services -- whether from the State or private businessmen. Indeed, many consider the creation of Commercial Courts to be one of the most important institutional reforms during the past three years. They only wish they were functional, and reliable.

What we are left with, then, is a void -- a business environment with judicial and non-judicial institutions in place, neither of which has the means or experience to resolve commercial disputes satisfactorily and efficiently, nor the confidence of the business community that would further promote their use. Notes "Beyond Policy Reform":

*"In virtually all African countries, continuing lack of property rights and meaningful contract law, as well as the hostility of government officials and the lack of a fair judicial process, have served to lower investor confidence."*

Such a stalemate works against future investment in Mali. Worse yet, it is presently tying up an estimated \$70-100 million in outstanding credit in dispute or non-payment -- funds that could be used for investment.

What to do? Three years ago, early on in the development of PRED, the Mission and the government identified Commercial Courts as one of the most critical enabling mechanisms for private sector growth in Mali. Our current analysis reconfirms this, and goes a step further by emphasizing the need to strengthen the full range of formal commercial dispute settlement mechanisms available to Mali (i.e., Commercial, Civil, Appellate and Administrative Courts; domestic and international arbitration).

**The objective:** Efficient, reliable and fair commercial dispute resolution.

**The payoff:** In the span of five years, (a) investment that generates 15,000 new jobs and an average of \$5.5 million a year in additional income; and (b) the promotion of democratic initiatives, social justice, and the rule of law.

In the end, it is not the purpose of this program to change or subvert existing cultural practices, or adversely affect the Malian business community. Indeed, would that every commercial dispute be settled out-of-court, amicably, and without arbitration! But Mali is past that stage. Businessmen recognize it; the government recognizes it, too.

There are needs that must be fulfilled now if Mali's entrepreneurs are to succeed; there are costs if they do not. Our goal in this is to help the Malian business community cope with and adapt to a changing and challenging business environment, and to strengthen existing institutions so they can play an important and constructive role in Mali's economic growth. The climate is right, the timing is right, and the potential impact is high.

courts, police, prosecutors), each of which has orderly procedures and clearly defined authority. Dispute resolution is impersonal, and usually predictable. As for oversight, the rewards and sanctions applied to those carrying out the law are directly related to their performance in furthering the law and its goals. People know how they are accountable.

In contrast to this are informal legal processes, found mainly in developing societies. They are characterized by a conspicuous absence of clear legal standards. Although the legislature has the mandate to set standards through passage of laws and the judiciary through resolution of disputes, neither has sufficient expertise, authority, or information that would enable them to carry out a standard-setting function. The result is a situational or personal application, or simple non-application, of ambiguous standards. Much is not on the books; what is is often inaccessible to the public and even to public administrators. Responsibility for enforcing standards is monopolized by officials who have first-hand access to relevant information. They, not the formal legal institutions, become the main legal actors and dispute settlers. They have wide discretion, and frequently negotiate settlements through non-judicial behavior. Regarding oversight, people in this system are usually hesitant to upset interpersonal relationships by evaluating or criticizing each other, or by holding each other to ideal standards. Doing so could result in reprisals for which the formal legal system provides no protection. There is less accountability, less pressure to promote the public good, fewer incentives for doing a good job.

Noteworthy in this 'good-bad' contrast (which admittedly reflects a cultural bias) is not which side Mali is on, but that it typifies Malian reality. Indeed, Malians are now straddling and struggling with both sides. The problem is not, nor has it ever been, the existence of formal legal mechanisms; these have been in place for years. The problem has been the political will to create a society based on the rule of law, with institutions (executive, judiciary, legislative) and instruments (a constitution and laws) that support the public good. This will, however, has re-surfaced during the past year, during the transition to the Third Republic. Sustaining it, as we shall see specifically for commercial courts, will require relevant information in the hands of the public, adequate human and

material resources, and in several cases a re-tooling of procedures, policies and regulations. With these elements Mali can transit from the informal to the formal side of the equation.

But is Mali's legal system, the one governing business and trade, only reflected in public administration and law? Can it only be cast in terms of the legal processes above? The answer is no. Overlaying these processes is a 'culture of trade' found in Mali and throughout West Africa, comprised of ideas, beliefs, values, and codes for conduct that are grounded in centuries of unwritten rules and that govern a wide range of commercial dealings. It is a culture bound by kinship, ethnicity, friendship, mutual interest and exchange -- woven into a mosaic of overlapping relations that bind individuals and groups to one another in innumerable ways. In this sense it epitomizes personal, non-confrontational relations. Rules governing conduct are not written in a constitution or legislation; the enforcement of those rules is not carried out by courts and police; oversight is not linked to support of public policy. Yet the culture of trade has a definite rule of law which allows business to take place. For those adhering to it, it is a law no less formal or binding than for those who negotiate written contracts, resolve their disputes in courts, or sanction their competitors through legal proceedings.

There is thus no one 'rule of law' governing legal proceedings and trade in Mali, but spheres of influence where formal and informal, traditional and modern, intersect and inter-relate. Our task in working with the Malian judicial system is not to choose one sphere over the other. Rather, it is to recognize and appreciate the advantages and shortcomings of each, so that we can better assist the GRM to strengthen the ability of the Mali's legal system to set and enforce standards, resolve disputes, and oversee the actions of civil servants and traders.

## **B. The Court System**

Before discussing commercial courts in detail, it is important to highlight the constitutional and legal basis of the Malian court system, and review its basic organization, structure and operation.

## 1. The Constitution of the Third Republic

The Constitution of the Third Republic, drafted in August 1991 and endorsed by popular referendum in January 1992, lays the groundwork for new democratic institutions and contains significant guarantees for the protection of basic human rights. The Constitution of the Second Republic (1968-1991), which was passed by referendum in 1974 and revised by governmental decree in 1979, gave priority to the State and its sovereignty. The new Constitution and the interim *Acte Fondamentale* of the transitional government, focus first and foremost on the rights and responsibilities of Malian citizens. Other innovations include the freedom to create political parties and participate in a multi-party State, freedom of speech and of the press, and the freedom to assemble and to strike. The new Constitution also maximizes the separation of powers; reduces the potential for abuse of power by elected and appointed officials; maximizes openness and transparency in the government; and confirms the rule of law. One of the first actions of the newly-elected National Assembly will be its adoption.

## 2. The Constitutional Basis for the Judiciary

By far the most far-reaching parts of the new Constitution are judicial reforms. Under the previous Constitution, independence of the judiciary was affirmed and exercised essentially through the Supreme Court and the High Court of Justice. The Civil, Appellate, Assizes and Labor Courts were created through separate laws after the Constitution was passed.

The Supreme Court had four sections under its jurisdiction: the judicial, to handle appeals in civil, criminal, commercial and social matters; the administrative, to resolve litigation involving administrative institutions, and to provide advice in developing laws, ordinances and regulations; the accounting and audit section, to assess public accounts and verify budgetary management of those responsible for implementing the national budget implementation; and the constitutional section, to judge the constitutionality of laws, international commitments, and elections.

There was also a High Court of Justice should the President or any of his/her Ministers be accused by the National Assembly of crimes or other offenses committed while carrying out their official duties. However, given that the previous National Assembly was composed entirely of Deputies loyal to the President and the single political party (the *Union Démocratique du Peuple Malien*), the Court never functioned.

After the overthrow of the former regime, the CTSP immediately issued the *Acte Fondamentale* which, as of 31 March 1991, suspended the 1974 Constitution and dissolved all institutions it had set in place. Continuity of legal effect, however, is provided by Article 57 which states that "legislation currently in place will remain applicable unless replaced by new texts". Article 64 states that until new elections can be held, and new institutions put in place based on an approved Constitution for the Third Republic, the *Acte Fondamentale* will be "executed as the Constitution of the Malian Republic". The only reference to the judicial system is Article 57, which states that the judiciary is independent from the executive and the legislative branches, and that judicial power will be exercised by the Supreme Court and "the other courts and tribunals". This therefore confers continued constitutional legitimacy on those courts (the Commercial Courts among them) established in 1986-88 by separate laws.

Article 81 of the new Constitution reiterates Article 57 above. In addition are two innovations which strengthen the independence of the judiciary and the rule of law. The first is that the President of the Republic, i.e., the person occupying the office and not simply the executive branch, is personally responsible for safeguarding this independence. To do so he/she is assisted by a new institution known as the Superior Council of the Magistrature. This Council oversees the assignments of judges, gives opinions on questions about the independence of the judiciary, and regulates internal disciplinary matters among judges.

The second change is the restructuring of the Supreme Court and creation of a Constitutional Court. Whereas the Supreme Court's judicial, administrative and accounting sections remain intact, the former constitutional section has been given greater autonomy and authority through its transformation into a Constitutional Court. Comprised of

nine Advisors<sup>14</sup>, this Court has the power to judge the constitutionality of laws, rule on conflicts of jurisdiction among or between public institutions, rule on the electoral process, and proclaim the results of any election or referendum. Decisions of this Court are not subject to appeal. With respect to the validity of an election, any voter, candidate or political party can refer the question to this Court for an opinion. This gives greater meaning to the rights and freedoms under the new Constitution, and to the rule of law.

### 3. The Legislative Basis for the Judiciary

The new Constitution, besides establishing these three superior courts, validates through Article 57 laws that three years earlier had begun a major reorganization of Mali's judicial system. Signed into effect on 5 April 1988, laws 88-38/39/40 respectively established the Commercial Courts, reorganized the judiciary, and created jurisdictions for and established the competence of the Appellate Court and other more specialized courts.<sup>15</sup>

The result today is a system whereby justice is dispensed by: three superior courts (the Supreme and Constitutional Courts, and the High Court of Justice); the Court of Appeals, to which is attached the Court of Assizes; the Court of First Instance, also known as the Civil Court, with detached sections and Justices of the Peace with extended competence; and four 'tribunals' with special jurisdictions (the Commercial, Administrative, Labor and Juvenile Courts.) Though the jurisdictions of the Civil Court and other specialized courts overlap at times, as we will see in the case of Commercial Courts, the Malian court system is basically three-tiered, within a superior-appellate-civil court hierarchy. A tabular view of the current court system with respect to structure, jurisdiction, and function can be found on the following page.

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<sup>14</sup> Three are nominated each by the President of the Republic and the President of the National Assembly, of which two in each group must be jurists; the remaining three are judges designated by the Superior Council of the Magistrature. Each advisor serves a seven-year once renewable term.

<sup>15</sup> These texts are presented in their entirety in Annex D. Also included is Decree 147 PGRM of 30 May 1988, which applies Law 88-38 by determining the terms and conditions for election and eligibility of Commercial Court members.

THE MALIAN COURT SYSTEM

COURT	(a) LOCATION (b) JURISDICTION	ROLE/FUNCTION	STRUCTURE/ ORGANIZATION	OBSERVATIONS
Supreme Court	(a) Bamako (b) Nationwide	Court of last resort for judicial, administrative, and public accountability cases	Judicial (civil-commercial, social, criminal chambers); Admin, Budgetary Sections	Autonomy and mandate strengthened in the Third (1991) Constitution
Constitutional Court	(a) Bamako (b) Nationwide	Rules on constitutional law, jurisdictional disputes, and the electoral process	Advisory body nominated by the President, National Assembly, and Magistrates	Changed to an autonomous court (1991) from a branch of the Supreme Court
High Court of Justice	(a) Bamako (b) Nationwide	Dispenses justice on Mali's President and Ministers for crimes against the state	Members designated by National Assembly after each legislative election	Never functioned, though power/authority increased in Third Constitution
Court of Appeals	(a) Bamako, Kayes, Mopti (b) Nationwide	Rules on appeals from Courts within jurisdiction of First Instance	Civil, social, commercial, criminal, correctional, juvenile chambers	Appellate jurisdiction and competence defined by law in April 1988
Court of First Instance	(a) Bamako, Reg. Capitals (b) Nationwide	Court of first and often last resort on civil, customary, some commercial matters	Several Sections presided over by Justices of Peace with extended competence	Extended competence in juris. where specialized courts do not exist
Court of Assizes	(a) Bamako, Reg. Capitals (b) Nationwide	Issues indictments and rules on criminal prosecution	Presided over by the First President of Appeals Court	Created in 1986; activated only in 1991
Commercial Court	(a) Bamako, Kayes, Mopti (b) Bamako, Kayes, Mopti	Settle disputes on trade, business, banking matters	Mixed composition of both professional and lay judges	Created in 1988; functional in 1991 in exceptional juris.
Labor Court	(a) Bamako, Reg. Capitals (b) Nationwide	Settles disputes involving labor contracts/conditions	Mixed composition of both professional and lay judges	Located in Courts of First Instance
Juvenile Court	(a) Bamako, Kayes, Mopti (b) Bamako, Kayes, Mopti	Resolves civil/criminal cases involving minors	Mixed composition of both professional and lay judges	Not functional; regional courts are first pending
Administrative Court	(a) Bamako, Kayes, Mopti (b) Bamako, Kayes, Mopti	Rules on civil proceedings against the state	Currently being finalized in the Ministry of Justice	Not functional

What does this reorganization mean in terms of the access to and the dispensing of justice? Though 1988 was an important milestone for judicial legislation, what there is today at that level is largely a skeleton court system with very little flesh. It took well over three years to establish Commercial Courts in Bamako, Kayes and Mopti; today they functioning minimally at best. Administrative and juvenile courts still exist on paper only; labor courts limp along, and only function at all because of strong pressure from Mali's national labor union. In sum, the best intentions of the Ministry, the Legislature and Administration have yet to engender the resources and accompanying measures necessary get these courts functioning properly. Commercial Courts are a case in point.

### C. The Commercial Courts

Before the creation of Commercial Courts in 1988, traders and other businessmen could access a judicial system with three jurisdictions for resolving commercial disputes. They could first file a suit in the commercial section of the Civil Court. Judgments could then be appealed in the commercial chamber of the Appellate Court and, if need be, resolved in the commercial chamber of the Supreme Court's judicial section. Why a separate Commercial Court when all this existed, and still exists?

Apart from the substantive reasons discussed below, the immediate impetus came in the context of the policy framework negotiated by the GRM and the World Bank/IMF in 1986. In essence it stipulated that within three years Commercial Courts be created in Mali's most active and promising business centers, and that Mali's Commercial Code be revised. It was recognized that unless there was a viable system for formal litigation in which traders, businessmen, and banks could resolve disputes and enter into negotiations with confidence, no amount of policy reform would stimulate private sector development in Mali. Moreover, if Mali was to develop into a market-driven economy and engage in regional and international trade and investment, there had to be a legal system supporting it. Specifically, there had to be (a) the security of private property and a clear definition of property rights; (b) the enforcement of contracts, and rules for entering into and exiting from economic activities; and (c) the assignment of liability for wrongful damage, with rules for market exchange.

Malian businessmen and traders had begun to recognize this as well, among themselves and in relations with the outside. It was clear in discussions with them that doing business in Mali was evolving in a more formal and structured way. Growth and movement have brought opportunities and relationships that could not always be regulated in a personalized way; disputes that could not always be settled amicably and in a non-confrontational way.

On this latter point, though businessmen unequivocally stress the undesirability of going to court, during the 1989-1991 period they used the courts extensively to resolve commercial disputes. As the table on the next page shows, during the 1988-1991 period Bamako's Court of First Instance registered 4,292 cases and the commercial section of the Appellate Court 2,316 cases. The number of cases registered in 1991 in the Court of First Instance is almost equal to the number registered during the two-year 1989-90 period (2029 vs. 2263). Thus, even though productivity (the number of judgments) remained the same, the judiciary took on an increasingly greater role in dispute settlement, a high proportion of it commercial.

#### 1. The Structure and Mandate of Commercial Courts

Laws 88-38/39/40 ANRM (April 1988) and Decree 147 PGRM (May 1988) established Commercial Courts under authority of the Ministry of Justice. They were created partly to provide a system of dispute settlement more adaptive and responsive to commercial needs, partly to absorb the overload of commercial cases in the Civil and Appeals courts.<sup>16</sup> Established in Bamako in November 1991, Mopti in December 1991, and Kayes in May 1992, their mandate was to resolve disputes relating to transactions among traders, following Article 3 of the Commercial Code; bankruptcy, settlements and liquidation of assets; and acts of trade between parties.

One distinctive feature of the Commercial Courts is their establishment as separate jurisdictions, with separate authority to interpret and apply the law. Regarding this authority:

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<sup>16</sup> As shown in the table on the following page, during the 1989-1991 period these courts were able to judge only 19% and 76% of their cases, respectively.

**DISPUTE RESOLUTION IN THE CIVIL AND APPELLATE COURTS: 1988-1991**

COURT	1988		1989		1990		1991	
	R	J	R	J	R	J	R	J
<b>Appellate Court: Commercial Section (a)</b>	576	333	450	383	721	578	569	464
<b>Court of First Instance: Bamako (b)</b>	Statistics not available		1122	297	1141	255	2029	258

R = number of cases registered  
J = number of judgments rendered

- (a) 1988/89/90 statistics cover Appellate Courts in the Bamako District, and the Koulikoro, Segou, Sikasso, Kayes, Mopti, Timbuktu, and Gao Regions. 1991 figures are for Bamako and Koulikoro only.
- (b) These figures represent both commercial and civil cases (no disaggregation was possible). Commercial cases are estimated at one-third.

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- o When promissory notes bear at the same time signatures of trading and non-trading individuals, the commercial court may deal with the case; when it bears only the signatures of non-trading individuals and do not deal with business, banking or brokerage, the case will have its jurisdiction before the Civil Court, if the defendant requests it.
  - o Promissory notes signed by a trader that are established as part of his trade are commercial matters; those established for his personal use and consumption are not considered commercial matters.

Commercial Courts have specific parameters in terms of the kinds of cases they can hear. For example, regardless of the sum involved, if litigants want their case to be decided 'once-and-for-all' and without appeal, and the presiding magistrate determines that there is no criminal prosecution involved, the Commercial Court is the court of last resort. It is also last resort for any claim whose principal does not exceed FCFA 1,000,000; or counterclaims which, when added to the principal claim, do not exceed FCFA 1,000,000. However, if the principal claim or counterclaim exceeds this limit, or any criminal intent is determined, the Commercial Court can only rule on them in the first resort. It would then be referred to the Appellate Court for judgment.

Another distinctive feature of Commercial Courts is their mixed composition. Each chamber is composed of a President, who is a career magistrate; and two titular judges, known as 'assessors', who are private traders. Together they resolve cases, with equal voice. The President, appointed through the magistrature, serves for an indefinite term. The assessors are elected for three-year terms by an Electoral College, which include (a) those members of the Malian Chamber of Commerce and Industry (CCIM) who are enrolled in the Trade Register within the jurisdiction of the Commercial Court; and (b) former and current assessors of the court. Electors from the CCIM are appointed by their colleagues, usually from among the high-ranking members. To be eligible as an assessor one must be over 30; a member of the CCIM; and have at least five years of experience doing business in Mali. Assessors are not remunerated for their court services.

This mixed professional-lay system is widespread in Europe and in overseas former French territories. Its strength is that it validates and sustains the basically private and specialized nature of commercial matters. As noted by the head of Mali's National Direction for Judiciary Services in a letter to the Ministry of Justice in 1990:

*It appears worth specifying that commercial cases are essentially private, and that this essential concept is the basis of the aldermanship ("assessor") system. The State gets involved through its Magistrates only to chair the court as an expert responsible for interpreting and stating the law. In this manner the two key elements of commerce are preserved: security and promptness of transactions.*

This is why a mixed approach of public (trader) and judicial powers can best guarantee the simultaneous interests of everyone involved. Law is followed, and traders are essentially judged by their peers. This engenders confidence within the private sector, knowing that cases are being decided by experienced businessmen familiar with the issues, and not civil servants with little business experience.

## 2. Operational Constraints

Observation of Mali's Commercial Courts during their first six months of operation indicates that for them to function well, there are a limited number of criteria that need to be in place:

- o Clear definition of competence and jurisdiction of the courts; clear knowledge of authority and decision-making power.
- o Efficient procedural codes, which guide the way justice is to be carried out.
- o Equitable access to the courts, and knowledge that they are open and available to the public at large.
- o The presence of professional judges, competent both in law and business, who can guarantee sound judgments and impartiality, and who can appreciate the 'mixed' system of jurisprudence.
- o Experienced, competent assessors, whose practical knowledge, technical expertise and business acumen complement the legal expertise of the professional judge.
- o A spirit of reconciliation, with a view toward finding a solution that resolves a case quickly and makes it easier for all parties to resume business.
- o The human and material resources needed to carry out justice efficiently and effectively.

With only two of three courts operational during this six-month period, it is far too early to conclude how well or poorly the Commercial Courts are functioning. In their favor is successful resolution of some 70 cases, most of which concerned lease disputes and debt recovery. There is also a growing backlog of cases, some due to

jurisdictional questions, and others simply to a lack of manpower. In general, however, as we examine the seven criteria above, there are still a number of problems and constraints that need to be resolved for these courts to operate as they should.

**a. Establishment of Jurisdiction**

The Commercial Court has exceptional jurisdiction, established by law. Its proponents emphasize the advantages of having a specialized and expert court, with ability to dispense justice more rigorously and efficiently. Jurists on Commercial Courts, for example, are able to use certain special rules of commercial law, such as the presumption of solidarity between debtors. Its opponents, however, stress the downside of separate jurisdictions, which they liken to a 'balkanization' of the legal system. They view the creation of distinct courts, and separate authority of each, as diluting the economy and efficiency of the legal system – a process fostering needless differentiation among those who administer and use it.

In the few months that the courts have operated, however, this jurisdictional authority has not yet worked to advantage. The problem stems in part from the 1988 law which provides for eventual exceptional jurisdiction to these courts, but without a fixed date. Article 13 of Law 88-38 ANRM states, "The Court of First Instance is competent to rule on commercial matters until such time as the Commercial Courts are functional." Although Commercial Courts are now functional, still in effect are laws which specify that the commercial chamber of the Courts of First Instance:

- o deals in first and last resort with civil and customary cases whose total amount does not exceed FCFA 100,000, or whose monthly revenues in rent or lease do not exceed FCFA 10,000. Whenever dealing with custom, they must include assessors who are familiar with the subject in question. Assessors, along with the professional magistrate, have a deliberative voice.

c deals only in the first resort with cases exceeding these amounts; and actions concerning the condition of individuals (i.e., state of health); and inheritance, donations, wills within the above amounts.<sup>17</sup>

There is thus overlap between the Court of First Instance and the stated jurisdiction of Commercial Courts. 'parallelism' and duplication which has created confusion as to which court is to hear which case. Compounding this ambiguity is that unlike the Courts of Appeal, whose geographic jurisdiction extends beyond the District or region in which they are established, those of the Commercial Courts are restricted to Bamako District, and Mopti and Kayes regions.<sup>18</sup> Article 13 states "when a Commercial Court is not functioning for whatever reason, the Appellate Court, on request from the Solicitor General, can designate the Court of Instance competent to judge commercial matters, until such time as the Commercial Court is again functioning." Since there are no Commercial Courts in Koulikoro, Segou, Sikasso, Gao and Timbuktu, the Court of First Instance continues settling commercial disputes, per the authority specified above. Side-by-side, then, we have exceptional (Commercial Courts) and unified (First Instance Courts) jurisdictions, dealing with the same matters.

The problems cited above relate to resolution of disputes among traders. What happens when the litigants are not just traders, but the State or a non-trader? Imagine, for example, that a trader signs a contract with the State and, upon delivery of services, is not paid, or is otherwise not justly treated according to the terms of his contract. What to do? As a trader, he could press charges against the State before the Commercial Court. This was recently attempted, only for this court to declare itself incompetent, as the sum under litigation was above FCFA 1,000,000 and the State refused to forgo appeal. It also took the Commercial Court five months to decide that it was not competent to hear the case.

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<sup>17</sup> There exists a Court of First Instance in each regional capital. For the six communes in Bamako District, there is one Court of First Instance and, for the remaining five communes, five other sections with Justices of the Peace with extended competence.

<sup>18</sup> Law 88-40 ANRM, Article 6, sets the geographic jurisdiction of the Appellate Courts as follows: (1) Kayes: region of Kayes; (2) Bamako: the District of Bamako; regions of Koulikoro, Sikasso and Segou; (3) Mopti: regions of Mopti, Gao and Timbuktu.

Another option is to bring the State before the administrative chamber of the Court of First Instance. This has also been tried, only for that chamber to declare itself incompetent. It is precisely for this reason that the GRM created Administrative Courts in 1988 under Law 88-40 ANRM, so that citizens could resolve claims and disputes against the State. Three years later, however, these courts still only exist on paper.

Another difficulty for the local businessman is that Mali's commercial and industrial public enterprises (EPIC) are currently protected against seizure, as the State is a shareholder. Yet these public companies come within the jurisdiction of Commercial Courts, as if they were private traders. Representatives of public industrial and trading firms can vote and be elected to the Chamber of Commerce and Industry, and thus be elected assessors on the Commercial Courts. This is thus a conflict of interest which needs to be resolved in the procedural codes. Moreover, claimants, even if they were to win a case against an EPIC, cannot compel them (i.e., the State) to pay. All this adds to the frustration of private sector dealings with the government, and one trader's remark that "it's not worth taking the State to court".

#### b. Clarification of Procedural Codes

These conflicts of jurisdiction and competence are not solely the product of weaknesses or ambiguities in law, but also deficiencies in courtroom procedures. What governs courtroom procedures and ultimately gives order to the judicial process is Mali's Code for Civil, Commercial and Social Procedures (CCCSP). This Code, which dates from 1962, is essentially the French procedural code applied to the Malian context. Most legal specialists see it as outmoded and not adapted to today's realities, and in need of revision.

Currently, commercial procedure is regulated by the CCCSP (Article 12) and certain provisions of the Commercial Code. The main procedural features of litigation before Commercial Courts, however, are not satisfactorily articulated in law. On issues of court jurisdiction, for example, there are no articles in the current Commercial Code that would allow questions of competence to be resolved with minimal delay, or for decisions of competence

given by the Appellate Court to become final and immediately applicable. Nor are there procedures that, in cases where the Commercial Court declares itself incompetent to judge on specific matters, would permit this court to undertake certain initial measures that would protect the rights of creditors (e.g., inventories of the debtor's property, sealing off evidence, etc.)

Equally serious is the vacuum of procedure in cases relating to the seizure of property, which during the 1982-1991 period comprised more than 60% of all commercial litigation in Mali. Malian law and procedures are clear in cases whereby debt repayment is carried out through garnishing wages. It is a two-step process involving first a court order, and second a determination by a judge on the mode of repayment. The debtor's rights are also protected in the sense of ensuring that he/she is not denied the means to continue to live.

Regarding other attachments, however, and particularly those which involve a third party, procedures are non-existent. When the court orders a debtor to repay a creditor, for example, if the debtor does not have the sum in hand, the creditor can attach the debtor's money or property that is held by a third party, such as a bank. This is done by court order. But for the creditor to be awarded the sum or property due him, he must return to court a second time and have a judge validate his claim so that it can be executed. If this second step is not cumbersome enough, the validation must come from the Court of First Instance -- even if the initial court order was issued from the Commercial Court. This two-step procedure only delays the application of justice, requiring the creditor to start over a second time. It is not practiced under current French law, from which Mali derives many precedents, for in France the initial court order alone will permit attachment and seizure of property. Rather, this is the application of wage garnishment procedures to other types of debt and property. Malian legal specialists view this procedure as regressive and detrimental to resolving business disputes. Notes one,

*It is inconceivable to apply procedures designed for one type of seizure to third-party attachments. This quasi-vacuum of judicial procedure in such an important area is regrettable, and the cause of much disorder and confusion in the application of the law. It must be changed.*<sup>19</sup>

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<sup>19</sup> Diakit , Mariam, "Analysis of the Malian Court System". USAID/Mali. 1992. Unpublished manuscript.

Putting in place good procedures that promote the fair and speedy resolution of commercial disputes would boost the efficiency of the court system, the credibility and integrity of Commercial Courts, and the confidence of the private sector to use them

c. Access to Commercial Courts

Article 10 of the CCCSP and Article 73 of the Code on combined taxes state that "any claimant (plaintiff) should pay 7% of the total amount of the claim", before his case can be heard by the court. This is essentially a user-fee, the proceeds of which go into the central treasury. Information from the Treasury Department indicates that these courtroom deposits during the six-year 1986-1991 period brought \$665,000 in revenue to the State, based on a case load totaily some \$9 million in litigation.

Obtaining justice has a price. Some jurists view this as a plus, stating that only the most serious cases will make their way to the courts. Malian businessmen, however, see this deposit as excessive and, especially for small operators, prohibitive for accessing the courts.

d. Professionalism of Judges and Assessors

Competence of a particular court to adjudicate a case is one issue; competence of the judges to render a decision is another. On the latter point, there are critical needs for upgrading the competence of judges and assessors in commercial law and dealings; for putting in place mechanisms that ensure representativeness and seriousness of the assessors; and for instilling trust and confidence in the mixed system of justice, so that its strengths overcome some of its perceived weaknesses.

Mali's professional judges, whether in the Commercial Courts or in the commercial chambers of the Civil, Appellate or Supreme Courts, have only a limited and theoretical knowledge of commercial law, which they get

from basic courses in jurisprudence. To become a judge, for example, one begins by passing a national-level exam — one for those who have a diploma from the National School of Administration (Law Section), or an overseas equivalent; another for those who have a high school teaching diploma and five years experience in the civil service. Success on the exams is followed by a training at the National Judiciary Training Institute, where business law is minimal and theoretical. Candidates then take an oath before the Court of Appeals, after which they begin a ten-month apprenticeship in the courts. At the end of this on-the-job-training, they are appointed judges. Thus, though some judges might have additional short-term training in France in commercial law, none is specialized in it, nor do they have practical application of it.

This gives them a handicap in judging commercial disputes, especially those involving both Malian and international firms. Cordahi describes their dilemma as follows:

*The business judge in Mali has a difficult role to play, especially in mediating between the legislator and the private businessman, in applying laws that are oftentimes outdated, in a very "statist" environment and in society whose endogenous culture and ways of resolving conflict give written law little credence and reconciliation great significance.<sup>20</sup>*

As for assessors, currently they are concerned (and competent) only on customary cases. Though they have excellent business expertise and practical application of the law, many feel deficient next to the professional judge, as a kind of "decoration", one remarked. Both judges and assessors recognize their limitations, and have requested practical training in various areas of commercial law, arbitration, negotiation and reconciliation.

The institution from which assessors are currently chosen, Mali's Chamber of Commerce and Industry (CCIM), is in a state of flux. For years a quasi-public entity attached to the Ministry of Finance and financed by a percentage of business taxes, the Chamber is now transforming itself into a more autonomous, private, and business-oriented operation. Although it is too soon to judge whether the composition of the CCIM will remain intact, or

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<sup>20</sup> Cordahi, *op. cit.*, p. 65

whether it will formally fission into distinct business-industrial-trade chambers, it still needs its assessors to represent the range of commercial interests in Mali. Expertise in matters that one is judging is vital for court operations. The Ministry of Justice needs to consider this requirement, and perhaps broaden the base of assessors to include representatives from unions, associations and non-aligned groups -- whatever can best promote business, trading, finance and industrial interests.

Instilling confidence in this mixed system will take some time, as there are some cultural and professional sensitivities that need to be softened. Judges, for example, feel themselves more technically capable to assess the merits of a case and to render an impartial judgment; assessors feel themselves more capable from a business viewpoint, though not knowledgeable in the intricacies of the law. Judges are paid for their work on the court; assessors are not. This has had a clear affect on the motivation of assessors, as evidenced in frequent absenteeism during court proceedings. Judges are subject to a strict disciplinary code, with sanctions for improper conduct on the bench; assessors are not. This 'double-standard' has caused some judges to call into question the accountability of assessors, with undertones that assessors might not be as impartial and steadfast as career magistrates. Some judges also have a somewhat distrustful view of the business world, perceiving assessors often as illiterate, ignorant of the law and judicial system. Some assessors see judges as arrogant, protective of information, and unwilling to integrate them into the judicial process. In the end, it will likely be formal training and more on-the-job case resolution that will enable both groups to more fully appreciate the advantages of the mixed system and their respective roles and expertise in it.

#### e. International Conventions for Commercial Dispute Resolution

The resolution of disputes efficiently and fairly, and the protection of investments by a rule of law, are critical elements for the Malian business world. Functional and effective Commercial Courts, along with the more informal and culturally anchored methods of conciliation, play an important role in this regard, especially to the extent they instill confidence among local entrepreneurs and investors.

If the Malian economy, however, is to attract outside investment in any appreciable way, the external business community must have equal confidence. It needs to know that its investments are protected, and that it has recourse to legitimate, neutral redress should the need arise. For this to happen (a) Malian Commercial Courts need to be able to resolve commercial disputes and jurisdictional questions involving the international business community; (b) Malian judges need better to appreciate the importance of arbitration as an effective mechanism for resolving conflicts among businessmen; and (c) the Republic of Mali needs to recognize the usefulness of foreign arbitration.

There are at least two international conventions which can help realize these objectives. One is the International Convention for the Settlement of Investment Disputes (ICSID), which provides guidelines for settling commercial conflicts between States and nationals of other States. Promulgated in Washington on March 18, 1965, this Convention went into effect on October 14, 1966. Mali signed it on January 3, 1978; 90 other countries have done so to date, 14 of which are within the Sahel or West Africa.<sup>21</sup> The strength of this Convention is that it offers a legal framework for businesses that invest in foreign countries, and an implicit guarantee that investments will be protected and justice served. It is a flexible Convention - seen by some as an advantage and others as a limitation - in that it does not specify in which jurisdiction the investment contract is to have force, or which law is to apply. These elements can only be decided during contract negotiations. Thus the effectiveness of the Convention depends on its definition at the time contracts are negotiated. If there is no binding contract, however, or the contract fails to specify jurisdiction, the result can be ambiguous. This has been a problem in Mali, one which the courts have not been able to resolve in any consistent and satisfactory manner. One step to a solution is to draw up and promote the use of "model contracts" which deal with this issue.

Not all business disputes lend themselves to resolution with the formal court system. Businessmen often prefer arbitration, for it can provide a degree of flexibility, expertise, understanding and timeliness that the judicial system often cannot. A principal international convention which advocates the use of arbitration is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which was promulgated in New York on June 10, 1958

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<sup>21</sup> They are Benin, Burkina Faso, Cameroon, Côte d'Ivoire, The Gambia, Ghana, Guinea, Liberia, Mali, Mauritania, Niger, Senegal, Sierra Leone, and Togo.

and entered into force on June 7, 1959. To date 83 countries have signed it, signifying their recognition of and support for international arbitration institutions.<sup>22</sup> It is noteworthy that France signed the convention in 1959, which at that time extended its jurisdiction to all French territories, the French Sudan (now Mali) included.

Since Malian independence, however, only four Sahelian and West African states (Bénin, Burkina Faso, Cameroon, Niger) have signed the convention -- Mali not among them. One reason is the relatively low-level of international investment in Mali, and the fact that there is no record of ever having used arbitral institutions to resolve international business disputes. Another is a perception, especially among professional judges, that there is no need for such arbitration, that the Malian courts are capable of handling such matters. For many jurists and civil servants these international institutions symbolize "the rejection of the State, its laws and its jurisdiction."<sup>23</sup>

Mali is no stranger to arbitration. It is well-known that Malian businessmen prefer to settle differences amicably - using informal third-party intervention if necessary. Indeed, for some time the Chamber of Commerce and Industry (CCIM) has proposed itself, albeit unsuccessfully, the 'court of first resort' for settling disputes between local businessmen. Making international dispute resolution effective, and opening up the possibility for local, regional and international arbitration, will encourage private sector investment and growth in Mali.

#### f. Resources for Resolving Commercial Disputes

Inadequate staffing, limited operational funds, poor facilities -- Mali's court system is not unlike other branches of the government and civil service. On the human resource side, we have noted the overload of commercial cases in Civil and Appellate Courts. It will undoubtedly not take long for the same to happen in Commercial Courts.

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<sup>22</sup> The most prominent of these is the International Court of Arbitration of the International Chamber of Commerce (ICC), which has handled some 7,000 cases since the Court was established in 1923. Since the 1975 ICC Arbitration Rules came into effect, international commercial arbitration has evolved rapidly -- the number of cases deliberated during the 1979-1989 period equalling the number of the preceding 56 years.

<sup>23</sup> See Cordahi, pp. 59-61

A 1991 Ministry of Justice survey revealed that a minimum of 300 judges is necessary for the constant operation of the judiciary service. There are currently 215 in all, 150 in the judiciary and 65 detached to the administration. This 50% coverage of jurisdictions has already contributed to a three-year delay in the establishment of the Commercial Courts, and the non-existence of Administrative Courts.

On the material side, one of the most serious problems, one which threatens the credibility and efficiency of the entire judiciary, is the lack of documentation. No jurisdiction has a law library, no judge has a law clerk. Judges are for the most part unaware of cases that have been resolved in other Malian courts, and in some cases the law itself. Proceedings are either not published, or severely late. The need for recording decisions and law, and making them available to all legal professionals, is critical for the proper functioning of the court system.

### 3. Prospects for the Future

New institutions are hard to create and, once created, hard to keep going. Commercial Courts are not an exception. Jurisdictional disputes, ineffective procedures, poorly trained judges and assessors, costly court fees, basic public distrust of the judicial system, fears of State interference in private business affairs, social notoriety of going to court...all these contribute to the fragile beginning of the Commercial Courts.

But there is another perspective, Cordahi's, who concludes that "although commercial courts are established and in place, from the viewpoint of smooth functioning they still remain in the realm of the prospective."<sup>24</sup> This is not said negatively, but rather with the knowledge that the existing structures, procedures, laws and personnel can all be improved in ways that will allow Commercial Courts to reinforce private sector activity and formal business operations. Indeed, there are too many trumps to play to throw the hand in now. The next section plays this hand, presenting proposals for strengthening the judicial and non-judicial mechanisms for settling commercial disputes.

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<sup>24</sup> Cordahi, *ibid*, p. 65.

### III. PROGRAM DESCRIPTION

*Overview: USAID's \$9.1 million of assistance will be used for 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 (cf. listing in Annex E) 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.<sup>25</sup>

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.

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<sup>25</sup> The 'Commission' is a commonly-used and legally-sanctioned expert advisory group. For more information, see Annex F.

**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.<sup>26</sup> 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.

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<sup>26</sup> Cordahi, *op. cit.*, p. 54.

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 (cf. Annex G), to be implemented beginning September 1992, indicates the most urgently needed courses, workshops, seminars and tours during the initial phase of assistance.<sup>27</sup> 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.

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<sup>27</sup> This initial training program will likely be carried out through a combination of Malian jurists, private businessmen and bankers, and specialized legal training institutions, such as the International Development Law Institute (IDLI) and other legal training resources readily accessible to AID, e.g. the IQC to Checchi and Company (with Howard University) on legal reforms and the administration of justice.

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 Directory, 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,<sup>28</sup> 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.

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<sup>28</sup> As mentioned earlier in our review of the judiciary, this Council is responsible for regulating internal disciplinary matters among judges. It could apply this experience to lay assessors as well.

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 (cf. Section VII, Financial Plan). This level of program assistance is justified on three grounds. First is the economic impact (cf. Section IV, Feasibility and 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. This is a significant impact for \$9.1 million of assistance.

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. Last year, which was 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 (cf. Annex H). 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. The total estimated cost is \$2.1 million (cf. Section VII, Financial Plan).

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.

Notes Cordahi:<sup>29</sup>

*Those engaged in legal training, the technical consultants, and those providing legal advice in the matter of reform [need]...competence adapted to transactional realities and regional integration. Purely bilateral legal approaches, i.e., those simply transposing a system to Mali, must be avoided, since they are lacking in creativity and a pragmatic approach."*

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.

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<sup>29</sup> Cordahi, *op.cit.*, p. 73.

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.

#### IV. FEASIBILITY AND IMPACT

*Overview: The various economic, political and social reforms undertaken during the past year, coupled with the highly collaborative nature of the PRED program and project design, reflect the feasibility of this program and the "will" of the Malian people to make it succeed. The impact of USAID's \$9.1 million of assistance will be measured in gains in employment and income. By 1997, reform measures will have produced an estimated 15,000 new jobs and generated an average of \$5.5 million of additional annual income. The immediate and direct beneficiaries will be first the jurists and traders within the current jurisdiction of the Commercial Courts. Over time, however, the major share of benefits will accrue to what is now the informal sector, in rural and urban areas.*

Thus far this discussion has focused on how a comprehensive program of judicial reforms can support private sector initiatives, while at the same time advancing democratic principles and the rule of law. Attention is now directed to benefits and beneficiaries, and the feasibility of this program within the broader context of economic development in Mali.

Feasibility - whether the program can be carried out as expected - depends on many things going right. Continued progress in both economic and democratic reforms, appropriate development programs, effective political and administrative structures, transparency in government operations, continued decentralization and local-level empowerment, pluralism and stability are all elements that must be safeguarded and promoted if the measures described above are to take effect. The one element on which all of these others depend, however, and the one that will make this program successful or simply prevent it from happening, is the will of the Malian people. Indeed, there can be no results or impact without it.

That will exists. For over a year the transitional government gave priority to the establishment of a strong and independent judicial system. This was manifest in the new Constitution of the Third Republic, and in several measures that laid the groundwork for a functional and user-friendly court system. Malian leadership also made excellent progress on the economic reform front, honoring all international agreements, promoting private sector initiatives, and exercising exemplary budgetary control. From what we have seen and learned in the past few

weeks, the new government has responded positively to these actions, and in at least two areas has gone a step further. With the creation of the Ministry of Justice and Human Rights, and the new Ministry for the Promotion of Private Initiatives, there is a clear message that law and justice are for the Malian people, and that the private sector is the motor for economic development. They are not symbolic acts, but a statement of Malian priorities.

Regarding the reforms proposed under this amendment, officials in the Justice Ministry, along with several judges, private jurists, and representatives from the business community, have collaborated with USAID from the initial planning stages in the identification and elaboration of the various reform measures. Their stamp is on this program. This period has also shown the GRM adept at moving forward on measures critical to the viability of the private sector and judicial system, namely the revision of the Commercial Code. A mixed public and private Commission, similar to the one that will be established for the revision of Procedural Codes, has worked intensively and efficiently to complete the seven-volume Commercial Code, soon to be submitted for legislative approval.

Finally, with Mali's first popularly-elected government in place, we need not suspect -- as we would have two years ago -- that the Malian people want something different than their leaders. Their interests are in common. We can highlight the increased level of local activity, as seen in constructive demands for participation in the political process and a share in the development of Mali's future. This is expressed openly and peacefully, something which did not happen before. These changes, and the conviction that a new economic and political order can indeed work, are what best represent the political will of the Malian people. This bodes well for the PRED program.

#### A. Economic Benefits

What will be the benefits and impact of \$7 million in program assistance and \$2.1 million in project assistance? Calculating these depends on one's assumptions about performance, one's selection of analytical variables, and one's decision on plausible scenarios. These are all elaborated below. What needs to be stressed from the outset, however, and what was detailed in the original PAAD, is that the impact of the proposed reform measures cannot

be determined in a vacuum. There is no one-to-one correlation, for example, between the operational efficiency of the courts and the creation of jobs. Commercial Court reforms are an integral part of a broader policy and institutional reform effort, the components of which are integrated in a complex and mutually supportive way. As such, the strength and eventual success of the reforms are highly dependent on the performance of the economic reform program in general.

This analysis assumes that the increased efficiency of commercial dispute resolution, through Commercial Courts or arbitration, will increase the productivity of existing capital, as well as capital freed from litigation.<sup>30</sup> Efficiency will be measured by 'effective settlements', or the amount of and rate at which litigated funds re-enter the market. Impact will be measured by increases in income and employment stemming from this investment.

Available information shows that an estimated \$100 million is being litigated in Mali at any given time, with an average of \$50,000 per case and a lag time of two years for resolution.<sup>31</sup> As indicated in Annex I, Table 1, our baseline scenario for computing benefits is a conservative one which assumes that over time, (1) the amount of time needed to resolve a commercial dispute will decrease from an average of two years to four months; (2) 10% of the funds freed up in litigation will be re-invested productively; (3) profitability of the stock of capital arising from the project will increase by 1%; and (4) the modern sector will increase 2% per year, assuming that this movement to the modern sector results in a 3% increase in the productivity of informal sector investments<sup>32</sup>. This last point is particularly important, for it assumes that the informal sector will be increasingly integrated into the formal

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<sup>30</sup> We assume that the proposed interventions shift the supply curve to the right by removing some of the costs of doing business in the current environment, e.g., forgone income of resources tied up in litigation, fees and other costs for resolving conflicts, and other problems relating to poor definition of property rights and contractual obligations, and deficient application of the law.

<sup>31</sup> Analysis is based on the last three years of Civil Court cases nationwide, and the first six months of Commercial Court cases in Bamako. \$100 million is Cordahi's estimate, based on the assumption that 20% of credit is contentious. Starting with the information shown in Annex I, Table 2, we arrived at a similar value by extrapolating the actual amount found in litigation in the Bamako civil courts to the rest of the nation.

<sup>32</sup>The GRM and donors have several projects aimed at developing micro, small and medium enterprises through technical, managerial and financial assistance. The economic actors have yet to take full advantage of these programs, which make available some \$150 million dollars in credit or credit guarantees.

business community, that the advantages of becoming formal (e.g. access to credit, technical and managerial assistance, the Commercial Courts) will outweigh the advantages of remaining informal (e.g., anonymity, evasion of taxes and regulations).

With the institutional costs needed to implement this program (technical assistance, training, maintenance, salaries, equipment) currently valued at \$2.1 million, this baseline scenario has an Internal Rate of Return (IRR) of 26% and an Net Present Value (NPV) of \$12.2 million, based on a discount rate of 12%. Table 1 also shows benefits of two other scenarios, each of which increases one element of the base scenario by 1%: Scenario 1 the productivity of the stock of capital, and Scenario 2 informal participation in the formal sector. Simulations show IRRs of 28% and 29%, and NPVs of \$14 million and \$17.2 million, respectively.

These three scenarios indicate that the proposed Commercial Court reforms will yield positive net benefits, as measured in increases in the investment of freed resources, the productivity of formal sector capital, and formal sector participation. The ultimate impact, however, will be in increased income and employment. The three scenarios above show that by Year 5 of project benefits, the additional income generated by these reforms will average \$5.5 million annually, with additional jobs stabilizing at 15,000. If we compare this to current income and labor force, this represents a 0.2% net gain in income and additional employment equal to 0.4% of the labor force.

#### **B. The Beneficiaries**

Who will benefit from these reforms? The immediate and most direct beneficiaries will be jurists and traders within the current jurisdiction of the Commercial Courts, i.e., Bamako District, Kayes and Mopti. Benefits to these groups will spread to the extent that (a) Civil Courts retain authority to rule on commercial matters in locales where Commercial Courts do not have jurisdiction, (b) jurisdictions of the existing Commercial Courts are extended or new ones created, (c) judicial reforms and procedures applied in Commercial Courts are adopted in the Civil and

Appellate Courts, and (d) non-judicial arbitration is used to settle commercial disputes. Any one or a combination of these actions will positively effect economic activities in Mali.

Within the court system, the judiciary, assessors, and professional jurists will benefit from these reforms.. They will all undoubtedly be busier and, with new compensation plans, remunerated at levels commensurate with their responsibilities. All of them are targeted for training and human resource development – with those in the judiciary encompassing not just Commercial Court jurists, but also those assigned to the Civil, Appellate, and Supreme Courts, and to Ministries. Given the small core of professional jurists in Mali, this cross-fertilization is important for career development and the smooth functioning of the court system.

Within the business community, the initial impact of these reforms will accrue to the present formal sector whose resources are either tied up in the court system, or who have not used the courts due to the difficulties of obtaining satisfaction from the current system. Businesses in this sector are registered, and as such have access to the courts and eventually to more institutionalized arbitration procedures. The formal sector will also benefit from increased external investment, as judicial and legislative reforms will improve the overall investment climate. Though more efficient Commercial Courts and the adoption of International Conventions will not be the decisive factors influencing outside private investment in Mali, their presence will be a plus and in some cases could "tip the scales" in Mali's favor.

Over time the major share of these benefits, and the gains in employment and income, will go to what is now the informal sector, currently responsible for an estimated 63% of economic activities in Mali. This is not happening now, as they have no access to Commercial Courts or the other benefits available to formal sector operators. This will change as they take an increasingly active role in the modern economy. In the immediate term, however, the less-favored "informals" are still not precluded from income and employment benefits generated from the reform program. Many of the jobs created from the investment of previously litigated funds will go to the informal sector. Not all of the "modern wealth" is invested in the modern sector.

Though it is not possible to estimate the urban/rural breakdown of these benefits, it is likely in the short- and mid-term that they will accrue to the urban sector (20% of Mali's population). The indirect demand for raw material, however, implies strong potential link to agriculture and therefore the rural sector. The actual distribution will depend on the relative competitiveness of the different potential activities, many of which have been discussed above in the analysis of the elimination of export taxes (cf. Annex B). In the end, the additional income gained by Mali's rural populations as a result of remittances from seasonal migrations to urban areas makes it very difficult to establish whether the proposed benefits are going to the "rural poor" or the "urban poor".

Finally are the benefits that will come no later than Year 3 of the program when Administrative Courts are functional. Access will not be limited to commercial litigation with the State, but to any type of civil dispute with the State. Results can be measured not only in funds freed from litigation, but also in the degree of confidence engendered by a more transparent judiciary. As long as Malians are informed of their rights, which will be made possible through a number of existing and upcoming civic education activities, the impact of this Court on the 'rule of law' will be significant.

## V. IMPLEMENTATION PLAN

As discussed in the original PAAD, since 1985, when USAID first became involved in policy reform in Mali, the Mission has taken an active role in crafting and implementing the reform program. Assistance was never viewed as simply a quick cash transfer followed by some modest monitoring of macroeconomic variables. Rather, USAID-sponsored reforms were cast from the very beginning as a comprehensive program of assistance, and a vehicle for ongoing policy dialogue. This high level of involvement continues under PRED, and in this amendment.

This involvement, however, is selective. The Mission will continue, for example, to implement its performance monitoring program which yields specific information on policy reform, as well as macro-level data used for reporting and for the Mission's annual Assessments of Program Impact (API). Regarding the Mission support for the Project Coordination Unit (PCU), their capability of analyzing and processing information relevant to the reform program, and of ensuring the day-to-day operations of and accountability for USAID assistance, is confirmed. The PCU is a mature management unit, no longer requiring USAID to have an intensive "hands-on" management role. Where the Mission can make a further contribution to the PCU and the Ministry is through selective technical assistance, particularly in the areas of public finance and management information systems. Contracting for this TA is in the final stages.

Though the reforms to be undertaken under this amendment will be strengthened by this institutional contract, they will not depend on it. USAID already has in-house expertise which will facilitate policy dialogue; conduct analyses on the effect of reform measures on the business and judiciary communities, as well as on other targeted groups; and monitor the performance of the reform program. A USDH program economist, working with two highly qualified Malian PSCs (a legal specialist and a macroeconomist), comprise the core of the USAID management team. It is they who are largely responsible for identifying the reforms needed to improve commercial dispute settlement, and for working with the Ministries of Finance and Justice to establish the overall program, and the conditionality, action plan, benchmarks, and implementation procedures to support it.

USAID may also make use of specialized technical assistance through various Africa Bureau projects and initiatives. Funds have been set aside, for example, for buy-ins to the African Democratic Initiatives program, which can provide diverse legal services and democratization/decentralization support to African Missions. USAID may also call on the Bureau's IQC with Checchi and Company/Howard University for specific requirements in support of legal reform and the administration of justice. Associates in Rural Development (ARD) also have an IQC through the "Decentralization: Finance and Management" Project (DFMP), which the Missions has already accessed several times. Expertise may also be sought from the Private Enterprise Development Support (PEDS) project, and the new Africa Private Sector Support project, which is currently in design. Finally, given the quality of assistance the Mission received from the International Development Law Institute (IDLI) during the design of this Amendment, and the excellent training programs IDLI has already conducted for numerous Malian jurists and legal experts, the Mission plans to carry out with IDLI additional training and human resource development activities, and possibly further analyses of the Malian judicial system.

## VI. MONITORING AND EVALUATION

The Monitoring and Evaluation Plan elaborated in the original PAAD remains valid. This consists of monitoring (1) GRM compliance with the conditions for disbursing program funds; (2) the impact of specific PRED reforms; (3) the performance of macroeconomic and structural adjustment policies; and (4) the capacity of the Project Coordination Unit (PCU) to monitor and evaluate these elements.

These will not all be monitored at the same time or with the same intensity. There are two immediate concerns during the first 15 months when the reform measures are implemented. First is compliance with the conditions for disbursement. Though the individual measures to be satisfied for the three tranche releases are straightforward, the nature of the June and December 1993 tranches in particular will necessitate close tracking and documentation support from the PCU and USAID. Regarding the September 1992 measures, which will validate the competence of the Commercial Courts and permit them to adjudicate cases within their jurisdiction, the project will put tracking systems in place at the outset in order to get information on the case load of the Commercial Courts (and the presumed reduction of cases in the First Instance Courts); the kinds of businesses engaged in litigation; the nature of disputes and the amount of claim; the time it takes to resolve disputes, and the decisions of the court. These are the kinds of information that will help determine viability and efficiency of the Commercial Courts in the short-term.

PRED will also gather periodic information on consumer confidence and customer satisfaction. Interviews with litigants will give a preliminary and first-hand look as to how the process is proceeding. In the longer term this group will be key in determining the use of funds or other property that was put back into circulation or generated through dispute resolution. It will also be important to know how the business community at large perceives the usefulness and performance of the courts. For this the project will continue its dialogue with the 27 medium and large firms that served as the basis for this year's private sector interviews. This pool, which represents a cross-

section of business interests, will be invaluable in this exercise, as well as in providing information on economic trends, employment and investment, and the overall business climate in Mali.

Ascertaining why things happen — why courts are used or why they are not — is not a clearcut task. What is not done in or through the Commercial Courts, for example, can also be as significant as what is done. If the courts are efficient, if a debtor knows that laws are now being enforced and claims pursued, he or she might be more inclined to avoid the court and settle the claim either personally, or through arbitration. In this respect the measures PRED will be taking to further non-judicial mediation could take on increasing importance, and will warrant close monitoring.

Conversely, arbitration could also increase because of inefficiencies in the court system. What is important is being aware that although an ineffective court system will not bring in much business, an effective one can act as both an incentive and a deterrent to litigation. Just as we cannot use the number of court cases resolved and the amounts successfully litigated as the sole barometers of success, neither can we use the absence of court cases or an increase in non-judicial arbitration as indicators of judicial failure. How we resolve this interplay will be determined during implementation.

Getting Commercial and Administrative Courts up-and-running, with the necessary jurisdictional authority, procedural codes, competent professional staff, and adequate facilities, will likely take three years. The real impact of the courts' work, in terms of increased commercial investment, and increased employment and incomes, will be seen after that. Measuring this at a macro-level is discussed in the initial PAAD, in the M&E section "Private sector growth and employment impact indicators". As noted, we will need to be cautious in how dispute resolution is linked with jobs and income. At a micro-level, and as a field-level check, USAID, in addition to periodic discussions with the "Group of 27", will use its existing mechanisms for monitoring micro- and small enterprise development in both rural and urban areas. As this sector of the business community has been identified as the "engine for economic growth" which in the near future will fuel the Malian economy, and as it is a beneficiary of

this reform program, we need to monitor the dynamics of its evolution closely. This can be done at a national-level through the microenterprise component of the PYO Co-Financing Project (688-0247), for which a focus (PIVOT) group is in place and monitoring procedures being developed; and at a regional level through the Village Association component of the Haute Vallée Development Project (688-0233), for which monitoring systems are already functional.

## VII. FINANCIAL PLAN

### A. Budget and Financial Management

#### 1. Budget:

The original PRED PAAD authorized \$7 million for program (NPA) and \$7 million for project (PA) assistance. To date the Mission has disbursed the entire \$7 million in NPA, through a FY 1991 cash transfer; and obligated \$4 million in PA, \$2 million each in FY 1991 and FY 1992. This amendment will authorize an additional \$7 million in program and \$2 million in project assistance, for a new total of \$23 million. As noted in the Financial Tables (cf. Annex J), the additional project assistance is needed essentially to meet obligations for technical assistance and additional expenses for Commercial Court activities not anticipated in the initial PAAD. Funds to be applied for the purposes of this amendment total \$9 million -- \$7 million in NPA and \$2 million in PA (including the \$100,000 from the original PA).

Regarding program and project management, the new Ministry of Economy, Finance and Plan (MEFP) replaces the Ministry of Finance and Commerce (MFC) as the GRM implementing agency. This Ministry is basically the same as the former, with the same responsibility for the Program Coordination Unit (PCU) under the Mali Economic Reform Policy Project. The PCU has been reviewed semiannually since March 1988 through the 121 (d) certification process by the Mission's Controller Office. Furthermore, a Non-Federal Audit of AID's Grant to the PCU under USAID/Mali Economic Policy Reform Project, covering the period of September 17, 1985 to September 30, 1990, was conducted. The audit did not report any material weaknesses in the PCU's systems of accounting and internal control. (See audit report no. 7-688-92-03 -N. issued March 7, 1992). The Mission's Controller Office has worked with the PCU to implement all the recommendations concerning internal accounting control. These recommendations have been satisfactorily closed the Regional Inspector General. In addition to all

above, PRED funds will be managed under the supervision of the technical assistance as was for the former Mali's Economic Reform Policy Project.

## **2. Audit Requirement:**

Based on new audit requirements, PRED will conduct annual non-federal audits to assure that project operations are in full compliance with USAID financial management standards, and that financial management procedures accurately monitor project funds. Funds have been budgeted in the amount of USD 150,000 for the non-federal audits for the Life-of-Project.

## **3. Financial Management Assessments and Requirements:**

The project will also establish appropriate internal control systems within the PCU, comprised of (1) an adequate accounting system, supported by a chart of accounts and appropriate ledgers and journals, that will provide reasonable accounting control over assets, and items such as cash receipts and disbursements, petty cash, encumbrances, inventories, and payrolls; (2) appropriate accountability standards for the procurement, management, and control of inventories (i.e., equipment, vehicles, gasoline, fixed assets, furniture, supplies.); (3) procedures that track compliance with the conditions of the Project Grant Agreement concerning utilization of funds, with accurate and timely reporting mechanisms as required by USAID and the GRM; and (4) an organizational plan which provides clear delineation of functional responsibilities within the PCU;

## **B. Cash Transfers**

This PRED Amendment will be financed under the Development Fund for Africa (DFA). The program will use a special account established by the West African Monetary Union (WAMU) Central Bank, the *Banque Centrale des Etats de l'Afrique de l'Ouest* (BCEAO), in the name of the BCEAO for the account of the GRM, at the

CITIBANK-NY (111 Wall Street, NY, account No. 36-062-094). This dollar account, to be used solely for USAID/Mali cash transfers, is the exclusive BCEAO deposit facility for USAID/Mali dollar transfers to the GRM. It was established in December 1988 under the earlier Economic Policy Program (688-0240), and was subsequently used for cash transfers under the Basic Education Expansion Program (688-0257) and the initial Policy Reform for Economic Development Program (688-0246).

Regarding the transfer process, the US treasury will deposit dollar cash transfers to the above CITIBANK account upon instructions from AID/Washington. This will occur after the GRM submits evidence that (a) account number 36-062-094 already opened at CITIBANK NY remains active for dollar deposits under the program; (b) account number 305-072 remains open at the BCEAO branch in Bamako for deposit of the local currency under the PRED program; and (c) the GRM has met all programmatic conditions precedent to the particular disbursement, as specified in the Program Grant Agreement Amendment. The BCEAO will notify USAID/MALI in writing of the receipt of each dollar transfer from the U.S. Treasury within three days of such receipt by the CITIBANK.

Pursuant to existing BCEAO rules and procedures ratified by WAMU members, the BCEAO will then pay into the GRM special FCFA (*Franc de la Communauté Financière Africaine*) account opened by the MEFP in the books of the BCEAO, the equivalent of the dollars at the FCFA/dollar rate on the date of disbursement to the FCFA special account. The need for two accounts, one the dollar account and the second the local currency FCFA account, is a function of WAMU rules which require all dollars and other foreign exchange to be transferred to the WAMU pool. The equivalent in local currency is at the same time credited to the member country's account in the BCEAO. There are no notification requirements; transfer to the local currency account is immediate following dollar deposit. Upon transfer, the local currency is available to the GRM for use as general budget support per the Program Grant Agreement Amendment. Any interest that accrues in the special FCFA account will be used for the same purposes as the principal.

Implementation Letters for these accounts will require the GRM to notify USAID/Mali of all deposits to and releases from both the dollar and local currency accounts and to provide USAID/Mali with the monthly bank issued statements of transactions in both accounts within five working days after the end of each month. These requirements will allow for full monitoring by USAID/Mali of all deposits and transfers for both accounts. The USAID Controller will verify MEFP reports periodically through inspection of MEFP accounting records and reconciliation of documentation. This will include verifying the transactions in the two special accounts.

On the issue of co-mingling funds, the local currency account is only for the local currency equivalent FCFA transfers for the program covered by this Program Grant Agreement Amendment (688-0246). Accordingly, when there is an additional dollar transfer to the GRM by USAID under another project, the same account at CITIBANK will be used. For each program, however, the equivalent local currency FCFA transfer is made to a local currency account (at the BCEAO branch in Bamako) specifically and solely established for the program in question. In effect, the operating account is the local currency account which is separate for each program. The dollar account becomes only a conduit for the dollar deposit and transfer of local currency to the GRM.

Insofar as USAID/Mali (a) is notified by the GRM of all deposits to and releases from both accounts, (b) receives monthly statements from both accounts and is able to monitor all transactions; (c) confirms that the dollar account is used exclusively for USAID dollar transfers; and (d) that the GRM formally accepts the non-commingling obligation through signature of the PRED Grant Agreement Amendment, the assurances requirement for non-commingling will be satisfied.

**ANNEX A**  
**MACROECONOMIC POLICY TABLES**

## ANNEX A

Table 1. External Finance: Needs and Resources  
Million US\$

	1988	1989	1990	1991	1992	1993	1994
				Est	Program		
<b>Needs</b>	552.73	582.18	450.55	487.27	492.73	425.09	418.18
Deficit/current account excluding official transfers 1/	360.73	340.00	344.36	343.64	349.45	334.91	340.00
Debt amortization 1/	40.36	44.00	41.82	34.91	46.91	46.91	46.91
Repurchases and Repayments w/ IMF	26.18	26.91	18.18	9.82	6.55	8.73	9.82
Change in external payments arrears	70.91	58.18	0.00	-4.00	4.00	0.00	0.00
(net change -)							
Net external assets	57.09	122.18	60.36	130.55	85.82	34.18	21.82
Net (increase +)	-2.55	-9.09	-14.18	-27.27	0.00	0.00	0.00
Adjustments 2/							
<b>Resources (sources)</b>	552.73	582.18	450.55	487.27	492.73	425.09	418.18
Official transfers	263.27	238.91	224.00	301.82	274.18	229.09	237.09
Drawings on long term loans of the public sector (gross)	178.55	233.82	192.00	179.27	154.18	147.64	131.64
of which : World Bank	66.18	56.36	40.36	86.55	82.18	67.64	56.36
Short term Capital (net)	0.73	17.45	9.55	3.64	3.64	17.45	18.18
Debt rescheduling	83.27	84.36	13.82	2.55	2.55	2.55	2.55
Debt in renegotiation	8.36	0.00	0.00	0.00	8.00	0.00	0.00
Uses of IMF resources	18.55	7.64	27.27	0.00	28.36	28.73	29.09
of which : SAF	14.91	0.00	20.36	0.00	0.00	0.00	0.00
ESAF	0.00	0.00	0.00	0.00	28.36	28.73	29.09
Outstanding financing	0.00	0.00	0.00	0.00	21.82	0.00	0.00
Exchange rate (francs CFA against 1 SDR)	400.30	409.00	369.40	385.90	383.20	386.00	391.80

275 FCFA/US\$

Exchange Rate:

Sources: data provided by Malian authorities and IMF and World Bank  
estimations and projections: PFP, March 1992

1/ After debt forgiveness

2/ Including the adjustments for reevaluation, errors and commissions.

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ANNEX A

Table 2

	Total amount at End of December 1991 Preliminary figures	Variation from end of December 1991 to End of December 1992			
		March Indicative Benchmarks	June Criteria	Sept	Dec
<b>I. Performance Criteria and Financial Benchmarks 1/</b>					
	(In Million Dollars)				
Internal Bank Credit 1/ 2/	315.6	60.0	40.4	5.5	-2.5
State Bank Credit	-1.8	1.8	-7.3	-12.7	-24.4
Minimal Cumulative Revenues	389.1	92.0	199.6	293.5	421.5
Minimal Cumulative Reduction on Government overdue					
External	--	--	--	-4	--
Internal	8.4	--	-1.5	-5.1	-8.4
<b>New External Debts</b>					
From 1 to 12 years	--	--	--	--	--
Less than 1 year	--	--	--	--	--
<b>II. Performance Criteria and Structural Benchmarks</b>					
(Dates)					
<b>a. Performance Criteria</b>					
1. Adoption of a new Commercial Code				June 30, 1992	
2. Extension of VAT to resales				June 30, 1992	
<b>b. Benchmarks</b>					
1. Adoption of a new Labor Code				June 30, 1992	
2. Verification of the commitments of liquidated or privatized public firms and settlement through crossed debts compensation				June 30, 1992	
3. Completion of the liquidation of two public enterprises (SEPARA and TAHALI) and of the privatization of COMATEX.				June 30, 1992	
4. Completion of the development of action plans for the rehabilitation of "Institut National de Prévoyance Sociale" (INPS) and of the "Caisse de Retraite du Mali"				July 31, 1992	
5. Completion of an operation program for the "Office du Niger".					October 31, 1992

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## ANNEX B: ANALYSIS OF EXPORT TAX ELIMINATION

In their follow-up cable (see attachment for 91 STATE 259776) to the PRED PAAD, AID/W requested the Mission to undertake a further detailed analysis of the effects of the elimination of the export tax on the Malian economy. This Annex responds to that request.

### A. Recent Developments in Malian Exports

PRED supported the elimination of exported taxes, which went into effect on February 1991. This measure was undertaken to increase revenues from exports, within the context of the ongoing structural adjustment program and efforts to stimulate economic growth. Though it is still too early for this reform to have had an impact on decisions of entrepreneurs, on the economy and on exports, the growth of exports in 1991 is nonetheless encouraging. Between 1990 and 1991 total exports are estimated to have grown by 9% while cotton, livestock and gold grew by 12%, 11% and 14%, respectively. The other exports shown in Table 1 remained constant, except for skins and hides which declined by 10%.

Last year's political disturbances and resulting economic losses may have accounted for the 44% decline of the "other" category, and skins and hides. High yields in cotton offset negative trends in the world cotton price, with gold continuing good performance on the export markets.

Between 1985 and 1990 the average growth of exports was 3% with a high of 15% between 1988 and 1989 and a low of minus 11% between 1985 and 1986. In the next three years exports are expected to grow by an average of 8%, with the higher rates expected as the economy adjusts to an improved policy environment.

### 1. Potential Impact of the Elimination of Export Taxes

As the analysis in STATE 259776 points out, the major source of projected benefits from the elimination of export taxes is increased export earnings. Most of these benefits were projected to accrue in the form of increased returns to herders and exporters. Elimination of export taxes will affect allocation of resources other than those currently exported. Therefore the composition of domestic demand, production and imports are also used as guides in the selection of activities to be included in the analysis.<sup>1</sup>

#### a. Activities Selected for Analysis

Tables 1 through 5 summarize Mali's exports, imports, production, consumption and comparative advantage, respectively. Table 1 shows the distribution of Malian exports from 1982 to 1991 as well as IMF/BCEAO projections to 1996. It also selects Mali's main exports (cotton, livestock and gold) for analysis. Groundnuts were also selected due to their past importance as a cash crop. Coarse cereals are included for their importance to

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<sup>1</sup> To carry out the proposed comparative static analysis by estimating the producer surplus generated by the reduction of export taxes requires that all production and marketing aspects of a given Malian export be analyzed. To obtain the relevant demand and supply elasticities requires price and quantity information on all the inputs in other the production and marketing chain, as well as on the availability and prices of competitive products from other suppliers. It also requires information on the population and income of potential buyers in domestic and export markets. This information is not currently available.

domestic production and consumption, their export in good agricultural years (although this is not officially recorded), and because increased productivity of livestock will likely lead to increased demand for coarse cereals for animal feed. Mali's main imports (textiles, leathers and milk) are retained because they are possible import-substitution candidates. On the basis of the comparative advantage information (Table 5) we have also selected agricultural equipment, which was recently identified in the GEMINI microenterprise study as a potentially promising activity.<sup>2</sup>

Table 1 shows that since 1985, the share of exports in GNP has been remarkably stable at some 13% of GNP, attaining \$364 million in 1991. Cotton is the main export followed by livestock and gold. As a group they provided 90% of exports in 1991, with 49%, 27% and 14% respectively. The share of exports from Mali's industrial production has been consistently below 10%. The small share of industry in production and exports should provide scope for substantial future increase in the industrial contribution.

Cotton at 8% of cultivated land will probably continue to be a most important cash crop and basis of economic activity in Mali. It provides significant employment and income through both agricultural and industrial production, as well as contributing to exports and export substitution.

Livestock is also vital to the Malian economy in production, exports and as potential source of raw material for secondary activities. Between 1985 and 1989 it accounted for an average of 19% of GNP and 28% of exports, with a 27% share in 1991. A recent analysis of regional market demand for livestock and livestock products concludes that "meat is likely to experience a much greater demand in the medium to long term as population continues to grow and as West African economies begin reaping the benefits of structural adjustment programs."<sup>3</sup> Mali will enjoy a considerable comparative advantage in exporting livestock to the Côte d'Ivoire, not only in terms of prices but also in terms of consumer preferences. Most of the consumers prefer fresh meat due to cultural and religious reasons. Mali could also increase its regional competitiveness by further streamlining export procedures, thus reducing export costs. Livestock should benefit from growth of cotton through increased supplies of cottonseed cake, and in turn raise demand for coarse cereals needed to produce higher value-added in livestock.

Gold extraction and exports is also well established. In 1987 a survey of Mali's mineral resources, prepared with United Nations Development Program assistance, found that Mali had good albeit little-exploited mineral potential. Gold accounts for some 80% of mining activity. SOGEMORIS—the Société des Mines d'Or de Kalana, a wholly government-owned enterprise managed with technical assistance from the U.S./S.R.—started the mining of gold at Kalana in 1985. Although the total reserves of the Kalana mine are estimated at 35 metric tons of gold, production declined from 0.6 ton in 1986 to about 0.5 ton a year in 1987-89, and dropped to 0.1 ton in 1990, as the mine was plagued by flooding problems and a lack of maintenance of the physical plant. The Société des Mines d'Or de Syama, a mixed company with participation of the Malian Government and an Australian-U.S. joint-venture (BPH-UTAH) started operating in 1990. The reserves of the Syama mine are estimated at 100 metric tons and production in 1990 reached two tons. Two other gold deposits, at Loulo and at Sadiola, are expected to be exploited in the near future. Small-scale gold production by the local population is estimated to amount to some two tons annually.

Groundnuts occupy 5% of the cultivated land. Their previous importance as a cash crop in the past may provide some promise for the future. Groundnuts are cultivated in the southern and western regions of the country. Official producer prices were discontinued in 1983/84. In order to revive production, a public marketing agency started to pay guaranteed prices to farmers in 1984/85. The GRM has improved its extension services for seeds, equipment, and inputs. These measures, combined with improved weather conditions, resulted in continuing

<sup>2</sup> See "Mali Microenterprise Sector Assessment and Strategy: Strategic Options for USAID". GEMINI. Development Alternatives, Inc. October 1991.

<sup>3</sup> Shapiro, Ken, "Malian Animal Exports and the Demand for Meat in Coastal West Africa." Animal Productivity and Export (APEX) Project Paper. USAID/Mali. March 1992.

increases in groundnut production--from 78,000 tons in 1987/88 to 132,000 tons in 1989/90, and further to 137,000 tons in 1990/91.

Coarse cereals occupy over 70% of Mali's the cultivated land, with millet, sorghum, and maize occupying 38%, 27%, and 5% respectively. Millet and sorghum are the most important crops in Mali, for their importance in consumption, employment and income. Maize has also been growing in importance. The demand for and profitability of these three crops could increase significantly with the growth of population and increased demand for livestock feed. Data on regional trade are difficult to obtain, although it is known that these exchanges are subject to large fluctuations due to the climatic conditions and to frequent changes in policy.

A recent study on cereals regional trade found that with consistent regional policies, cereals trade is viable. With domestic resource costs of between .38 and .98, Mali could exploit its comparative advantage and satisfy the demand for coarse cereals in Upper Guinea and Eastern Senegal. The study also found that Malian rice production is competitive in Mali because of the natural protection that Mali isolation affords.<sup>4</sup> In 1989-90 regional cereals trade was dominated by Malian exports of coarse cereals with the total estimated between 70,000 and 90,000 tons.<sup>5</sup> Though the lack of data on the extent to which they are exported makes it difficult to be precise, sorghum and millet are nonetheless important in regional trade with Mauritania. With improvements in quality, millet could have an important and even large market in the Côte d'Ivoire.

Mali imported \$38 million of textile and leather products in 1989. Mali also has the raw material needed to produce both and could therefore increase domestic value added and employment by processing a larger share of its cotton. In 1991 Mali exported \$178 million of cotton fiber and \$5 million of cotton threads. From a total cotton fiber production of 137 tons in 1991, 114,000 tons were exported and 23 tons used domestically. Difficulties experienced by two of Mali's textile companies will mean some degree of caution. However, with the large unemployed labor force, recent changes in the Labor and Investment Codes, upcoming changes in the Commercial Code, and a more efficient legal system, the viability of investments should improve.

In 1989 Mali imported \$10.2 million of milk and milk products. Given the importance of livestock in Mali's economy, the size of the import bill of dairy products is perplexing. Grant and Hanel selected dairy products such as dried and condensed milk as one of the potential import substitution candidates<sup>6</sup>. The report noted that there was one milk plant in Bamako producing at half capacity using powered milk imported from the EEC at subsidized prices, and losing about \$1 million per year. This was in spite of or because of its monopoly over the processed milk market.

Although milk was sold locally at \$.55 to \$.73 per liter, Mali Lait (Mali's largest milk and milk-products producer) paid \$.87 per liter to its suppliers, with seven milk producers providing 25% of the 4,000 liters Mali Lait was able to buy at the subsidized price. The remainder was supplied by 278 subscribers providing 10 to 20 liters per day. Grant and Hanel estimated in 1988 that dropping the producer price to \$.55 per liter would make it cost effective both to process the milk and to open the market to new sources of supply.

<sup>4</sup> "Incitations, Avantages Comparatifs et Echange: Régionaux de Céréales dans le Sous-Espace Ouest. ARD. April 1991.

<sup>5</sup> "Echange Céréalières et Politiques Agricoles dans le Sous-espace Ouest". INRA-IRAM-UNB, April 1991.

<sup>6</sup> "A Study of the Business Climate in Mali" by William Grant and Peter Hanel, September 1988.

The agricultural machinery subsector consists of roughly 2300 microenterprises, 5 medium-sized enterprises and one large enterprise.<sup>7</sup> Traditional blacksmiths, who number some 18,000, earn an average of \$12.55 per day in the Bamako area, and \$3.03 per day in rural areas. They do not have access to informal capital; 60% of their sales is on credit. They face strong competition from modern blacksmiths whose products are of superior quality and competitively priced. With many traditional blacksmiths trying to become modern, which can be achieved through training and modest equipment, the size of the modern sector is expected to increase.

Given the importance of agriculture in Mali's economy, the linkage between farm machinery (hand tools, ploughs and tractors) and agricultural production is one of the criteria for selecting this activity. Since only 33% of farmers currently use animal traction, the scope for increased use of agricultural machinery is broad. The annual value of the overall market for agricultural machinery is estimated at \$28 million. Some 60% of primary sector output is generated by the traditional daba (hand tool), with the remainder using animal traction or motorized equipment.

Farming systems research in Mali indicates that under a cash crop scenario, the use of oxen plough and weeder is highly profitable. The value of this market is estimated at \$7.6 million annually, with more than 85% of demand met by local artisans and industrial production. Motorized equipment is used mostly in the CMDT cotton zone and the Office du Niger rice zone, with at most 2% of the total land cultivated with tractors. The motorized equipment market which includes tractors, mills, threshers and pumps is estimated at \$3.5-\$7 million annually.

#### b. Economic Analysis

Using these activities as the base, potential growth is estimated both of production and exports, based on the elimination of export taxes and improvements in the regulatory environment. Table 6 summarizes the economic analysis of the elimination of export taxes, while Table 7 presents background information on the selected activities.

The impact of the elimination of export taxes on Mali's economy is positive. With the basic assumptions shown in tables 6 and 7, the internal rate of return (IRR) is 55%, and the net present value (NPV) using 12% as the discount rate is \$24.5 million. Alternative simulations around the basic scenario show the project benefits to be very stable with respect to changes in the parameters<sup>8</sup>. In the alternative one scenario, the IRR increases to 62% as the NPV increases to \$28.2 million. Alternative 2 has an IRR of 48% and a NPV \$16.4 million.

To judge the reasonableness of these summary values we go behind the aggregate values into some of the selected activities on which the aggregation depends<sup>9</sup>. Only the currently legally exported activities benefit directly from the elimination of export taxes, even though illegal exports would also benefit by not having to pay past costs incurred in smuggling. In this respect the benefits to the economy are underestimated, with their distribution biased toward the larger legal ones.

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<sup>7</sup> See GEMINI, *op.cit.*

<sup>8</sup> The basic scenario depends on the assumptions and parameters of Table 7. The alternative scenarios arise from changing the parameters of supply and demand response as well as those on the employment characteristics of production. Alternative one is the more pessimistic one in which all the parameters are 10% of their value in the basic scenario. Alternative two keeps the values of the basic scenario for employment and demand but increases the supply response by 50% that of the basic scenario.

<sup>9</sup> It is important realize that the evolution of the economy in response to the broad reforms underway is complex and cannot be fully predicted even with more and better data, and more complete analysis. Extrapolations are based on the known structure of the economy, which will change in response to new incentives and opportunities.

The biggest and more transparent export, cotton is expected to benefit the most. Tax savings of 8% result in an initial transfer of over \$9 million from taxes to the economic agents. Cotton exports are expected to increase by over \$900,000. This initial increase in income arising from developments in cotton is expected to generate additional economic activities of over \$6 million.

The other selected exported products give similar benefits, adjusting for their current relative contribution to exports. With regard to potential export substitution activities, textiles and leathers are most important. An estimated \$1.7 million is expected to substitute for current imports, while additional income from these revenues would be \$1.4 million. Agricultural machinery substitution would generate \$270,000 additional revenue initially with a subsequent \$160,000 derived income.

The employment implications of this reform are also significant. The simulations show that in the basic scenario 15,185 jobs are created while in alternatives one and two, 12,861 and 16,448 jobs are created, respectively. The relatively higher sensitivity to the employment parameter shows the extent to which the project depends on the ability of the economy to respond to opportunities. The connection between the decision to increase production and employment is stronger to net benefit, which is net of the related costs.

The overwhelming impact from these selected export activities, in which cotton, livestock, textiles and leather will contribute over 75% of the expected increase in employment<sup>10</sup>, will be the creation of rural jobs, primarily among farmers and herders. It is estimated that only some 10% of the employment created will be in urban areas.

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<sup>10</sup> Note that all this employment will not be solely in these activities. The employment arising from increased domestic demand due to increased income will be distributed to other items produced domestically. The distribution of employment generated from these activities is shown at the bottom of Table 7.

**ANNEX C**

**PRIVATE SECTOR INTERVIEWS**

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## ANNEX C: PRIVATE SECTOR INTERVIEWS

As discussed in the main text, the PRED program was designed as the next logical step in improving the Malian investment climate. In this regard, the objective of this year's PRED program assistance is to move further down the path to direct encouragement and support to the private sector. As the PRED program has its roots in the dynamics of private sector activity, there is a great need to understand, as thoroughly as possible, the Malian business climate.

Independent analyses may be useful for determining the constraints to this growth, but in the final analysis there is no better source for appreciating the situation than the Malian private sector itself. Although the Mission had sponsored private sector surveys, the most recent conducted by BECIS<sup>1</sup> in 1989 and by Grant and Hanel<sup>2</sup> the year before, the need to update them had been current within the Mission for some time and also endorsed at the PRED reviews in Washington. With this in mind, the Mission undertook a series of interviews with leading Malian industrialists, traders, financial intermediaries and others, with a view toward:

- (1) obtaining a better and more structured view of businessmen's attitudes toward the current investment climate;
- (2) constituting of a permanent private sector consultative body that Mission and PRED program personnel could use as a sounding board; and
- (3) following up on the 1989 survey by BECIS of the effects of the first round of EPRP reforms on the private sector.

### 1. Description

The program of interviews took place in January, February and March 1992. The survey involved the administration of a questionnaire by a team of two to four representatives from the Mission, and on occasion from the Commercial Office of the Embassy. The team formally interviewed 27 firms, all in the medium to large category. Although some firms have as few as three permanent employees, even these have many day laborers, such that they are larger than they appear. Some of the firms are in the formal sector, but their size is such that they are classified as small. Firms were categorized in accordance with the practice of the Ministry of Labor. Small firms have five or fewer permanent and temporary employees, medium-size firms have between five and twenty, and larger firms have more than twenty. The largest firm in the sample reported having 250 employees. As noted, there is no accepted definition of micro-enterprise, in part because the micro-entrepreneur is likely to belong to the informal sector and thus not declare the number of full-time salaried employees (see the discussion of this below).

Firms in Mali, as elsewhere, can be described as belonging to the formal or informal sector.

#### A. How the survey was conducted

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<sup>1</sup>For a discussion see Dat Bui and Pierre de Raet's "Fiscal and Regulatory Reform Impact Assessment Study", May, 1989.

<sup>2</sup>William Grant and Peter Hanel, "A Study of the Business Climate in Mali", September 1988

a. Formal sector

The formal private sector employs 9% of the active population. Some 21% of these form the industrial labor force. The "mixed" sector, with 26% of the labor force, contributed 30% to the gross domestic product in 1989, as compared with 50% for agriculture.

The latest industrial census, published in July 1991 by the Ministry of Finance, lists 186 enterprises within the "modern industrial sector", mostly located in the Bamako District, followed by the Sikasso (13%), Ségou (11%) and Koulikoro (8%) regions. Concentration has taken place in the food, beverage, tobacco, textiles, clothing and leather industries, accounting for about 60% of all jobs. In spite of the partially divergent interests between manufacturers and the commercial operators it is instructive to note that "most industries were set up by Malian traders".

b. Informal sector

The informal sector is thought to account for 50% of urban jobs and generate more income than the entire farming sector. It includes services connected with cars, transportation, or laundries—businesses which do not appear in economic statistics, such as door-to-door selling, retailing of traditional craftwork and manufactured objects, and smuggling.

According to DNSI 1989 estimates, the informal sector accounts for 63% of economic activities and, according to the traditional ILO definition, "includes small independent businesses, with or without employed workers, having low organizational and technological standards, whose main purpose is to create jobs and sources of income for the people concerned, insofar as such businesses are conducted without official approval and elude the control of administrative supervisory bodies in charge of enforcing the regulations on taxes and minimum wages as well as similar enactments concerning fiscal matters and working conditions; they are underground activities".

The ILO definition, although comprehensive, makes it difficult to estimate the number of informal firms and their contribution to the economy. A clear line can be drawn between those who pay the *patente* (annual business tax) and those who do not. This is the definition used by a leading fiscal and accounting services firm in Mali, which is currently researching the question. The great majority of firms—estimated at around 90%—are in the informal sector, but their size and the sophistication of their operations varies widely. Some of the informal firms are quite large, employing hundreds of workers. One or two of the commercial firms in the survey, although quite large, could be considered as belonging to the informal sector.

c. Commercial and Industrial Firms

The majority of formal sector firms in Mali are commercial in nature rather than industrial. There are an estimated 400 formal commercial firms in Mali and perhaps 35 large formal manufacturers<sup>4</sup>. The commercial firms interviewed are principally wholesalers (*grossistes*). Most are engaged in importing cereals, tea, sugar, cloth and other consumable household goods. Some are specialized in a particular product line by virtue of an exclusive distributor's license. Nearly every one of these imports other things as well. There are a few exporters, but very few firms gain their livelihood principally from exporting.

<sup>3</sup>Club du Sahel, *Le Secteur Privé au Mali*, 1989.

<sup>4</sup> The universe of industrial firms, of which the GRM records 186, includes bakeries and a series of smaller enterprises.

The firms were selected for this survey not in proportion to their representation in the economy but principally as a function of their expected ability to produce useful information for this analysis. After interviewing several large commercial (import-export) firms it became clear that commercial firms' views were sufficiently homogeneous that further interviews would not provide additional information. Further, many questions, such as those relating to the Investment Code, were not applicable to their operations. The sample was therefore changed in midstream and more industrialists added. Names were chosen from the Malian Business Registry (*Annuaire des Opérateurs Economiques*), from a client list maintained by the Embassy's Commercial Office, and from suggestions that surfaced from the interviews themselves.

All but a few interviews were held with the CEO or equivalent. In many cases the CEO and a chief advisor (chief accountant or factory manager) were both present. In one case five persons were present for part of the interview, including an outside management consultant who happened to be in the office when the interview began.

As can be seen in the interview results, there is a marked difference in outlook, perception of the role of the government, and suggestions for the future, among traders and industrialists at all levels. Apart from other factors, this difference is reflected in the tensions within the Chamber of Commerce (*Chambre de Commerce et de l'Industrie du Mali*, or CCIM), which came to a head during the November *Etats Généraux*. Industrialists complain that their interests are not well represented by the CCIM because traders are over-represented. The difference in approach permeates the interviews as reflected in the responses.

## 2. Questionnaire

The questionnaire contained fourteen categories of questions (cf. following table). As a rule all questions were asked of each firm, but some were deemed inappropriate for certain firms. For example, questions about export taxes were not asked of firms who had no involvement in exporting. As the interviews progressed and patterns emerged in the way in which questions were answered, the team reformulated the questions or inserted them earlier or later in the interview. The respondent was encouraged to guide the discussion and to speak of items of interest to him (or, in one case, her). A summary of the results is as follows.

### Question 1 : Nature of the Enterprise

According to the definition above, all firms interviewed were in the formal sector. Seven of the firms, around 25%, were commercial in nature. One was a service firm (3% of the sample), and the remainder were large and small manufacturers. There was a wide variation in products manufactured and of technology used in the manufacturing process, ranging from artisanal activities to sophisticated plastics and chemicals.

Firm sizes ranged from two employees to 300, with an average of 62. The smallest firms had few permanent employees but many day laborers or contractors. For example, the smallest firm with two employees hired as many as 200 day laborers. Although firm size is small by international standards, these firms were among Mali's largest.

Of the 27 firms that comprised the sample, five were run or directly managed by expatriates with some degree of Malian participation. One small firm and one large one were run by families originally from the Middle East who had been in Mali for two generations. Only one firm appeared to be fully owned and operated by a single expatriate. All but one firm were run by men. The woman respondent had been a participant in the AID-funded voluntary early departures program. Most of the businessmen were literate, but one of the largest traders was not, and his French language ability was very limited.

1. What is the nature of your enterprise? How many employees do you have, both here and at other locations? Who are your clients?
2. In a general way, what do you think of the current investment climate?
3. What are the main factors blocking the expansion of your enterprise?
4. What do you think of the revised Investment Code?
5. What relation do you have with the commercial banks? Do you obtain working credit? What is required for collateral?
6. What reform would you like to see the government undertake?
7. Do you think that the *Etats Généreux* took your needs into consideration?
8. What do you think about the reorganization of the Chamber of Commerce and Industrie? Are you in favor of the creation of a Chamber of Industry?
9. Have you heard of the Commercial Court (*tribunal de commerce*)? Would you be disposed to use its services?
10. What is your view of the *Direction Nationale des Affaires Economiques*? Has their role changed visibly since March 1991? In what way?
11. Were your operations affected by the violence of March?
12. Are you aware of the AID-sponsored structural adjustment reforms (i.e., the EPRP-financed reforms)? Have they helped or hindered your activities?
13. What do you think of the ongoing privatization program? Is it being correctly implemented?
14. Does your firm export? If so, did the abolition of export taxes have a favorable impact?

b. Question 2 : Current Investment Climate

This question produced the longest and most instructive responses of the survey, probably because it was the first question asked and among the most open-ended.

Businessmen were generally critical of the fiscal and regulatory system, although some conceded that it had improved somewhat over the last few years. Taxes are too high, respondents generally remarked, in comparison with those of neighboring states. This remark applied to customs duties, income taxes, indirect taxes and nuisance taxes.

It is instructive that every interviewee (27 of 27) complained that taxes were too high. Those involved in importing and exporting either intermediate or final goods said that customs duties are too high or out of sync with those of neighboring countries, causing distortions. Even those who acknowledged that some decreases have taken place maintain that tax rates are in general high even though tax decreases have taken place. It is striking, though, that when the question was asked later, most did not cite high taxes as their chief problem.

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Some respondents suggested that tax pressure is very high due to the small relative size of the formal sector which bears the tax burden. The tax code is clearly complex and information is hard to come by, permitting abuses by tax agents. Enterprises of a certain size can procure the services of tax experts to assist them in the assessment of their taxes, and the largest firms do, but that is not the case for the majority of businesses. The complexity of the code therefore increases transaction costs with the government and is an incentive to remain in the informal sector.

The tax authorities frequently close down businesses for nonpayment of taxes. This situation, in addition to creating a bad reputation for the firm, interrupts its activities and increases their difficulties. Many firms deplored this procedure.

Customs duties are another element much disparaged by businessmen. *Commerçants* complained about the high level of the rates which makes their products more expensive than those smuggled in. Industrialists also are concerned about the high rates because it increases the price of imported raw materials and other intermediary products. Many firms gave examples of unfair competition resulting from customs rates differentials between West African countries.

### (1) Fiscal pressure

Although all named taxes as a problem, the frequency with which this topic arose, and the fact that it was not later cited as a principal constraint to expansion, may be explained by the composition of the sample. In general, manufacturers cited regulatory and legal problems as more of a constraint to expansion than did commercial firms. Larger firms mentioned taxes less often. All cited the GRM's inconsistency in the application of regulations and taxes, saying "*ils ne sont pas sérieux*".

Wholesalers and industrialists are subject to slightly different fiscal regimes by virtue of the difference in their businesses. The TVA is paid by larger firms<sup>5</sup> but, as was expected, the smaller firms continue to pay other taxes (BIC, IGR, *patente*, *mainmorte*, *impôt sur le revenu foncier*<sup>6</sup> and so forth). There is an assessment made by the tax authorities (the *Direction Nationale de l'Industrie, DNI*) based on a door-to-door survey in every neighborhood. The DNI produces an assessment (*émission*) which the firm may or may not eventually pay. The end result is a low tax yield and an erosion in respect for tax authorities.

Although excessive taxation and import duties were cited by many as an obstacle to development, nearly all cited the problem of smuggling and contraband. Interestingly, manufacturers cited this problem as often as importers: both are affected, commercial firms because of direct competition in importing and manufacturers because of products produced elsewhere subject to lower tax regimes.

Businessmen are quite specific in their analyses of the problem. One industrialist defined the difference between *fraude* (smuggling via falsification of papers) and *contrabande* (which also means smuggling). According to him, *fraude* is an unethical practice characterized by underinvoicing, bribing border guards, and similar practices. *Contrabande*, on the other hand, consists in avoiding passing through the formal import system entirely. Both are bad, but *contrabande* is worse because it produces no benefit to the State whatsoever. *Fraude* produces at least

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<sup>5</sup>One quite large firm we interviewed does not pay the TVA, as it benefits from a special *agrément* under which it continues to pay the old IAS.

<sup>6</sup>BIC: *Bénéfice industrielle et commerciale* (business profits tax); IGR: *Impôt général sur le revenu* (income tax); *Patente*: Business license; *mainmorte*, a tax on plant and productive equipment; *impôt sur le revenu foncier* (property tax).

some revenues, even if they are partially absorbed by dishonest customs officials. *Courraban* has increased markedly since the events, largely because the SGS<sup>7</sup> has been so effective in reducing false invoicing. This forces firms to avoid the borders and smuggle clandestinely. SGS was criticized for that reason.

Despite these concerns, the smuggling problem will not be solved by simple manipulation of the customs tariffs. One case in particular illustrates this point. A certain Malian manufacturer produces a food product under license from a European firm. As it is a widely consumed product, the European parent has licensed one firm in each of several Sahelian countries to produce the product. However, since several of the neighboring countries have weak currencies, there is a strong pressure for smuggling. Here the product is identical in each of the target countries and the import duties are more or less the same.

c. Question 3: Factors Blocking Expansion

The range of answers to these questions, in order of frequency, were (1) limited market size, (2) difficulty of access to financing, (3) smuggling, (4) tax administration, (5) lack of infrastructure, particularly for transportation, (6) high energy prices, and (7) lengthy administrative procedures. As noted, the size of the market was by far the most frequently cited. It is interesting to note that the level of taxes was not considered a factor blocking expansion. One presumes that firms in fact pass on tax payments as a cost of doing business. In this perspective, it is clear why market size and similar items were so frequently cited. It is also interesting to note that government behavior (items amenable to modification by the government) was implicated only in the fourth and seventh places.

d. Question 4: Investment Code

Surprisingly, the Investment Code was not an item of much concern to anyone interviewed. There had been a revision in the Code in 1991 but no two persons interviewed seemed to agree on what the terms of the new Code were. Two interviewees stated that it did not matter what was in the code since each new investor obtained his own *agrément* under special terms with the Ministry of Finance. Two firms suggested that the Code should be revised to permit unlimited duty-free import of productive equipment, and another stated that this was already the case.

e. Question 5: Commercial Banks

Financing was frequently cited as a problem, and some named it as constraint to expansion of business. Even some of the enterprises which rely on self-financing put forward the difficulty of obtaining loans from the banking system.

Banks are blamed for not providing an adequate level of financing for private sector projects and donors were encouraged to press them to do so or to provide credit lines. Some blamed the banks' insistence on extraordinary levels of collateral. Others did not even consider banks as sources of working capital.

Some firms reported no problem with financing. It seemed that firms who were self-financed and those who had recently benefitted from credit programs were less likely to complain about the problem. What became clear during the interviews is that the bank-client relationship is a complex subject, that it almost certainly varies from one business to another, and that it is not amenable to simple regulatory and legislative solutions. There is a further discussion of the credit question below.

<sup>7</sup>a Swiss firm, the Société Générale de Surveillance, which has been hired to inspect all imports to Mali and verify their value.

f. Question 6 : Proposed Reforms

The most frequently suggested reform (cited by seven firms) was to increase access to financing. Interestingly, two respondents suggested that what was most needed was for the government to follow through on what it said. There is a perception that the GRM speaks well but does not carry out the programs it proposes.

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Consistent with other answers, some firms urged the GRM to provide increased protection against smuggling. One suggested that donors help to increase civil servants' salaries.

In summary, most of the responses reflected a view that foreign donors can serve as a useful interlocutor, a third party in discussions with the government. It is possible that the frequency with which financing was offered as a response was because the respondents knew that the interviewers represented a donor agency.

i. Question 7 : Etats Generaux

The *Etats Généraux du Commerce et de l'Industrie* (hereinafter EG) was a series of intensive meetings held in Bamako in November 1991 for approximately one week. The EG brought together a wide variety of firms, large and small, to discuss the constraints to private sector development, and propose methods for addressing them. The EG was subdivided into working groups on a number of relevant topics, such as fiscal issues and taxation, legal and regulatory matters, and the regulatory environment. Each working group contained a representative from the government (usually the Ministry of Finance) as well as private sector representatives. The conclusions they reached were viewed as representing the views of both the private sector and the government.

Most of those interviewed believed the EG meetings were very useful and did indeed represent their interests. A surprising number (around twenty of the firms interviewed) had directly participated in the debates, and those who had not had either attended some sessions or listened on the radio. Although all respondents were familiar with the EG, there were one or two firms who did not. Most believe that the recommendations should be enacted as written and that the GRM is procrastinating in studying and implementing them.

It should be noted in discussing this, though, that a good number of the EG recommendations concerned forgiveness of previous debts owed to the BDM<sup>a</sup> and other official financing agencies, a topic that donors would not wish to become involved in. This feature reduces the usefulness of the EG document as a clear statement of proposed reforms.

<sup>a</sup>A plethora of unpaid debts to the central development bank (the Banque de Développement du Mali) brought about its failure in 1988, with severe consequences for Mali's banking sector. Many of those large debts remain unpaid, despite valiant efforts by the GRM to collect them.

j. Question 8 : Chamber of Commerce and Industrie

This topic provoked a variety of reactions, mostly unfavorable. The division between commercial and industrial firms was clearly noted here, for the CCIM is viewed by a number of manufacturers as the tool of the *commerçants*. In one sense, this is reasonable, as the great majority of members belong to the commercial sector.

The suggestion most often made to improve the organization was a change in leadership—the lack of direction as more a matter of personalities than anything else. Two of the firms who argued most strongly for the unity of the CCIM were in fact active members of the CCIM board of directors. Among those who were not members of the board, the criticism was raised that its directors benefitted unfairly from their positions. As an example, one firm's president suggested that the CCIM's leadership was benefitting personally from announcements of business opportunities which should have been given general distribution, but instead were used directly by the officials. One expected result of this survey was to be the recommendation that the CCIM be dissolved and replaced by a purely private sector entity. The reality turned out to be much more complex. To begin with, the Chamber of Commerce and Industrie (CCIM) in Mali is based upon the French model. It serves an advisory role to the government rather than as a vehicle for purely private sector interests. As such, it is not merely a technical matter to dissolve the agency, since it is at base a part of the Ministry of Finance. Furthermore, there are strong hidden passions and a long history of dispute under the surface; these elements are only partly understood by outsiders.

k. Question 9 : Commercial Court

All but two or three firms had heard of the commercial court, and most knew it was functioning. Most had had some experience with litigation, or dealings with the formal legal system. All firms asked had a negative view of the civil court (*tribunal civil*), perceiving it as controlled by a small interest group and not a good forum in which to receive a fair trial. They felt that the charges assessed by the court in order to resolve disputes were excessive. Two firms spoke of a fee, a function of the value of the case, levied by the court against the plaintiff.

Without exception, everyone interviewed preferred to solve his problems *à l'amiable* rather than have recourse to the courts. This is for two reasons: first, that it is imperative to maintain amicable working relations among all parties. In a small country like Mali, where many people know each other, one cannot afford not to be on good terms with other businessmen. Secondly, it costs a lot to go to court and those are charges that should be avoided at all possible. No one would go to court over a small claim. When pressed to name a figure, one person suggested that a cutoff might be around 10 million CFA — a matter of less value than that would not be worth pursuing in court (in fact, some pending cases in court are smaller than that).

Most answered, quite understandably, that it was undesirable to go to court at all. Those who had gone for one reason or another had had unpleasant experiences. Businessmen saw the major advantage of the Commercial Court as being run by businessmen (there are two advisors appointed from the business community to assist the magistrate), and not by civil servants. They would be more likely to render a fair decision, in large measure because the judges are businessmen like themselves and hence understand the issues better. Many also felt that the courts could assist them in freeing up litigated funds. One respondent stated that the Commercial Court was preferable to the civil tribunal as it might be less expensive to bring a case there, since it was possible the fee charged could be lower.

With regard to the administrative tribunal, most recognized the name but believed that it was not yet operative. Among the firms with whom the question was discussed at greatest length, though, the sentiment was that this could be a very important reform. One respondent expressed uneasiness at the prospect of taking the State to court.

1. Question 10 : *Direction Nationale des Affaires Economiques*

After the tax and customs authorities, DNAE was the government agency most frequently cited by respondents. It is not difficult to see why. Stated simply, DNAE's mandate is the management of many aspects of Mali's external trade regime. Responsible for price and trade policy and enforcement, DNAE is being significantly affected by the GRM's program of liberalization of prices and trade regulations which began in 1985 and is continuing. They have traditionally been most visibly concerned with the issuance of licenses for importing restricted items. Grant and Hanel<sup>9</sup> list three areas for which DNAE has visible regulatory responsibility from the private sector's point of view: (1) selling *patentes* (business and export licenses), (2) managing the export licensing system, and (3) issuing licenses for importation of restricted goods. Within their mandate of managing external trade, DNAE is also responsible for calibrating scales (the weights and measures division) and collecting data on trade.

Views of DNAE behavior were almost exclusively negative. The rancor with which the agency was viewed is reflected in respondents' answers: "The DNAE sends its agents out with the intent to collect a predetermined amount of penalties"... "agents continue to harass honest businessmen"... "the office should be eliminated"... A few acknowledged that DNAE's behavior had improved since the events of March but many of these credited this to fear of reprisal rather than a change in attitude. Some thought DNAE should be abolished, although some recognized its legitimate role, such as in assuring fair weights and measures. Surprisingly, a few thought its mandate should be strengthened so it could serve the former economic police role and seize illegally imported merchandise. It does seem that the accusation of agents' being sent out to collect penalties is based in fact. It is the practice of certain agencies, according to the Controller General, to award a percentage fee to its agents based on the taxes and penalties collected. It would thus appear that if the DNAE is to have a complete change of purpose and become a private sector advocate, this practice should be reviewed.

m. Question 11 : The March Violence

Several firms had suffered damage, in particular one large manufacturer who was the target of particularly bitter reprisals. He discussed whether the GRM would be responsible for reimbursing the losses. He estimated that it was likely a dead issue, since the government had no resources to pay these damages. One *commerçant* who is a distributor for a European firm suffered the loss of all of his inventory. He had no insurance and will probably lose his commercial agent's *dépense* because of this.

n. Question 12 : AID-Sponsored Reforms

All who were familiar with them praised the AID-sponsored reforms. As could be expected, all firms interviewed welcomed the reduction in the *contribution forfaitaire* and IMF<sup>10</sup> under the EPRP program. Praise for the elimination of export taxes was universal, even among firms who do not export. Most firms were not aware of AID's involvement in the voluntary early departure program or revisions in the investment budget, the labor or commercial codes. They were understandably unaware of the specific elements of the EPRP and PRED programs, but knew that AID and the World Bank worked together in implementing the SAP.

It is significant that AID was favorably associated with the structural adjustment program, particularly with the tax reductions, although the extent of knowledge about specific AID involvement was limited. In general, AID is viewed as the businessman's friend and an ally against the anticompetitive practices of the government.

<sup>9</sup>in "Description of the Business Climate in Mali", Louis Berger, 1989.

<sup>10</sup>*contribution forfaitaire*: default payroll tax; *Impôt minimum forfaitaire*: minimum default tax.

o. Question 13 : Privatization Program

The general feeling about the World Bank-sponsored privatization program was that the government was not benefitting from the operation, as it was not getting a fair price for the liquidated firms. Many expressed concern about the numbers of unemployed parastatal agents who might press the government for compensation. Some acknowledged the need for selling off the parastatal firms but, without suggesting how, believed it should have been done differently.

p. Question 14 : Abolition of Export Taxes

Answers to this question were virtually identical throughout the sample. No one interviewed had a negative response, even among firms which do not export. Of the half-dozen firms who do export, only one gains the majority of his revenue from it. Exporting firms were asked whether there had been a demonstrable increase in their business or an improvement in the climate because of the elimination. As the measure had been enacted less than a year earlier, no one was able to point to effects other than increased profits as a direct result. This will certainly evolve and produce visible results as the measure has time to take effect.

B. Conclusions and Policy Implications

The picture that first emerges from the interviews is one of a business sector still overtaxed and overregulated, a context that constrains private enterprise. Most businessmen expressed the opinion that Mali is an unwelcoming place in which to do business and that they chronically lose money (leading one to wonder how and why they remain in the business). A little investigation, though, reveals a different picture, and an evolution of behavior both by private and public entities. The Malian private sector is on the move. The activity and debate surrounding the CCIM, the massive restructuring of the parastatal sector, and the fact that the Etats Generaux could take place and generate such enormous interest are all testimony to an active sector.

Another striking matter in the interviews is the topic of taxes. In one sense it is not surprising that fiscal matters—in particular, taxation—were cited as the first complaint by so many firms. It is quite likely that if one were to conduct a similar series of interviews in an industrialized country like the United States the resistance to paying taxes would be the same. The homogeneity of views about the informal sector was notable, as was the diversity of opinion about what steps could be taken to increase the private sector's ability to represent its views to the government.

One of the most often discussed topics was the GRM's behavior, whether that of the President, the Minister of Finance, or the customs and tax agents with which a firm deals more directly. Predictably, an investor's perception of the GRM's intent toward the private sector is an important factor in investment decisions. When the topic of the new government came up, as it usually did during the interviews, most investors said they would wait and see what the new government had to offer and whether it was honest and serious in its promises.

Among the most revealing discussions were those concerning direct interactions with the GRM. There is mistrust of government agents in Mali, as there is around the world. It is apparent that there is a sense of structural antagonism between the public and private sectors, which while it might have some universality remains a major element of the Malian business climate. A recent article on external views of the Malian business climate quoted one investor as saying that one would have to be a "hero" to invest in Africa at present. This is not an atypical view, but it is not constructive, and it is a perception that the PRED program must aim at overcoming.

The guiding themes of this analysis are:

## Tax and Customs Reform

*"Taxes and customs duties are too high in comparison our neighbors. This leads to smuggling. The State should intervene to protect Mali's borders."*

Taxes, unsurprisingly, were the most frequently discussed topic. Taxes can be lowered further, although in the context of the medium-term adjustment program, this could cause budgetary difficulties. Also, it is not necessarily true that further tax reductions at this time would help the cause of private sector development. The more immediate problems of inefficiencies and market limits would seem to outweigh the importance of taxes.

The question of non-payment of them is an issue for the formal sector, particularly in their perception of "carrying the load" for the informal sector, as important in Mali as elsewhere in the region. Protection against smuggling at the borders is sought by many firms, but they admit it is an elusive target. Regarding Malian purchasing decisions, many believe that price, not quality, is the most important criteria. The issue of customs enforcement seems to hold little promise for donor assistance.

The GRM is already considering legislation designed to combine three taxes into one annual payment for the smallest firms. This would result in the *patente*, BIC and IGR will be paid once by these firms for the year — the type of reform that will help reduce abuse, while at the same time encourage smaller firms to expand.<sup>11</sup>

Like its predecessor EPRP, the PRED program will address taxation, through studies aimed at consolidating taxes. The purpose is to eliminate the double taxation decried by businessmen, and eventually to permit all taxes on income to be merged into one payment for certain categories of taxpayers. This simplification should reduce the cost of doing business and encourage some smaller firms to enter the marketplace.

### Behavior of Civil Servants:

*"Tax agents do not respect their mandates; DNAE agents harass honest businessmen. Both are only interested in meeting predetermined quotas and penalties set their supervisors. Corruption among government agents is still widespread."*

Businessmen are clearly concerned with the behavior of public officials, for it affects the efficiency of their enterprises. Those receiving the brunt of the criticism are tax officials, and agents in the Finance Ministry's Direction of Economic Affairs (DNAE), which manages many aspects of Mali's external trade regime, particularly the issuance of licenses for importing restricted items.

USAID and other donors can help redress this situation by supporting DNAE and other regulatory agencies in their dealings with the private sector. As detailed in the original PAAD, USAID has targeted DNAE for project support, based on the GRM's desire to expand the DNAE role to include collecting, analyzing and disseminating information needed to guide government and private sector decision-making. This will include statistics as well as information on the regulatory environment. DNAE will also provide institutional and regulatory support for policies designed to move toward a more liberal business environment. This new mandate will make DNAE a key element for the success of economic reform in Mali. It will also have an impact beyond the Malian private sector, as evidenced by DNAE's current collaboration with the CEAO (West Africa Economic Community) in a study on opportunities for and constraints of regional trade.

<sup>11</sup>*Patente*: Business license; BIC: *Bénéfice industrielle et commerciale* (business profits tax); IGR: *Impôt général sur le revenu* (income tax).

## Financing and the Availability of Credit

*"Banks are difficult to deal with. There is not enough working credit. Whenever you try to get a loan they ask for so much collateral that it's not worth it."*

The issue of credit as a constraint to development is problematic. The literature frequently cites a chronic shortage of medium and long term financing<sup>12</sup>. Analysts blame the banks, the private sector's inability to develop viable loan proposals, the structure of the capital market, and the BCEAO's<sup>13</sup> credit policy. Bankers in turn cite problems in credit supervision, and the borrowers' inability to provide collateral and unwillingness to accept a share of the risk, as the most pressing constraints to credit availability.

There are in fact many sources of credit available in Mali, both funded by donors and from purely commercial sources. There are seven active commercial banks in Mali with a total of 38 branches<sup>14</sup>. There is a credit ceiling, but in 1991 there was an unutilized margin of some FCFA 3 billion, or approximately \$11 million. The provision of additional financing would be an easy problem for donors to address, and there has been no shortage of interest in the topic by donors for the last several years. Nevertheless, recent credit studies have not been promising. One solution might be the a new commercial bank credit program financed by the AfDB for medium enterprises, which donors are watching with interest.

There is another aspect to the question of financing<sup>15</sup>, closely related to the institution of commercial courts. It is well established that disputes (disputes brought before the formal legal system) mainly concern credit recovery. Courts as well as banks must cope with situations whose nature is not exclusively financial. The procedures and the rules governing unpaid bills, guarantees and measures of execution are out of date for modern commercial transactions. The GRM's current efforts to restructure the banking sector will not suffice to promote access to bank credit. Indeed, an effective general law of bank guarantees, along with reform of civil and commercial procedure, are essential if credit practice is to be reorganized. These issues are discussed further in Section II, the "Malian Legal and Judicial System".

### Private Sector Organizations

*"The Chamber of Commerce and Industry (CCIM) needs to be reorganized and revitalized."*

This topic provoked a variety of reactions, mostly unfavorable. The division between commercial and industrial firms was clearly noted, with the CCIM is viewed by many manufacturers as the tool of the *commerçants*. This division reached a breaking point recently when a group of CCIM members splintered off and formed a separate Chamber of Industry. Though not yet a fait accompli, this sends a clear message that the CCIM — which has traditionally performed in an advisory role to the Ministry of Finance rather than a vehicle for purely private sector interests — is in a precarious position vis-a-vis the public and the private sectors.

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<sup>12</sup>On this subject see the 1989 study entitled "Financial Intermediation" by Nicolas Rofe and the 1988 "Malian Financial Markets Assessment and Strategy" by Tamara Duggleby.

<sup>13</sup>*Banque Centrale des Etats de l'Afrique de l'Ouest*, the central monetary authority.

<sup>14</sup>much of this material comes from a recent AfDB analysis of the Malian credit system in connection with the BMCD credit line project proposal.

<sup>15</sup>for more on this analysis see Cordahi, *op. cit.*

The immediate outcome of this split has been to accelerate the CCIM's own previously scheduled review of the problem of the division between the commercial and industrial membership, and to look for satisfactory ways to resolve it within the CCIM. There is reason to be optimistic -- given the right mix of personalities and a sustained effort to reform the character, orientation and efficiency of the institution. The debate could indeed lead to a revitalized chamber with a more involved membership and a more productive private sector. In the final analysis, there is little that donors can do to address this problem. It holds potential for improving the investment climate, but is essentially a Malian problem.

the Ministry of Justice

**ANNEX D**

signed by

**LIGISLATION ON THE MALIAN COURTS**

CHAPTER I

1. Bankruptcy, liquidation, settlement

2. Commercial courts

3. Courts of appeal

4. Courts of first instance

5. Courts of second instance

6. Courts of cassation

7. Courts of arbitration

8. Courts of conciliation

9. Courts of mediation

10. Courts of conciliation and mediation

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ANNEX D

ACT No.88-38 AN-RM

BEARING TO THE ESTABLISHMENT OF COMMERCIAL COURTS

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THE NATIONAL ASSEMBLY HAS DISCUSSED AND ADOPTED DURING ITS SESSION OF APRIL 8, 1988:

THE PRESIDENT OF THE REPUBLIC PROMULGATES THROUGH THE ACT THE TERMS OF WHICH FOLLOW:

ARTICLE 1: Commercial Courts will be established in the Republic of Mali under the authority of the Minister of Justice.

ARTICLE 2: Commercial Courts deal with:

- issues relating to changes and transactions between traders within the meaning assigned by Article 3 of the Code of Commerce;
- issues relating to trade acts between any parties.
- any matter relating to bankruptcy, judicial settlements and assets liquidations.
- However, the parties may, at the time of contract negotiation, decide to submit to arbitrators the issues listed above when they occur.

ARTICLE 3: When the promissory notes bear only the signatures of non trading individuals and do not deal with business, traffic, change, banking or brokerage, the Commercial Court must transfer the case before the civil court, if the defendant resquests it.

ARTICLE 4: When the promissory notes bear at the same time the signatures of trading and non trading individuals, the Commercial Court may deal with the case.

ARTICLE 5: Are not relevant to the competency of Commercial courts proceedings entered against a proprietor, a farmer or a herder for the sale of his own products, proceedings entered against a trader for the procurement of goods and supplies for his own consumption. However, promissory notes signed by a trader deemed to be established for his trade...

**ARTICLE 6: Commercial Courts deal in the last resort with:**

Any claim in which the parties under the jurisdiction of the courts and using their rights have declared that they wanted their case to be decided upon ultimately and without appeal. Any claim the principal of which does not exceed the sum of 1.000.000 Fcfa. Counterclaims or actions for compensation, even when added to the principal claim, do not exceed 1.000.000 Fcfa. However, if one of the principal claims or counterclaims exceeds the limits indicated above, the Court does not deal with all of them but in the first resort.

Nevertheless, the Court deals with any claim for damage, if it is grounded exclusively on the principal claim itself.

**ARTICLE 7: The Commercial Court is composed of a President and titular and substitute judges.**

Each chamber of the Commercial Court is composed of a President and two substitute judges. The President belong to the magistrature body. The titular and substitute judges are traders. A government decree will specify regulations relating to the election and eligibility of the latter. Several court clerks will be nominated to each Commercial Court.

**ARTICLE 8: Commercial Court judges are elected for a three year term. Before taking office, they are sworn in at a session of the Appeal Court. These formalities are fulfilled on the conclusions of the Public Prosecutor and without cost.**

The wording of the oath is the following: "I swear and promise in all conscience to fulfill well and faithfully my functions, to keep religiously the secrets of the findings, and to behave in all circumstances as dignified and honest magistrate".

**ARTICLE 9: The title of honorary member may be conferred by a decision of the Minister of Justice to former members of Commercial Courts having exercised their functions for at least 9 years.**

The title of honorary member may be withdrawn following the same procedure.

**ARTICLE 10. The functions of Commercial Courts judge are not remunerated.**

**ARTICLE 11: No one, except lawyers regularly registered can plead for a party before the Commercial Courts unless the party present at the session authorizes him or unless he is vested with a special power.**

**ARTICLE 12: The procedure followed before the Commercial Courts are the ones provided in the Code of civil, commercial and social procedure.**

ARTICLE 13: The District Court is competent to deal with trade cases as long as a Commercial Court is not established.

When a Commercial Court cannot operate for whatever reason, the Appeal Court informed about this condition sets the date at which cases can be taken before the Commercial Court again.

The District Court should deal with cases that had been submitted to it, in accordance with paragraph 2 of this Article.

Koulouba, April 5, 1988

THE PRESIDENT OF THE REPUBLIC

GENERAL MOUSSA TRAORE

- First Instance Courts and their relations

Extended assistance

Act 88-39/AN-PM

Bearing to the Judicial Reorganisation

The NATIONAL ASSEMBLY has deliberated and adopted during its session of February 1988:

THE PRESIDENT OF THE REPUBLIC promulgate the Act the content of which is as follows:

Chapter 1: GENERAL PROVISIONS

ARTICLE I: On the territory of the Republic, justice is delivered by:

- a Supreme Court;
  - Courts of Appeal;
  - Courts of Assizes;
  - First Instance Courts and their Detached Sections;
  - Labor Courts;
  - Commercial Courts;
  - Administrative Courts;
  - Juvenile Courts;
  - Justices of Extended Competence.
- The sessions of these courts are public, except when this publicity is harmful to law and order or morals, in which case the President of the jurisdiction concerned orders in camera sessions.

Sessions take place:

- a) at the headquarters of the Supreme Court;
- b) at the headquarters of the jurisdiction concerned or at any other place of under its competence.

Decisions and Judgments made in all matters are publicly pronounced and should be motivated under penalty of nullity, except for criminal indictments.

The President is responsible for managing the sitting and directing the debates.

**ARTICLE 2:** The organisation, competence and operation of the Supreme Court, Administrative Courts, Commercial Courts and the Jurisdictions for Minors are the subject of separate legislative provisions.

**CHAPTER II : THE COURT OF APPEAL**

**ARTICLE 3:** The Court of Appeal deals with civil and commercial matters as well as various types of minor offences, appeals for judgments passed in first resort by First Instance Courts, Detached Sections of these courts, Commercial Courts, Jurisdictions for Minors and Justices of Peace with extended competence.

The Court of Appeal deals also with appeals for judgment passed by the Labor Courts. In this case, it is assisted by assessors representing the employers and the workers.

In case of appeal on decisions delivered by the Courts of First Instance, the Detached Sections of Courts and the Justices of Peace with extended competence ruling on customary matters, the Court is assisted by assessors of the customs of the parties concerned. The assessor body, the titular and the substitute assessor relating to the case will decide on the appeal.

In any case, the assessors are entitled to deliberate and vote.

**ARTICLE 4:** A decision of the Minister of Justice sets the list of permanent assessors and of substitute assessors at the beginning of each year.

**ARTICLE 5:** The Court of Appeal is composed of :

- The First President;
- The Head of Prosecution Department;
- The Senior Court Clerk.

In addition, it includes at least:

- 8 advisors;
- 1 Deputy Director of the Public Prosecution
- Court Clerks.

It includes a civil court which deals also with custom matters, a commercial court, a social court, a magistrate court special court for minors and a criminal court which acts as a Court of Criminal Appeal.

**ARTICLE 6:** In case of impediment or absence, the magistrates of the Court of Appeal are replaced by the magistrates of the Courts of First Instance nominated by an ordinance of the First President. For any case, judgments are passed by three magistrates at least.

**ARTICLE 7:** The court rules every case in the presence of the Head of the Prosecution Department or his representative with the assistance of a Clerk.

The Court can hold its formal sessions under the chairmanship of the First President, the Advisors and the Assessors, in the presence of the Head of the Prosecution Department or his representative, with the assistance of the Senior Court Clerk.

The First President also chairs the general assemblies and the Sessions of the Civil Court.

He also presides over any chamber, at his discretion.

**ARTICLE 8:** At the beginning of each judicial year, the Court sets the number and the days of its Sessions through deliberation of its members including:

- The First President;
- The Head of the Prosecution Department;
- The Senior Court Clerk

**ARTICLE 9:** The Court of First Instance, the Detached sections of the Courts of first Instance and the Justices of Peace with extended competence deals in first and last resort with civil and customary actions the amount of which does not exceed 100.000 F for the principal and 10.000 F for the monthly returns determined either as a rent, or as the price of a lease.

They deal only in first resort with actions the amounts of which are higher than the sums indicated above and actions concerning the status of persons as well as successions, donations and wills the amounts of which are higher than the above indicated sums.

In places where there is no commercial court, the judges of the First Instance Court, of the Detached Section of the First Instance Court and the Judges of Courts with extended competence will exercise the functions of the Commercial Court judge and will deal with matters attributed to these by the law.

Similarly, in places where there is no Juvenile Court, the judges of the First Instance Court, of the Detached Section of the

First Instance Court and the Judge of Tribunal with extended competence will exercise the functions of the Juvenile Court judge and will deal with matters attributed to these by the law.

When a cross-action or a claim for damage has been entered within the scope of competence of the civil courts of first instance in last resort, the case will be ruled without possibility for an appeal. When one of the claims is higher than the limits indicated, the court will decide on both claims only in first resort.

However, claims for damages will be ruled in last resort when the latter are based exclusively on the leading claim.

In the case of minor offences, the jurisdictions mentioned in this chapter may hear any offence committed within their scope of competence.

As for minor offences, they settle any contravention stated by the law and any infraction the treatment of which is attributed by special enactments to the Courts of minors offences.

**ARTICLE 10:** The Courts of First Instance are composed as follows: ART

- 1 President

- 1 or several Vice-President

- 1 or several Examining Magistrates

- 1 State Prosecutor

- 1 or several Assistant State Prosecutors

- 1 Senior Clerk of the Court

- several clerks

The Justices of peace with extended competence do not include a member of the Public Prosecution Office nor Examining Magistrates.

**ARTICLE 11:** A Detached Section is composed of: a President, an Examining Magistrate, a representative of Public Prosecution Office, a Senior Clerk and one or several clerks.

The Detached Section hears within the limits of its competence all matters falling within the competence of First Instance Courts.

provided by

**ARTICLE 12:** The service of detached sections is provided by magistrates of the court of first instance within the jurisdiction of which the section is located. These magistrates are nominated by

decree .....

**ARTICLE 13:** The scope of jurisdiction of the courts of first instance, the courts of justice with extended competence and the detached sections of courts of first instance is defined by ordinance taken in council of ministers.

**ARTICLE 14:** Within the jurisdiction of courts of first instance as well as detached sections of the court of first instance, investigations are carried out by an examining magistrate.

In case of prevention, a magistrate from the headquarters is designated by ordinance of the President of the Court in connection with his jurisdiction, either by ordinance of the first president of the Court of Appeals as to detached sections, upon notice from the Head of the Prosecution Department.

In the scope of courts of justice with extended competence investigations are carried out by the court judge with extended competence or possibly by any other magistrate designated by ordinance of the first president of the Court of Appeals after notice of the Head of the Prosecution Department.

**ARTICLE 15:** The presidents of courts of first instance, the presidents of detached sections of courts of first instance, justices of peace with extended competence dispense justice in matters which are in the competence of their respective jurisdictions.

**ARTICLE 16:** The presidents of courts of first instance, the presidents of detached sections of court, justices of peace with extended jurisdiction or magistrates due to replace them, hold open court hearings within the scope of their respective jurisdictions whenever the need arises. The dates of these hearings are set by the Chamber of the Council.

The presidents of courts of first instance, the presidents of detached sections of courts of first instance, justices of peace with extended competence or their substitutes can sit during open court hearings without assistance from the Department of Public Prosecutor. They enact to the full of their jurisdiction.

**ARTICLE 17:** Courts of first instance, sections of courts of first instance of courts of justice with extended jurisdiction, when enacting in common law, are composed of two assessors of custom of the parties concerned. Assessors are entitled to deliberate and vote.

**CHAPTER IV : COURT OF ASSIZES**

**ARTICLE 18:** The Court of Assizes usually sits at the Court of

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Appeals. However, when circumstances requires it, the Ministry of Justice can, after notice from the Head of the Prosecution Department and the first president of the Court of Appeals, transfer this seat to a place other than the ones provided for in this article.

**ARTICLE 19:** The Court of Assizes comprises:

- a President
- two Court Advisors or two magistrates from the headquarters of the jurisdiction of first instance;
- four assessors
- a court clerk

It is chaired by the first president of the Court of Appeals, and his absence by the senior advisor or by any other councilor designated by ordinance of the first president of the Court of Appeal.

The duties of the Department of Public Prosecution are carried out by the Head of the Prosecution Department and in his absence, either by a member of the general prosecution, or by a magistrate of the prosecution office of first instance, especially designated to this end by the Head of the Prosecution Department.

**ARTICLE 20:** Members of the Court of Appeals who will have voted on arraignment will neither be able to chair the assizes, nor assist the President under penalty of invalidity on the same case. The same will apply to the examining judge.

**ARTICLE 21:** The opening date of each session is set by ordinance from the first president of the Court of Appeals after notice from the Head of the Prosecution Department.

From the opening of the session and wherever it is held, the President of the Assizes will provide substitute for a magistrate who is absent or will designate, if necessary, substitute magistrates.

Assizes will be closed only after all registered criminal cases have been examined.

#### CHAPTER V : LABOR COURT

**ARTICLE 22:** There are labor courts that deal with individual conflicts which can arise during the life time of a work contract between workers and their employers.

These courts are competent to settle any individual conflicts relating to collective conventions or acts considered as such; their jurisdiction covers also conflicts between workers in the

course of work.

They are competent to deal with any protests arising between workers, employers and the "Institut National de Prévoyance Sociale".

**ARTICLE 23:** The competent court is that of the work place. However, for conflicts resulting from the termination of a work contract and regardless any conventional distribution of jurisdiction, the worker whose usual residence is located in an area other than his work place will have the choice between the court of his residence and that of his work place when this residence is on the territory of the Republic of Mali.

**ARTICLE 24:** The labor court is made up of:

1o) a magistrate president.

Excetionally, in case of incapability to designate a magistrate, or in case of absence, impediment or normal leave of a designated magistrate, the court can be presided over by a civil servant designated by the ministry of justice upon proposal from the minister in charge of manpower.

2o) two assessors representing one the employers and the other the workers, chosen from a list established by decree of the Minister of Manpower.

The President designates for each case assessors for employers and for workers belonging to the category involved.

the incumbent assessors are replaced in case of impediment by substitute assessors.

3o) a secretary chosen among the staff at the court headquarters.

**ARTICLE 25:** The President, if he is not a magistrate, the assessors and their substitutes as well as the secretary, swear in before the jurisdiction in the following terms: I swear to accomplish my duties with zeal and integrity and to keep secret of proceedings.

In case of impediment, the oath can be sworn in writing.

**ARTICLE 26:** Judgements of court should be motivated. They are final and without appeal when the amount of the claim does not exceed 100,000 francs. Beyond this amount, they can be called in front of the Court of Appeals.

ARTICLE VI

FINAL PROVISIONS

ARTICLE 27: Any previous contrary provisions are superseded, especially Act no. 61-55/AN-RM of May 15, 1961 bearing to the judiciary organization in the Republic of Mali.

ARTICLE 27

ARTICLE 27

ARTICLE 27

ARTICLE 27

M<sup>me</sup> SISSOKO  
PRESIDENCE OF THE REPUBLIC

REPUBLIC OF MALI

GENERAL SECRETARY OFFICE  
OF THE GOVERNMENT

ONE PEOPLE-ONE GOAL-ONE FAITH

OI No. 88-40/AN-RM  
BEARING TO THE CREATION OF JURISDICTIONS AND THE  
ESTABLISHMENT OF THE COMPETENCE OF COURT OF APPEAL

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THE NATIONAL ASSEMBLY DEBATED AND ADOPTED IN ITS SESSION OF  
FEBRUARY 8, 1988

THE PRESIDENT OF THE REPUBLIC PROMULGATES THE LAW WHICH STATES:

ARTICLE 1: It is created a Court of Appeal in each of the following  
areas:

- BAMAKO
- KAYES
- MOPTI

ARTICLE 2: It is created at the level of the Court of First  
Instance of Bamako five (5) separate sections:

ARTICLE 3: It is created a juvenile court in each of the following  
areas:

- BAMAKO
- KAYES

ARTICLE 4: It is created a commercial court in each of the  
following areas:

- BAMAKO
- KAYES
- MOPTI

ARTICLE 5: It is created an Administrative court in the following  
areas:

- BAMAKO
- KAYES
- MOPTI

ARTICLE 6: The geographic scopes of courts of appeal are set as  
follows:

COURT OF APPEAL OF KAYES: Region of KAYES

COURT OF APPEAL OF BAMAKO: Region of KOULIKORO

- SIKASSO
- SEGOU and the District of BAMAKO

COURT OF APPEAL OF MOPTI: Region of MOPTI

- TIMBUCTU and
- GAO

ARTICLE 7: Pending the effective establishment of the jurisdictions created, the duties that are assigned to them will continue to be carried out by the jurisdictions that are currently conducting them.

KOULOUBA, APRIL 5, 1988  
THE PRESIDENT OF THE REPUBLIC

GENERAL MOUSSA TRAORE

Dep. Min. et s. and s. 1988

Code of  
Code  
No.

Alex. CAMARA

PRESIDENT OF THE GOVERNMENT

REPUBLIC OF MALI

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ONE PEOPLE - ONE GOAL- ONE FAITH  
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GENERAL SECRETARIAT OF THE GOVERNMENT  
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DECREE No 147 PG-RM  
DETERMINING TERMS AND CONDITIONS  
FOR ELECTION AND ELIGIBILITY  
OF Commercial COURTS MEMBERS

THE PRESIDENT OF THE GOVERNMENT,

CONSIDERING the Constitution  
CONSIDERING Act No. 61-55/AN-RM of May 15 1961 bearing to the  
judicial organisation;

CONSIDERING Act No. 89-13/AN-RM of March 21 1986 bearing to the  
Code of Commerce;

CONSIDERING the Code of civil, commercial and social procedure  
CONSIDERING Act No. 88-38/AN-RM of April 5 1988 bearing to the  
institution commercial courts;

CONSIDERING Decree No. 069/P-RM of February 15 1988 bearing to  
the appointment of the members of the government;

AT A SESSION OF THE COUNCIL OF MINISTERS,

D E C R E E S :

ARTICLE 1 : The members of commercial courts, other than the  
Presidents who are career magistrates, are elected by an electoral  
college including the following:

1. The members of the Chamber of Commerce and Industry of Mali  
enrolled in the Trade Register in the jurisdiction of the  
Commercial court.
2. Former and present members of the Commercial Court.

**ARTICLE 2** : The list of the members of the electoral college of each Commercial Court is established in the month following the elections of the members of the Chamber of Commerce by an ad hoc committee meeting at the request of its President and composed of four of the senior members of the Chamber of Commerce.

To establish this list, the Committee uses the proceedings of the election of the members of the Chamber of Commerce made available to them by the Minister of Tutelage - as well as the list of the former and present members of the Commercial Court.

**ARTICLE 3** : Are eliminated from the electoral list of Commercial Courts deceased persons or persons unauthorized to exercise commercial activities

**ARTICLE 4** : The updated list of the electoral college of the Commercial Court, posted at the secretariat of the said Court in the month preceding the election.

**ARTICLE 5** : Are eligible any natural person satisfying the following requirements:

- be an elector of the CCIM in the jurisdiction of the Commercial Court within the meaning assigned by articles 20 and 21 of the by-laws of said Chamber.
- be over 20 years old
- having exercised the trade profession for five years in the Republic of Mali.

**ARTICLE 6** : The election of the members of the Commercial Court takes place in the locality in which the Commercial Court is established.

The electoral college is summoned every three years between June 1st and 15 through an order of the Minister of Justice one month before the date of the election and determining the places where election operations should take place.

Besides, each elector is summoned individually.

The board of the electoral committee includes: the President of the Instance Court or, failing that, a judge appointed by him. The President nominates also two associate judges from the Instance Court.

The clerical functions of the board are carried out by the clerk of the court at the Commercial Court.

ARTICLE 8: Election begins at 8 o'clock AM and ends at 4 o'clock PM. It is held at a single ballot. Are declared elected candidates who have obtained the highest scores of votes.

ARTICLE 9: The census of the votes and the results are announced publicly by the board.

The proceedings of the electoral operations with the signatures of all the members of the board are made in three copies. One copy is sent to the Minister of Justice, the second copy to the Head of the Prosecution Department at the Appeal court, and the third is kept in the files of the Commercial Court, to which are attached the list with the voters signatures signed by the president and the clerk of the court.

ARTICLE 10: Total or partial invalidation of the elections to the Commercial Courts may be pronounced in the following cases:

- if the electoral operations have not been carried out in accordance with the requirements and in the forms required by the enactments in force.
- if the election has not been free or if it has been vitiated through cheating or misrepresentation.
- in the case of legal incapacity of one or several of the elected persons.

ARTICLE 11: Any elector or eligible person may request the annulment of the results within eight days following the publication of the results.

ARTICLE 12: Actions for cancellation should be entered to the Court of Appeal. Claimants notify their recourse through a registered letter with a delivery note from the Head of the Prosecuting Department of the Court of Appeal who informs the candidate whose election has been questioned. The latter is entitled to introduce his defence within the five days following notification of the recourse.

Appeals are summarily decided over without any cost by the Court of Appeal, within twenty days from the day it has been informed of the appeal.

Objection is not allowed against judgment by default, which must be notified.

Judgments are subject to appeal before the Supreme Court within .. days after notice has been served. The assistance of a barrister is not compulsory.

The members of the Commercial Courts whose election is contested .. days cannot attend meeting until the case has been settled definitely.

ARTICLE 13: Within the fortnight following the notification contesting the results of the electoral operations, the Head of the Prosecution Department invites the persons elected to session of the Court of Appeal which publicly proceeds to their reception and take a minute recorded in the files. The minutes of this session is maintained at the Court of Appeal in the minute files. The day the Commercial Court is officially established, the reception minute is read. This official establishment should take place one month after the elections.

ARTICLE 14: Hierarchy among the judges and substitutes is determined according to seniority, i.e. the number of years of judicature accomplished without interruption and between the judges elected for the first time and at the same election by the number of votes each got in the election. In case of equal number of votes, precedence is given to the oldest member.

ARTICLE 15: The judges at the Commercial Court are elected for a term of three years. The Commercial Court is renewed by its third every year.

ARTICLE 16: Judgments are made by at least three judges including the President. A titular judge should take part in the proceedings under penalty of nullity.

ARTICLE 17: The Commercial Court Judges who want to resiliate their mandate should send their resignation to the President who will transmit a copy to the President of the Court of Appeal.

A Commercial Court Judge may not stay in function after tendering his resignation.

ARTICLE 18: When a Commercial Court judge has been sentenced for acts contrary to probity, accepted standards of good behavior or honor, and that this magistrate has handed in his resignation within eight days following the effective date of the sentence, he is considered as resigner and dismissed by a decision of the Minister of Justice.

ARTICLE 19: In case, for whatever reason, one or several seats become vacant in a Commercial Court, a complementary election may take place within two months.

However, no election can take place in the three months following the partial renewal of the Court.

**ANNEX E**

**REFORM MEASURES FOR THE COMMERCIAL COURTS**

**ANNEX E: REFORM MEASURES FOR THE COMMERCIAL COURTS**

<b>MEASURE (1-15)</b>	<b>ACTION</b>
1	A declaration by the Ministry of Justice that Commercial Courts are functional and competent to adjudicate all cases within their current jurisdiction.
2	Definition of the location and geographic jurisdiction of Commercial Courts over the next five years.
3	Establishment of functional Administrative Courts in jurisdictions specified in Article 5 of Law 88-40 ANRM.
4	Revision of the Code of Civil, Commercial and Social Procedure (CCCSP).
5	Review and detailed analysis of the 7% consignment fee required for adjudication of suits involving claims.
6	Review and analysis of Mali's position regarding adherence to international Conventions of dispute resolution.
7	Analysis of arbitration procedures as an alternate means for commercial dispute resolution.
8	An approved human resource development program for professional judges, assessors, and others taking an active role in commercial dispute resolution.
9	Analysis of staffing patterns, recruitment, and career development needs of judges and other court personnel; and
10	Analysis of the 'profile' of assessors needed for the Commercial Courts, and their source(s) of recruitment.
11	Examination of remuneration-incentive policies and laws for career judges and lay assessors.
12	Establishment of a disciplinary code for Commercial Court assessors.
13	A mechanism giving those involved in the resolution of commercial disputes access to timely and relevant legal materials.
14	The establishment of model contracts for the most common types of business dealings.
15	The establishment of a single, unified system of identification for commercial firms.

### THE MALIAN COURT SYSTEM

COURT	(a) LOCATION (b) JURISDICTION	ROLE/FUNCTION	STRUCTURE/ ORGANIZATION	OBSERVATIONS
Supreme Court	(a) Bamako (b) Nationwide	Court of last resort for judicial, administrative, and public accountability cases	Judicial (civil-commercial, social, criminal chambers); Admin, Budgetary Sections	Autonomy and mandate strengthened in the Third (1991) Constitution
Constitutional Court	(a) Bamako (b) Nationwide	Rules on constitutional law, jurisdictional disputes, and the electoral process	Advisory body nominated by the President, National Assembly, and Magistrates	Changed to an autonomous court (1991) from a branch of the Supreme Court
High Court of Justice	(a) Bamako (b) Nationwide	Dispenses justice on Mali's President and Ministers for crimes against the state	Members designated by National Assembly after each legislative election	Never functioned, though power/authority increased in Third Constitution
Court of Appeals	(a) Bamako, Kayes, Mopti (b) Nationwide	Rules on appeals from Courts within jurisdiction of First Instances	Civil, social, commercial, criminal, correctional, juvenile chambers	Appellate jurisdiction and competence defined by law in April 1988
Court of First Instance	(a) Bamako, Reg. Capitals (b) Nationwide	Court of first and often last resort on civil, customary, some commercial matters	Several Sections presided over by Justices of Peace with extended competence	Extended competence in juris. where specialized courts do not exist
Court of Assizes	(a) Bamako, Reg. Capitals (b) Nationwide	Issues indictments and rules on criminal prosecution	Presided over by the First President of Appeals Court	Created in 1986; activated only in 1991
Commercial Court	(a) Bamako, Kayes, Mopti (b) Bamako, Kayes, Mopti	Settles disputes on trade, business, banking matters	Mixed composition of both professional and lay judges	Created in 1988; functional in 1991; exceptional juris.
Labor Court	(a) Bamako, Reg. Capitals (b) Nationwide	Settles disputes involving labor contracts/conditions	Mixed composition of both professional and lay judges	Located in Courts of First Instance
Juvenile Court	(a) Bamako, Kayes, Mopti (b) Bamako, Kayes, Mopti	Resolves civil/criminal cases involving minors	Mixed composition of both professional and lay judges	Non-functional; regional jurisdictional lists pending
Administrative Court	(a) Bamako, Kayes, Mopti (b) Bamako, Kayes, Mopti	Rules on civil proceedings against the state	Currently being finalized in the Ministry of Justice	Non-functional

**ANNEX F**  
**LEGAL COMMISSIONS IN MALI**

## ANNEX F: LEGAL COMMISSIONS IN MALI

A principal initial step in the conditionality for this program amendment is the establishment of a commission to revise the Civil, Commercial and Social Procedure Code. The 'Commission' is a standard mechanism in Mali's judicial-administrative structure, and there are currently three commissions working under the direction of the Ministry of Justice. One is charged with revising the Labor Code, the second the Criminal and Criminal Procedural Code, and the third the Commercial Code. Each was created in 1990, and none has yet finished its work.

Any decision to revise a code comes from the Ministry of Justice. Within the Ministry the National Director of Judicial Affairs (DNAJ) is empowered to create commissions for this type of work. The composition of the three existing commissions is as follows:

### o For the Revision of Criminal and Criminal Procedural Codes

- two officials from the DNAJ
- one representative from the judicial advisors ('Conseils Juridiques')
- two representatives from the Bar ('Avocats')
- one representative from the Bailiffs ('Huissiers')
- one representative from the Malian Legal Association (AJM)
- two representatives from the Malian Human Rights Association (AMDH)
- two representatives from the National Direction of Penitentiary Administration (DNAP)

Because of their expertise in criminal law and proceedings, three law professors from the National School of Administration (ENA) are participating on this commission on a voluntary basis.

### o For the Revision of the Labor Code

This commission, which is under the aegis of the National Labor Union (Union Nationale des Travailleurs du Mali UNTM), is composed of:

- representatives of the UNTM
- representatives from the Malian Consumers Association (ASCOMA)
- representatives from the Ministry of Labor and Employment
- representatives from the Judiciary (Judges)
- representatives from the Bar
- representatives from the Judicial Advisors

### o For the Revision of the Commercial Code

- two officials from the DNAJ
- An Official from the National Direction of Economic Affairs (DNAE)
- a representative from the judicial advisors
- a representative from the Bar
- a representative from the Solicitors ('Notaire')
- a representative from the insurance industry
- a representative the Chamber of Commerce and Industry
- a representative from the Tax Advisors
- a representative from the Malian Consumers Association

Working sessions take place at the request of the DNAJ, who sets the agenda and review procedures. Meetings appear to respond more to specific work at a given moment rather than any set schedule. Members of the commissions normally form working groups by tasks. They discuss their work in committee and then bring recommendations to the full commission for approval. Besides seeking input from the commission members in this manner, at any time the DNAJ may seek the opinion of professional judges – even if there are some already assigned to the commission. Once the DNAJ has input from the commission on all aspects of the Code, it will be discussed by all commission members in a special general session. Changes are recorded and adopted, and the document approved by the commission.

At this point the text is sent to the Minister of Justice. After further discussion and possible changes it is then forwarded to the GRM Cabinet (Council of Ministers). Following that review, the revised code is then sent on to the National Assembly for approval. At this point, if the government considers the need is urgent to enact the reforms, and the Assembly is either not in session or in a position to ratify the code in the near future, the government can ask the legislature for approval for the government to adopt it by ordinance (executive order). Such an ordinance is limited by time, which is fixed by the Assembly in giving the government its approval to proceed. If the proposal is not subsequently submitted for ratification within the limit set, it becomes null and void. Moreover, the issuing of the ordinance itself by the government may only take place after advice by the Supreme Court. The Assembly's ratification at a later date may include modifications.

The three present commissions are not working at the same pace. Revision of the Labor Code and the Criminal Code and Procedures is progressing slowly. The commission for the Labor Code, for example, has done little since 1990; the DNAJ has just sent the existing Code (not revised) to various judges for comment, with no deadline specified. The Commercial Code, however, is moving fairly rapidly and is due to be completed and published in June. There seem to be two reasons for this: (1) the World Bank is pressing the question with a deadline set; and (2) the Bank is also financing it, providing compensation for all those working on it. The other two commissions have no such deadlines or outside funding support. It is clear that revision of the Civil, Commercial and Social Procedure Code could in the same way be assisted through PRED conditionality.

**ANNEX G**  
**TRAINING PLAN**

**ANNEX G: TRAINING PLAN**

<b>SHORTCOURSE/ SEMINAR/TOUR</b>	<b>PURPOSE</b>	<b>TARGET GROUP</b>	<b>DURATION/ TIMING</b>	<b>LOCATION</b>
Resolving Disputes in Mixed Court Systems	To train judges in procedures and technique of mixed dispute resolution	Comm. Judges/Assessors; First Instance and Appellate Judges	3 week course October 92	Bamako; other jurisdict. as needed
Mali's Revised Commercial Code	To provide (1) a detailed knowledge and (2) a working understanding of Mali's revised commercial code	(1) Commercial, First Instance, Appellate, Supreme Court Judges; Lawyers; (2) Lay Assessors	2 week course September 92	Bamako; other regions as needed
Principles of Malian Contract Law	To enable judges to resolve disputes involving written/oral agreements	Comm. Judges/Assessors; First Instance and Appellate Judges	2 week course March 93	Bamako; other jurisdict. as needed
Dispute Settlement through Arbitration	To make judges and private traders informed about arbitration as its uses	Comm. Judges/Assessors; CCIM and trade organizations, etc.	3 day seminar October 92	Bamako; other regions as needed
Negotiation and Resolution of Disputes	To train assessors/arbiters in non-judicial dispute resolution	Lay Assessors; members of the CCIM, trade organizations, etc.	1 week course November 92	Bamako; other regions as needed
Regional/International Commercial Law	To keep jurists informed of external laws that affect commerce in Mali	Comm., First Instance, Appellate, Supreme Court Judges; Lawyers	2 week course March 93	Bamako
Bankruptcy/Liquidation and Judicial Procedure	To train judges in bankruptcy law for private and mixed companies	Comm., First Instance, Appellate, Supreme Court Judges; Lawyers	3 week course November 93	Bamako
Banking, Credit, and the Law in Mali	To keep legal/financial specialists informed of the judicial application of Malian banking and credit laws	Commercial, First Instance, and Appeal Judges; interested bankers and credit specialists	2 week course February 93	Bamako; other regions as needed
Commercial, Civil and Social Procedural Code	To familiarize Malian jurists with the revised CCS Procedural Code	Comm., First Instance, Appellate, Supreme Court Judges; Lawyers	2 week course December 1993	Bamako; other regions as needed
Commercial Dispute Resolution in West Africa and Europe	To give Malian Jurists and traders a relevant comparative view of judicial and arbitrage procedures	Commercial Court Judges and Assessors, traders, negotiators, lawyers	3 week tour When Convenient	Abidjan, Dakar, France, Belgium, Italy
Litigation in Administrative Courts	To train jurists in responsibilities and procedures of Administrative Courts	Admin., Comm., First Instance, Appellate Court Judges; Lawyers	3 week course June 1993	Bamako; other regions as needed

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**ANNEX H**  
**ACTION PLAN FOR THE COMMERCIAL COURTS**

**ANNEX H: ACTION PLAN FOR THE COMMERCIAL COURTS**

TARGET DATE	MEASURE (1-15)	ACTIONS TO BE TAKEN
September 1992	1	o Commercial Courts declared functional
	2	o Commercial Court Commission established
	3	o Administrative Court Commission established
	4	o CCCSP Procedural Code Commission established
	14	o Model Contract Working Group established
December 1992	4	o Intermediate CCCSP Measures completed
	13	o Documentation Assessment completed
	15	o Business Registration Working Group established
March 1993	5	o Consignment Fee recommendations submitted
	6	o Washington Convention recommendations submitted
	7	o Local Arbitration recommendations submitted
	8	o Human Resource Development Program completed
	9/10	o Judiciary Recruitment recommendations submitted
	11	o Compensation recommendations submitted
	13	o Documentation Procedures established
	14	o Model Contracts approved
June 1993	2	o Commercial Court recommendations submitted
	3	o Administrative Court recommendations submitted
	5	o Action taken on Consignment Fee Recommendations
	6	o Recommendations on New York Convention submitted
	7	o Recommendations on Intern. Arbitration submitted
	8	o Human Resource Development Program approved
	9/10	o Judiciary Recruitment Recommendations approved
	11	o Action taken on Compensation Recommendations
	12	o Disciplinary Code for Assessors drafted
	13	o Documentation Procedures implemented
15	o Recommendations on Unified Registration submitted	
September 1993	2	o Action taken on Commercial Court Jurisdiction
	3	o Action taken on Administrative Court Establishment
	4	o Revised CCCSP Procedural Code approved (Ministry)
	14	o Model Contracts published and distributed
December 1993	4	o Revised CCCSP Procedural Code ratified (Legislature)
	6	o Action taken on International Conventions
	8	o Human Resource Development Program implemented
	9/10	o Judiciary Recruitment Recommendations implemented
	11	o Action taken on Compensation Recommendations
15	o Unified Registration System implemented	

**ANNEX I**

**ECONOMIC FEASIBILITY TABLES**

**ANNEX I: Economic Feasibility**

**TABLE 1: COST BENEFIT ANALYSIS OF PRED1992**

YEAR: 1/	1	2	3	4	5	6	7	8	9
<b>PROJECT COSTS (DOLLARS) 2/</b>	9,100,000								
CASH DISBURSEMENT	7,000,000								
ADDITIONAL INSTITUTIONAL COSTS	2,100,000								
CONSTRUCTION COSTS	500,000								
SALARIES	500,000								
OTHER CURRENT COSTS	500,000								
TECHNICAL ASSISTANCE	500,000								
EQUIPMENT	100,000								
<b>PROJECT BENEFITS</b>		837,000	1,440,450	2,378,167	3,065,436	3,159,090	3,253,681	3,349,218	3,445,710
FROM THE INVESTMENT OF FREED RESOURCES		360,000	600,000	960,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000
FROM INC. PRODUCTY OF FORMAL SEC CAPITAL		450,000	750,000	1,200,000	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000
FROM SHIFT OF INFORMAL SECTOR INTO FORMAL SECTOR		27,000	90,450	218,167	365,436	459,090	553,681	649,218	745,710
<b>NET BENEFIT</b>	(9,100,000)	837,000	1,440,450	2,378,167	3,065,436	3,159,090	3,253,681	3,349,218	3,445,710

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BASIC SCENARIO-----		ALTERNATIVE SCENARIO ONE-----		ALTERNATIVE SCENARIO TWO-----	
PRESENT DISC. VALUE OF COSTS	9,100,000	PRESENT DISC. VALUE OF COSTS	9,100,000	PRESENT DISC. VALUE OF COSTS	9,100,000
PRESENT DISC. VALUE OF BENEFITS	21,325,346	PRESENT DISC. VALUE OF BENEFITS	23,185,293	PRESENT DISC. VALUE OF BENEFITS	26,384,112
NET PRESENT VALUE	12,225,346	NET PRESENT VALUE	14,085,293	NET PRESENT VALUE	17,284,112
DISCOUNTED COST/BENEFIT RATIO	0.43	DISCOUNTED COST/BENEFIT RATIO	0.392	DISCOUNTED COST/BENEFIT RATIO	0.345
COST/BENEFIT RATIO	0.14	COST/BENEFIT RATIO	0.129	COST/BENEFIT RATIO	0.104
INTERNAL RATE OF RETURN	0.2607	INTERNAL RATE OF RETURN	0.280	INTERNAL RATE OF RETURN	0.294
IRR GUESS	0.22	IRR GUESS	0.220	IRR GUESS	0.220
ADDITIONAL INCOME	5,109,060	ADDITIONAL INCOME	5,609,060	ADDITIONAL INCOME	5,736,482
ADDITIONAL EMPLOYMENT	14,050	ADDITIONAL EMPLOYMENT	15,425	ADDITIONAL EMPLOYMENT	15,775

1/ Project benefits are assumed to extend for 20 years

2/ Project costs are conservatively placed in year one implying some underestimation of IRRs and NPVs

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# ANNEX I: Economic Feasibility

TABLE 1: COST BENEFIT ANALYSIS OF PRED1992 (continued)

DATA, PARAMETERS AND ASSUMPTIONS-----

MONEY MARKET INTEREST RATE	0.12								
DISCOUNT RATE	0.12								
Tied Resources due to Inefficiencies in courts	100,000,000								
Percentage Invested from freed Resources	0.1								
Increase in Productivity of Formal sec. Capital	0.005								
Increased Investment in Formal Private Sector	0.1								
Percent Increase	0.01								
Percent of revenue as project benefit	0.01								
Benefit to project from this increased investment	0.01								
CASH DISBURSEMENT	7,000,000								
CAPITAL STOCK (FORMAL SECTOR)	2,500,000,000								
Capital Stock Multiplier (K/I)	5								
ANNUAL INVESTMENT: FORMAL SECTOR	500,000,000								
Public	250,000,000								
Private	250,000,000								
Growth of formal sector due to shift from Informal	0.01								
Differential productivity of sectors	0.3								
Capital to Output Ratio	5								
Employment per \$1,000 output	0.275								
PROJECT YEAR:	1	2	3	4	5	6	7	8	9
Phase-in of project benefits	0	0.3	0.5	0.8	1	1	1	1	1
Informal to formal shift factor	1	1.01	1.02	1.03	1.04	1.05	1.06	1.07	1.08

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# ANNEX I: Economic Feasibility

TABLE 7. COMMERCIAL GAMES-REGISTERED TO THE BANKED CIVIL COURTS 1989 AND 1991

INDL	PRINCIPAL FCFA	INTEREST FCFA	M/BANK(S) OR MOT(C)	EST. TIME TO SOLVE	
				CASE	YEARS
4	35,831,795	3,000,000	B		0.73
25	48,993,096		B		0.00
33	3,110,800	350,000	B		0.04
43	152,343,765	5,000,000	B		0.28
50	1,251,979	250,000	B		1.61
66	46,677,743	16,005,245	B		2.60
74	70,000,000		B		0.00
76	83,110,910		B		0.00
79	0,306,044	2,000,000	B		1.72
81	2,518,290	300,000	B		1.68
94	2,810,047		B		0.00
96	3,563,249		B		0.00
97	7,927,465		B		0.00
106	67,478,586	2,000,000	B		0.26
113	22,400,000		B		0.00
117	133,290		B		0.00
146	100,133	50,000	B		3.57
168	2,000,000		B		0.00
3	4,942,782	1,200,000	C		1.92
5	1,552,530	400,000	C		2.02
8	10,094,033	1,500,000	C		1.22
11	22,160,000		C		0.00
12	605,000		C		0.00
17	7,000,000		C		0.00
18	10,781,462		C		0.00
20	20,000,500	2,000,000	C		0.84
23	500,000	200,000	C		2.97
24	2,880,000		C		0.00
34	10,000,000	1,000,000	C		0.04
36	1,551,818	400,000	C		2.02
43	250,000	150,000	C		4.15
47	914,000	300,000	C		2.50
48	323,000	150,000	C		3.37
49	1,500,000	700,000	C		3.38
51	126,500	540,000	C		14.92
52	1,005,000	400,000	C		2.77
54	854,325	500,000	C		4.06
55	4,103,419	700,000	C		1.39
56	129,095,511	5,000,000	C		0.33
57	8,241,000	1,500,000	C		1.48
58	3,700,000	600,000	C		1.33
59	1,300,779	600,000	C		3.35
61	1,725,000	50,000	C		0.25
63	7,500,000		C		0.00
68	550,000	350,000	C		4.35
69	209,000	50,000	C		1.61
70	500,000		C		0.00
71	1,094,910	300,000	C		3.31
78	1,124,558		C		0.00
80	11,000,000		C		0.00
82	800,000		C		0.00
85	2,545,000		C		0.00
86	10,987,460	500,000	C		0.39
88	650,000		C		0.00
90	500,494		C		0.00
91	976,116		C		0.00
92	528,000		C		0.00
95	0,338,935		C		0.00
103	1,298,272		C		0.00
110	29,926,396		C		0.00
115	19,185,600	1,000,000	C		0.45
119	8,831,796		C		0.00
122	2,329,291	500,000	C		1.72
136	2,100,000	250,000	C		0.99
138	13,439,605		C		0.00
140	0,765,094		C		0.00
141	22,000,000		C		0.00
147	2,600,000	700,000	C		0.65
149	3,400,000	1,000,000	C		1.48
154	1,378,977		C		0.00
163	2,109,600		C		0.00
166	18,750,000	5,000,000	C		2.09

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TABLE 1a. ESTIMATES BASED ON COMMERCIAL CASES REGISTERED IN THE BAHAKO CIVIL COURTS 1989 AND 1991

TOTAL NUMBER OF RECORDS IN CIVIL COURTS	169
NUMBER INVOLVING BANKS	49

VALUES IN FCFA-----			
	PRINCIPAL	INTEREST	
TOTAL BASIC DATA	990,469,777	56,415,245	85.25
AVERAGE	13,568,079	1,446,545	2.19
WITH BANKS	557,857,294	29,155,245	13.31
BY BANKS	30,992,072	3,239,472	1.48

-----VALUES IN DOLLARS (AT FCFA)                      275 per dollar

TOTAL BASIC DATA	3,601,708	205,146
AVERAGE	49,338	5,260
INVOLVING BANKS	2,028,572	106,019
AVERAGE INV. BANKS	112,698	11,780

BAHAKO CIVIL COURTS 1/	8,338,201
INVOLVING BANKS	5,522,224
ALL CIVIL COURTS 2/	27,160,265
INVOLVING BANKS	17,987,699
FORMAL SECTOR TOTAL 3/	135,801,325

PARAMETERS	
BAHAKO SHARE OF FORMAL SECTOR	0.307
EXCHANGE RATE	275 FCFA/\$
INTEREST RATE CHARGED	0.12
CREDIT TO ECONOMY 4/	\$365.1 million

ASSUMPTIONS

- 1/ Assumes that commercial cases in litigation without specified amount also involve the average amount
- 2/ assumes that in the formal sector, the rest of the nation is not significantly different from Bamako and uses the share of value added in the formal sector, p38, 'Enquete Sector Informel' to estimate the national figure
- 3/ Assumes that cases in court as a share of total in litigation is 0.2  
Note that our information is for two years meaning that with these assumptions 368 million is tied in one year
- 4/ Credit to Economy on June 30, 1992, according to reform program. Economic and Financial Operations Table (TOFE), March 27

**ANNEX J**  
**FINANCIAL SUMMARY TABLES**

**ANNEX J**  
**TABLE 1**  
**SUMMARY FINANCIAL PLAN**  
**PROGRAM DEVELOPMENT FOR ECONOMIC REFORM**  
**(\$'000)**

	ORIGINAL	AMENDMENT	TOTAL
1. Program Assistance	<u>7,000</u>	<u>7,000</u>	<u>14,000</u>
2. Project Assistance	<u>7,000</u>	<u>2,000</u>	<u>9,000</u>
A. L.T. Tech. Assistance	4,500 [+450]*	0	4,950**
B. S.T. Tech. Assistance	0	500	500
C. DNAE Program	200*	450	650
D. Comm. Courts	300	700	1,000
E. PCU Operations	700	50	750
F. Training	500	0	500
G. AID Assistants	100	100	200
H. Audits	150	0	150
I. Evaluation	0	50	50
J. IQC Support	100	150	250
<b>TOTAL</b>	<b>14,000</b>	<b>9,000</b>	<b>23,000</b>

\* REDSO/WCA contracting officer advised that a \$450,000 contract modification was approved in June 1992. Pending confirmation of the budget category from where those funds were taken, the DNAE allocation under the original project budget has been adjusted to accommodate this increase.

\*\* Illustrative Figure. Actual amount will be determined when contract total figures are available.

ANNEX J  
TABLE 2  
PROJECTED EXPENDITURES BY FISCAL YEAR  
(\$'000)

BUDGET CATEGORY	1991	1992	1993	1994	1995	TOTAL
1. Program Assistance	<u>7,000</u>	<u>7,000</u>	<u>TBD*</u>	<u>TBD</u>	<u>TBD</u>	<u>14,000</u>
1st Tranche	7,000	-	-	-	-	7,000 ✓
2nd Tranche	-	7,000	-	-	-	7,000 ✓
2. Project Assistance	<u>150</u>	<u>2,100</u>	<u>2,450</u>	<u>2,325</u>	<u>1,975</u>	<u>9,000</u>
A. L.T. Tech. Assistance	0	1,300	1,200	1,200	1,250	4,950 <sup>™</sup> ✓
B. S.T. Tech. Assistance	0	50	200	200	50	500 ✓
C. DNAE Program	0	300	100	150	100	650 ✓
D. Comm. Court	0	150	350	325	175	1,000 ✓
E. PCU Operations	150	150	150	150	150	750 ✓
F. Training	0	100	200	100	100	500 ✓
G. AID Assistants	0	50	50	50	50	200 ✓
H. Audits	0	0	50	50	50	150 ✓
I. Evaluation	0	0	0	0	50	50 ✓
J. PEDS Project	0	0	150	100	0	250 ✓
<b>TOTAL</b>	<b>7,150</b>	<b>9,100</b>	<b>2,450</b>	<b>2,325</b>	<b>1,975</b>	<b>23,000</b>

Note: Disbursements above include an order of magnitude \$500,000 for commodities and equipment. These requirements will be detailed during implementation, specifically through the annual PCU work plan.

\* To Be Determined

<sup>™</sup> Estimated Figure. Final amount will be determined when contract total figures are available.

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ANNEX J  
TABLE 3  
SUMMARY COST ESTIMATES AND FINANCIAL  
(\$'000)

BUDGET CATEGORY	LC	FX	TOTAL
<b>1. Program Assistance</b>	<b>0</b>	<b><u>14,000</u></b>	<b><u>14,000</u></b>
1st Tranche	0	7,000	7,000
2nd Tranche	0	7,000	7,000
<b>2. Project Assistance</b>	<b><u>2,550</u></b>	<b><u>6,450</u></b>	<b><u>9,000</u></b>
A. L.T. Tech. Assistance	0	4,950	4,950
B. S.T. Tech Assistance	100	400	500 ✓
C. DNAE Program	400	250	650 ✓
D. Commercial Courts	1,000	0	1,000 ✓
E. PCU Operations	500	250	750 ✓
F. Training	200	300	500 ✓
G. AID Assistants	200	0	200 ✓
H. Audits	150	0	150 ✓
I. Evaluation	0	50	50 ✓
J. IQC Support	0	250	250 ✓
<b>TOTAL</b>	<b>2,550</b>	<b>20,450</b>	<b>23,000</b>

Note: Section 110 (Foreign Assistance Act) requirements for 25% cost-sharing have been met for both the program (14,000,000) and the project (8,000,000). See Annex H in the PRED PAAD.

\* Illustrative Figure. Final amount will be determined when contract total figures are available.

ANNEX J  
TABLE 4  
COSTING OF PROJECT INPUTS/OUTPUTS  
(\$'000)

INPUTS	TAXES	DNAE	BUDGET	C. COURTS	PCU MGT	TOTAL
1. Program Assistance	<u>7,000</u>	-	-	<u>7,000</u>	-	<u>14,000</u>
1st Tranche (FY91)	7,000	-	-	-	-	7,000
2nd Tranche (FY92)	-	-	-	7,000	-	7,000
2. Project Assistance	<u>1,155</u>	<u>2,559</u>	<u>664</u>	<u>2,100</u>	<u>2,522</u>	<u>9,000</u>
A. L.T. Tech. Assistance	1,143	1,679	651	85	1,392	4,950*
B. S.T. Tech. Assistance	0	0	0	500	0	500
C. DNAE Program	0	650	0	0	0	650
D. Comm. Courts	0	0	0	1,000	0	1,000
E. PCU Operations	0	0	0	0	750	750
F. Training	0	150	0	200	150	500
G. AID Assistants	12	30	13	115	30	200
H. Audits	0	0	0	0	150	150
I. Evaluation	0	0	0	0	50	50
J. IQC Support	0	50	0	200	0	250
<b>TOTAL</b>	<b>8,155</b>	<b>2,559</b>	<b>664</b>	<b>9,100</b>	<b>2,522</b>	<b>23,000</b>

Note: There is not a one-to-one correspondance between the amount of tranche release and the cost of enacting the particular reform (s) that correspond to it. Rather, the level of program support represents the relative magnitude and substantive contribution to the reform agenda of the measures being carried out.

\* Illustrative Figure. Final amount will be determined when contract total figures are available.

ANNEX J  
TABLE 5  
METHODS OF IMPLEMENTATION AND FINANCING  
(\$'000)

COMPONENTS	METHODS OF IMPLEMENTATION	METHODS OF FINANCING	AMOUNT (\$'000)
PROGRAM NPA	DIRECT & TRANSFER GRM ACCT/New York	DIRECT DISBURS.	14,000
L.T. TECHNICAL ASSISTANCE	DIRECT CONTRACT	DIRECT PAYMENT	4,950*
S.T. TECHNICAL ASSISTANCE	DIRECT CONTRACT	DIRECT PAYMENT	500
DNAE PROGRAM	HC IMPL. UNIT	DIRECT REIMBURS.	650
COMMERCIAL COURTS	HC IMPL. UNIT	DIRECT REIMBURS.	1,000
PCU OPERATING COSTS	HC IMPL. UNIT	DIRECT REIMBURS.	750
TRAINING PROGRAM	DIRECT CONTRACT HC IMPL. UNIT	DIRECT PAYMENT DIRECT REIMBURS.	250 250
AID ASSISTANT	DIRECT CONTRACT	DIRECT PAYMENT	200
AUDITS	DIRECT CONTRACT	DIRECT PAYMENT	150
EVALUATION	DIRECT CONTRACT	DIRECT PAYMENT	50
IQC SUPPORT	BUY-IN/DIR CONTRACT	DIRECT PAYMENT	250
<b>TOTAL</b>			<b>23,000</b>

Note: HC Impl. Unit = Host Country Implementation.

\* Illustrative Figure. Final amount will be determined when contract total figures are available.

**ANNEX K**

**POLICY OBJECTIVES, WORKPLAN, AND RESOURCES**

**ANNEX K  
 PRED AMENDMENT NUMBER 1  
 SUMMARY OF POLICY OBJECTIVES, WORKPLAN, AND RESOURCES**

POLICY FOCUS	SEPTEMBER 1992	JUNE 1993	DECEMBER 1993	INDICATORS
<p style="text-align: center;"><b><u>Program Goal</u></b></p> <p>To promote market-driven and sustainable economic growth in Mali</p> <p style="text-align: center;"><b><u>Strategic Objectives</u></b></p> <p>To increase private sector participation in the economy, particularly in areas of high productive potential.</p> <p>To promote democratic initiatives, social justice, and the rule of law.</p> <p style="text-align: center;"><b><u>Objective of Amendment</u></b></p> <p>To promote efficient, fair and reliable resolution of commercial disputes.</p>	<p style="text-align: center;"><b><u>Measures to be Taken</u></b></p> <p>Declare Commercial Courts functional and competent to adjudicate cases within their jurisdiction.</p> <p>Create Commercial Court, Administrative Court, and Commercial/Civil/Social Procedural Code (CCCSP) Commissions.</p> <p>Create a Working Group for Model Contracts</p>	<p style="text-align: center;"><b><u>Measures to be Taken</u></b></p> <p>Make recommendations on the establishment of Administrative Courts; jurisdictions of Commercial Courts; relevance of the Washington and New York Conventions; usefulness of arbitration; staffing, training, compensation for the judiciary; types and content of model contracts; unified business registration disciplinary codes; and dissemination of legal documentation.</p> <p>Establish intermediate procedures for Commercial Courts.</p> <p>Execute recommendations on consignment fees.</p>	<p style="text-align: center;"><b><u>Measures to be Taken</u></b></p> <p>Take action on jurisdiction of the Commercial Courts; the establishment of Administrative Courts; and application of Washington and ratification of New York Conventions.</p> <p>Obtain legislative approval for the Commercial, Civil, and Social Procedural Code</p> <p>Implement human resource development program; and recommendations for judicial recruitment and compensation, unified business registrations, and model contracts.</p>	<p style="text-align: center;"><b><u>Policy Indicators</u></b></p> <p>Revised CCCSP Code</p> <p>Clearly established and functional jurisdictions for Commercial/Administrative Courts</p> <p>Ratification of the New York Convention (TBD)</p> <p style="text-align: center;"><b><u>Impact Indicators</u></b></p> <p>15,000 new jobs and \$5.5 million of additional annual income created by Year 5 of implementation (1997)</p> <p>The Rule of Law</p> <p style="text-align: center;"><b><u>Intermediate Indicators</u></b></p> <p>Number of Commercial Court cases; adjudication time; use of arbitration; re-investment of funds freed from litigation.</p>
<p>Program Assistance</p>	<p>\$3 million</p>	<p>\$2 million</p>	<p>\$2 million</p>	<p>Total NPA: \$7 million</p>
<p>Project Assistance</p>	<p>\$750,000 (1992-1993)</p>	<p>\$800,000 (1993-1994)</p>	<p>\$550,000 (1994-1995)</p>	<p>Total PA: \$2.1 million</p>

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**ANNEX L**  
**ORIGINAL PAAD LOGFRAME**

ANNEX I

POLICY REFORM FOR ECONOMIC DEVELOPMENT  
(688-0245/0246)  
LOGICAL FRAMEWORK  
(SUBMITTED JULY 1991)

NARRATIVE SUMMARY	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	IMPORTANT ASSUMPTIONS
<p><u>Goal:</u></p> <p>To promote economic growth in Mali</p>	<ol style="list-style-type: none"> <li>1. Real GDP increases from \$2.2 billion in 1990 to \$2.6 billion in 1996</li> <li>2. Per capita GDP increases from \$260 in 1990 to \$310 in 1996</li> <li>3. Exports of goods and non factor services grow from \$330 million in 1990 to \$400 million in 1996</li> <li>4. Government expenditures as a percentage of GDP decreases from 26% in 1990 to 23% in 1996</li> <li>5. The fiscal deficit as a percentage of GDP is reduced from 8% in 1990 to 6% in 1996</li> </ol>	<p>World Bank Reports</p> <p>IMF Mission Reports</p> <p>Program evaluations and impact assessments</p> <p>MEF surveys</p> <p>DNSI statistics</p>	<p>The current transitional and upcoming elected governments remain stable</p> <p>Democratic initiatives are effective</p> <p>There are no significant unforeseen climatological changes</p>
<p><u>Purposes:</u></p> <p>(a) To create an environment conducive to increase growth and employment, and</p> <p>(b) to improve the management of public finances.</p>	<ol style="list-style-type: none"> <li>1. Private investment increases from \$280 million annually in 1990 to \$340 million in 1996</li> <li>2. Household incomes increase from an average of \$1560 in 1990 to \$1860 in 1996</li> <li>3. Tax revenues increase from \$220 million in 1990, to \$330 million in 1993, to \$365 million in 1996</li> <li>4. Private sector perception of public sector performance improves</li> <li>5. MEF non-salary expenses increase from \$800,000 in 1991 to \$1.8 million in 1996</li> </ol>	<p>MEF and PCU reports</p> <p>World Bank SDA Income Surveys</p> <p>DNSI statistics</p> <p>USAID/DNAE joint studies</p> <p>Attitudes surveys on the business climate</p>	<p>Government adheres to structural adjustment program</p> <p>World market situation for Malian exports does not change dramatically</p>

POLICY REFORM FOR ECONOMIC DEVELOPMENT  
(688-0245/0246)  
LOGICAL FRAMEWORK  
(SUBMITTED JULY 1991)

NARRATIVE SUMMARY	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	IMPORTANT ASSUMPTIONS
<p><b>Outputs:</b></p> <p>1. Taxes are abolished or reduced</p> <p>2. DNAE is restructured to support the private sector</p> <p>3. New firms and jobs are created</p> <p>4. Commercial courts are established and functioning</p> <p>5. Bank credit for SME's increases</p>	<p>1. Remaining export taxes are abolished by 1991; minimum business profits and payroll taxes decrease one-third by 1992; direct taxes on business income decrease to one by 1994</p> <p>2. DNAE agents trained by 1993, disseminating information, revising regulations &amp; proposing new statutes in support of the private sector</p> <p>3. New firms obtaining business licenses in Bamako District increases from 1600 in 1989 to 2500 in 1996; the number of jobs created in the private sector increases from 15,000 in 1990 to 18,000 in 1996</p> <p>4. Number of claims brought to and resolved by commercial courts in Bamako (1992) and two other cities (1996)</p> <p>5. Available credit for SME's increases 5% per year through 1996; share of bank credit given to noncommercial activities increases from 20% in 1990 to 25% in 1996</p>	<p>MEF and DNAE reports</p> <p>ONMOE statistics and labor surveys</p> <p>PCU analyses</p> <p>Chamber of commerce records and reports</p> <p>DNSI statistics</p>	<p>MEF applies new budget resources effectively</p>

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POLICY REFORM FOR ECONOMIC DEVELOPMENT  
 (688-0245/246)  
 LOGICAL FRAMEWORK  
 (SUBMITTED JULY 1991)

NARRATIVE SUMMARY	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	IMPORTANT ASSUMPTIONS
<u>Inputs:</u>			
Program Assistance	\$7 Million	GRM financial statements	Allowances are received from AID/W
Project Assistance	\$7 Million		
a. Tech. Assistance	a. \$ 4,500,000	Project and Controller Reports	Inputs are provided in a timely manner
b. DNAE Program	b. \$ 650,000		
c. Commercial Courts	c. \$ 300,000		
d. PCU Operations	d. \$ 700,000		
e. Training	e. \$ 500,000		
f. AID/PSC Economist	f. \$ 100,000		
g. Audits/Evaluations	g. \$ 150,000		
h. PEDS Buy-In	h. \$ 100,000		

**ANNEX M**  
**MISSION PROGRAM LOGFRAME**

**Annex M**  
**USAID/Mali Program Logical Framework, Fiscal Years 1990 - 1993**

<p><b>MISSION PROGRAM GOAL</b> To Promote Economic Growth.</p> <p><b>SUBGOAL</b> To Improve the Quality of Life.</p>	<p><b>COUNTRY TREND INDICATORS</b></p> <ol style="list-style-type: none"> <li>1. Real GDP grows at least 4% per year, surpassing \$3.3 billion by 1995.</li> <li>2. Per capita GDP increases from \$260 in 1989 to \$355 in 1995.</li> <li>3. Exports of goods and non-factor services increases from \$268 million in 1989 to \$468 million in 1995.</li> </ol> <ol style="list-style-type: none"> <li>1. Life expectancy increases from 47 in 1987 to 51 by 1995.</li> <li>2. Literacy rate increases from 14% in 1989 to 17% in 1995.</li> </ol>
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<p><b>STRATEGIC OBJECTIVE 1:</b> Increase Private Sector Participation in the Economy.</p>	<p><b>PROGRAM PERFORMANCE INDICATORS</b></p> <ol style="list-style-type: none"> <li>A. Private sector investment in the economy increases from FCFA 75 billion in 1989 to FCFA 130 billion in 1995.</li> <li>B. New firms obtaining business licenses in Bamako district increase from 12,500 in 1990 to 23,000 in 1995.</li> <li>C. 50 new traders increase participation in grain trade by 1995, due to favorable marketing conditions and improved licensing procedures.</li> </ol>
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<p><b>TARGET</b></p> <p>1.1: Improve Regulatory Policies and Practices</p> <p>1.2: Decrease Fiscal Burden on the Private Sector</p> <p>1.3: Improve Public Sector Performance</p> <p>1.4: Increase Job Opportunities</p> <p>1.5: Increase the Availability of Credit to Small and Medium Enterprises</p>	<p><b>SUBTARGET</b></p> <ol style="list-style-type: none"> <li>a. Simplification: GRM reduces the number of business income taxes from 11 in 1989 to 1 by 1992.</li> <li>b. Transport: Price controls on internal transport are abolished by 1993, allowing private sector to provide agricultural transport services.</li> <li>c. Privatization: The Pharmacie Populaire du Mali (PPM) stops importing nonessential drugs by 1991, permitting private pharmacies to do so directly.</li> <li>d. Judicial system: Commercial courts in Bamako, Kayes and Mopti regions are fully operational by 1995.</li> </ol> <ol style="list-style-type: none"> <li>a. Export promotion: GRM eliminates all export taxes by 1992.</li> <li>b. Fiscal pressure: Business profits tax and payroll tax are reduced one-third by 1993.</li> <li>c. Equity: Number of taxpayers increases 10% per year, with fiscal burden being distributed equitably.</li> </ol> <ol style="list-style-type: none"> <li>a. Support to private sector: Ministry of Finance's DNAE is reoriented to a private sector support role by 1992.</li> <li>b. Fiscal performance: Government fiscal deficit as a percentage of GDP is reduced from 10% in 1989 to 6% in 1993.</li> <li>c. Revenue promotion and equity: Tax revenues increase from FCFA 85.6 billion in 1988 to FCFA 125 billion in 1995, through increases in the tax base and equitable income tax rates.</li> </ol> <ol style="list-style-type: none"> <li>a. Employment: 18,000 new jobs are created by 1995, to absorb public sector overflow and unemployed graduates.</li> </ol> <ol style="list-style-type: none"> <li>a. Lending: Bank credit for small and medium enterprises increases by 5% per year from 1989-1995.</li> <li>b. Non-Commercial Credit: The share of credit given to noncommercial activities increases from 54% in 1988 to 64% in 1995.</li> </ol>
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**ANNEX N**

**REFLECTIONS ON THE MALIAN COURTS**

## REFLECTIONS ON THE MALIAN COURTS

Review of the state of the commercial courts system in Mali indicates that AID has the opportunity to work with the GRM to improve the effectiveness of the legal system, which will result in an improved climate for the private sector. This can be done through a combination of project and program assistance. Without such assistance, the economic liberalization program may be severely affected. Indeed, the absence of a properly functioning legal system in the context of this liberalization program could have a negative effect upon the efforts of the GRM and the donors.

At present, the new, poorly equipped commercial courts are being called upon to enforce an ill-defined legal framework producing an uncertain result. This uncertainty dissuades economic activity by potential national or international traders, investors, creditors and debtors seeking predictability and efficiency from the legal system. The commercial court which was established in Mali as a jurisdiction d'exception will be considered as specialized only when commercial procedures exist.

### Program Objectives

Strengthening the capabilities of commercial courts to resolve the bulk of private disputes will help to develop the private sector, the portfolio of the banking system and the flow of credit. The value of the change reflects financial criteria but also and mainly the predictability and efficiency of legal instruments and institutions. A tentative study with conservative assumptions would show that more than \$ 100,000,000 can be brought into light, into the structured legal circuits, by a more effective justice system. Indeed, more than 20% of the total credit of the financial institutions to the economy can be considered as 'contentieux'. This represented at the end of 1991 about \$ 70,000,000 not taking into consideration the private sector internal debt between non-financial institutions and the various damages claimed. How can the privatization program proceed without a basic legal framework?

### The Quest for Pluralism

The Malian State affirms its unity with society as well as its continuity and its "monopoly over the law". Yet, for all that, the establishment of a commercial court represents one of the first recent experiences of judicial "pluralizing" in Africa. Since gaining independence, African States have unified their domestic jurisdictions. A number of reasons, identical with those now invoked to favor the creation of the new jurisdictions, were at that time cited to suppress them. It was necessary to unify the law in order to "guarantee certainty in transactions and to reassure investors". This need for standardization, streamlining and stabilization of the law coincided with the concern expressed by leaders of the poor countries for budgetary austerity and over the shortage of personnel. Balkanized before their independence and threatened by the tribal pattern of their own society, the new States could not afford to encourage, in any way, the existence of two distinct categories of citizens. A reform was therefore necessary envisaging a single order of jurisdiction, with no distinction between citizens subject to the law". (K. Mbaye p.37ff). In 1992, however, a pluralist climate prevails, whether politically (with about 40 parties), economically (14 firms privatized), professionally (discussions regarding the division of the Malian Chamber of Commerce and Industry into two distinct bodies, (establishment of a "Chambre Consulaire des Métiers d'Artisans") or even ethnically (Touareg claims for autonomy). This is a difficult passage from, on one side, the single party - the State monopoly, with the judicial, civil and military power in the hands of the Head of State - and on the other

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\* Source: Cordahi Alexandre: Mission Report On The Commercial Court in Mali, April 6, 1992, Rome (International Development Law Institute). Excerpted and in some cases restated (with apologies to the author) by USAID/Mali.

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a situation of open debate and even conflicts. Investigation confirms the present tension affecting the judicial world as well. Yet does not this tension - between unity and pluralism - represent the essence of democracy and of a constitutional state once it finds expression in the very institutions and through procedures made to measure?

### Problems of Form

The establishment of the commercial courts, under Act No. 88-38 of April 5, 1988, is merely one element in a complex judicial reorganization instituted in the Republic of Mali in that year. (Several draft enactments on this organization of the judiciary (e.g., regarding the possibility of instituting legal advisers) are still under discussion.) Despite the well-known African penchant for codes, the usual attention paid to form in the classification of laws has been disregarded in this case. Problems of form, disparate laws and decrees, and deficiencies and flaws now call for a tidying-up and reorganization. Indeed, economic development and the introduction of commercial law have been dwarfing the provisions of a Napoleonic-style commercial code. But the organization of justice requires clear-cut, easily communicated, well-arranged and rational classification. A great deal of correspondence has been necessary between the Ministry of Finance and Commerce and the Ministry of Justice in order to elucidate such relevant points as the composition of the Tribunal de Commerce, the term of the presiding judge, the oath taken by 'juges consulaires' (tradesman sitting as judges in commercial courts) or the representation of the prosecuting magistrate, and so on.

Under Art. 2 of this Act, "the jurisdiction of Commercial Courts extends to any claim relating to exchanges and transactions between tradesmen under Art. 3 of the Commercial Code". The printer undoubtedly intended "undertakings" (engagements) rather than "exchanges" (changements) but this is not the most important point. Beyond problems of form, a problem of cohesion and pragmatism of the many reforms already introduced or planned is apparent. It is the very content of these reforms which is now at stake.

The recommendation is made here to the effect that the necessary tidying-up and reorganization be carried out in the form of a renovated Code de Procédure (Civili et Commercial (CPCCS) and the comprehensive approach of a revised code for the judiciary as such. A code of this kind would bring together all matters having to do with the judiciary - jurisdiction, civil and commercial procedure, distraints and methods of execution.

### Organizational Problems

The gap between the laws passed in the last few years and the state of trade and commercial suits in Mali calls for an analysis of the organization and of the ways by which the rules of commercial law are devised and find their way on the statute book. Commercial law, both substantive and procedural, would gain if greater attention were paid to the facts of business life in Mali, and cases associated therewith. The overwhelming and exclusive influence of the Civil law tradition is so far little affected or tempered by case-law, which is certainly to be found in Civil law countries. Commercial law does not consist only in a body of abstract rules. Preliminary revision work on the commercial code, or even on the 1988 judicial reform, has not relied sufficiently on the collection, description and analysis of cases. The case method should be introduced and encouraged, and the dualism Civil law tradition/Common law tradition should be replaced with a synthesizing approach more appropriate to the situation in Mali and the region as a whole. The commercial court can only be conceived as originating from and depending upon the same realities as that which it is expected to regulate. In the normal way it should be organized in terms of integrating the following elements:

- identification of problems (courts' workload, slowness, cost), and the recognition of the fact that the need exists;
- consideration of constraints (budget, conflicts of jurisdiction);
- determination of the aims to be pursued (technical expertise, rapidity, the trust of the person coming, or being taken, to the court); and

identification of the targets to be achieved (output, training, efficiency of the measures of execution,

The next stage consists in building up a system using all technical mechanisms and elements available to the law (Chamber of Commerce or commercial court; professional judges/co-opted tradespeople, and so on). This approach does not seem to have been considered by the authorities responsible for "monitoring the codification of the reforms" or even in their terms of reference. The burden of this discussion is that precisely such an approach should be followed.

### Bypassing the Courts

From an analysis of judicial statistics it will also be seen that in cases of economic disputes, the forum for the settlement of litigation either does not exist as a practical matter (to the detriment of the insured, for example) or shifts from judicial instances to the public authorities. Company reorganization-related problems have never been "solved" by the judicial apparatus. As far as we know, no judicial decision has been delivered in this respect. And, according to Malian jurists "had there been such a decision, no company in Mali, after paying off all its debts, as provided for by the Commercial Code, would be able to redress its financial situation". There is a real danger of commercial justice becoming marginalized. Faced with an economic and financial crisis, a deterioration in the terms of trade and growing uncertainty, the Government is trying to exert a *de facto* predominance. Its plan to sell off public companies and to privatize the economy is not accompanied by the creation of judicial arms or by the implementation of measures for the private sector to step in following this disengagement by the State. The legislator cannot foresee all possible social and economic situations in Mali, which is now experiencing rapid changes and is subject to several internal and external pressures. Legislation, Government action and adjustment programs have only limited scope for adaptation to circumstances.

Thus is where the role of the judge comes into its own. In a crisis situation, with firms going out of business, with wages remaining unpaid, uncoordinated Government measures risk creating a gulf between the law and the realities of economic and social conflicts; it is here that a case-law approach can bridge the gap between short-term economic expediency and the long-term rule of law.

For all these reasons the powers of the commercial court to deal effectively with litigation in economic matters should be strengthened. Essentially, the principles engaged in the conception of the court and the conditions accompanying its institution do not appear, by themselves, to have guaranteed its efficacy. By improving the court's operational performance, the desired strengthening will follow.

### The New Act

Before examining the problems relating to jurisdiction rules, one should note that the legislator made no special provision prescribing the exact date when the new law should come into force. Indeed, art. 13 states that: "a trial court may exert jurisdiction over business matters until a commercial court is established...". The provision is ambiguous and the citizen no longer knows which court he/she must turn to. Even lawyers and judges, because the subject is so new, tend to confuse problems relating to the time aspect of the applicability of the Act and to other situations connected with conflicts of jurisdiction. Are the commercial courts, for example, "established" in Mali, at Bamako, Kayes and Mopti, or just at Bamako?

If this question has to be asked, then, in principle the Act is immediately applicable to any suit already brought or yet to be brought. Without a formal exception being invoked, the ordinary courts can have a case removed from them and brought before a commercial court. This however would not apply where the ordinary court has already handed down a first - or final-instance decision on the merits or affecting the merits of a case that has been regularly brought before it. The Malian Constitution and Art. 231 par. 2 of the CPCCS provide for the principle of legislative continuity.

This interpretation (the only one possible) has several practical drawbacks. The commercial court of Bamako seems to be fully "established" (unlike the Kayes court, which has no physical premises and the Mopti court, whose president is currently in hospital) but it could hardly handle all the commercial proceedings pending before the Bamako Court of First Instance. The silence of this law (with the exception of art. 13, par. 4, which does not apply specifically to conflicts as regards time) as regards proceedings instituted before the commercial courts were established could be interpreted as an oversight. The omission, however, and the ambiguity are intended, since they express one of the peculiar features of law and legal reforms in Africa, lying in "the flexible, non-imperative nature of conduct rather than one prescribing sanctions for offences" (Rouland p. 386). Some legal scholars dismiss this as "ghost law" or "ineffective law"; yet others use the expression "progressive law". Often, new laws and institutions enjoying official status under the constitution and under statutory law are difficult to apply fully and immediately - it is more convenient not to worry about problems relating to applicability in time; and this is in any case the current attitude of the Ministry of Justice. However, such an attitude is not free from dangers; and it can deprive such a new Act of all authority.

Techniques are available, however, for the progressive implementation of a new legislative and institutional policy. These include: legal planning envisaging a coherent and controlled development of statute law, the adoption of transitional and accompanying measures, together with measures for insuring the information of the public and applied training. In the case in point, the legislation, by the same article 13, vested the judge of the appellate court with wide powers, which have so far never been exercised: "whenever a commercial court cannot operate for any reason, the Court of Appeal once the matter has been brought before it, at the request of the Attorney General, appoints the trial court competent for handling business cases. When the commercial court is able to resume its functions, the Court of Appeal, seized for this matter under the same conditions, takes this into account and fixes the date starting from which actions shall be brought before the commercial court again". The process is flexible, coherent and suitable for the Malian context.

It is therefore to be recommended that the "Court of Appeal, thus called upon at the request of the Attorney General", should appoint the courts competent to exercise jurisdiction over business matters in Kayes, Mopti and Bamako, in order to settle as soon as possible problems regarding the timing of applicability. The legislation and the Ministries concerned should adopt a stricter procedure regarding the dates on which laws are supposed to come into force. The above-mentioned techniques make it possible to couple strictness with caution - a technical caution. This may result in a less idealized law but one which is certainly more effective and less frequently disregarded.

The applicant has to determine the jurisdiction that is territorially competent for his/her purposes. How can he/she do so at all clearly in Mali today, when article 2 of the 1988 Act is imperfect and refers one to article 3 of a commercial code. How could the Malian jurist have avoided the radical judgement that "our conception of the commercial transaction is not sufficient, and unfortunately the question is dominated by that of the competence of the Commercial Courts; and this question, too, will have to be reconsidered" (Traité, p.8). And how could our Malian jurist have done any better, avoid archaisms, draw support from scholarly opinion regarding real needs, finalities, objectives, opinions and solutions. Praise is due for re-reaching efforts and the reports of the expert working group established in Bamako to renew the 1986 Commercial Code. To be sure, the 1986 Commercial Code took into consideration the changes in French commercial law. Nevertheless, the numerous and important French technical reforms of the 1980s have not yet been adopted in Mali. Some are not even taken into consideration; and there is no statute defining the scope of privatizations (Act No. 88-34 is the only one that authorizes the opening up of the capital of State-owned companies to other operators, and of joint-ventures -i.e. companies with public and private capital and those to be privatized). It seems that the new Commercial Code will give a different meaning to the notion of a commercial act. It is not the intention in this brief survey to judge between the subjective conception of commercial law as concerning only those qualifying as commercial operators and the objective conception which considers legal acts necessary to commercial activities. Here more than ever, the Malian jurist need to strengthen his understanding of the theories of l'accessoire and of mixed actions.

### Observations

The commercial jurisdiction concept can be defended on the grounds that it offers more expeditious procedures and that access to the court is facilitated. It would be a mistake to suppose that the simple institution of a tribunal d'exception would automatically guarantee specialization in one field or another, both functional and procedural specialization. The point is relevant since the autonomy of the commercial jurisdiction provides the basis for renewal of judicial power in a society where economic liberalization is in process. But the effort made from the institutional standpoint has not really affected so far the course of commercial justice. Thus, if the reform is to succeed, it needs a lot of improvements in order to achieve its original purpose, namely that of "settling disputes between commercial operators who have to state their respective claims in good faith without being bogged down by the subtleties of statutory laws or decrees" (Edict of November 1563, which created the territorial jurisdiction of professional and lay judges in Paris and determined their competence.) These solutions for conflicts of competence will ensure that the reform is not unreasonable and not an example for those judicial/ law experts who, ever since Jeremy Bentham, have argued for the abolition of special courts.

The proposal is accordingly made that the reform of Mali's Code de Procédure Civile et Commerciale shall have among its purposes to nullify any manoeuvres designed to slow down the course of justice. A special procedure is needed to solve conflicts of jurisdiction immediately. Pleas in bar of trial, or of lis pendens or, again joinder pleas will have to be addressed with this in mind. That is why article 13 of the Act to institute the Commercial Court should encourage reliance on this procedure and empower the Court of Appeal to decide in conflicts of jurisdiction. Juridical acculturation is easier when the legal system comes from a country whose language is the same as that spoken in the adopting country, which is why the following approach, adopted in France for judicial settlements liquidation cases, is suggested:

- a/ Expeditious clarification of all conflicts of jurisdiction: when the court before which a case is brought finds that the case is beyond its jurisdiction, the presiding judge has to inform the President of the Court of Appeal who will then indicate the competent jurisdiction (in so many days', weeks', months' time).

The decisions of the presiding judge and the President of the Court of Appeal are notified immediately to the parties by the clerk of the court and may not be appealed. The decision of the President of the Court of Appeal is an order for the parties and for the judge to whom the case is sent back.

- b/ Where the competence of a court is challenged, but where it finds that it is competent, the court must decide on the merits immediately.
- c/ Where there is a conflict of jurisdictions, then the court that finds that it has no competence can nevertheless take conservation measures as a form of guarantee (e.g., taking inventory of a debtor's property and thereafter affixing seals) to protect the creditors' rights.

### Mixed Composition Of The Commercial Court

There is a cultural dimension associated with the status of the professional judge and of the commercial judge. The two are called to sit together. As in all the French-speaking countries in Africa and in Madagascar, Mali was already familiar with the mixed system in the labor courts. There are lessons to be learnt in the practice of having lay judges sit in customary matters in Mali. Some of them are likely to lack motivation as they are not remunerated. And there is the professional judge who complains about his salary being a "corruption trap", to a greater extent than his commercial lay counterpart. The latter, on the contrary, feels that his is merely a decorative function. His role must therefore be accorded greater esteem. In the mixed legal system, the presiding judge does not have to be a professional, as is currently the case in Mali. It is interesting to make a comparison with what was said 60 years ago about the Roume doctrine and its attempts to write on African issues: "... by limiting oaths on

feushes or on the Koran, by disregarding the supernatural factors linked with the person of the judge, by depriving the chiefs of their position as judge and by calling in lay judges to sit in court, i.e., no longer the initiates, the inspired of the Africa of old, haven't we emptied custom of its meaning?" (in Roulard p. 355). This quotation shows that, in a similar court system, the problems associated with the mixed legal system in Mali can be solved by statutory or procedural means which make allowances for the cultural factor. To avoid the problems of a professional judge appointed to a court in the provinces and surrounded by locally influential people, the revised Judiciary Code might follow the example of the Belgian Code and provide for such matters as the acceptance of judges, residence, and the exercise of judicial functions (as regards rank, precedence and the servicing of hearings) - since Malian society is far from being informal.

It would wrong to think that the involvement of the commercial operator in the process of Mali jurisprudence constitutes a danger. His presence there assumes that the professional judge comes from an independent and hierarchical body, and that he is detached from the milieu where he exercises his functions. Many observers of the judicial world in Mali believe that there is no difference here between him and the commercial operator. Some judges, whether experienced or at the beginning of their career, have expressed the same opinion. Great hopes are therefore engaged in this new mixed legal system which may be a real asset for the private sector. Traders and industrialists care very much about unfairly judged disputes that they come across in the cases they hear, about unfair competition or discrimination against French traders who have been living in Bamako for many years and are still waiting for the enforcement of a judgement. "Judges of all shapes and sizes, dressed in black or red, with or without ermine, all have in common this modern idea that equity is the only justice" (Jean Denis Bredin in Etudes offerte à B. Goldman, Litec 1987 p.20). And this is the general feeling that the mission perceived - a feeling that can renew a legal system which has been constrained too long by its dependence on authority.

## Specializing The Commercial Court

### Training and Recruitment

An instrument for changing mentalities. The preponderance of economics, the contract taking precedence over the law, the development of a private sector with which the law is inadequately acquainted - these are but some of the factors that disorientate the judiciary qua institution as well as the judges that make up that institution. The bringing into being of a commercial court has, in such a context, given rise to a misunderstanding that is best cleared up. Career judges look askance at the Commercial Court, and are the first to point to the illiteracy of lay judges, their ignorance of the law and their incompetence as a component of the judiciary. The former tend to ignore and look down on the world of private enterprise, and the latter tend to ignore and look down on the judiciary. One thing that must be done immediately (otherwise the gulf will become yet wider between the expectations the commercial court engenders and the disappointment that may ensue), namely to define its specific place and provide it with the means of sustaining it. And it is training that represents the high road to achieving this purpose.

### Facilitating Access

### The Commercial Register

Legal incentives. Just as the Chamber of Commerce and Industry and the commercial courts (of which the Chamber is a basic element), the commercial register finds its origin in the corporate organization of traders. In Mali, articles 11 to 55 of the Code relate to the Commercial Register. The next nine articles (56 to 64) concern the list of professions. The Register is fundamental to the development of the private sector because, quite apart from its administrative functions, certain legal effects may be connected to it. Any policy aiming at bringing the informal sector into the mainstream of commercial activities should see in the Register a special means for

encouraging registration by informing the people concerned of its effects. Now, the ordinary citizen trader seems to be unaware of one of the main advantages of registration (which is also a pre-requisite for the status of trader), namely the access to the competence of the commercial court. In the absence of registration, it is often difficult to uphold the commercial nature of any document by applying the theory of appurtenance, in order to claim such a competence.

**Fiscal incentives.** Developing the peculiar character of commercial procedure and jurisdiction will be a practical incentive to abandon the informal sector and enjoy the benefits of joining the formal sector. At present, it is exactly the opposite that takes place: a number of traders and manufacturers complain of the publicity involved in the formal sector - in being a licensed operation. Thus, the private sector, covering only one-tenth of the working population, accounts for more than a half of direct tax revenues of the State. This is a handicap, namely a fiscal one, against informal traders. It could be countered that business companies draw all kinds of benefits from corporate status as a result of their registration. Moreover, registration could be encouraged by promoting access to the status of trader through a fiscal approach. A study carried out in 1989 by D.E.G. Louis Berger International at the request of the Bamako USAID highlighted "the discrepancy between the small number of formal (in the legal sense) "commerçants" who are known to the internal revenue service and who are not experts". The discrepancy persists today.

### **Specificity Of The Law**

#### Alternative procedures for the settlement of disputes.

Judges look suspiciously on arbitration. "The procedure experts do not like to change their habits and do not welcome innovations, be they imposed or proposed, from the top down or from the outside. Is it really so outrageous to add that such attitudes conceal a certain amount of ignorance?" (in Etudes, p.187). As an accompanying measure to the adoption of a Malian law providing for arbitration procedures, it is necessary to introduce specific training for professional judges. The ordinary judiciary proceeding and arbitration must be brought closer to each other. As things stand in Mali, these are not two mutually opposed methods of settling disputes. In this country and especially in the business sector, relations are pluralist and community-based, and people are bound by common ties at different levels (community, family, religion, economic considerations). The severance of relations may be much more upsetting than could be imagined in a more individualistic society. The parties thus try to settle their disputes in terms of composition, mediation, conciliation and arbitration. Such an attitude is already present in trial practice. Training seems to be the best way to remedy such a perception on the part of the Malian judge, according to which arbitration has its roots in a rejection of the State, of its laws and of its courts. Arbitration simply represents a preference for justice administered in a different way - in a way better suited to the commercial context. Having endured the State monopoly in the field for too long, tradespeople, through the creation of a commercial court, sought to counterbalance the "governmentalization" of justice. Domestic arbitration organized within a corporative context, such as the arbitration likely to be introduced by the revised Chamber of Commerce and Industry, may also meet such a need.

### **Conclusion**

Although it is technically in existence, the commercial court is still, in operational terms, in the realm of the future. There can be no denying, of course, that a law has been enacted, and that decisions have been taken on the strength of its provisions. But it is even more the resolve of all the actors in the economic life of the country that makes the institution a reality. If this is true, then the measures suggested will be better suited to carrying out the implications of that resolve - in other words, if a specialized commercial jurisdiction, with all the advantages that this offers, is to be brought into being. The underlying conviction is that commercial judges with a thoroughgoing training in business law and assisted by lay judges (magistrats consulaires) can amply demonstrate that the

commercial court is a strengthening element for the private sector and for the formal operations that take place within it.

The commercial judge in Mali has the difficult task of mediating between the legislator and the private sector, by the fact that he has often to apply obsolete rules in a heavily top-down, i.e. State-controlled, environment and one in which indigenous written law is of little consequence yet where conciliation has an important part to play.

Only a fragment of the economic life of Mali comes before the commercial judge. That being so, there are those who would have the "ordinary" justice there in the midst of economic and social processes, and there are others who argue that it should be kept apart. In either case, there is the risk that justice will be considered as just another government department and that the courts will simply be lumped together including the courts that have "expertise in economic efficiency". The question therefore has to be asked, as to how to obviate the risk and, at the same time, how to avoid setting up a government of judges.

**The dilemma.** At one and the same time, one is thus faced with a fundamental anomaly, with the effective predominance of the State in the exercise of the legislative and the judicial function but a predominance that needs to be geared to developing the private sector and to the settlement of economic disputes. This needs to be done without a marginalization of justice but bringing into being of a commercial jurisdiction. This state of affairs is not confined to Mali. It is commonplace to see a certain public law "interference" in commercial law; and it remains to be determined how one can escape from the dilemma here described.

**The new pattern of co-operation.** The Development Aid Committee (DAC) is anxious to see progressively shifted elsewhere the centres of decision-making, hitherto in the public sector (Rapport Annuel, 1991). Here, an attempt has been made to translate such a shift into legal terms, for the areas for decision-making are there at hand and need to be strengthened for both the judge and the parties to commercial transactions. The commercial court is a first step in this direction. The court could be strengthened through commercial techniques of a procedural or contractual nature. Private groups are already taking part in the economic and political process in Mali; and, according to the analyses and recommendations of the DAC, such a process could also curb corruption and help to extend the people's participation in the economic process. A major problem is thus one of power-sharing in the organization, under law, of business relations in the private sector. Without going so far as to adopt the American-style hearing (My God, these fellows are always suing one another - Sir Gordon White, in Fortune, November 7, 1988, p. 74), Mali can only benefit from lightening the conceptual ballast of legal theory and relying instead on contractual pragmatism and on custom without, however, jettisoning the Roman-German framework. It is not a question of passing from one legal system to another but rather, to quote Paillusseau (p. 14), of taking a lead from worthwhile formulas in American law or from the methods used in lawyer training and legal practice.

**Terms of reference.** It is therefore to be recommended that the terms of reference for those engaged in legal training, the technical consultants, and those providing legal advice in the matter of reform, might specify competence in matters and manners more closely geared to transactional realities and regional integration. Purely bilateral legal approaches, i.e., those simply transposing systems to Mali, must be avoided, since they are lacking in creativity and any pragmatic approach. Yet, on the other hand, autonomous legal development is rarely possible. The incorporation of laws and practices coming from outside a country has characterized most societies since ancient times. The main problem is first one of acquiring the means of assessing how a law, and institution, a type of court could actually and effectively operate in Mali, and of then introducing the necessary adjustments. Such an approach is what this discussion has been about. Yet it is the men and women involved that make law, an institution or a court come alive and function; and that is why training should be an essential pre-requisite for an efficient performance of justice in Mali.

**ANNEX O**

**RELEVANT CABLES**

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VZCZCBMA  
PP RUEHC  
EE RUTABM #5450/01 214 \*\*  
ZNR UUUUU ZZH  
P 021457Z AUG 91  
FM AMEMBASSY BAMAKO  
TO SECSTATE WASHDC PRIORITY 1044  
BT  
UNCLAS SECTION 01 OF \* BAMAKO 05450

CLASS: UNCLASSIFIED  
CHRG: AID 08/02/91  
APPR: DIR: DJBRENNAN  
DEFTD: DIR: DJBRENNAN  
CLEAR: NONE  
DISTR: AID AMB DCM  
ECON

AFLAC

FOR AFR/SVA SIMMONS

E.O. 12358: N/A  
SUBJECT: AMENDMENT TO PRED PAAD

REF: STATE 232737

1. THE PAAD FOR THE POLICY REFORM FOR ECONOMIC DEVELOPMENT (PRED) IS HEREBY AMENDED AS FOLLOWS:

A. THROUGHOUT THE PAAD: NON-PROJECT ASSISTANCE (NPA) IS REDUCED FROM DOLS 18 MILLION TO DOLS 7 MILLION. NPA CONDITIONALITY IS LIMITED TO ELIMINATION OF EXPORT TAXES AGAINST WHICH THE FY 1991 DISBURSEMENT OF DOLS 7 MILLION WILL BE MADE. REFERENCES TO ALL OTHER NPA CONDITIONALITY ARE DELETED. PROJECT ASSISTANCE REMAINS AT DOLS 7 MILLION. THE TECHNICAL ASSISTANCE WILL STUDY ALTERNATIVE REFORMS DURING THE PROJECT. THE AMOUNT OF NON-PROJECT ASSISTANCE MAY BE INCREASED IN SUBSEQUENT YEARS IN RESPONSE TO SUCH OTHER REFORMS AS ARE IDENTIFIED AND AGREED UPON AS THE BASIS FOR SUCH ADDITIONAL ASSISTANCE BY AID AND THE GRM. SEE STATE 232737 AND BAMAKO 5089.

B. ELIMINATION OF EXPORT TAXES: EXPORT TAXES ELIMINATION MATERIAL TRANSMITTED TO AFR/SVA BY FAX ARE INCORPORATED AS ANNEX L. SEE BAMAKO 5089.

C. LOCAL CURRENCY CLAUSES: THE FOLLOWING PARAGRAPHS ARE ADDED TO SECTION V.B. REGARDING MANAGEMENT OF LOCAL CURRENCY FUNDS. TO THE EXTENT THE EXISTING DISCUSSION UNDER SECTION V.B. IS INCONSISTENT WITH THIS AMENDMENT, THE EXISTING DISCUSSION IS MODIFIED ACCORDINGLY. SEE STATE 204855.

THE USE OF TECHNICAL ASSISTANCE TO BE PROVIDED UNDER THE PROJECT PORTION OF THIS PROGRAM FOR MONITORING LOCAL CURRENCY IS NOT NECESSARY OR APPROPRIATE SINCE THE USE OF THE LOCAL CURRENCY TO BE GENERATED BY THE NON-PROJECT ASSISTANCE WILL NOT BE PROGRAMMED.

THE ONLY MONITORING OF LOCAL CURRENCY THAT WILL OCCUR UNDER THE PROGRAM ACCOUNT IS TO KEEP TRACK OF DEPOSITS TO AND WITHDRAWALS FROM THE PROGRAM ACCOUNT. THIS WILL BE DONE BY USAID. ALTHOUGH USAID WILL APPROVE BY PROJECT IMPLEMENTATION LETTER (PIL) THE PURPOSE OF THE WITHDRAWAL

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TO BE SURE THAT THE FUNDS ARE NOT USED IN A MANNER THAT VIOLATES MALIAN LAW OR THE ANTI-ABORTION, MILITARY AND LUXURY USE CONVENANTS OF THE GRANT AGREEMENT, THEY CAN BE USED FOR ANY OTHER PURPOSE BY THE GRM.

USAID WILL VERIFY ONCE A YEAR THE REPORTS SUBMITTED BY THE GRM ON LOCAL CURRENCY SPECIAL ACCOUNT WITHDRAWALS AND DEPOSITS BY CHECKING THEM AGAINST OTHER DOCUMENTS, WHICH, PURSUANT TO THE GRANT AGREEMENT AND PILS, THE GRM WILL BE REQUIRED TO SUBMIT ON REQUEST.

THE SPECIAL ACCOUNT WILL BE AUDITED ONCE IN THE LIFE OF THE PROJECT BY A PRIVATE ACCOUNTING FIRM HIRED THROUGH THE NORMAL AID PROCESS FOR THIS PURPOSE. SINCE FUNDS IN THE ACCOUNT CAN BE USED FOR ANY LEGITIMATE GRM PURPOSE OTHER THAN USES PROHIBITED BY U.S. STATUTE AND THE GRANT AGREEMENT, THE AUDIT WILL BE LIMITED TO THE LEGITIMACY OF THE USE UNDER MALIAN LAW AND THE AID STATUTORY PROHIBITIONS.

THE GRM IS NOT EXPECTED TO CONDUCT A SPECIAL AUDIT OF THE ACCOUNT SINCE THE FUNDS WILL BE FOR GENERAL BUDGETARY USE. THUS, THE ACCOUNT WILL BE COVERED BY AUDITS OF GOVERNMENT EXPENDITURES IN GENERAL PROGRAMMED BY THE GRM.

D. SECTION IV.B. OF THE PAAD, CONTRACTING FOR TECHNICAL ASSISTANCE, IS MODIFIED TO PROVIDE FOR TWO CONTRACTS, ONE OF WHICH WILL BE AWARDED NON-COMPETITIVELY. THE NON-COMPETITIVE CONTRACT WILL BE FOR THE PROJECT COORDINATOR AND FOR PCU-RELATED SHORT-TERM TECHNICAL ASSISTANCE (INCLUDING STUDIES), COMMODITY PROCUREMENT AND TRAINING. THE OTHER CONTRACT, TO BE AWARDED COMPETITIVELY, WILL PROVIDE FOR THE THREE OTHER TECHNICAL ADVISORS AND THE REMAINDER OF THE SUPPORT TO BE PROVIDED UNDER THE PROJECT. SEE BAMAKO 5111.

E. THE INITIAL ENVIRONMENTAL EVALUATION HAS BEEN AMENDED TO REFLECT THE CURRENT PROJECT. SEE BAMAKO 5375.

F. ALL OTHER PROVISIONS OR DISCUSSION IN THE PAAD INCONSISTENT WITH THIS AMENDMENT ARE MODIFIED ACCORDINGLY.

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UNCLAS SECTION 7 OF 22 BAKO 05450

1. CABLES REFERRED TO HEREIN ARE INCORPORATED IN THEIR ENTIRETY IN THIS AMENDMENT.

2. PLEASE ADVISE IMMEDIATE APPROVAL TO AUTHORIZE PRED AS AMENDED.

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SECTION: AID-2 INFO: AMB DCM ECON

VZCZCDKA112ESD685Z  
3F RUTABM  
3E RUEHC #9776/01 2192059  
3K UUUUU ZZH  
3L 072055Z AUG 91  
3M SECSTATE WASHDC

LOC: 076-077 777  
08 AUG 91 0829  
CN: 29741  
CHRG: AID  
DIST: AID

TO AMEMBASSY BAMAHO 5731

BT  
UNCLAS SECTION 01 OF 02 STATE 259776

AIDAC

E.O. 12356: N/A

TAGS:  
SUBJECT: MALI; POLICY REFORM FOR ECONOMIC DEVELOPMENT  
ECONOMIC ANALYSIS OF EXPECTED BENEFITS

<b>ACTION TAKEN:</b>
<b>DATE:</b>
<b>INITIALS:</b>

REFERENCE: USAID/MALI FAX OF JULY 18, 1991 - SAME SUBJECT

1. WE APPRECIATE THE FAST TURN-AROUND TIME IN WHICH MISSION SUBMITTED ITS ECONOMIC ANALYSIS FOR SUBJECT PROJECT. IN CARRYING OUT ITS MONITORING OF THE IMPACTS, HOWEVER, YOU UNDERSTAND WELL THAT A MORE REFINED BASIS SHOULD BE LAID FOR THE EVALUATION FUNCTION. AFR/W HAS EXAMINED THE MATTER FURTHER AND REQUESTS THAT YOU SUBMIT A REVISED ANALYSIS IN THE NEAR FUTURE. THEIR COUNSEL IS PROVIDED IN THIS CABLE, AND ADDITIONAL CONSULTATION IS AVAILABLE FROM AFR/DP/PAR, J. SMITH AT (202) 647-346 AND BY FAX AT (202) 6473364.

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2. THE REFERENCED FAX CONTAINED THE PAAD ANNEX, ECONOMIC IMPACT OF THE ELIMINATION OF EXPORT TAXES. AS WE UNDERSTAND IT, THE ANALYSIS PROVIDED BY THE MISSION ASSUMES THAT THE ELIMINATION OF EXPORT TAXES WILL LEAD TO A TEN PERCENT ANNUAL GROWTH RATE OF SOME OR ALL EXPORTS (TWO ALTERNATIVE SCENARIOS ARE PRESENTED) AS OPPOSED TO A FIVE PERCENT ANNUAL GROWTH RATE WHICH WOULD BE THE CASE IF EXPORT TAXES WERE NOT ELIMINATED. THE ANALYSIS ALSO ESTIMATES THAT GDP WILL INCREASE BY SOME DOLS 20 MILLION DUE TO THE ELIMINATION OF THE EXPORT TAX. IT THEN COMPARES THESE INCREASES WITH THE COST OF THE REFORM PROGRAM (DOLS 7 MILLION DISBURSEMENT) AND CONCLUDES THAT THE BENEFITS ARE SIGNIFICANTLY GREATER THAN THE COST OF THE PROGRAM.

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CHRO  
RF

3. WE AGREE WITH THE CONCLUSION THAT THE BENEFITS ARE LIKELY TO BE SIGNIFICANTLY GREATER THAN THE COST OF THE PROGRAM. HOWEVER, THE ANALYSIS MUST BE PUSHED FARTHER TO PROVIDE A CLEAR BASIS FOR EVALUATING THE IMPACT OF THE REFORM PROGRAM. THE ANALYSIS CORRECTLY IDENTIFIES THE PRINCIPAL BENEFIT FROM THE ELIMINATION OF EXPORT TAXES AS AN INCREASE IN GDP. HOWEVER, IT DOES THIS BY ASSUMING A "VERY CONSERVATIVE ADDITIONAL INCREASE OF ONE PER CENT" WHICH RESULTS IN AN ANNUAL ADDITION OF OVER DOLS 20 MILLION. THE ANALYSIS SHOULD DEMONSTRATE HOW THIS INCREASE IN GDP IS ACHIEVED, PRIMARILY THROUGH THE

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INCREASE IN EXPORT EARNINGS. WE SUGGEST THAT THE MISSION CARRY OUT A COMPARATIVE STATIC ANALYSIS TO ESTIMATE THE PRODUCER SURPLUS GENERATED BY THE REDUCTION (ELIMINATION) OF EXPORT TAXES.

4. AS THE ANALYSIS INDICATES, THE MAJOR SOURCE OF BENEFITS FROM THE ELIMINATION OF EXPORT TAXES IS INCREASED EXPORT EARNINGS. THIS INCREASE OCCURS BECAUSE THE ELIMINATION OF TAXES SHIFTS THE SUPPLY CURVE FOR MALIAN EXPORTS TO THE RIGHT. THAT IS, THE COST OF PRODUCING EXPORTS IS REDUCED BY THE AMOUNT OF THE TAX REDUCTION. HOWEVER, ESTIMATING THE INCREASE IN EXPORT EARNINGS ALONE DOES NOT ESTABLISH THE EXPECTED LEVEL OF BENEFITS FROM THE PROPOSED CHANGES. THE BENEFIT IS NET OF THE INCREASE IN IMPORTED INPUTS NECESSARY TO PRODUCE THE ADDITIONAL EXPORTS AND NET OF FOREGONE OUTPUT OF OTHER GOODS OR SERVICES PRODUCED WITH THE RESOURCES WHICH ARE SHIFTED INTO THE PRODUCTION OF EXPORTS.

5. FOR EXAMPLE, IF MORE LIVESTOCK IS EXPORTED, BUT NO ADDITIONAL IMPORTED VACCINES ARE REQUIRED AND NO OTHER OUTPUT IS FOREGONE TO INCREASE LIVESTOCK PRODUCTION, THEN THE ENTIRE INCREASE IN EXPORT EARNINGS TRANSLATES INTO INCREASED INCOME. ON THE OTHER HAND, IF MORE VACCINE IS IMPORTED TO INCREASE HERD GROWTH AND A SHIFT OF LABOR AND LAND INTO INCREASING LIVESTOCK PRODUCTION REDUCES THE OUTPUT OF OTHER GOODS (SUCH AS FOOD CROPS), THEN THE INCREASE IN EXPORT EARNINGS MUST BE REDUCED BY THE ADDITIONAL COST OF VACCINE AND THE VALUE OF FOREGONE OUTPUT TO CALCULATE THE NET BENEFIT.

5. TO TAKE COTTON AS AN EXAMPLE, AN INCREASE IN COTTON EXPORTS WILL UNDOUBTEDLY REQUIRE ADDITIONAL IMPORTED FERTILIZERS AND PESTICIDES. IT MAY ALSO OCCUR THROUGH FARMERS SHIFTING LAND OUT OF PRODUCTION OF FOOD CROPS IN ORDER TO PRODUCE COTTON. (THE LOSS OF FOOD OUTPUT MAY IN FACT BE QUITE SMALL SINCE COTTON FARMERS APPLY FERTILIZERS AND PESTICIDES AVAILABLE THROUGH CMTD TO THEIR FOOD CROPS AND GET HIGHER YIELDS THAN NON-COTTON FARMERS). THUS, THE INCREASE IN NATIONAL INCOME IS THE INCREASE IN COTTON EXPORT REVENUES LESS THE COST OF ADDITIONAL IMPORTED INPUTS LESS THE VALUE OF FOREGONE FOOD OUTPUT.

7. SIMILAR LOGIC SHOULD BE APPLIED TO THE OTHER CATEGORIES OF EXPORTS TO ESTIMATE THE NET BENEFIT FROM INCREASING EXPORT EARNINGS. THAT IS, WHAT ADDITIONAL IMPORTS ARE REQUIRED TO PRODUCE MORE EXPORTS, AND WHAT IS THE OPPORTUNITY COST TO THE ECONOMY WHEN DOMESTIC

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RESOURCES ARE SWITCHED FROM PRODUCING GOODS FOR LOCAL CONSUMPTION TO PRODUCING GOODS FOR EXPORT:

8. THERE IS ANOTHER BENEFIT IN ADDITION TO THE NET INCREASE IN INCOME FROM INCREASED EXPORT EARNINGS DISCUSSED ABOVE. THAT BENEFIT IS THE EFFICIENCY GAIN FROM REDUCTIONS IN THE COST OF EXPORTING WHICH MAY COME ABOUT THROUGH TAKING ADVANTAGE OF ECONOMIES OF SCALE. FOR EXAMPLE, RATHER THAN TREKKING CATTLE TO AVOID FORMAL TAXES, SOME LIVESTOCK MAY BE TRANSPORTED IN A MORE COST-EFFECTIVE MANNER ONCE THERE ARE NO MALIAN TAXES TO PAY. GAINS IN EFFICIENCY ARE POTENTIALLY QUITE SIGNIFICANT AND COULD RESULT IN BOTH HIGHER PROFITABILITY OF EXPORTING AND INCREASED EXPORT VOLUMES.

9. THE STRENGTH OF THIS EFFECT WILL DEPEND UPON HOW SIGNIFICANT FORMAL (AND INFORMAL) IVORIAN TAXES ARE TO THE DECISION TO TRADE INFORMALLY OR THROUGH FORMAL CHANNELS. THE EXISTENCE OF BOTH INFORMAL AND FORMAL TRADE ALSO COMPLICATES THE INTERPRETATION OF THE DATA ON INCREASES IN EXPORT EARNINGS, AS THE MISSION POINTS OUT, SINCE SOME OF THE APPARENT INCREASE MAY BE A DIVERSION OF INFORMAL, UNRECORDED TRADE TO FORMAL, RECORDED TRADE. TO THE EXTENT THAT INCREASES OCCUR BECAUSE PREVIOUSLY UNRECORDED TRADE BECOMES RECORDED TRADE, THE DATA WILL OVERSTATE THE REAL CHANGE.

10. ESTIMATING THE EFFECT OF ELIMINATING THE EXPORT TAX ON EXPORTS SHOULD BE BASED ON THE MISSION'S ESTIMATE OF THE PRICE ELASTICITY OF SUPPLY OF MALIAN EXPORTS. ASSUME THAT THE PRICE ELASTICITY OF DEMAND IS INFINITE (MALI CAN EXPORT AS MUCH AS ITS PRODUCERS ARE WILLING TO PRODUCE AT THE GOING PRICE WITHOUT AN EFFECT ON THE MARKET PRICE). APPLYING THE APPROPRIATE SUPPLY ELASTICITIES, ONE COULD THEN ESTIMATE THE INCREASE IN SUPPLY OF MALIAN EXPORTS. THE ASSUMPTION OF 10 PERCENT EXPORT GROWTH RATES FOR SOME OR ALL EXPORTS PROBABLY OVERSTATES THE EFFECT ON SUPPLY FROM THE EXPORT TAX ELIMINATION. SUCH AN INCREASE IN EXPORTS ALSO GENERATES A MUCH GREATER STREAM OF BENEFITS THAN WOULD NORMALLY BE EXPECTED FROM AN INVESTMENT OF DOLS 7 MILLION.

11. FINALLY, AFTER CALCULATING THE NET BENEFITS FROM INCREASING EXPORTS, THE ANALYSIS SHOULD PRESENT THE YEAR-TOYEAR CHANGE IN A SPREADSHEET FORMAT AND CALCULATE EITHER THE NET PRESENT VALUE AT A 10 OR 15 PERCENT DISCOUNT RATE OR THE INTERNAL RATE OF RETURN FROM THE PROJECTED BENEFIT STREAM. WE HAVE DONE SO USING THE MISSION'S ESTIMATES FOR THE CASE IN WHICH THERE ARE NO ADDITIONAL IMPORTS AND NO OPPORTUNITY COST IN ALLOCATING RESOURCES TO EXPORT PRODUCTION. THE INTERNAL RATES OF RETURN WOULD BE 277 PERCENT FOR ALTERNATIVE ONE AND 132 PERCENT FOR ALTERNATIVE TWO. THESE ARE SO HIGH AS TO BE UNLIKELY.

YEAR	BASE EXPCRTS (MILLIONS OF U.S. DOLLARS)	ALT. 1 EXPORTS	CHANGE	ALT. 2 EXPORTS	CHANGE
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COST			7.0		7.0
1990	312.7	312.7	-	312.7	
1991	328.3	343.9	15.6	337.3	9
1992	344.7	361.1	16.4	354.2	9.5
1993	362	379.2	17.2	371.9	9.9
1994	380	398.1	18.1	390.5	10.5
1995	399.1	418.2	19.1	410	10.9
1996	419	439	20	430.5	11.5

INTERNAL RATE OF RETURN 2.27 1.32

THE INTERNAL RATE OF RETURN TO ALTERNATIVE 1 (10 PERCENT EXPORT GROWTH) IS 227 PERCENT, THE RATE OF RETURN TO ALTERNATIVE 2 (5 PERCENT PRIMARY EXPORT GROWTH, 10 PERCENT TRANSFORMED AND OTHER EXPORT GROWTH) IS 132 PERCENT. BOTH RATES ARE TOO HIGH SINCE THE BENEFITS SHOULD BE NET OF ADDITIONAL IMPORT COSTS AND THE OPPORTUNITY COST OF FOREGONE OUTPUT IN THE DOMESTIC ECONOMY.

12. WE LOOK FORWARD TO SEEING THE REVISED ECONOMIC ANALYSIS FOR THE EFFECT OF THE ELIMINATION OF EXPORT TAXES. BAKER

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ACTION: AID-2 INFO: AMB DCM ECON

VZCZCDKA300ESD8610  
PP RUTABM  
DE RUEHC #2737 1980309  
ZNR UUUUU ZZH  
P 170307Z JUL 91  
FM SECSTATE WASHDC  
TO RUTABM/AMEMBASSY BAMAHO PRIORITY 5494  
INFO RUEHDK/AMEMBASSY DAKAR PRIORITY 0106  
RUEHAB/AMEMBASSY ABIDJAN PRIORITY 0566

LOC: 058 504  
17 JUL 91 0834  
CN: 26941  
CHRG: AID  
DIST: AID

BT  
UNCLAS STATE 232737

AIDAC DAKAR FOR RLA; ABIDJAN FOR REDSO/WCA AND REDSO/RLA

E.O. 12356: N/A

TAGS:  
SUBJECT: MALI POLICY REFORM FOR ECONOMIC DEVELOPMENT  
(PRED) (688,0245/0246)

REF: STATE 343600

1. THE PROJECT COMMITTEE REVIEW (PCR) HAS FOUND THE PRED PAAD MACRO-ECONOMIC AND POLICY FRAMEWORK ASSESSMENT TO BE AN EXCELLENT AND WELL-REASONED BASIS FOR CONTINUING TO WORK WITH MALI. WITH REGARD TO THE PROGRAM DESCRIPTION, WE APPLAUD YOUR VERY FRANK AND PRUDENT ASSESSMENTS OF THE PROBABLE IMPACTS OF TAX POLICY REFORMS. REGRETTABLY, IT DOES NOT APPEAR THAT SIGNIFICANT DEVELOPMENT OBJECTIVES WILL BE ACHIEVED FROM SUCH INTERVENTIONS. YOUR ANALYSIS LEADS US TO CONCLUDE THAT MOST POLICY CHANGES WILL BE MARGINAL IN TERMS OF PEOPLE-LEVEL DEVELOPMENT IMPACTS, AND THEREFORE DO NOT MERIT DFA SECTOR GRANT FUNDING. IT MAY BE THAT WE HAVE GONE DOWN A BLIND ALLEY IN THIS ONE, AND WE WILL HAVE TO LOOK ELSEWHERE. THE PROJECT ASSISTANCE COMPONENT SEEMS TO BE WELL SUPPORTED AND SHOULD GO FORWARD. THE EXPORT TAX REMOVAL IS THE ONLY ELEMENT OF THE NPA WHICH THE PCR FEELS MAY HAVE POTENTIAL. WE WOULD RECOMMEND THAT IT BE RE-EXAMINED TO DETERMINE IF (A) THE FUNDING LEVEL IS APPROPRIATELY SCALED TO THE BUDGET

DEFICIT CREATED, AND THEN (B) RE-EXAMINE TO WHAT EXTENT THE EXPORT TAX POLICY CHANGE CAN REASONABLY BE LINKED TO INCREASES IN EXPORTS, JOBS AND INCOME THAT MAY RESULT FROM THE IMPROVED ENVIRONMENT FOR PRIVATE SECTOR-LED GROWTH. PLEASE ADVISE RE THE DATA AND REASONING PROCESS WHICH LED THE MISSION TO THE CONCLUSION THAT WHILE ESTIMATES OF A MAJOR EXPANSION OF EXPORTS WOULD BE SPECULATIVE, LIMITED GAINS ARE EXPECTED, AND ELIMINATION OF RENT SEEKING ACTIVITIES WOULD PROBABLY ENCOURAGE EXPORTS.

2. BASED ON THE ABOVE, THE MISSION IS REQUESTED TO:

A) PROCEED WITH THE PROJECT COMPONENT;

B) MODIFY THE PAAD'S NPA COMPONENT, AS NOTED ABOVE, TO FOCUS ONLY ON EXPORT TAXES, DESCRIBING THE LINKAGE OF THE

ACTION: \_\_\_\_\_  
DATE: \_\_\_\_\_  
INITIALS: \_\_\_\_\_

JUL 17 1991

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- ACTION
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- INFO
- DIR
- OT/DIR
- PROG
- DEO
- MGT
- CONT
- ADO
- GDO
- JAO/DIR
- JAO/OSO
- JAO/ER
- DISP
- C&R
- CHRON
- RF

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( ) FUNDING TO THE PROPOSED REFORMS AND THEIR ANTICIPATED IMPACT.

( ) C) COMMUNICATE THE ESSENTIAL COMPONENTS OF A REVISED PAAD BY CABLE TO AFR/SWA, FOR A FINAL AFR GO AHEAD AND I

D) AT THE SAME TIME, PROVIDE REVISED CONGRESSIONAL NOTIFICATION MATERIALS WHICH REFLECT THE RESTRUCTURED PROGRAM. TOGETHER WITH THE CABLE REQUESTED IN PARA 2 (C), THIS WILL ENSURE THAT AFR/SWA HAS ADEQUATE BACKGROUND TO DISCUSS POSSIBLE ISSUES WITH THE CONGRESS AND CAN COMPLETE A CONGRESSIONAL NOTIFICATION WHICH WILL ADDRESS KNOWN CONGRESSIONAL CONCERNS. FYI, THE WINDOW FOR SUBMISSION OF FY 1991 CMS ENDS JULY 30 AND DOES NOT OPEN AGAIN UNTIL SEPTEMBER 11. END FYI. EAGLEBURGER

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**ANNEX P**  
**CONSTRAINTS ANALYSIS**

ANNEX P

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AID 08/07/92  
DIR:AVGETSON  
DIR:AVGETSON  
PRM:VDUARTE  
AID AMB DCM ECON

AVG  
AVG  
VD

AMEMBASSY BAMAKO  
SECSTATE WASHDC, IMMEDIATE  
INFO AMEMBASSY DAKAR  
AMEMBASSY ABIDJAN

AIDAC

SECSTATE FOR AFR/SWA, DAKAR FOR RLA ADAMS, ABIDJAN  
FOR REDSO

E.O. 12356: N/A  
SUBJECT: UPDATED CONSTRAINTS ANALYSIS, MALI PRED  
- AMENDMENT (688-0246/0246)

REF: STATE 247555

1. USAID/MALI APPRECIATES ECPR APPROVAL PROVIDED REFTEL. THIS CABLE PROVIDES AN UPDATED CONSTRAINTS ANALYSIS TO ADDRESS ITEM 1B OF REFTEL AND WILL BE ADDED TO THE PAAD AMENDMENT AS ANNEX P. MISSION HOPES THAT THIS INFORMATION ALONG WITH AA/OPS APPROVAL WILL RESULT IN AID/W CONCURRENCE WITH MISSION PROCEEDING TO EXERCISE DOA 551 AUTHORITY TO AUTHORIZE AND OBLIGATE THIS AMENDMENT AFTER ECPR GUIDANCE IS RECEIVED. MISSION WOULD APPRECIATE BEING NOTIFIED IF ANY SIGNIFICANT DELAYS ARE ANTICIPATED BY AID/W IN RECEIVING EITHER AA/OPS APPROVAL OR IN PREPARING ECPR GUIDANCE SINCE MISSION PLANS TO OBLIGATE BY END AUGUST. WE WOULD ALSO APPRECIATE AFR/DP BEING NOTIFIED SHOULD THERE BE ANY DELAYS SO THAT THIS INFORMATION CAN BE INCLUDED IN END OF FY AFR OBLIGATION PLANNING. MISSION APPRECIATES AFR/SWA ASSISTANCE WITH THIS ENTIRE PROCESS. CONSTRAINTS ANALYSIS UPDATE FOLLOWS. SHOULD THERE BE ANY QUESTIONS ABOUT THIS UPDATE, MISSION ECONOMIST VIC DUARTE WILL BE IN AID/W ON TDY (ENVIRONMENTAL ECONOMICS CONFERENCE, ROSSLYN) DURING 8/10-14 PERIOD AND WILL BE AVAILABLE TO PROVIDE ANY CLARIFICATIONS NEEDED. HE WILL CONTACT AFR/SWA UPON ARRIVAL.

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2. BACKGROUND - MISSION INCLUDED A DETAILED CONSTRAINTS ANALYSIS IN THE ORIGINAL PAIP FOR THE PRED PROGRAM. BASED ON THIS ANALYSIS THE MISSION DESIGNED A REFORM PROGRAM THAT INCLUDED A SERIES OF FISCAL AND REGULATORY REFORMS WHICH ADDRESSED MAJOR CONSTRAINTS TO THE DEVELOPMENT OF THE PRIVATE SECTOR IN MALI. THE PAIP ANALYSIS JUSTIFYING THESE REFORMS WAS CONFIRMED BY THE PAAD/PP AUTHORIZED IN AUGUST, 1991 AND WAS RECONFIRMED BY THIS CURRENT AMENDMENT. THE BROAD PROGRAM APPROACH ORIGINALLY PROPOSED WAS MODIFIED TO FOCUS ON ONE MAJOR REFORM I.E., ELIMINATION OF EXPORT TAXES, FOR THE INITIAL PROGRAM WITH PLANS FOR PERIODIC AMENDMENTS WHICH WOULD ADD OTHER ELEMENTS FROM THE BROADER ORIGINAL PROGRAM DESIGN AS COUNTRY CONDITIONS AND ADDITIONAL ANALYSIS WARRANTED. THIS CURRENT AMENDMENT IS CONSISTENT WITH THIS PROGRAM DESIGN APPROACH AND PROVIDES IN-DEPTH ANALYSIS OF ONE ELEMENT OF THE BROADER PROGRAM DESCRIBED IN EARLIER DOCUMENTS. FUTURE PLANNED AMENDMENTS TO PRED WILL ADDRESS OTHER REFORMS.

ANALYSIS UPDATE - THE FOLLOWING TABLE, REPRODUCED FROM THE PAIP, SHOWS THE PROGRAM PRESENTED ORIGINALLY ON THE BASIS OF THE ANALYSIS UNDERTAKEN AT THAT TIME. THE PAIP REVIEW AND SUBSEQUENT PAAD PREPARATION AND REVIEW EXCLUDED THE CREDIT GUARANTEE FUNDS AS WELL AS THE PAYROLL AND MINIMUM TURNOVER TAX. THE REMAINDER OF THE MEASURES WERE ACCEPTED UNDER THE PROJECT SIDE OF PRED. ADDITIONALLY, AS NOTED ABOVE PRED SUPPORTED THE 1991 ELIMINATION OF EXPORT TAXES IN THE PROGRAM SIDE.

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TABLE 1. POLICY MEASURES PROPOSED 1/

TAKING INTO CONSIDERATION THE RELATIVE IMPORTANCE OF THE REQUIRED MEASURES AS WELL AS THE DEMANDS THAT THE IMPLEMENTATION OF THE REFORMS WILL IMPOSE ON THE MISSION, PRED WILL ADDRESS THE FOLLOWING SET OF MEASURES TO BE TAKEN BY THE GRM DURING THE LIFE OF THIS PROJECT.

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1. REGULATORY AND INSTITUTIONAL MEASURES
  - A) ESTABLISH AND MAKE FUNCTIONAL THE COMMERCIAL COURTS ENVISIONED IN THE COMMERCIAL CODE OF 1986
  - B) RESTRUCTURE THE NATIONAL OFFICE FOR ECONOMIC AFFAIRS (DNAE)
  - C) INCREASE THE RATIO OF NON-SALARY TO SALARY EXPENDITURES IN THE MINISTRY OF FINANCE AND COMMERCE
  
2. FISCAL INCENTIVES
  - A) ELIMINATE EXPORT TAXES
  - B) INTRODUCE A SINGLE INCOME TAX
  - C) REDUCE THE PAYROLL TAX, "CONTRIBUTION FORFAITAIRE" AND THE MINIMUM TURNOVER TAX, "IMPOT MINIMUM FORFAITAIRE"
  
3. FINANCING SUPPORT TO PRIVATE SECTOR
  - A) ESTABLISH AN EXPORT GUARANTEE FUND AND AN EXPORT PROMOTION FUND TO PROMOTE, AND FACILITATE THE FINANCING OF, MALIAN EXPORTS
  - B) ESTABLISH A CREDIT GUARANTEE FUND IN SUPPORT OF SMALL AND MEDIUM ENTREPRENEURSHIP

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1/ SOURCE: PRED PAIP, PAGE 21  
- USAID/MALI, AUGUST 17, 1992

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THIS AMENDMENT REENFORCES THE SUPPORT TO THE COMMERCIAL COURTS ENVISIONED IN THE PROJECT SIDE OF THE INITIAL PAAD AND CONDITIONS THE PROPOSED PROGRAM ASSISTANCE ON THE SET OF MEASURES PRESENTED IN PROGRAM DESCRIPTION SECTION AND ANNEX E OF THE PAAD AMENDMENT. THESE MEASURES ADDRESS THE JUDICIAL SYSTEM PARTICULARLY THE COMMERCIAL AND ADMINISTRATIVE COURTS. THE ADDITION OF THE ADMINISTRATIVE COURTS TO PROGRAM CONDITIONALITY RESULTED FROM THE CONSULTANCY FROM THE INTERNATIONAL DEVELOPMENT LAW INSTITUTE WHICH ASSISTED THE MISSION IN THE IDENTIFICATION OF THE SPECIFIC MEASURES IN SUPPORT OF THE COMMERCIAL COURTS.

HOWEVER, THE SELECTION OF COMMERCIAL COURTS AS A PROJECT/PROGRAM ACTIVITY DATES BACK TO THE EPRP, THE PREDECESSOR OF THE PRED PROJECT. THAT PROJECT HELPED DEVELOP MALI'S COMMERCIAL CODE AND CALLED FOR THE DEVELOPMENT OF COMMERCIAL COURTS. THE ANALYSIS BEHIND THE SELECTION OF COMMERCIAL COURTS EMPHASIZED THE NEED TO ACCELERATE THE SHIFT FROM A POLICY ENVIRONMENT THAT HAD BEEN SUPERIMPOSING SOME ELEMENTS OF A PRIVATE SECTOR ENVIRONMENT ON THAT OF THE STATIST PUBLIC SECTOR DRIVEN ECONOMY INITIATED BY MALI'S FIRST PRESIDENT.

THE PAIP CHARACTERIZED THE ENVIRONMENT AT THE BEGINNING OF THE REFORM EFFORT IN THE EARLY 1980'S AS:

- A SHRINKING BUT STILL INEFFICIENT AND NON-COMPETITIVE STATE ENTERPRISE SECTOR;
- A PRIVATE SECTOR ACCUSTOMED TO DOING BUSINESS AND DEFENDING ITS INTERESTS PRIMARILY THROUGH PERSONAL CONTACTS WITH WELL-PLACED PEOPLE IN THE GOVERNMENT;
- A COMPLICATED AND INCOHERENT TAXING AND REGULATORY SYSTEM THAT MULTIPLIED INCENTIVES FOR PEOPLE NOT TO COMPLY WITH THE LAW;
- THE GENERAL ABSENCE OF MODERN BUSINESS MANAGERIAL TECHNIQUES AMONG MALIAN ENTREPRENEURS, ESPECIALLY THOSE IN THE COMMERCIAL SECTOR;

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- HIGH TRANSACTION COSTS DUE TO SUCH FACTORS AS HIGH ENERGY COSTS, POOR TRANSPORTATION NETWORKS, COMPLICATED GOVERNMENT REGULATIONS, AND CONFISCATORY TAXING POWERS INCLUDING THE "TAXE SAUVAGE";
- OVER-CENTRALIZATION OF ECONOMIC DECISION-MAKING;
- THE ABSENCE OF POWERFUL PRIVATE SECTOR PROFESSIONAL ASSOCIATIONS CAPABLE OF PUTTING PRESSURE ON THE GOVERNMENT TO LIBERALIZE THE ECONOMY;
- A GENERALLY DEPRESSED RURAL ECONOMY SORELY TOUCHED BY CHRONIC DROUGHT WHICH SEVERELY RESTRICTED OPPORTUNITIES FOR DEVELOPING COMMERCE AND INDUSTRY;
- AN OVERBURDENED SCHOOL SYSTEM THAT COULD NOT KEEP UP WITH THE GROWING POPULATION AND WHOSE GRADUATES COULD NOT BE ABSORBED BY THE WEAK ECONOMY;
- A TRADITION OF PROVIDING SCHOLARSHIPS FOR SECONDARY AND UNIVERSITY LEVEL STUDENTS WHICH HAD BECOME A MAJOR DRAIN ON THE NATIONAL BUDGET;
- A TOP HEAVY AND OVER CENTRALIZED CIVIL SERVICE CHARACTERIZED BY A SEVERE LACK OF MATERIALS TO CARRY OUT ITS WORK; AND
- GROWING DEPENDENCY OF THE GOVERNMENT UPON FOREIGN AID.

POLICY CHANGES MADE IN THE 1980S HAVE CREATED INCENTIVES FOR PRIVATE INITIATIVE BUT, GRAFTED ONTO THE STATIST POLICY AND REGULATORY BACKGROUND, THESE CHANGES HAVE NOT BEEN SUFFICIENT TO GIVE THE SIGNALS NEEDED TO RELEASE THE CONCERTED INDIVIDUAL ENERGIES NEEDED TO POWER MALI'S ECONOMIC GROWTH.

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USAID'S ROLE IN MALI'S POLICY REFORM EFFORT ESPECIALLY THROUGH THE EPRP WHICH ENABLED THE GRM TO CONTINUE ON A POLICY REFORM PATH WHEN IN 1986, AMONG OTHER REASONS, THE COLLAPSE OF THE PRICE OF COTTON BROUGHT MALI OUT OF COMPLIANCE WITH AN IMF STANDBY. PRED WILL ALSO TAKE ADVANTAGE OF THE PERCEIVED PIONEERING ROLE OF EPRP TO PIONEER THE CHANGES IN THE JUDICIARY SYSTEM.

HOWEVER, THE IMPLEMENTATION OF THE COMMERCIAL COURTS INITIALLY CALLED FOR IN EPRP, IS AMONG THE CONDITIONS OF THE WORLD BANK STRUCTURAL ADJUSTMENT PROGRAM. THE CRUCIAL ROLE OF USAID IS IN FOCUSING IN THIS ESSENTIAL REFORM WHICH MIGHT NOT OTHERWISE GET THE DETAILED ATTENTION IT NEEDS TO INSURE THAT THE ENVIRONMENT FOR PRIVATE SECTOR LED GROWTH SET FORTH IN THE POLICY FRAMEWORK PAPERS AND CONDITIONED WITH THE IMF AND WORLD BANK ADJUSTMENT PROGRAMS IS SUPPORTED BY THE APPROPRIATE LEGAL, REGULATORY AND JUDICIAL ENVIRONMENT.

THE CONTINUATION OF A PROGRAM-BASED ASSISTANCE ACTIVITY IS ALSO CRUCIAL TO THE CORE DIALOGUE WITH MALIAN POLICY MAKERS. THE PROGRAM FOCUS INITIATED WITH EPRP HAS BEEN HIGHLY EFFECTIVE IN SUSTAINING AN ENVIRONMENT WHICH ENCOURAGES STRONGER ECONOMIC PERFORMANCE.

THE RECOMMENDATIONS OF SEVERAL TEAMS OF CONSULTANTS SUMMARIZED IN ANNEX F OF THE PAIP EMPHASIZED THAT A WELL INTEGRATED SET OF MEASURES WAS NEEDED IF THE REFORM PROCESS IS TO BE SUCCESSFUL. A CONSISTENT SET OF POLICY REFORMS TOGETHER WITH THE COMPLEMENTARY REGULATORY AND INSTITUTIONAL MEASURES NEED BE SELECTED. THE INITIAL SET OF REFORMS SELECTED IN THE PAIP WAS CONSISTENT WITH THIS PERCEIVED NEED WHICH WAS THEN SHARED BY THE MALIAN GOVERNMENT, THE WORLD BANK AND THE IMF. ON THE BASIS OF THE BACKGROUND ANALYSIS UNDERTAKEN BY THE MISSION AND ON THE BASIS OF CLOSE COLLABORATION WITH THE MALIAN GOVERNMENT, THE MISSION SELECTED FROM THE POLICY FRAMEWORK PAPER PREPARED BY THE GOVERNMENT AND MULTILATERAL DONORS, THE SUBSET THAT THE MISSION DEEMED TO BE BOTH PRIORITY AND CONSISTENT WITH MISSION'S COMPARATIVE ADVANTAGE.

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ONE OF SET OF CONSTRAINTS TO PRIVATE SECTOR DEVELOPMENT CONSISTENTLY EMPHASIZED WAS THE WEAKNESS OF THE GOVERNMENT INSTITUTIONS TO IMPLEMENTING A RATHER COMPLEX SET OF REGULATIONS. OPPENHEIM, WHO IS ECHOED BY LATER ANALYSTS, CONCLUDED THAT, IN MALI, FISCAL AND TRADE POLICIES HAVE CONSPIRED TO SEND FIRMS VERY MISLEADING SIGNALS AND THAT POLICIES RATHER THAN MARKETS ARE CREATING THE BARRIERS TO PRIVATE SECTOR DEVELOPMENT. HE NOTES THAT FOR MANY YEARS, POLICIES, INSTITUTIONS, AND IDEOLOGY HAVE CONSPIRED TO STUNT THE CONTRIBUTION OF THE PRIVATE SECTOR TO MALIAN ECONOMIC DEVELOPMENT AS A BYZANTINE ARCHITECTURE OF TAXES AND TAX HOLIDAYS OF RESTRICTIVE TRADE REGULATIONS; TARIFF EVASION HAS ENCOURAGED RENT-SEEDING OVER PRODUCTIVE INVESTMENT, SUBSTITUTING THE VISIBLE FINGERS OF THE BUREAUCRAT FOR THE INVISIBLE HAND OF THE MARKET.

HE ADDED HOWEVER, THAT AT THE TIME HE WROTE THERE APPEARED TO BE A GREATER WILLINGNESS ON THE PART OF THE MALIAN AUTHORITIES TO EMBRACE PRIVATE INITIATIVES AND ADVISES THAT IT IS VITAL THAT THIS GOODWILL, BOUGHT IN PART BY EPRP NOT BE ALLOWED TO DISSIPATE AND THAT USAID IN COLLABORATION WITH OTHER DONORS CONTINUE TO PROVIDE MEANINGFUL SUPPORT FOR REFORMS THAT WILL IMPROVE THE BUSINESS ENVIRONMENT, THE QUALITY OF PUBLIC SECTOR SERVICES AN THE EFFICIENCY OF RESOURCE ALLOCATION.

HE EMPHASIZED THAT WITH A SET OF TRANSPARENT, STABLE AND ECONOMICALLY RATIONAL POLICY RULES, THERE IS NO REASON WHY THE MARKETS IN MALI SHOULD NOT WORK TO GENERATE FASTER GROWTH AND A FAIRER DISTRIBUTION OF INCOME. HE CAUTIONED THAT POLICY REFORM - WHETHER IT TAKES THE FORM OF REDUCING THE GOVERNMENT PAYROLL OR OF RATIONALIZING THE FISCAL SYSTEM - WILL NOT RESULT IN A PAINLESS REALLOCATION OF RESOURCES TO PRODUCTIVE INVESTMENT IN THE PRIVATE SECTOR. BUT, THAT PUTTING THE RIGHT MECHANISMS IN PLACE SHOULD, HELP TO SMOOTH THE ADJUSTMENT PROCESS.

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AMONG THE CONSTRAINTS EMPHASIZED BY OPPENHEIM, HE NOTES THE ABSENCE OF A FUNCTIONING COURT SYSTEM TO ENFORCE PROPERTY RIGHTS AND TO PROTECT INDIVIDUALS AND CORPORATIONS AGAINST THE VIOLATIONS OF CONTRACTUAL ARRANGEMENT BY ONE TO THE CONCERNED PARTIES MAKES BUSINESS DEALS MUCH MORE RISKY AND RAISES TRANSACTION COSTS. HE EMPHASIZED THE ABSENCE OF SPECIALIZED COURT TO DEAL WITH COMMERCIAL MATTERS, THE LACK OF ENOUGH TRAINED PERSONNEL AVAILABLE TO STAFF SUCH A COURT AND TO PROVIDE LEGAL SERVICES FOR THOSE WISHING TO GO TO COURT TO RESOLVE THEIR PROBLEMS.

ALTHOUGH USAID INITIAL EMPHASIS ON THE JUDICIAL SYSTEM RECOGNIZED THE DIFFICULTY OF INSTITUTIONALIZING THE OBJECTIVES UNDER THE TRAORE REGIME, THE MEASURE WAS NEVERTHELESS CHOSEN BECAUSE OF ITS IMPORTANCE TO THE DEVELOPMENT OF A DECENTRALIZED ECONOMY AND BECAUSE OF THE GOOD WILL USAID HAS IN PIONEERING REFORMS IN MALI. THE OVERTHROW OF THE TRAORE REGIME PROVIDED A WINDOW OF OPPORTUNITY WHICH WE ARE FORTUNATE TO BE IN A POSITION TO TAKE.

PUBLIC DEMAND FOR DEMOCRACY, EQUITY AND TRANSPARENCY IS NOW ECHOED IN THE CONSTITUTION WHICH GIVES THE JUDICIAL SYSTEM THE NECESSARY AUTONOMY TO BE REALLY INDEPENDENT. WITH THIS AMENDMENT, PRED WILL BE IN A POSITION TO ASSIST IN THE OPERATIONALIZATION OF THESE OBJECTIVES.

WITH THE OVERTHROW OF THE TRAORE REGIME THE PROBABILITY THAT POLICY REFORM IN GENERAL AND THE PRED PROJECT IN PARTICULAR WILL BEAR FRUIT HAS INCREASED SIGNIFICANTLY. PUBLIC DEMAND FOR EQUITABLE TREATMENT OF ALL IN A TRANSPARENT ENVIRONMENT, NECESSARY FOR THE SUCCESS OF AN ECONOMY BASED ON DECENTRALIZED DECISIONS, BUTTRESSED BY THE CONSTITUTIONAL SEPARATION OF POWERS THAT GIVES THE JUDICIAL SYSTEM SUFFICIENT INDEPENDENCE FROM POLITICS. THE NEWLY-ELECTED DEMOCRATIC GOVERNMENT, RESPECTED OPPOSITION AND FREE PRESS ARE OTHER POSITIVE ELEMENTS.

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THE REENFORCEMENT OF SUPPORT FOR COMMERCIAL AND  
ADMINISTRATIVE COURTS CALLED FOR IN THIS AMENDMENT  
WILL ENSURE THAT THE OPPORTUNITY TO INSTITUTIONALIZE  
THIS HISTORIC MOMENT IS NOT MISSED.  
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**ANNEX Q**

**STATUTORY CHECKLIST**

## 5C(1) - COUNTRY CHECKLIST

Listed below are statutory criteria applicable to the eligibility of countries to receive the following categories of assistance: (A) both Development Assistance and Economic Support Funds; (B) Development Assistance funds only; or (C) Economic Support Funds only.

### A. COUNTRY ELIGIBILITY CRITERIA APPLICABLE TO BOTH DEVELOPMENT ASSISTANCE AND ECONOMIC SUPPORT FUND ASSISTANCE

#### 1. Narcotics

a. Negative certification (FY 1991 Appropriations Act Sec. 559(b)): Has the President certified to the Congress that the government of the recipient country is failing to take adequate measures to prevent narcotic drugs or other controlled substances which are cultivated, produced or processed illicitly, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from entering the United States unlawfully?

No

b. Positive certification (FAA Sec. 481(h)). (This provision applies to assistance of any kind provided by grant, sale, loan, lease, credit, guaranty, or insurance, except assistance from the Child Survival Fund or relating to international narcotics control, disaster and refugee relief, narcotics education and awareness, or the provision of food or medicine.) If the recipient is a "major illicit drug producing country" (defined as a country producing during a fiscal year at least five metric tons of opium or 500 metric tons of coca or marijuana) or a "major drug-transit country" (defined as a country that is a significant direct

No

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source of illicit drugs significantly affecting the United States, through which such drugs are transported, or through which significant sums of drug-related profits are laundered with the knowledge or complicity of the government):

(1) does the country have in place a bilateral narcotics agreement with the United States, or a multilateral narcotics agreement?

(2) has the President in the March 1 International Narcotics Control Strategy Report (INSCR) determined and certified to the Congress (without Congressional enactment, within 45 days of continuous session, of a resolution disapproving such a certification), or has the President determined and certified to the Congress on any other date (with enactment by Congress of a resolution approving such certification), that (a) during the previous year the country has cooperated fully with the United States or taken adequate steps on its own to satisfy the goals agreed to in a bilateral narcotics agreement with the United States or in a multilateral agreement, to prevent illicit drugs produced or processed in or transported through such country from being transported into the United States, to prevent and punish drug profit laundering in the country, and to prevent and punish bribery and other forms of public corruption which facilitate production or shipment of illicit drugs or discourage prosecution of such acts, or that (b) the vital national interests of the United States require the provision of such assistance?

c. Government Policy (1986 Anti-Drug Abuse Act of 1986 Sec. 2013(b)). (This section applies to the same categories of assistance subject to the restrictions in FAA Sec. 481(h), above.) If recipient country is a "major illicit drug producing country" or "major drug-transit country" (as defined for the purpose of FAA Sec 481(h)), has the President submitted a report to Congress

No

listing such country as one: (a) which, as a matter of government policy, encourages or facilitates the production or distribution of illicit drugs; (b) in which any senior official of the government engages in, encourages, or facilitates the production or distribution of illegal drugs; (c) in which any member of a U.S. Government agency has suffered or been threatened with violence inflicted by or with the complicity of any government officer; or (d) which fails to provide reasonable cooperation to lawful activities of U.S. drug enforcement agents, unless the President has provided the required certification to Congress pertaining to U.S. national interests and the drug control and criminal prosecution efforts of that country?

2. **Indebtedness to U.S. citizens (FAA Sec. 620(c):** If assistance is to a government, is the government indebted to any U.S. citizen for goods or services furnished or ordered where: (a) such citizen has exhausted available legal remedies, (b) the debt is not denied or contested by such government, or (c) the indebtedness arises under an unconditional guaranty of payment given by such government or controlled entity?

No

3. **Seizure of U.S. Property (FAA Sec. 620(e)(1)):** If assistance is to a government, has it (including any government agencies or subdivisions) taken any action which has the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property of U.S. citizens or entities beneficially owned by them without taking steps to discharge its obligations toward such citizens or entities?

No

4. **Communist countries (FAA Secs. 620(a), 620(f), 620D; FY 1991 Appropriations Act Secs. 512, 545):** Is recipient country a Communist country? If so, has the President: (a) determined that assistance to the country is vital to the security of the United States, that the recipient country is not controlled by

No

the international Communist conspiracy, and that such assistance will further promote the independence of the recipient country from international communism, or (b) removed a country from applicable restrictions on assistance to communist countries upon a determination and report to Congress that such action is important to the national interest of the United States? Will assistance be provided either directly or indirectly to Angola, Cambodia, Cuba, Iraq, Libya, Vietnam, Iran or Syria? Will assistance be provided to Afghanistan without a certification, or will assistance be provided inside Afghanistan through the Soviet-controlled government of Afghanistan?

5. Mob Action (FAA Sec. 620(j)): Has the country permitted, or failed to take adequate measures to prevent, damage or destruction by mob action of U.S. property? No

6. OPIC Investment Guaranty (FAA Sec. 620(l)): Has the country failed to enter into an investment guaranty agreement with OPIC? No

7. Seizure of U.S. Fishing Vessels (FAA Sec. 620(o); Fishermen's Protective Act of 1967 (as amended) Sec. 5): (a) Has the country seized, or imposed any penalty or sanction against, any U.S. fishing vessel because of fishing activities in international waters? (b) If so, has any deduction required by the Fishermen's Protective Act been made? No

8. Loan Default (FAA Sec. 620(q); FY 1991 Appropriations Act Sec. 518 (Brooke Amendment)): (a) Has the government of the recipient country been in default for more than six months on interest or principal of any loan to the country under the FAA? (b) Has the country been in default for more than one year on interest or principal on any U.S. loan under a program for which the FY 1990 Appropriations Act appropriates funds? No

9. Military Equipment (FAA Sec. 620(s)): If contemplated assistance is development loan or to come from Economic Support Fund, has the Administrator taken into account the percentage of the country's budget and amount of the country's foreign exchange or other resources spent on military equipment? (Reference may be made to the annual "Taking Into Consideration" memo: "Yes, taken into account by the Administrator at time of approval of Agency OYB." This approval by the Administrator of the Operational Year Budget can be the basis for an affirmative answer during the fiscal year unless significant changes in circumstances occur.)

N/A

10. Diplomatic Relations with U.S. (FAA Sec. 620(t)): Has the country severed diplomatic relations with the United States? If so, have relations been resumed and have new bilateral assistance agreements been negotiated and entered into since such resumption?

No

11. U.N. Obligations (FAA Sec. 620(u)): What is the payment status of the country's U.N. obligations? If the country is in arrears, were such arrearages taken into account by the A.I.D. Administrator in determining the current A.I.D. Operational Year Budget? (Reference may be made to the "Taking into Consideration" memo.)

CURRENT

12. International Terrorism

a. Sanctuary and support (FY 1991 Appropriations Act Sec. 556; FAA Sec. 620A): Has the country been determined by the President to: (a) grant sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or (b) otherwise support international terrorism, unless the President has waived this restriction on grounds of national security or for humanitarian reasons?

No

b. Airport Security (ISDCA of 1985 Sec. 552(b)). Has the Secretary of State determined that the country is a high terrorist threat country after the Secretary of Transportation has determined, pursuant to section 1115(e)(2) of the Federal Aviation Act of 1958, that an airport in the country does not maintain and administer effective security measures?

No

13. Discrimination (FAA Sec. 666(b)): Does the country object, on the basis of race, religion, national origin or sex, to the presence of any officer or employee of the U.S. who is present in such country to carry out economic development programs under the FAA?

No

14. Nuclear Technology (FAA Secs. 669, 670): Has the country, after August 3, 1977, delivered to any other country or received nuclear enrichment or reprocessing equipment, materials, or technology, without specified arrangements or safeguards, and without special certification by the President? Has it transferred a nuclear explosive device to a non-nuclear weapon state, or if such a state, either received or detonated a nuclear explosive device? If the country is a non-nuclear weapon state, has it, on or after August 8, 1985, exported (or attempted to export) illegally from the United States any material, equipment, or technology which would contribute significantly to the ability of a country to manufacture a nuclear explosive device? (FAA Sec. 620E permits a special waiver of Sec. 669 for Pakistan.)

No

15. Algiers Meeting (ISDCA of 1981, Sec. 720): Was the country represented at the Meeting of Ministers of Foreign Affairs and Heads of Delegations of the Non-Aligned Countries to the 36th General Assembly of the U.N. on Sept. 25 and 28, 1981, and did it fail to disassociate itself from the communique issued? If so, has the President taken it into account? (Reference may be made to the "Taking into Consideration" memo.)

The present Government of Mali derived from a popular revolt against the previous authoritarian regime. A democratically elected Government is now in place and has confirmed its friendly relations with the U. S.

16. **Military Coup (FY 1991 Appropriations Act Sec. 513):** Has the duly elected Head of Government of the country been deposed by military coup or decree? If assistance has been terminated, has the President notified Congress that a democratically elected government has taken office prior to the resumption of assistance?

No

17. **Refugee Cooperation (FY 1991 Appropriations Act Sec. 539):** Does the recipient country fully cooperate with the international refugee assistance organizations, the United States, and other governments in facilitating lasting solutions to refugee situations, including resettlement without respect to race, sex, religion, or national origin?

Yes

18. **Exploitation of Children (FY 1991 Appropriations Act Sec. 599D, amending FAA Sec. 116):** Does the recipient government fail to take appropriate and adequate measures, within its means, to protect children from exploitation, abuse or forced conscription into military or paramilitary services?

No

**B. COUNTRY ELIGIBILITY CRITERIA APPLICABLE ONLY TO DEVELOPMENT ASSISTANCE ("DA")**

1. **Human Rights Violations (FAA Sec. 116):** Has the Department of State determined that this government has engaged in a consistent pattern of gross violations of internationally recognized human rights? If so, can it be demonstrated that contemplated assistance will directly benefit the needy?

No

2. **Abortions (FY 1991 Appropriations Act Sec. 535):** Has the President certified that use of DA funds by this country would violate any of the prohibitions against use of funds to pay for the performance of abortions as a method of family planning, to motivate or coerce any person to practice abortions, to pay for the performance of involuntary

No

sterilization as a method of family planning, to coerce or provide any financial incentive to any person to undergo sterilizations, to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning?

C. COUNTRY ELIGIBILITY CRITERIA APPLICABLE ONLY TO ECONOMIC SUPPORT FUNDS ("ESF")

(NOT APPLICABLE)  
( DFA FUNDED )

Human Rights Violations (FAA Sec. 502B): Has it been determined that the country has engaged in a consistent pattern of gross violations of internationally recognized human rights? If so, has the President found that the country made such significant improvement in its human rights record that furnishing such assistance is in the U.S. national interest?

## 5C(2) - ASSISTANCE CHECKLIST

Listed below are statutory criteria applicable to the assistance resources themselves, rather than to the eligibility of a country to receive assistance. This section is divided into three parts. Part A includes criteria applicable to both Development Assistance and Economic Support Fund resources. Part B includes criteria applicable only to Development Assistance resources. Part C includes criteria applicable only to Economic Support Funds.

CROSS REFERENCE: IS COUNTRY CHECKLIST UP TO DATE?

### A. CRITERIA APPLICABLE TO BOTH DEVELOPMENT ASSISTANCE AND ECONOMIC SUPPORT FUNDS

1. **Host Country Development Efforts** (FAA Sec. 601(a)): Information and conclusions on whether assistance will encourage efforts of the country to:

- (a) increase the flow of international trade;
- (b) foster private initiative and competition;
- (c) encourage development and use of cooperatives, credit unions, and savings and loan associations;
- (d) discourage monopolistic practices;
- (e) improve technical efficiency of industry, agriculture, and commerce; and
- (f) strengthen free labor unions.

2. **U.S. Private Trade and Investment** (FAA Sec. 601(b)): Information and conclusions on how assistance will encourage U.S. private trade and investment abroad and encourage private U.S. participation in foreign assistance programs (including use of private trade channels and the services of U.S. private enterprise).

a) Yes, through elimination of export taxes. b) Yes, through regulatory simplification; c) Yes, through support to the Private Sector; d) Yes, through dissolving parastatal enterprises; e) Yes, through greater Private Sector activity; f) Yes, through greater Private Sector activity.

The project will encourage U.S. Private Sector Trade and Investment by fostering the growth of the Private Sector and a market economy in Mali which will create a hospitable climate for U.S. Trade Investment.

### 3. Congressional Notification

a. General requirement (FY 1991 Appropriations Act Secs. 523 and 591; FAA Sec. 634A): If money is to be obligated for an activity not previously justified to Congress, or for an amount in excess of amount previously justified to Congress, has Congress been properly notified (unless the notification requirement has been waived because of substantial risk to human health or welfare)?

Yes

b. Notice of new account obligation (FY 1991 Appropriations Act Sec. 514): If funds are being obligated under an appropriation account to which they were not appropriated, has the President consulted with and provided a written justification to the House and Senate Appropriations Committees and has such obligation been subject to regular notification procedures?

N/A

c. Cash transfers and nonproject sector assistance (FY 1991 Appropriations Act Sec. 575(b)(3)): If funds are to be made available in the form of cash transfer or nonproject sector assistance, has the Congressional notice included a detailed description of how the funds will be used, with a discussion of U.S. interests to be served and a description of any economic policy reforms to be promoted?

Yes, Cable dated  
6/16/92

4. Engineering and Financial Plans (FAA Sec. 611(a)): Prior to an obligation in excess of \$500,000, will there be: (a) engineering, financial or other plans necessary to carry out the assistance; and (b) a reasonably firm estimate of the cost to the U.S. of the assistance?

N/A

5. Legislative Action (FAA Sec. 611(a)(2)): If legislative action is required within recipient country with respect to an obligation in excess of \$500,000, what is the basis for a reasonable expectation that such action

No such action  
will be needed  
prior to obligatio

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will be completed in time to permit orderly accomplishment of the purpose of the assistance?

6. Water Resources (FAA Sec. 611(b); FY 1991 Appropriations Act Sec. 501): If project is for water or water-related land resource construction, have benefits and costs been computed to the extent practicable in accordance with the principles, standards, and procedures established pursuant to the Water Resources Planning Act (42 U.S.C. 1962, et seq.)? (See A.I.D. Handbook 3 for guidelines.)

N/A

7. Cash Transfer and Sector Assistance (FY 1991 Appropriations Act Sec. 575(b)): Will cash transfer or nonproject sector assistance be maintained in a separate account and not commingled with other funds (unless such requirements are waived by Congressional notice for nonproject sector assistance)?

Yes

8. Capital Assistance (FAA Sec. 611(e)): If project is capital assistance (e.g., construction), and total U.S. assistance for it will exceed \$1 million, has Mission Director certified and Regional Assistant Administrator taken into consideration the country's capability to maintain and utilize the project effectively?

N/A

9. Multiple Country Objectives (FAA Sec. 601(a)): Information and conclusions on whether projects will encourage efforts of the country to: (a) increase the flow of international trade; (b) foster private initiative and competition; (c) encourage development and use of cooperatives, credit unions, and savings and loan associations; (d) discourage monopolistic practices; (e) improve technical efficiency of industry, agriculture and commerce; and (f) strengthen free labor unions.

See A.1

10. **U.S. Private Trade** (FAA Sec. 601(b)): Information and conclusions on how project will encourage U.S. private trade and investment abroad and encourage private U.S. participation in foreign assistance programs (including use of private trade channels and the services of U.S. private enterprise).

See A.2

11. **Local Currencies**

a. **Recipient Contributions** (FAA Secs. 612(b), 636(h)): Describe steps taken to assure that, to the maximum extent possible, the country is contributing local currencies to meet the cost of contractual and other services, and foreign currencies owned by the U.S. are utilized in lieu of dollars.

The country will contribute 25% of the costs of the project. There will be U.S. Government owned local currency.

b. **U.S.-Owned Currency** (FAA Sec. 612(d)): Does the U.S. own excess foreign currency of the country and, if so, what arrangements have been made for its release?

No

c. **Separate Account** (FY 1991 Appropriations Act Sec. 575). If assistance is furnished to a foreign government under arrangements which result in the generation of local currencies:

N/A

(1) **Has A.I.D.** (a) required that local currencies be deposited in a separate account established by the recipient government, (b) entered into an agreement with that government providing the amount of local currencies to be generated and the terms and conditions under which the currencies so deposited may be utilized, and (c) established by agreement the responsibilities of A.I.D. and that government to monitor and account for deposits into and disbursements from the separate account?

- a) Yes
- b) Will be specified in the Grant Agreement
- c) Yes; In the Grant Agreement

(2) Will such local currencies, or an equivalent amount of local currencies, be used only to carry out the purposes of the DA or ESF chapters of the FAA (depending on which chapter is the source of the assistance) or for the administrative requirements of the United States Government? Yes

(3) Has A.I.D. taken all appropriate steps to ensure that the equivalent of local currencies disbursed from the separate account are used for the agreed purposes? Yes

(4) If assistance is terminated to a country, will any unencumbered balances of funds remaining in a separate account be disposed of for purposes agreed to by the recipient government and the United States Government? Yes

## 12. Trade Restrictions

a. Surplus Commodities (FY 1991 Appropriations Act Sec. 521(a)): If assistance is for the production of any commodity for export, is the commodity likely to be in surplus on world markets at the time the resulting productive capacity becomes operative, and is such assistance likely to cause substantial injury to U.S. producers of the same, similar or competing commodity? No

b. Textiles (Lautenberg Amendment) (FY 1991 Appropriations Act Sec. 521(c)): Will the assistance (except for programs in Caribbean Basin Initiative countries under U.S. Tariff Schedule "Section 807," which allows reduced tariffs on articles assembled abroad from U.S.-made components) be used directly to procure feasibility studies, prefeasibility studies, or project profiles of potential investment in, or to assist the establishment of facilities specifically designed for, the manufacture for export to the United States or to third country markets in direct competition with U.S. exports, of No

textiles, apparel, footwear, handbags, flat goods (such as wallets or coin purses worn on the person), work gloves or leather wearing apparel?

13. Tropical Forests (FY 1991 Appropriations Act Sec. 533(c)(3)): Will funds be used for any program, project or activity which would (a) result in any significant loss of tropical forests, or (b) involve industrial timber extraction in primary tropical forest areas?

No

14. PVO Assistance

a. Auditing and registration (FY 1991 Appropriations Act Sec. 537): If assistance is being made available to a PVO, has that organization provided upon timely request any document, file, or record necessary to the auditing requirements of A.I.D., and is the PVO registered with A.I.D.?

N/A

b. Funding sources (FY 1991 Appropriations Act, Title II, under heading "Private and Voluntary Organizations"): If assistance is to be made to a United States PVO (other than a cooperative development organization), does it obtain at least 20 percent of its total annual funding for international activities from sources other than the United States Government?

N/A

15. Project Agreement Documentation (State Authorization Sec. 139 (as interpreted by conference report)): Has confirmation of the date of signing of the project agreement, including the amount involved, been cabled to State L/T and A.I.D. LEG within 60 days of the agreement's entry into force with respect to the United States, and has the full text of the agreement been pouched to those same offices? (See Handbook 3, Appendix 6G for agreements covered by this provision).

IT WILL BE

16. Metric System (Omnibus Trade and Competitiveness Act of 1988 Sec. 5164, as interpreted by conference report, amending Metric Conversion Act of 1975 Sec. 2, and as implemented through A.I.D. policy):

Yes

Does the assistance activity use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms? Are bulk purchases usually to be made in metric, and are components, subassemblies, and semi-fabricated materials to be specified in metric units when economically available and technically adequate? Will A.I.D. specifications use metric units of measure from the earliest programmatic stages, and from the earliest documentation of the assistance processes (for example, project papers) involving quantifiable measurements (length, area, volume, capacity, mass and weight), through the implementation stage?

17. Women in Development (FY 1991 Appropriations Act, Title II, under heading "Women in Development"): Will assistance be designed so that the percentage of women participants will be demonstrably increased?

Yes, the project will help all Malians especially those in the non-formal sector where women are more heavily represented than other sectors.

18. Regional and Multilateral Assistance (FAA Sec. 209): Is assistance more efficiently and effectively provided through regional or multilateral organizations? If so, why is assistance not so provided? Information and conclusions on whether assistance will encourage developing countries to cooperate in regional development programs.

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19. Abortions (FY 1991 Appropriations Act, Title II, under heading "Population, DA," and Sec. 525):

a. Will assistance be made available to any organization or program which, as determined by the President, supports or participates in the management of a program of coercive abortion or involuntary sterilization? No

b. Will any funds be used to lobby for abortion? No

20. Cooperatives (FAA Sec. 111): Will assistance help develop cooperatives, especially by technical assistance, to assist rural and urban poor to help themselves toward a better life? No

21. U.S.-Owned Foreign Currencies

a. Use of currencies (FAA Secs. 612(b), 636(h); FY 1991 Appropriations Act Secs. 507, 509): Describe steps taken to assure that, to the maximum extent possible, foreign currencies owned by the U.S. are utilized in lieu of dollars to meet the cost of contractual and other services. U.S. does not own excess FCFA

b. Release of currencies (FAA Sec. 612(d)): Does the U.S. own excess foreign currency of the country and, if so, what arrangements have been made for its release? No

22. Procurement

a. Small business (FAA Sec. 602(a)): Are there arrangements to permit U.S. small business to participate equitably in the furnishing of commodities and services financed? Yes

b. U.S. procurement (FAA Sec. 604(a)): Will all procurement be from the U.S. except as otherwise determined by the President or determined under delegation from him? Yes

**c. Marine insurance (FAA Sec. 604(d)):** If the cooperating country discriminates against marine insurance companies authorized to do business in the U.S., will commodities be insured in the United States against marine risk with such a company?

Yes

**d. Non-U.S. agricultural procurement (FAA Sec. 604(e)):** If non-U.S. procurement of agricultural commodity or product thereof is to be financed, is there provision against such procurement when the domestic price of such commodity is less than parity? (Exception where commodity financed could not reasonably be procured in U.S.)

N/A

**e. Construction or engineering services (FAA Sec. 604(g)):** Will construction or engineering services be procured from firms of advanced developing countries which are otherwise eligible under Code 941 and which have attained a competitive capability in international markets in one of these areas? (Exception for those countries which receive direct economic assistance under the FAA and permit United States firms to compete for construction or engineering services financed from assistance programs of these countries.)

N/A

**f. Cargo preference shipping (FAA Sec. 603):** Is the shipping excluded from compliance with the requirement in section 901(b) of the Merchant Marine Act of 1936, as amended, that at least 50 percent of the gross tonnage of commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) financed shall be transported on privately owned U.S. flag commercial vessels to the extent such vessels are available at fair and reasonable rates?

No

**g. Technical assistance (FAA Sec. 621(a)):** If technical assistance is financed, will such assistance be furnished by private enterprise on a contract basis to the fullest extent practicable? Will the

Yes

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facilities and resources of other Federal agencies be utilized, when they are particularly suitable, not competitive with private enterprise, and made available without undue interference with domestic programs?

**h. U.S. air carriers**  
(International Air Transportation Fair Competitive Practices Act, 1974): If air transportation of persons or property is financed on grant basis, will U.S. carriers be used to the extent such service is available?

Yes

**i. Termination for convenience of U.S. Government (FY 1991 Appropriations Act Sec. 504):** If the U.S. Government is a party to a contract for procurement, does the contract contain a provision authorizing termination of such contract for the convenience of the United States?

Yes

**j. Consulting services**  
(FY 1991 Appropriations Act Sec. 524): If assistance is for consulting service through procurement contract pursuant to 5 U.S.C. 3109, are contract expenditures a matter of public record and available for public inspection (unless otherwise provided by law or Executive order)?

Yes

**k. Metric conversion**  
(Omnibus Trade and Competitiveness Act of 1988, as interpreted by conference report, amending Metric Conversion Act of 1975 Sec. 2, and as implemented through A.I.D. policy): Does the assistance program use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms? Are bulk purchases usually to be made in metric, and are components, subassemblies, and semi-fabricated materials to be specified in metric units when economically available and technically adequate? Will A.I.D. specifications use metric units of measure from the earliest programmatic stages, and from the earliest

Yes

documentation of the assistance processes (for example, project papers) involving quantifiable measurements (length, area, volume, capacity, mass and weight), through the implementation stage?

1. **Competitive Selection Procedures (FAA Sec. 601(e)):** Will the assistance utilize competitive selection procedures for the awarding of contracts, except where applicable procurement rules allow otherwise? Yes

23. **Construction**

a. **Capital project (FAA Sec. 601(d)):** If capital (e.g., construction) project, will U.S. engineering and professional services be used? N/A

b. **Construction contract (FAA Sec. 611(c)):** If contracts for construction are to be financed, will they be let on a competitive basis to maximum extent practicable? N/A

c. **Large projects, Congressional approval (FAA Sec. 620(k)):** If for construction of productive enterprise, will aggregate value of assistance to be furnished by the U.S. not exceed \$100 million (except for productive enterprises in Egypt that were described in the Congressional Presentation), or does assistance have the express approval of Congress? N/A

24. **U.S. Audit Rights (FAA Sec. 301(d)):** If fund is established solely by U.S. contributions and administered by an international organization, does Comptroller General have audit rights? N/A

25. **Communist Assistance (FAA Sec. 620(h)).** Do arrangements exist to insure that United States foreign aid is not used in a manner which, contrary to the best interests of the United States, promotes or assists the foreign aid projects or activities of the Communist-bloc countries? Yes

**26. Narcotics**

**a. Cash reimbursements (FAA Sec. 483): Will arrangements preclude use of financing to make reimbursements, in the form of cash payments, to persons whose illicit drug crops are eradicated?**

N/A

**b. Assistance to narcotics traffickers (FAA Sec. 487): Will arrangements take "all reasonable steps" to preclude use of financing to or through individuals or entities which we know or have reason to believe have either: (1) been convicted of a violation of any law or regulation of the United States or a foreign country relating to narcotics (or other controlled substances); or (2) been an illicit trafficker in, or otherwise involved in the illicit trafficking of, any such controlled substance?**

Yes

**27. Expropriation and Land Reform (FAA Sec. 620(g)): Will assistance preclude use of financing to compensate owners for expropriated or nationalized property, except to compensate foreign nationals in accordance with a land reform program certified by the President?**

N/A

**28. Police and Prisons (FAA Sec. 660): Will assistance preclude use of financing to provide training, advice, or any financial support for police, prisons, or other law enforcement forces, except for narcotics programs?**

N/A

**29. CIA Activities (FAA Sec. 662): Will assistance preclude use of financing for CIA activities?**

Yes

**30. Motor Vehicles (FAA Sec. 636(i)): Will assistance preclude use of financing for purchase, sale, long-term lease, exchange or guaranty of the sale of motor vehicles manufactured outside U.S., unless a waiver is obtained?**

Yes

31. **Military Personnel (FY 1991 Appropriations Act Sec. 503):** Will assistance preclude use of financing to pay pensions, annuities, retirement pay, or adjusted service compensation for prior or current military personnel? Yes

32. **Payment of U.N. Assessments (FY 1991 Appropriations Act Sec. 505):** Will assistance preclude use of financing to pay U.N. assessments, arrearages or dues? Yes

33. **Multilateral Organization Lending (FY 1991 Appropriations Act Sec. 506):** Will assistance preclude use of financing to carry out provisions of FAA section 209(d) (transfer of FAA funds to multilateral organizations for lending)? Yes

34. **Export of Nuclear Resources (FY 1991 Appropriations Act Sec. 510):** Will assistance preclude use of financing to finance the export of nuclear equipment, fuel, or technology? Yes

35. **Repression of Population (FY 1991 Appropriations Act Sec. 511):** Will assistance preclude use of financing for the purpose of aiding the efforts of the government of such country to repress the legitimate rights of the population of such country contrary to the Universal Declaration of Human Rights? Yes

36. **Publicity or Propoganda (FY 1991 Appropriations Act Sec. 516):** Will assistance be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress, to influence in any way the outcome of a political election in the United States, or for any publicity or propoganda purposes not authorized by Congress? Yes

37. Marine Insurance (FY 1991 Appropriations Act Sec. 563): Will any A.I.D. contract and solicitation, and subcontract entered into under such contract, include a clause requiring that U.S. marine insurance companies have a fair opportunity to bid for marine insurance when such insurance is necessary or appropriate?

Yes

38. Exchange for Prohibited Act (FY 1991 Appropriations Act Sec. 569): Will any assistance be provided to any foreign government (including any instrumentality or agency thereof), foreign person, or United States person in exchange for that foreign government or person undertaking any action which is, if carried out by the United States Government, a United States official or employee, expressly prohibited by a provision of United States law?

No

B. CRITERIA APPLICABLE TO DEVELOPMENT ASSISTANCE ONLY

1. Agricultural Exports (Bumpers Amendment) (FY 1991 Appropriations Act Sec. 521(b), as interpreted by conference report for original enactment): If assistance is for agricultural development activities (specifically, any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training), are such activities: (1) specifically and principally designed to increase agricultural exports by the host country to a country other than the United States, where the export would lead to direct competition in that third country with exports of a similar commodity grown or produced in the United States, and can the activities reasonably be expected to cause substantial injury to U.S. exporters of a similar agricultural commodity; or (2) in support of research that is intended primarily to benefit U.S. producers?

N/A

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2. Tied Aid Credits (FY 1991 Appropriations Act, Title II, under heading "Economic Support Fund"): Will DA funds be used for tied aid credits?

No

3. Appropriate Technology (FAA Sec. 107): Is special emphasis placed on use of appropriate technology (defined as relatively smaller, cost-saving, labor-using technologies that are generally most appropriate for the small farms, small businesses, and small incomes of the poor)?

N/A

4. Indigenous Needs and Resources (FAA Sec. 281(b)): Describe extent to which the activity recognizes the particular needs, desires, and capacities of the people of the country; utilizes the country's intellectual resources to encourage institutional development; and supports civic education and training in skills required for effective participation in governmental and political processes essential to self-government.

N/A This is a Policy Reform Project

5. Economic Development (FAA Sec. 101(a)): Does the activity give reasonable promise of contributing to the development of economic resources, or to the increase of productive capacities and self-sustaining economic growth?

Yes

6. Special Development Emphases (FAA Secs. 102(b), 113, 281(a)): Describe extent to which activity will: (a) effectively involve the poor in development by extending access to economy at local level, increasing labor-intensive production and the use of appropriate technology, dispersing investment from cities to small towns and rural areas, and insuring wide participation of the poor in the benefits of development on a sustained basis, using appropriate U.S. institutions; (b) encourage democratic private and local governmental institutions; (c) support the self-help efforts of developing countries; (d) promote the participation of women in the national economies of developing countries

- A) Project will support GE Micro-enterprise and Small Enterprise Policies, Trade Reforms in support of decentralization.
- b) Will promote local group and credit union lending
- c) This project supports the stated Self Help Measures previously agreed to
- d) See 17 above
- e) The project will promote Regional Trade by fostering growth of the Malian Private Sector.

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and the improvement of women's status; and  
(e) utilize and encourage regional  
cooperation by developing countries.

**7. Recipient Country Contribution**  
(FAA Secs. 110, 124(d)): Will the  
recipient country provide at least 25  
percent of the costs of the program,  
project, or activity with respect to which  
the assistance is to be furnished (or is  
the latter cost-sharing requirement being  
waived for a "relatively least developed"  
country)?

Yes

**8. Benefit to Poor Majority** (FAA  
Sec. 128(b)): If the activity attempts to  
increase the institutional capabilities of  
private organizations or the government of  
the country, or if it attempts to  
stimulate scientific and technological  
research, has it been designed and will it  
be monitored to ensure that the ultimate  
beneficiaries are the poor majority?

Yes

**9. Abortions** (FAA Sec. 104(f); FY  
1991 Appropriations Act, Title II, under  
heading "Population, DA," and Sec. 535):

a. Are any of the funds to be  
used for the performance of abortions as a  
method of family planning or to motivate  
or coerce any person to practice  
abortions?

No

b. Are any of the funds to be  
used to pay for the performance of  
involuntary sterilization as a method of  
family planning or to coerce or provide  
any financial incentive to any person to  
undergo sterilizations?

No

c. Are any of the funds to be  
made available to any organization or  
program which, as determined by the  
President, supports or participates in the  
management of a program of coercive  
abortion or involuntary sterilization?

No

- d. Will funds be made available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services? N/A
- e. In awarding grants for natural family planning, will any applicant be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning? N/A
- f. Are any of the funds to be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning? N/A
- g. Are any of the funds to be made available to any organization if the President certifies that the use of these funds by such organization would violate any of the above provisions related to abortions and involuntary sterilization? N/A
10. Contract Awards (FAA Sec. 601(e)): Will the project utilize competitive selection procedures for the awarding of contracts, except where applicable procurement rules allow otherwise? Yes
11. Disadvantaged Enterprises (FY 1991 Appropriations Act Sec. 567): What portion of the funds will be available only for activities of economically and socially disadvantaged enterprises, historically black colleges and universities, colleges and universities having a student body in which more than 40 percent of the students are Hispanic Americans, and private and voluntary organizations which are controlled by individuals who are black Americans, Hispanic Americans, or Native Americans, or who are economically or socially disadvantaged (including women)? Selection process will encourage participation of economically and socially disadvantaged firms, etc.

12. **Biological Diversity (FAA Sec. 119(g):** Will the assistance: (a) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity; (b) be provided under a long-term agreement in which the recipient country agrees to protect ecosystems or other wildlife habitats; (c) support efforts to identify and survey ecosystems in recipient countries worthy of protection; or (d) by any direct or indirect means significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas?

N/A

13. **Tropical Forests (FAA Sec. 118; FY 1991 Appropriations Act Sec. 533(c)-(e) & (g)):**

a. **A.I.D. Regulation 16:** Does the assistance comply with the environmental procedures set forth in A.I.D. Regulation 16?

Yes, see IEE

b. **Conservation:** Does the assistance place a high priority on conservation and sustainable management of tropical forests? Specifically, does the assistance, to the fullest extent feasible: (1) stress the importance of conserving and sustainably managing forest resources; (2) support activities which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and help countries identify and implement alternatives to colonizing forested areas; (3) support training programs, educational efforts, and the establishment or strengthening of institutions to improve forest management; (4) help end destructive slash-and-burn agriculture by supporting stable and productive farming practices; (5) help conserve forests which have not yet been degraded by helping to increase production on lands already cleared or degraded; (6) conserve forested watersheds and rehabilitate those which have been deforested; (7) support training, research, and other actions

N/A see above

which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing; (8) support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation; (9) conserve biological diversity in forest areas by supporting efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis, by making the establishment of protected areas a condition of support for activities involving forest clearance or degradation, and by helping to identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas; (10) seek to increase the awareness of U.S. Government agencies and other donors of the immediate and long-term value of tropical forests; (11) utilize the resources and abilities of all relevant U.S. government agencies; (12) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land; and (13) take full account of the environmental impacts of the proposed activities on biological diversity?

c. Forest degradation: Will assistance be used for: (1) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner and that the proposed activity will produce positive economic benefits and sustainable forest management systems; (2) actions which will significantly degrade national parks or similar protected areas which contain tropical forests, or introduce exotic plants or animals into such areas; (3) activities which would result in the conversion of forest lands to the rearing of livestock; (4) the construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undergraded

No

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forest lands; (5) the colonization of forest lands; or (6) the construction of dams or other water control structures which flood relatively undergraded forest lands, unless with respect to each such activity an environmental assessment indicates that the activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development?

d. Sustainable forestry: If assistance relates to tropical forests, will project assist countries in developing a systematic analysis of the appropriate use of their total tropical forest resources, with the goal of developing a national program for sustainable forestry?

N/A

e. Environmental impact statements: Will funds be made available in accordance with provisions of FAA Section 117(c) and applicable A.I.D. regulations requiring an environmental impact statement for activities significantly affecting the environment?

N/A

14. Energy (FY 1991 Appropriations Act Sec. 533(c)): If assistance relates to energy, will such assistance focus on: (a) end-use energy efficiency, least-cost energy planning, and renewable energy resources, and (b) the key countries where assistance would have the greatest impact on reducing emissions from greenhouse gases?

N/A

15. Sub-Saharan Africa Assistance (FY 1991 Appropriations Act Sec. 562, adding a new FAA chapter 10 (FAA Sec. 496)): If assistance will come from the Sub-Saharan Africa DA account, is it: (a) to be used to help the poor majority in Sub-Saharan Africa through a process of long-term development and economic growth that is equitable, participatory, environmentally sustainable, and self-reliant; (b) to be used to promote sustained economic growth, encourage

a) Yes

b) Yes

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private sector development, promote individual initiatives, and help to reduce the role of central governments in areas more appropriate for the private sector; (c) to be provided in a manner that takes into account, during the planning process, the local-level perspectives of the rural and urban poor, including women, through close consultation with African, United States and other PVOs that have demonstrated effectiveness in the promotion of local grassroots activities on behalf of long-term development in Sub-Saharan Africa; (d) to be implemented in a manner that requires local people, including women, to be closely consulted and involved, if the assistance has a local focus; (e) being used primarily to promote reform of critical sectoral economic policies, or to support the critical sector priorities of agricultural production and natural resources, health, voluntary family planning services, education, and income generating opportunities; and (f) to be provided in a manner that, if policy reforms are to be effected, contains provisions to protect vulnerable groups and the environment from possible negative consequences of the reforms?

c) Yes

d) Yes

c) Yes

f) Yes

16. Debt-for-Nature Exchange (FAA Sec. 463): If project will finance a debt-for-nature exchange, describe how the exchange will support protection of: (a) the world's oceans and atmosphere, (b) animal and plant species, and (c) parks and reserves; or describe how the exchange will promote: (d) natural resource management, (e) local conservation programs, (f) conservation training programs, (g) public commitment to conservation, (h) land and ecosystem management, and (i) regenerative approaches in farming, forestry, fishing, and watershed management.

N/A

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17. **Deobligation/Reobligation** (FY 1991 Appropriations Act Sec. 515): If deob/reob authority is sought to be exercised in the provision of DA assistance, are the funds being obligated for the same general purpose, and for countries within the same region as originally obligated, and have the House and Senate Appropriations Committees been properly notified?

N/A

18. **Loans**

N/A

a. **Repayment capacity** (FAA Sec. 122(b)): Information and conclusion on capacity of the country to repay the loan at a reasonable rate of interest.

b. **Long-range plans** (FAA Sec. 122(b)): Does the activity give reasonable promise of assisting long-range plans and programs designed to develop economic resources and increase productive capacities?

c. **Interest rate** (FAA Sec. 122(b)): If development loan is repayable in dollars, is interest rate at least 2 percent per annum during a grace period which is not to exceed ten years, and at least 3 percent per annum thereafter?

d. **Exports to United States** (FAA Sec. 620(d)): If assistance is for any productive enterprise which will compete with U.S. enterprises, is there an agreement by the recipient country to prevent export to the U.S. of more than 20 percent of the enterprise's annual production during the life of the loan, or has the requirement to enter into such an agreement been waived by the President because of a national security interest?

19. **Development Objectives** (FAA Secs. 102(a), 111, 113, 281(a)): Extent to which activity will: (1) effectively involve the poor in development, by expanding access to economy at local level, increasing labor-intensive production and the use of appropriate technology, spreading investment out from

See 6 above

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cities to small towns and rural areas, and insuring wide participation of the poor in the benefits of development on a sustained basis, using the appropriate U.S. institutions; (2) help develop cooperatives, especially by technical assistance, to assist rural and urban poor to help themselves toward better life, and otherwise encourage democratic private and local governmental institutions; (3) support the self-help efforts of developing countries; (4) promote the participation of women in the national economies of developing countries and the improvement of women's status; and (5) utilize and encourage regional cooperation by developing countries?

20. Agriculture, Rural Development and Nutrition, and Agricultural Research (FAA Secs. 103 and 103A):

N/A

a. Rural poor and small farmers: If assistance is being made available for agriculture, rural development or nutrition, describe extent to which activity is specifically designed to increase productivity and income of rural poor; or if assistance is being made available for agricultural research, has account been taken of the needs of small farmers, and extensive use of field testing to adapt basic research to local conditions shall be made.

b. Nutrition: Describe extent to which assistance is used in coordination with efforts carried out under FAA Section 104 (Population and Health) to help improve nutrition of the people of developing countries through encouragement of increased production of crops with greater nutritional value; improvement of planning, research, and education with respect to nutrition, particularly with reference to improvement and expanded use of indigenously produced foodstuffs; and the undertaking of pilot or demonstration programs explicitly addressing the problem of malnutrition of poor and vulnerable people.

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**C. Food security:** Describe extent to which activity increases national food security by improving food policies and management and by strengthening national food reserves, with particular concern for the needs of the poor, through measures encouraging domestic production, building national food reserves, expanding available storage facilities, reducing post harvest food losses, and improving food distribution.

**21. Population and Health (FAA Secs. 104(b) and (c)):** If assistance is being made available for population or health activities, describe extent to which activity emphasizes low-cost, integrated delivery systems for health, nutrition and family planning for the poorest people, with particular attention to the needs of mothers and young children, using paramedical and auxiliary medical personnel, clinics and health posts, commercial distribution systems, and other modes of community outreach.

N/A

**22. Education and Human Resources Development (FAA Sec. 105):** If assistance is being made available for education, public administration, or human resource development, describe (a) extent to which activity strengthens nonformal education, makes formal education more relevant, especially for rural families and urban poor, and strengthens management capability of institutions enabling the poor to participate in development; and (b) extent to which assistance provides advanced education and training of people of developing countries in such disciplines as are required for planning and implementation of public and private development activities.

N/A

**23. Energy, Private Voluntary Organizations, and Selected Development Activities (FAA Sec. 106):** If assistance is being made available for energy, private voluntary organizations, and selected development problems, describe extent to which activity is:

N/A

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a. concerned with data collection and analysis, the training of skilled personnel, research on and development of suitable energy sources, and pilot projects to test new methods of energy production; and facilitative of research on and development and use of small-scale, decentralized, renewable energy sources for rural areas, emphasizing development of energy resources which are environmentally acceptable and require minimum capital investment;

b. concerned with technical cooperation and development, especially with U.S. private and voluntary, or regional and international development, organizations;

c. research into, and evaluation of, economic development processes and techniques;

d. reconstruction after natural or manmade disaster and programs of disaster preparedness;

e. for special development problems, and to enable proper utilization of infrastructure and related projects funded with earlier U.S. assistance;

f. for urban development, especially small, labor-intensive enterprises, marketing systems for small producers, and financial or other institutions to help urban poor participate in economic and social development.

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**ANNEX R**

**GENDER CONSIDERATIONS**

## ANNEX R

### GENDER CONSIDERATIONS

#### Overview

The Malian woman, long discriminated against by social and customary practices face the same discrimination before the law: she cannot testify in court; the marriage code allows the husband to have up to as many as four wives and also stipulates that she owes respect to her husband and that the husband owes her protection; up until a recent date she needed the written authorization of her husband to get an exit visa and have access to family planning services; without the written authorization of her husband she could not get registered as a trader; and there is no legal provision for her to inherit. The current economic constraints in both rural and urban settings, which reduced men's ability to support alone the family needs or in some cases obliged them to migrate, have increased women's responsibilities. They are now the breadwinners in many families, operating in most cases in the informal sector; they sell whatever they can (from cold water to travelling to remote countries to export/import products) to make ends meet. However, their increased responsibilities do not often grant them more social/legal consideration or decision-making power.

#### Sex-disaggregated data

In general there is a poor statistical recording of data regarding women although their participation/contribution to development activities is tremendous (approximately 80% of field work in the rural area performed by women, and they are heavily represented in the informal sector). Efforts are being made to reverse this trend. However, women's status of unpaid laborers in family/communal fields and the kind of activities they conduct in the informal sector tends to hide their contribution to the economy and make it difficult to collect reliable data on them. Under PRED, data to be collected should be disaggregated by gender: it would be helpful for decision-makers, project planners and implementors to have a gender breakdown of the number of jurists, their distribution by commercial court, their training needs, the number of traders requesting services of the commercial courts and the amount of money involved in the litigations brought to court, number of people satisfied with the courts' sentence, etc.

#### Constraints to women's participation

PRED's focus, ie. the rapid and reliable resolution of commercial disputes will undoubtedly fill a legal gap. But if careful attention is not paid women run the risk of being excluded for a variety of reasons:

##### 1) Social constraints

Women have a very little experience of official/legal matters although in some cases they are authorized by law to act by and for themselves. Confined in their production and their reproduction role, they are used to being always assisted by a male member of the family: the

father, the uncle, the husband, the brother, the son, etc. Lacking confidence in themselves they are hesitant to undertake anything official/legal.

### 2) Field of operation

In business, women operate mainly in the informal sector, an area where they can easily escape administrative red-tape and avoid high taxation. This could prevent women from requesting services in commercial court since most women in the sector wish to remain in this shadow and peacefully conduct their business.

### 3) Lack of training

Among other things the lack or limited training women partly explains why they operate in the informal sector where there is little barrier to entry. But this lack of training prevents them from understanding the operation, advantages, and shortcomings of the commercial courts to use effectively their services.

However, opportunities exist that could help to overcome these constraints.

### Opportunities for women's participation

The best opportunity for women traders to participate in PRED is the political change that occurred in the country since the March 26, 1991 coup that ousted the military power and the subsequent democracy instituted in the country since then. Women have participated in the election process. Even though social constraints prevented them from exercising their rights in some cases, they know now that they can express their voice. In addition, there are many women's associations dedicated to women's promotion, like:

#### 1) The Association des Femmes Commerçantes et Entrepreneurs (AFCEM)

In 1989, a group of women operating in economic fields as varied as hair-dressing, tie-dying, handicraft, sewing, consulting services, trade and micro/small enterprise, organized themselves in an association called Association des Femmes Commerçantes et Entrepreneurs to provide its members among other things: (1) the opportunity to discuss the common financial, commercial and moral problems they face, (2) a mechanism for coordinating their actions vis-a-vis their partners, (3) promotion of commercial exchange within and outside of the country, (4) assistance, when needed, for members in commercial transactions, (5) a better flow of relevant technical and commercial information for its members.

Through seminars, AFCEM educates its members in commercial and administrative practices. AFCEM could provide a good opportunity for fostering the participation of its members to the use of commercial courts.

#### 2) The Association des Juristes Maliennes (AJM)

The AJM is an association of women professional lawyers. Since this is a women organization, female traders could have more confidence and address it to better understand the law and use it to defend their rights and interests.

3) With the political change, approximately thirty women's associations were created with the objectives of assisting women in various fields to improve their participation in all developmental activities.

There are constraints and opportunities to women's participation and strategies are necessary to ensure a good participation:

Information/sensitization - Experience has proven that lack of information can be a limiting factor to participating in an activity. Information on the existence, operation, and use of commercial courts could be conveyed to women through the existing associations. Both women and men should be sensitized to the usefulness of the services provided by these courts.

Easy transition between formal and informal sector - Few women are operating in the formal sector. The PP provides that the "initial impact of these reforms will accrue to the present formal sector... Over time the major share of these benefits and the gains in employment and income will go to what is now the informal sector, currently responsible for an estimated 63% of economic activities in Mali". This will temporarily exclude many women who however, manipulate important amounts of money. A way should be found to ease the transition between the two sectors and enable all traders to appeal to the court when they are in compliance with the basic requirements for requesting arbitration of the commercial courts.

Training - Many women traders lack basic and managerial training which limit their ability to formally conduct business. Practical legal training, provided either in French or local languages, will be very helpful in developing confidence among women to enable them to enter areas that, for a long time, were forbidden to them.

**ANNEX S**

**APPLICATION OF SECTION 110 OF  
THE FOREIGN ASSISTANCE ACT**

**COMPUTATION OF HOST COUNTRY CONTRIBUTION  
PART 1 - IN FCFA**

SALARIES	1991	1992	1993	1994	1995	TOTAL
MEF CABINET	3,660,000	3,660,000	3,660,000	3,660,000	3,660,000	18,300,000
DNAE	71,458,000	71,458,000	71,458,000	71,458,000	71,458,000	357,290,000
COMMERCIAL COURT	7,860,000	7,860,000	7,860,000	7,860,000	7,860,000	39,300,000
MINISTRY OF JUSTICE	91,486,000	91,486,000	91,486,000	91,486,000	91,486,000	457,430,000
BUREAU CENTRAL DES SOLDE	7,795,000	7,795,000	7,795,000	7,795,000	7,795,000	38,975,000
TAXES DEPARTMENT	4,422,000	4,422,000	4,422,000	4,422,000	4,422,000	22,110,000
CUSTOM SERVICES	39,955,000	39,955,000	39,955,000	39,955,000	39,955,000	199,775,000
<b>SUBTOTAL</b>	<b>226,636,000</b>	<b>226,636,000</b>	<b>226,636,000</b>	<b>226,636,000</b>	<b>226,636,000</b>	<b>1,133,180,000</b>
<b>ELECT./TRANSP. OTHER OPERATING COST</b>						
*PCU OFFICE	3,750,000	3,750,000	3,750,000	3,750,000	3,750,000	18,750,000
DNAE	6,570,000	6,570,000	6,570,000	6,570,000	6,570,000	32,850,000
COMMERCIAL COURTS	3,900,000	3,900,000	3,900,000	3,900,000	3,900,000	19,500,000
MINISTRY OF JUSTICE	38,154,000	38,154,000	38,154,000	38,154,000	38,154,000	190,770,000
BUREAU CENTRAL DES SOLDES	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	5,000,000
TAXES DEPARTMENT	959,800	959,800	959,800	959,800	959,800	4,799,000
CUSTOMS	6,741,300	6,741,300	6,741,300	6,741,300	6,741,300	33,708,500
<b>SUBTOTAL</b>	<b>61,075,100</b>	<b>61,075,100</b>	<b>61,075,100</b>	<b>61,075,100</b>	<b>61,075,100</b>	<b>305,375,500</b>
<b>RENT</b>						
MFE (PCU)	7,500,000	7,500,000	7,500,000	7,500,000	7,500,000	37,500,000
DNAE	48,000,000	48,000,000	48,000,000	48,000,000	48,000,000	240,000,000
COMMERCIAL COURTS	4,998,780	4,998,780	4,998,780	4,998,780	4,998,780	24,993,900
MINISTRY OF JUSTICE	30,750,000	30,750,000	30,750,000	30,750,000	30,750,000	153,750,000
BCS	900,000	900,000	900,000	900,000	900,000	4,500,000
<b>SUBTOTAL</b>	<b>92,148,780</b>	<b>92,148,780</b>	<b>92,148,780</b>	<b>92,148,780</b>	<b>92,148,780</b>	<b>460,743,900</b>
<b>COMMODITIES</b>						
MEF/PCU VEHICULES/EQUIP	11,111,500					11,111,500
COMMERCIAL COURTS	5,074,020					5,074,020
ADMINISTRATIVE COURTS	1,380,000					1,380,000
<b>SUBTOTAL</b>	<b>17,565,520</b>					<b>17,565,520</b>
<b>GRAND TOTAL</b>	<b>397,428,400</b>	<b>379,859,880</b>	<b>379,859,880</b>	<b>379,859,880</b>	<b>379,859,880</b>	<b>1,916,864,920</b>

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PROGRAM FOR ECONOMIC DEVELOPMENT  
 HOST COUNTRY CONTRIBUTION  
 IN U.S. DOLLARS

SALARIES	1991	1992	1993	1994	1995	TOTAL
MEF CABINET	14,640	14,640	14,640	14,640	14,640	73,200
DNAE	285,832	285,832	285,832	285,832	285,832	1,429,160
COMMERCIAL COURT	31,440	31,440	31,440	31,440	31,440	157,200
MINISTRY OF JUSTICE	365,944	365,944	365,944	365,944	365,944	1,829,720
BUREAU CENTRAL DES SOLDES	31,180	31,180	31,180	31,180	31,180	155,900
TAXES DEPARTMENT	17,688	17,688	17,688	17,688	17,688	88,440
CUSTOM SERVICES	159,820	159,820	159,820	159,820	159,820	798,100
<b>SUBTOTAL</b>	<b>906,544</b>	<b>906,544</b>	<b>906,544</b>	<b>906,544</b>	<b>906,544</b>	<b>4,532,720</b>
ELECT./TRANSP. OTHER OPERATING COSTS						
*PCU OFFICE	15,000	15,000	15,000	15,000	15,000	75,000
DNAE	26,280	26,280	26,280	26,280	26,280	131,400
COMMERCIAL COURTS	15,600	15,600	15,600	15,600	15,600	78,000
MINISTRY OF JUSTICE	152,616	152,616	152,616	152,616	152,616	763,080
BUREAU CENTRAL DES SOLDES	4,000	4,000	4,000	4,000	4,000	20,000
TAXES DEPARTMENT	3,839	3,839	3,839	3,839	3,839	19,196
CUSTOMS	26,965	26,965	26,965	26,965	26,965	134,826
<b>SUBTOTAL</b>	<b>244,300</b>	<b>244,300</b>	<b>244,300</b>	<b>244,300</b>	<b>244,300</b>	<b>1,221,502</b>
RENT						
MFE (PCU)	30,000	30,000	30,000	30,000	30,000	150,000
DNAE	192,000	192,000	192,000	192,000	192,000	960,000
COMMERCIAL COURTS	19,995	19,995	19,995	19,995	19,995	99,976
MINISTRY OF JUSTICE	123,000	123,000	123,000	123,000	123,000	615,000
BUREAU CENTRAL DES SOLDES	3,600	3,600	3,600	3,600	3,600	18,000
<b>SUBTOTAL</b>	<b>368,595</b>	<b>368,595</b>	<b>368,595</b>	<b>368,595</b>	<b>368,595</b>	<b>1,842,976</b>
COMMODITIES						
MEF/PCU VEHICLES/EQUIP	44,446					44,446
COMMERCIAL COURTS	20,296					20,296
ADMINISTRATIVE COURTS	5,520					5,520
<b>SUBTOTAL</b>	<b>70,262</b>					<b>70,262</b>
<b>GRAND TOTAL</b>	<b>1,589,702</b>	<b>1,519,440</b>	<b>1,519,440</b>	<b>1,519,440</b>	<b>1,519,440</b>	<b>7,697,460</b>

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## COMPUTATION OF HOST COUNTRY COMPUTATION

### SALARIES

MEFP: PCU members and 2 MEFP cabinet members.  
DIRECTION NATIONALE DES AFFAIRES ECONOMIQUE (DNAE) 80% of global salary  
COMMERCIAL COURTS: Salaries for 12 judges and others staff members  
MINISTRY OF JUSTICE: 20% global salary  
BUREAU CENTRAL DES SOLDES: 60% global salary  
TAXES DEPARTMENT: 10% global salary  
CUSTOMS SERVICES: 10% global salary

### ELECTRICITY/TRANSPORTATION AND OTHER OPERATING COST.

\*MEFP (PCU) only electricity estimated at 3,750,000 CFA/year for the PCU offices.  
DNAE: 80% of total budget  
COMMERCIAL COURTS: 100% of total budget  
MINISTRY OF JUSTICE: 20% of total budget  
BUREAU CENTRAL DES SOLDES: 60% of total budget  
TAXES DEPARTMENT: 10% of global budget  
CUSTOMS SERVICES: 10% of global budget.

### RENT

MEFP PCU OFFICES: rental of PCU offices at hotel des finances estimated at 7,500,000 CFA per year  
DNAE: 80% of estimated rental value per year of 60,000,000 FCFA  
COMMERCIAL COURTS: rent of 3 commercial courts at 416,565 CFA per quarter per commercial court.  
MINISTRY OF JUSTICE: 20% estimated rental value at 153,750,000 FCA per year for Ministry of Justice departments.  
BUREAU CENTRAL DES SOLDES: 60% rental value estimated at 1,500,000 FCFA per year

### COMMODITIES

MEFP (PCU): 2 vehicles bought in 1990 for 14,352,500 CFA, actual value is 8,611,500 FCA depreciation rate is 20%, and office equipment estimated at 2,500,000 FCA  
COMMERCIAL and ADMINISTRATIVE COURTS: office equipment.

Sources: Ministry of Economy, Finance and Plan; Collectif Budgetaire  
Ministry of Justice Direction Administrative et Financiere  
Commercial Court, Bamako  
Service des logements

The percentage rate of the above GRM departments represents their rate of involvement in the project/ program

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**ANNEX T**

**AID/W ECPR REVIEW AND AA/OPS  
APPROVAL CABLES**

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ACTION: AID-2 INFO: AMB DCV ESO:

VZCZCDEAE32ESD572E  
OO RUTABM  
DE RUEEC #2298/01 235022E  
ZNR UUUUC ZZE  
O 220225Z AUG 92  
FM SECSTATE WASHDC  
TO RUTABM/AMEMBASSY BAMAHO IMMEDIATE 9752  
INFO RUEHDK/AMEMBASSY DAKAR IMMEDIATE 6665  
RUEHAB/AMEMBASSY ABIDJAN PRIORITY 1851  
BT

LOC: 284  
24 AUG 92  
CN:  
CHRG: AID  
DIST: AID

UNCLAS SECTION 01 OF 02 STATE 272298

ZIDAC: DAKAR FOR RLA, ABIDJAN FOR REDSO/WCA RLA AND ECO

E.O. 12856: N/A

TAGS:

SUBJECT: MALI - POLICY REFORM FOR ECONOMIC DEVELOPMENT (PRED) (688-0245/0246) PAAD/PP AMENDMENT ECPR GUIDANCE

REFS: (A) STATE 257193 (B) BAMAHO 05631 (C) STATE 247555 (D) STATE 189625

1. PER REPTTEL (C), THE AFR/SWA EXECUTIVE COMMITTEE FOR PROJECT REVIEW (ECPR), CHAIRED BY AFR/SWA DIRECTOR TIMOTHY BORK, MET ON JULY 30, 1992 AND APPROVED THE MALI POLICY REFORM FOR ECONOMIC DEVELOPMENT (PRED) PAAD/PP AMENDMENT FOR A NEW LIFE-OF- PROGRAM (LOP) FUNDING NOT TO EXCEED DOLS 23 MILLION (DOLS 14 MILLION IN NON-PROJECT ASSISTANCE/CASH TRANSFER AND DOLS 9 MILLION IN PROJECT ASSISTANCE). OTHERS PARTICIPATING IN THE ECPR INCLUDED: MALI MISSION DIRECTOR DENNIS BRENNAN, PROGRAM OFFICER JON BRESLAR, AFR/DP, AFR/ONI, GC/APR. AFR/ARTS/EA SUBMITTED WRITTEN REVIEW COMMENTS. THE ECPR WOULD LIKE TO COMMEND THE MISSION FOR THE FIRST-RATE JOB IN DEVELOPING THE PRED PAAD/PP AMENDMENT AND PROVIDING A.I.D. WITH A QUOTE, CUTTING-EDGE ACTIVITY, UNQUOTE.

2. PAAD/PP AMENDMENT AUTHORIZATION VENUE: THE SUBJECT AMENDMENTS MAY BE AUTHORIZED BY THE MALI MISSION IN

ACCORDANCE WITH AFRICA DELEGATION OF AUTHORITY (DOA) 551.

(A) PER REPTTEL (A), THE ASSOCIATE ADMINISTRATOR FOR OPERATIONS HAS APPROVED A FY 1992 NON-PROJECT ASSISTANCE (NPA) OBLIGATION TO BE DISBURSED AS A CASH TRANSFER TO THE GOVERNMENT OF THE REPUBLIC OF MALI. THIS ADDITIONAL DOLS 7 MILLION IN NON-PROJECT ASSISTANCE AND ADDITIONAL DOLS 2 MILLION IN PROJECT ASSISTANCE MAY BE AUTHORIZED IN ACCORDANCE WITH DOA 551. THE CONGRESSIONAL NOTIFICATION (CN) WAITING PERIOD EXPIRED WITHOUT OBJECTION ON JULY 14, 1992. PER REPTTEL (D), MISSION HAS RECEIVED PRED NPA ALLOWANCE FOR DOLS 7 MILLION. THEREFORE, MISSION MAY AUTHORIZE AND OBLIGATE NPA FUNDS AS SOON AS POSSIBLE.

(B) IT IS OUR UNDERSTANDING THAT THE ADDITIONAL DOLS 2 MILLION IN PROJECT ASSISTANCE WILL BE AUTHORIZED BUT NOT

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OBLIGATED IN FY 92. THE ADDITIONAL PROJECT ASSISTANCE FUNDS WOULD BE OBLIGATED IN FISCAL YEARS 93-94 PER FY 94 ANNUAL BUDGET SUBMISSION (ABS) FOR MALI. THESE FUNDS MAY BE OBLIGATED IN ACCORDANCE WITH AFRICA DOA 551.

(C) SUBSEQUENT TO AUTHORIZATION OF THE SUBJECT PAAD/PP AMENDMENTS, THE MISSION IS REQUESTED TO FORWARD SIGNED ORIGINAL PAAD/PP AMENDMENTS TO AFR/SWA FOR REPRODUCTION AND DISTRIBUTION. ALSO, FORWARD SIGNED COPIES OF SUBJECT PAAD AMENDMENT AND OBLIGATING DOCUMENTS TO AFR/SWA AND FA/PM/A/PRP AS SOON AS POSSIBLE.

THE FOLLOWING GUIDANCE IS PROVIDED FOR MISSION ACTION PRIOR TO AUTHORIZATION OF THE PAAD/PP AMENDMENTS:

3. CONSTRAINTS ANALYSIS: THE ECPR APPRECIATED THE EFFORT EXPENDED IN DEVELOPING THE UPDATED PRED CONSTRAINTS ANALYSIS. THE COMPREHENSIVE OVERVIEW WAS QUITE USEFUL. WE HAVE REVIEWED THE ANALYSIS SUBMITTED PER REFTEL (B) AND CONCLUDED IT ADEQUATELY ADDRESSES THE CONCERNS RAISED DURING THE ECPR. THE CONSTRAINTS ANALYSIS SHOULD BE INCLUDED IN THE PRED PAAD AMENDMENT.

4. GENERAL STRATEGY: THE MISSION IS COMMENDED FOR CREATING AN ACTIVITY WHICH COULD SERVE AS A MODEL FOR THE AFRICA REGION IN DISPUTE RESOLUTION THROUGH THE COURTS, PROMOTING COHERENCE, TRANSPARENCY AND REGIONAL COOPERATION. WE WOULD APPRECIATE MISSION SHARING ITS KNOWLEDGE BASE WITH THE REGIONAL DEVELOPMENT ORGANIZATIONS, THE FRENCH, AND OTHER INTERESTED DONORS, ESPECIALLY IN VIEW OF OUR EMERGING REGIONAL INTEGRATION STRATEGY.

5. TECHNICAL FEASIBILITY: THIS IS A CUTTING EDGE PROGRAM WHICH PRESENTS MANY SPECIAL OPPORTUNITIES AS WELL AS SOME RISKS. THE MISSION'S SEEKING OUT OF INFORMATION FROM OTHER DEVELOPMENT CONTEXTS IN DEVELOPING THE DESIGN FOR THIS PROGRAM WILL HELP REDUCE RISKS. THE ECPR NOTED THAT IT WOULD BE HIGHLY COMMENDABLE IF ALL OF THE CONDITIONALITY COULD BE ACCOMPLISHED AS SCHEDULED IN THE PAAD AMENDMENT, BUT SHARED THE VIEW OF THE MISSION THAT THERE ARE MANY THINGS WHICH CAN GO WRONG, I.E. GOVERNMENT BUDGET PROBLEMS, SOCIO-CULTURAL ISSUES, NASCENT DEMOCRACY. THUS, WE SHARE THE MISSION'S CONCERN THAT THERE BE FLEXIBILITY WITHIN THE PROGRAM FOR CHANGE. THE ECPR FEELS THAT BY INCORPORATING FLEXIBILITY IN THE CONDITIONALITY AND THE TIMEFRAME UP FRONT MANY RISKS MAY BE MINIMIZED. BECAUSE OF THE INSTITUTIONAL VOLATILITY AT THIS TIME, WE ENDORSE THE MISSION ADDRESSING THE ISSUE OF INSTITUTIONAL

CAPACITY THROUGH THE PRED MONITORING AND EVALUATION SYSTEM IN COLLABORATION WITH THE MALIAN GOVERNMENT AND ELEMENTS OF THE PRIVATE SECTOR. A MID-TERM EVALUATION MIGHT BE A UNIQUE OPPORTUNITY TO REFLECT ON RISKS, ASSESS PROGRESS AND SET FORTH APPROPRIATE MODIFICATIONS TO THE PROGRAM.

6. ECONOMIC ANALYSIS: THE ECONOMIC ANALYSES FOR BOTH ELIMINATION OF EXPORT TAXES AND INCREASED EFFICIENCY OF COMMERCIAL DISPUTE RESOLUTION HAVE BEEN REVIEWED. THE MISSION IS COMMENDED FOR THE THOUGHTFUL, CLEAR ANALYSES WHICH ESTABLISH THE EXPECTED MAGNITUDE OF ECONOMIC IMPACT, AND THUS PROVIDE A BASIS FOR FUTURE ASSESSMENTS OF THE EFFECTIVENESS OF THESE REFORMS. THE BENEFIT-COST ANALYSES DEMONSTRATE THAT THE EXPECTED RETURNS ARE COMPENSURATE WITH THE PROPOSED INVESTMENT OF NON-PROJECT ASSISTANCE FUNDS AND PROJECT COSTS.

7. SUSTAINABILITY: THE SUSTAINABILITY ISSUES CENTERED AROUND WHETHER THE GOVERNMENT WOULD HAVE THE FINANCIAL RESOURCES TO: (A) EFFECTIVELY SUSTAIN THE COMPENSATION AND INCENTIVE PACKAGES WHICH WILL BE INTRODUCED, (B) MAINTAIN/REPLACE THE EQUIPMENT WHICH WOULD BE PROCURED BY THE PROJECT TO IMPROVE EFFICIENCY, AND (C) SUSTAIN A VIABLE IN-SERVICE TRAINING PROGRAM. IT IS EXPECTED THAT THERE WOULD BE PROVISIONS TO COVER THESE COSTS THROUGH A REVISED FEE SYSTEM OR TAX STRUCTURE. THE ECPR DECIDED THAT THE MISSION SHOULD BE CHARGED WITH USING THE PRED MONITORING AND EVALUATION SYSTEM TO CLOSELY MONITOR THESE ISSUES AND TO ASSIST THE MALIANS TO DEVELOP SOLUTIONS.

8. GENDER CONSIDERATIONS: WE ACKNOWLEDGE THE MISSION'S GENERALLY GOOD WORK IN THIS AREA, BUT WOULD LIKE TO EMPHASIZE THAT PROJECT ANALYSIS DOCUMENTATION SHOULD

INCLUDE THE FOLLOWING:

(A) DISCUSSION OF THE EXTENT TO WHICH SEX-DISAGGREGATED DATA IS AVAILABLE IN ALL REFERENCES TO PARTICIPANTS AND BENEFICIARIES IN THE PP;

(B) DISCUSSION OF CONSTRAINTS TO WOMEN'S PARTICIPATION AND OPPORTUNITIES FOR ENHANCING WOMEN'S PARTICIPATION;

(C) IDENTIFICATION OF STRATEGIES TO OVERCOME THESE CONSTRAINTS OR MAKE USE OF THESE OPPORTUNITIES AND BENCHMARKS AGAINST WHICH TO MEASURE PROGRESS.

HOWEVER, WHEN GENDER DISAGGREGATED DATA AND BENCHMARKS ARE NOT AVAILABLE AT THE PROJECT DESIGN STAGE, ACTIVITIES ARE REQUIRED TO BE INCLUDED IN THE PROJECT TO ENSURE SUBSEQUENT ANALYSIS AS TO WHAT THE OBSTACLES ARE AND HOW THESE OBSTACLES ARE TO BE SURMOUNTED DURING THE LIFE OF THE PROJECT.

9. HOST COUNTRY CONTRIBUTION: THE ECPR UNDERSTANDS DOCUMENTATION EXISTS AT THE MISSION WHICH WOULD FURTHER SUBSTANTIATE THE HOST COUNTRY CONTRIBUTION. THE AMOUNT AND DESCRIPTION OF THE CONTRIBUTION SHOULD BE CLEARLY

ARTICULATED IN THE PAAD/PP AMENDMENT DOCUMENTATION. TO THE EXTENT THE MISSION CANNOT VALIDATE THE HOST COUNTRY CONTRIBUTION UP TO THE REQUIRED LEVEL SUFFICIENT TO MEET THE FAA REQUIREMENTS, IT SHOULD INCLUDE IN THE DOCUMENTATION A WAIVER JUSTIFICATION FOR ANY REMAINING SUMS AND REQUEST A WAIVER APPROVAL FROM THE AA/APR PRIOR TO OBLIGATION.

13. GRAY AMENDMENT CONCERNS: THE ECPR COMMENDED THE MISSION FOR ITS CONTRIBUTION TO THE BUREAU'S GRAY AMENDMENT PROGRAM FOR FY 92 AND STRONGLY URGED THE MISSION TO CONTINUE ITS CONTRIBUTION UNDER THIS AMENDMENT TO PRED.

11. LOCAL CURRENCY: GENERALLY, THE DEGREE OF MISSION OVERSIGHT DEPENDS ON THE CAPABILITY OF THE HOST GOVERNMENT TO EFFECTIVELY MANAGE THE HOST COUNTRY-OWNED LOCAL CURRENCY SPECIAL ACCOUNT. THE MISSION SHOULD ENSURE THAT CURRENT A.I.D. LOCAL CURRENCY POLICY GUIDANCE IS FOLLOWED WITH REGARD TO THIS ISSUE. WISNER

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ACTION: AID-2 INFO: AMB DCM ECON

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PP RUTABM  
DE RUEHC #7193 2240239  
ZNR UUUUU ZZH  
P R 110237Z AUG 92  
FM SECSTATE WASHDC  
TO RUTABM/AMEMBASSY BAMAPO PRIORITY 9623  
INFO RUEHDK/AMEMBASSY DAKAR 6458  
RUEHAB/AMEMBASSY ABIDJAN ROUTINE 1488  
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UNCLAS STATE 257193

LOC: 071 907  
11 AUG 92 0803  
CN: 13907  
CHRG: AID  
DIST: AID

NNNAIDAC: DAKAR FOR RLA, ABIDJAN FOR REDSO/WCA RLA AND RCO

E.O. 12356: N/A

TAGS:

SUBJECT: MALI - POLICY REFORM FOR ECONOMIC DEVELOPMENT  
(PRED) (688-0245), CASH TRANSFER APPROVAL

ON AUGUST 7, 1992 THE ASSOCIATE ADMINISTRATOR/OPERATIONS  
APPROVED USAID/MALI'S REQ EST FOR A FY 1992 USDOLS 7  
MILLION NON-PROJECT ASSISTANCE OBLIGATION UNDER THE POLICY  
REFORM FOR ECONOMIC DEVELOPMENT (PRED) PROGRAM, TO BE  
DISBURSED TO THE GOVERNMENT OF THE REPUBLIC OF MALI AS A  
CASH TRANSFER.

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 DISP ✓  
 C&R ✓  
 CHRON ✓  
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**ANNEX U**

**PAYMENT VERIFICATION CERTIFICATION**



Controller's Office, USAID/Mali  
**memorandum**

DATE: August 19, 1992

REPLY TO

ATTN OF: R. Steven Crabtree, Controller *RS*

SUBJECT: Amendment to PRED Program 688-0245/0246

TO: Dennis Frennan, Director

USAID/Mali Controller's Office staff has reviewed the proposed program and project paper amendment in order to make a determination under the requirements of the Payment Verification Policy. The following summarizes our findings:

Methods of Implementation and Financing: The methods of implementation and financing are appropriate and are within the preferred methods as defined by Payment Verification Policy.

Host Country Contracting: Host country contracting, a preferred method of implementation, is included in the projectized portion of the program. Contracting responsibility is held by the PCU. This unit's capabilities were reviewed during the Non-Federal Audit, Report No. 7-688-92-03-N, dated March 7, 1992. No material weaknesses were reported by the audit firm. Based on this audit, I recommend that certification requirements of the PCU's ability to award and administer contracts should be deemed satisfied.

Host Government Accounting: Funds are to be made available to the host government implementing entity charged with responsibility for financial management of the project. In addition to the audit as noted above, this entity reviewed semi-annually since March 1988 under the guidelines of Section 121(d) of the Foreign Assistance Act of 1961, as amended. Although this section has since been repealed, USAID/Mali continues to enforce its provisions. Based on these assurances, I recommend certification as regards the PCU systems of accounting and internal control.

Audit: Based on an evaluation of audit requirements in light of potential risks, and in conformance with current guidelines, provision for annual non-federal audits has been included in the project budget

On the basis of the above, I recommend that you approve the amended program assistance approval document and project paper under the auspices of the Payment Verification Policy.

Clearance: Anna Diallo, CONT *AD* Date *08/20/92*

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