

Mali Access to Information Mission

June 2004

Consultants' Report

Introduction: Terms of Reference, Background & Methodology

1. At the invitation of President Touré, on behalf of the Carter Center we conducted an assessment visit, 14-17 June 2004. Our Terms of Reference were:
 - § To assess the opportunities for developing an access to information regime in Mali;
 - § To advise the government of Mali on the options for the way forward;
 - § To make recommendations as to design of an appropriate project and action plan, in relation to potential Carter Center support.
2. At present there exists a law passed in 1998 and implemented and put into effect in December 2003 through a Presidential Supreme Decree. This law 98-012 "Governing the Relations Between the Administration and Public Service Users", contains a provision related to accessing certain administrative documents and properly implemented could serve to increase transparency, but is not intended to be nor is it a comprehensive access to information law.
3. We conducted a series of meetings with relevant stakeholders (a full list is attached as an appendix), all of which were very helpful and informative. Despite the obvious shortcomings of such a condensed mission, we feel that we gathered sufficient information to provide a set of recommendations about the way forward.
4. In doing so, we are fully cognizant of the rtd a Preso-35 n000cc.0ion mu68xd2006 feel t;

8.3 Make a Difference to People: any access to information project should be designed with the needs of ordinary Malians in mind, and should aim to deliver concrete results that are meaningful and make a material difference to the lives of Malians.

9. This report is prepared for distribution by the local Carter Center representative to all relevant stakeholders, including the specific people with whom we had the privilege of meeting, for their comments and other feedback.

Key Findings

10. Mali's short history of democracy and its low human development indicators mean that the challenge to implementation of any new information regime will be very substantial. As with many of the countries that have recently passed access to information laws, there are other constraints, such as a history of secrecy within the bureaucracy and citizens habitually more inclined towards deference than holding their governments to account by asking questions. We were told that in Mali there are sociological factors that may impact negatively. For example, in traditional society there is a hierarchy that may be applied in relation to who is entitled to what information and at what age.
11. Thus, it is a potentially harsh environment for any ATI project and must be recognized as such and the full context taken into account when conceptualizing and planning the intervention. Yet, based on our meetings, it is our impression that the government of Mali generally, and specifically the Presidency, is committed to deepening transparency and developing a more comprehensive access to information regime as a part of its wider good governance agenda. It is a great advantage to have political will from the top of an administration; the fact that the Presidency is prepared to lead such an initiative is a very favorable starting point. The challenge, therefore, is to turn this political will and the present opportunity it offers, into an achievable action plan that will sustain the political will for the longer-term.
12. There is a major program underway to modernize the public sector, led by the Ministry of Public Administration, State Reform, and Institutional Relations (MPA) with the support of its in-house think-tank, the Commission for Institutional Development (CDI). The Director of CDI, Mr. Sidibé, is an enthusiastic advocate for modernization, and his institute has been named by the MPA to be the primary partner for the Carter Center in any ATI project. Their clear commitment creates a positive starting point. The state reform program (Program for Institutional Development (PDI)) that is underway is to be implemented over 10 years, with a three-year operational plan budgeted at approximately FCFA20m, FCFA11m of which will come from an EU grant. An ATI project could seek to complement this program, which aims to build

Primary Issues:

18. **Capacity:** What we are far less clear about is the capacity of government to fully and effectively implement and enforce the law and of civil society to monitor these efforts. At this point, and based on our experiences elsewhere, we have some concerns. A full assessment is necessary to determine the more specific strengths and weaknesses. Thus, the main element of the strategic planning that we propose, is intended to examine the opportunities and constraints in terms of capacity on both sides, and to plan accordingly.
19. **Depth and Extent of Access to Information:** In addition, there is an initial fundamental, macro-level choice to be made by government at this time. Does it wish to continue to see ATI as a subordinate part of a public service delivery strategy, as originally envisaged in the 1998 law or has its ambitions shifted to the extent that it would like to build a comprehensive ATI regime? The indications suggest the latter, but the choice needs to be overtly reached. This decision will make a great difference to the approach that must be taken, in terms of law and policy, operational plan, target groups and outcome indicators.
20. In practice, the question is whether the government of Mali sees the development of ATI in terms of citizens accessing simple classes of documents such as their birth certificates or whether they envisage a much “higher level” of access to, for example, policy documents and other government data for use by policy and advocacy orientated NGOs as well as individual citizens and local community organizations in order to take an active role in their own local development. Again, the indications are the latter, but if so there are substantial implications in terms of the scale and nature of the strategic action plan that must be devised and implemented. In particular, the law 98-012 would need to be completely re-drafted or a more comprehensive law would need to be written that overrides some of its provisions, such as the exemptions clauses, so as to provide a sufficient legal basis for the right to access to information.
21. The above options are not mutually exclusive. There are potentially important links between the 98-012 law and a more comprehensive approach to information, and the former could serve as a platform for the latter. For example, the orientation desk officers envisaged in the Supreme Decree could be re-conceptualized as access officers responsible for responding to ATI requests and as being key in implementation efforts as most modern laws provide for, but this may be a significant extension of the role that was originally envisaged for them. (Please see below for further details.)

Recommendations

I) Developing the Pilot Model (Option a and/or c): A Voluntary Openness Strategy

26. Based on our experiences with the implementation of access to information laws, we encourage an evolutionary approach to building a more comprehensive information regime. Even attempting to fully implement the 1998 law and 2003 Decree will prove challenging, not to mention attempts to move toward the comprehensive law. Obstacles are particularly great in countries, such as Bolivia, where government and civil society capacity are already stretched. Thus, rather than implementing the law in all government agencies concurrently, we would recommend a phasing-in of the access to information regime through a Voluntary Openness Strategy that could:

- a. Provide for automatic disclosure of information related to a particular theme, for example, the cotton or mining industries, or administration of public hospitals and health care services; or
- b. Provide automatic disclosure of certain categories of information across all of government, for example, lists of functions of agencies, certain policy documents or minutes, or to focus on particular public service delivery documents such as local budgets or birth certificates; or
- c. Focus on particular agencies or departments, as vanguards or 'islands of transparency'.

27. In determining pilot initiatives, care should be given to assuring that the three principles described will be met: realistic; add value; and make a difference to people. As such, if the Mali administration were to begin a Voluntary Openness Strategy in particular ministries or agencies, we suggest that these are selected based on the following criteria:

- Political will, with an identified leader/senior management level commitment to making the openness strategy succeed in practice;
- A reasonable level of institutional and administrative capacity to support the voluntary openness strategy;
- Holding information that matters to people – whether because of the specific content (e.g. birth certificates or service delivery) or because the policy area is of special interest and importance (e.g. cotton sector).

In Bolivia, for example, where we explored these three criteria in consultation with the Bolivian government, the following four ministries and agencies were

identified and chosen for the voluntary openness strategy: Ministry of Government; Ministry of Public Works; Ministry of Economic Development; and Customs Agency. We also are exploring including a Municipal Government body in that pilot project.

II) Working Towards a Full Transparency Regime (Option c) – A Preparatory Plan of Action

In addition, if the government of Mali chooses to move towards a comprehensive ATI regime, we respectfully offer the following additional recommendations, with three distinct phases:

Phase One: Full Assessment and Consultation:

28. For the diagnosis of administrative and cultural context and framework we suggest that three activities occur:

25.1 First, a testing of the current levels of transparency or opacity within the public sector is proposed. As a part of an international study of ATI implementation convened by the Open Society Institute, the Open Democracy Advice Centre (ODAC), Cape Town, is overseeing coordinated requests for information in six countries in Africa, including Senegal¹. The Carter Center Bolivia project, as a means of demonstrating the value of information and the need for a law, is developing a plan for making information requests in advance of the passage of legislation. A modified and simplified version of this methodology could be carried out in Mali by a civil society organization (CSO) or consortium of organizations. We suggest that since the purpose is to diagnose the strengths and weaknesses of government agencies' capacity to respond to requests, and not to expose inadequacies, this exercise be conducted in consultation with the CDI and with agreed terms. For example, it could be agreed that the results of the study be shared with CDI first before any publication.

25.2 Second, a sociological assessment: it is suggested that a short study be conducted by an appropriate local research institute or NGO, or academic, to identify those sociological factors which may impact on any attempt to build a new culture of openness in Mali and which may impede efforts to create awareness and use of an ATI regime.

25.3 Third, government record-keeping and making: an assessment needs to be made of the state of the Malian government's record management, its capacity for renovating the system and its current

29. Legal Review:

If the government of Mali decides to work towards a more comprehensive model of ATI in the future, then legal reform will, in our opinion, be essential. In that case, we would propose to offer an initial analysis of the 1998 law and the Supreme Degree, advising in light of the current international trends and best practice, the parameters and options for reform.

In addition, in the context of the review of the Malian constitution, the

- § The Ombudsman
- § The Judicial System
- § Donors – especially those supporting public sector reform; communications and freedom of expression issues; anti-corruption; or civil society participation.

Mali may be different, however. Hence the need to conduct a brief mapping exercise. The initial awareness-building program can be short and intense and could rotate around the visit of appropriate international experts. Seminars and public meetings can be conducted; and the media enlisted to disseminate information about the issue. We have stimulated such a discourse in Jamaica and elsewhere; in Mozambique, a facilitated “Open Democracy Week” was supported in September 2003. The object would be to

Phase Three: Strategic Planning