



**International covenant  
on civil and  
political rights**

Distr.  
GENERAL

CCPR/C/MLI/2003/2  
13 January 2003

ENGLISH  
Original: FRENCH

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Second periodic report**

**MALI\***

[3 January 2003]

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\* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

**REPUBLIC OF MALI**

**“One People - One Goal - One Faith”**

**Second periodic report on the implementation of the  
International Covenant on Civil and Political Rights**

December 2002

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## I. INTRODUCTION

The initial report of Mali on the implementation of the International Covenant on Civil and Political Rights was submitted in New York on Tuesday, 7 April 1981.

The questions raised after it was presented related to the regime under the Second Republic, the 1974 Constitution, the one-party system, the workings of the judicial system and fundamental freedoms.

The present document contains the second periodic report of Mali.

### 1.1 Overview of Mali

Mali, a landlocked African country situated in the northern hemisphere between 10° and 20° North, is one of the largest countries in western Africa, covering an area of 1,241,238 km<sup>2</sup>. It is a true ethnic crossroads, with an estimated population of 9,810,912 inhabitants (1998 census figures), consisting of Muslims, Christians and animists.

Malian territory was the cradle of several great empires (Ghana, Mali, Songhoy) and illustrious kingdoms (Bambara, Sénoufo, Peulh, Toucouleur), a real melting pot in which the identity and culture of the Malian people were formed.

*Sinangouya*, a kind of “brotherhood of jest”, is one of the leading features of Malian culture and one of the foundations of national unity. It makes it possible for two or more ethnic groups, races or communities to tease each other in a friendly way, thereby defusing social tensions in cases of potential conflict.

With this tradition behind it, on 10 December each year, Mali celebrates the Universal Declaration of Human Rights at the Democratic Discussion Forum (*Espace d'interpellation démocratique*, or EID), an institutionalized form of citizen participation.

The population of Mali is unevenly distributed across the country. Three quarters of the country's area (the northern part) houses less than 10 per cent of the total population. Population density ranges from 0.4 inhabitants/km<sup>2</sup> in Kidal, in the north, to 18.2 inhabitants/km<sup>2</sup> in Sikasso, in the south. The district of Bamako, the country's largest urban area, holds one tenth of the total population, with a density of 4,032.9 inhabitants/km<sup>2</sup>.

At the socio-economic level, after several years of attempted reforms and macroeconomic adjustments, Mali has still not reached the level of development needed to meet the basic needs of the majority of Malians.

The economic growth rate averaged no more than 5 per cent over the period 1994-2000, despite particularly favourable conditions during that period.

The primary-school enrolment and literacy rates in 2000 were, respectively, 58 per cent and 35 per cent. The literacy rate of 35 per cent is low compared with the average of 57 per cent for sub-Saharan Africa and an average of 54 per cent for the least developed countries.

The physical accessibility of health services (to which under 35 per cent have access within a radius of 5 km) and the availability of essential medicines remain poor and about half the population still has no access to drinking water.

Overall, poverty today affects about two thirds (64 per cent) of Malians, the worst affected being those living in rural areas.

These indicators show quite clearly the extent of the country's continuing underdevelopment.

## **1.2 Political regimes since independence**

Mali has had the following political regimes:

### **The First Republic: 1960-1968**

The Republic of Mali came into being on 22 September 1960. The regime experimented with socialism, which was characterized by:

The emergence of a dominant political party, the Union soudanaise-Rassemblement démocratique africain;

Withdrawal from the CFA franc zone and the introduction of the Malian franc, a sign of the country's monetary sovereignty;

The establishment of numerous State firms and businesses to ensure supplies of essential goods for the population and State intervention in production, processing, marketing and distribution activities;

Reform of the educational system in an effort to make good the shortage of technicians and managers.

### **The Military Committee for National Liberation regime: 1968-1979**

A military coup d'état on 19 November 1968 brought an end to the First Republic. The country was then ruled by the Military Committee for National Liberation (CMLN).

This period can be split into two distinct phases:

(a) First phase (1968-1974): a de facto military regime.

This regime operated without a constitution, the Constitution of 22 September 1960 having been repealed by the CMLN at the time of the military coup d'état.

The CMLN, which consisted of 14 officers, acted as the legislature.



(b) Second phase (1974-1979): return to a normal constitutional system.

The constitutional referendum held in 1974 led to the adoption of the Constitution of 2 June 1974, which established the Democratic Union of the Malian People (UDPM) as the single party.

However, conflicts within the ruling junta over the return to a normal constitutional system led to the events of 28 February 1978, which were marked by large-scale arrests, including the arrests of influential members of the CMLN.

After this, the return to a normal constitutional system was to become a reality.

### **The Second Republic: 1979-1991**

The Constitution of 2 June 1974 marked the birth of the Second Republic. However, it only really came into being with the establishment on 31 March 1979 of the UDPM, a constitutional party advocating “the construction of an independent and planned national economy”.

Against this background, the Government undertook, with the help of the International Monetary Fund (IMF) and the World Bank, a number of economic measures designed to enable the State to withdraw gradually from production, processing, marketing and distribution activities and to allow the private sector to take over.

The consequences of the structural adjustment programmes, including the closure of many State enterprises, massive lay-offs, the abolition of grants for students in secondary schools, the introduction of competitive examinations to recruit civil servants and a temporary freeze on the recruitment of State officials, together with the fall in purchasing power after the return to the CFA franc in 1984, opened the door to social and then political demands.

In response, the Government undertook to introduce a certain amount of political openness, characterized by the introduction of freedom of press, freedom of association and the right to demonstrate. Despite this openness, social and political demonstrations spread and led to the popular uprising of March 1991.

### **The democratic transition: 1991-1992**

On 26 March 1991, a group of military officers, together with the Committee of Democratic Associations and Organizations, set up the Transitional Committee of Public Safety (CTSP), which was responsible for the legislature and whose president took on the duties of Head of State.

Executive power was exercised by a government headed by a prime minister.

In July-August 1991, in accordance with its commitment to turn the country into a pluralist democracy, the transitional government organized a sovereign national conference, which adopted the basic legislation that was to govern the Third Republic: the Constitution, the Charter of Political Parties and the Electoral Act.

Following the National Conference, the following ballots were organized in 1992:

A constitutional referendum, which led to the adoption of the Constitution of 25 February 1992;

Local, parliamentary and presidential elections.

It was in this context that the National Pact between the Government and the Coordinating Committee of Rebel Movements in the North was signed on 11 April 1992.

### **The Third Republic: 1992 to date**

The investiture of the President following multi-party elections took place on 8 June 1992 and marks the effective beginning of the institutions of the Third Republic.

The Third Republic has made the defence and observance of human rights its guiding principle. The preamble to the Constitution of 25 February 1992 thus reaffirms Mali's commitment to the Universal Declaration of Human Rights of 10 December 1948 and the African Charter on Human and Peoples' Rights of 27 June 1981.

In addition, the first 24 articles of the Constitution are devoted to human rights. The constitutional provisions are supplemented by a number of laws and regulations designed to define the content of these rights and to regulate the conditions in which they are exercised.

It is also worth highlighting that, on 13 July 2000, the University of Mali and the United Nations Educational, Scientific and Cultural Organization (UNESCO) signed an agreement setting up the UNESCO chair on peace, human rights and democracy, one of the aims of which is to promote a comprehensive system of research, training, information and documentation activities in the field of human rights and a culture of peace, as well as democracy and tolerance.

This report, which is submitted pursuant to the provisions of article 40 of the International Covenant on Civil and Political Rights, covers the institutions of the Republic, the organization and operation of the judicial system and the manner in which civil and political rights are implemented in Mali.

## **II. INSTITUTIONS OF THE REPUBLIC**

The Constitution of 25 February 1992 established the foundations of the rule of law, allowing the expression of freedoms within an open and democratic system, and ushered in a semi-presidential system of government. Article 25 of the Constitution refers to the following

institutions: the President of the Republic, the Government, the National Assembly, the Supreme Court, the Constitutional Court, the High Court of Justice, the Supreme Council of the Communities and the Economic, Social and Cultural Council. All these institutions have been established.

The Constitution sets forth unambiguously the principle of the separation of the executive, legislative and judicial powers.

### **2.1 President of the Republic**

The President of the Republic is elected for five years by direct universal suffrage, by majority vote after two rounds of voting. He may stand for re-election once only. He represents national unity and is responsible for the lawful functioning of the administration. He is the guardian of the Constitution and the guarantor of national independence, territorial integrity and the observance of international treaties and agreements (art. 29 of the Constitution).

He appoints the Prime Minister and terminates this appointment when the Prime Minister submits the Government's resignation.

He appoints the other members of the Government and terminates their appointment at the request of the Prime Minister (art. 38).

He is the supreme commander of the armed forces (art. 44) and president of the Supreme Council of the Judiciary (art. 45).

### **2.2 The Government**

The Government is answerable to the National Assembly (arts. 53-58) and determines and conducts national policy. It commands the administration and the armed forces and is headed by the Prime Minister, who coordinates the action of the various ministers.

### **2.3 National Assembly**

According to article 26 of the Constitution, "national sovereignty belongs to the whole people, who exercise it through their representatives or by way of referendum".

The National Assembly represents the legislative power. It operates as a single chamber and is currently made up of 147 deputies, who are either from political parties or independent. Deputies are elected for five-year periods by direct universal suffrage.

In its daily work, the National Assembly must ensure that human rights are respected by giving an opinion on the legislation submitted to it for adoption. It should be pointed out that members of parliament with a keen interest in human rights issues set up the Human Rights Commission in July 1998.

The National Assembly may also challenge the Government by means of a vote of no-confidence (art. 78 of the Constitution). According to article 79, “if the National Assembly passes a motion of no-confidence or rejects the Government’s programme or statement of general policy, the Prime Minister must submit the Government’s resignation to the President of the Republic”.

## 2.4 Supreme Court

The Supreme Court, the highest judicial body in the country, is responsible for ensuring consistency in the application of the law by ensuring consistency in case law. It decides solely on matters of law. It is divided into three divisions: the Judicial Division, the Administrative Division and the Audit Division.

The *Judicial Division* is the supreme arbiter of all court decisions in civil, social and criminal matters in Mali. It verifies the lawfulness of decisions against which no ordinary appeal is possible. It also considers requests to have a case moved from one court to another on the grounds of reasonable suspicion or public safety and on conflict-of-jurisdiction procedures and applications for appeals based on judicial misconduct.

The *Administrative Division* is the appeal court under ordinary law for all decisions taken in first instance by administrative courts. It is competent to hear the first and final appeals against, among other things:

Ministerial or inter-ministerial decrees and orders that exceed their authority;

Decisions by administrative bodies of an adjudicatory nature.

The *Audit Division* considers the accounts of public auditors, monitors the management of finances by officials responsible for implementing the national budget or other budgets that require them to follow the same rules, checks property records and examines financial management.

When the combined divisions of the Supreme Court meet, the Court acts as a jurisdictional court, ruling on disputes over jurisdiction between courts of law and administrative courts.

## 2.5 Constitutional Court

According to article 85 of the Constitution, “the Constitutional Court shall be responsible for deciding whether laws are constitutional and for safeguarding the fundamental rights of people and civil liberties. It shall regulate the functioning of institutions and the activity of public authorities”.

It is composed of nine members, three of whom are appointed by the President of the Republic, three by the President of the National Assembly and three by the Supreme Council of the Judiciary.

Organizational laws must be submitted by the Prime Minister to the Constitutional Court prior to promulgation. Other types of law may be submitted to the Court by the President of the Republic, the Prime Minister, the President of the National Assembly or one tenth of the deputies, the President of the Supreme Council of the Communities or one tenth of the national councillors and the President of the Supreme Court prior to promulgation.

The third major responsibility of the Constitutional Court is to monitor “the proper conduct of presidential and parliamentary elections and referendums, the results of which it shall announce” (art. 86). Matters concerning such elections may be referred to it by any candidate, political party or prefect. In its Decision No. CCL 97-046 of 25 April 1997, for instance, the Court annulled the results of the parliamentary elections of 13 April 1997, on the grounds of irregularities during the voting.

In its Decisions No. 02-137/CC-EP of 23 May 2002 and No. 02-144/CC-EL of 9 August 2002, the Constitutional Court officially announced the definitive results of, respectively, the presidential election and the parliamentary elections. In doing so, the Court, in accordance with electoral law, had to rule on 47 complaints relating to the second round of the presidential election and 505 complaints relating to the second round of the parliamentary elections.

## **2.6 High Court of Justice**

The High Court of Justice was set up pursuant to article 95 of the Constitution and has the power to try the President of the Republic and ministers indicted by the National Assembly for high treason or for actions classified as crimes or offences and committed in the exercise of their duties. It can also try their accomplices in cases of conspiracy against the security of the State.

The High Court is bound by the definition of crimes and offences and by the sentences laid down in the criminal legislation in force at the time of the actions covered by the proceedings.

An indictment requires a two-thirds majority in an open ballot of the deputies in the National Assembly.

## **2.7 Supreme Council of the Communities**

The National Conference opted to follow a policy of decentralization. The ground was thus laid for a decentralization policy in articles 97 and 98 of the Constitution of 25 February 1992.

Act No. 93-008/AN-RM of 11 February 1993, which set out the conditions for the autonomy of the communities, was adopted in order to put into practice this policy of direct participation by citizens in public affairs.

The decentralization policy culminated in the establishment in 2002 of the Supreme Council of the Communities, the seventh institution enshrined in the 1992 Constitution.

Article 99 of the Constitution stipulates that the task of the Supreme Council of Communities is to study and give a reasoned opinion on every local and regional development policy. It can make proposals to the Government on any issue concerning environmental protection and improvements in the quality of life of citizens within the communities.

The Government is required to seek the opinion of the Supreme Council of Communities for any action in the above-mentioned areas.

Members of this institution are known as “national councillors” and are elected by indirect suffrage for a five-year term. They are comparable to the senators in a two-chamber system and represent the communities in Mali.

The National Assembly and the Supreme Council of Communities can both call a joint session of deputies and national councillors.

## **2.8 Economic, Social and Cultural Council**

The Constitution, in its article 107, gives the Economic Social and Cultural Council a paramount role in the search for solutions to the country’s problems in the field of economic, social and cultural development.

The Council is represented on every commission of an economic, social and cultural nature that is of nationwide significance. It compiles and edits an annual compendium of the aspirations, needs and problems of civil society, together with guidelines and proposals, for the benefit of the President, the Government and the National Assembly. The Economic, Social and Cultural Council must be consulted on any financial bill, any proposed economic, social and cultural plan or programme and any piece of legislation dealing with fiscal, economic, social or cultural matters. Once a matter is brought to their attention, the Government and the National Assembly are required to follow up on the Council’s recommendations and report within three months, in the case of the Government, or before the end of its current session, in the case of the National Assembly. Thus, under the Constitution, the Economic, Social and Cultural Council is:

A constitutionally established assembly and hence guaranteed to be independent of the legislature and the executive;

A consultative assembly which makes recommendations to the authorities on economic, social and cultural matters;

A representative assembly, consisting mainly of members appointed by social and professional organizations.

As far as membership of the Economic, Social and Cultural Council is concerned, the Constitution stipulates that it shall consist of representatives of trade unions, associations, social and professional groups and Malians living abroad.

The 58 members of the Council are elected for five-year terms. It should be noted that the Council also has associate members, who are high-ranking State officials with recognized expertise in economic, social and cultural matters. A maximum of 10 of them are appointed by decree of the Council of Ministers.

The Council is an advisory body that listens to ordinary people. It acts as both a “barometer” and a “compass”, measuring and guiding changes in development strategies. It offers one of the best ways for people to see their aspirations taken into account.

### **III. JUDICIAL SYSTEM: ORGANIZATION AND OPERATION**

Unlike the 1960 and 1974 Constitutions, which recognized only a judicial authority, the Constitution of 25 February 1992 establishes a judicial power.

In order to secure the independence of the judicial system, which guarantees the protection of citizens’ rights, the Constitution stipulates that “the judicial power shall be independent of the executive and legislative powers”.

This judicial power, exercised through the Supreme Court and other courts and tribunals, is the “guardian of liberties”. It “shall guard rights and liberties” and is responsible for “applying the laws of the Republic within its purview” (art. 81 of the Constitution). By listing the Supreme Court among the institutions of the Republic, the Constitution grants a special place to the judicial power (arts. 81 and 82) and to the Supreme Court (arts. 25, 37, 83 and 84).

As a corollary to the independence of the judiciary, judges may not be removed from office (art. 82). Pursuant to this constitutional provision, Ordinance No. 92-043/P-CTSP of 5 June 1992 on the regulations governing the judiciary sets out and regulates the guarantees and independence of the judicial power. The Supreme Council of the Judiciary, instituted under article 82 of the Constitution and presided over by the Head of State, is alone authorized to decide on the appointment or transfer of judges.

In Mali, justice is administered by:

The Supreme Court;

Three appeal courts;

Sixteen courts of first instance;

Forty-two district courts with extended jurisdiction;

Three commercial courts;

Eleven employment tribunals;

Three administrative courts;

Eight youth courts; and

Three military courts.

### **3.1 Appeal courts**

Appeal courts hear appeals against decisions taken in first instance. Each appeal court includes at least a civil division, a commercial division, a social division, a criminal division and an indictment division.

They sit as an assize court and try criminal cases with the help of lay judges drawn from the population.

In all cases, the appeal court delivers its rulings in the presence of the public prosecutor or his representative, with the assistance of a clerk of the court.

### **3.2 Courts of first instance**

Courts of first instance hear cases in first and last instance under civil and ordinary law where amounts of no more than 100,000 CFA francs are involved. Cases involving higher amounts are open to appeal.

They also rule on criminal matters and, in places where there is no commercial court, hear cases allocated by law to commercial courts.

### **3.3 District courts with extended jurisdiction**

A special feature of the Malian judicial system is that, in district courts, a single judge acts as prosecutor, investigator and trial judge, whereas, in a court of first instance, there is always at least a presiding judge, a prosecutor and an investigating judge.

District courts with extended jurisdiction have jurisdiction over the same subject matter as courts of first instance.

### **3.4 Commercial courts**

Commercial courts deal with disputes over transactions between tradesmen, disputes over commercial actions, bankruptcies, liquidation and insolvency procedures.

Commercial courts consist of a president and four specialized judges, two of whom are substitutes. The latter are elected by their peers.



On 17 April 1997, Mali ratified the Treaty on the Harmonization of Business Law in Africa (the OHBLA Treaty). This led to the creation of a new commercial court, the Common Court of Justice and Arbitration, which has already taken over the responsibilities of the Supreme Court in the area of business law.

### **3.5 Employment tribunals**

Employment tribunals rule on disputes between workers and their employers and on disputes relating to collective labour agreements.

Employment tribunals consist of a president and two lay judges, one representing the workers and the other the employers.

### **3.6 Administrative courts**

Administrative courts are courts of first instance in administrative matters and deal with disputes between citizens and the State, except in cases for which the administrative division of the Supreme Court has responsibility. They also rule on applications to have regional and local administrative authorities' decisions set aside on the grounds that they have exceeded their authority and on applications for judicial review of their decisions. The decisions of the administrative courts are taken on a collegiate basis.

### **3.7 Youth courts (art. 10, paras. 2 and 3, and art. 14, para. 4, of the Covenant)**

Youth courts try offences committed by minors; the age of criminal responsibility is set at 18 in Mali.

At this level, the emphasis is on rehabilitation and protection measures implemented with the help of social workers, rather than on purely repressive punishments. Minors who are convicted serve their sentences in a special centre in a suburb of the capital (Bollé).

### **3.8 Military courts**

Act No. 95-042 of 20 April 1995 on Mali's code of military justice sets out the territorial jurisdiction of military courts, corresponding to the appeal courts in Kayes, Bamako and Mopti.

Military courts are special courts that try so-called military offences. This category covers offences that can be committed only by members of the armed forces (e.g. desertion) and offences under ordinary law committed by members of the armed forces in a context related to their duties (e.g. stealing in a barracks).

The Ministry of Defence performs the same tasks with regard to military courts as the Ministry of Justice does with regard to ordinary law courts.

Specialized courts no longer exist in Mali.

By virtue of the powers vested in them, the courts and tribunals protect the rights of citizens. Courts may be administrative (administrative courts and the administrative division of the Supreme Court), dealing with disputes between citizens and the State or one of its agencies, or judicial (district courts with extended jurisdiction, courts of first instance, appeal courts, employment tribunals, commercial courts and youth courts, and the judicial division of the Supreme Court).

The judgements and decisions of the courts testify to the fact that the State is subject to the rule of law.

### **3.9 Ministry of Justice**

At the administrative level, all courts, except for the Supreme Court and military courts, come under the Ministry of Justice, which monitors their efficiency, although it cannot give instructions to judges, who are independent.

The professional organizations that exist alongside these judicial and administrative bodies include:

The Malian Bar;

The National Association of Bailiffs;

The National Association of Auctioneers;

The National Association of Solicitors; and

The National Association of Forensic Experts.

### **3.10 Prison service (art. 10 of the Covenant)**

The prison service comes under the Ministry of Justice, through the National Department for the Administration of Prisons and Reformatories. It is responsible for ensuring compliance with custodial sentences and release orders issued by the courts and for preparing prisoners for social rehabilitation. Because of the number of prisons (35, including special prisons for women and children), the number of prisoners (3,500) and the number of prison farms (4), it has been necessary in recent years to increase substantially the service's budget and the number of suitably qualified officers. Prison overcrowding is chronic.

It should be added that the Prison System Act requires prison personnel to treat detainees humanely and to respect their fundamental rights. This is why the Taoudenni detention centre for political prisoners and the Kidal penal colony have been closed for good. The Ministry of Justice has undertaken a major overhaul of the prison system to make conditions more humane.

Reintegration and rehabilitation are the guiding principles of the new prison policy. The implementation of this policy has included setting up a specialized corps of prison warders who are better qualified to make detention centres more humane.

Prisoners awaiting trial and those who have been convicted are kept apart in the Malian prison system. The same goes for men, women and children; a specialized detention, rehabilitation and reintegration centre has been built for the latter. It should be noted that this well-managed prison service forms the basis for the cooperation agreements signed between the Government of Mali and the International Criminal Tribunal for Rwanda, under which the Malian prison service receives Rwandan prisoners. This explains why there are currently five Rwandan prisoners in the central short-stay prison in Bamako.

Article 71 of the Penal Code imposes criminal sanctions on prison officials found guilty of arbitrary detention (six months' to two years' imprisonment and a fine of between 20,000 and 240,000 CFA francs) and on anyone who arrests, detains and illegally confines any person without an official warrant, except in cases where the law orders the arrest (art. 237).

### **3.11 Age of criminal responsibility and youth courts (art. 10, paras. 2 and 3, and art. 14, para. 4, of the Covenant)**

#### **(a) Age of criminal responsibility**

The age of criminal responsibility is governed by Act No. 01-081 of 24 August 2001 on the age of criminal responsibility and the establishment of youth courts. The age of criminal responsibility is set at 18 years. If the accused is under 13 years of age, he or she will be discharged or acquitted for acting without due discernment. If the accused is over 13 years of age and under 18 years of age, he or she will be discharged or acquitted if it is decided that he or she acted without due discernment. In this case, the minor is handed over to his or her parents or to a specialized public or private educational institution for the period determined in the sentence, which may not last beyond the date of the accused's eighteenth birthday. If only the minor's year of birth is known, the minor is assumed to have been born on 31 December of that year. Minors accused of crimes or offences are not taken before ordinary criminal courts, but must be tried in youth courts.

#### **(b) Youth courts**

The youth courts are special courts with the power to try offences formally assigned to them by law because of the personal status of the perpetrator. The system of youth courts consists of:

The children's judge;

The youth court itself;

The special division for minors in the appeal court;

The youth assize court.

Children's judges are appointed by presidential decree, with the approval of the Supreme Council of the Judiciary, on the basis of their abilities and interest in children's matters.

A youth court is established within each court of first instance and each district court with extended jurisdiction. It deals solely with offences and misdemeanours concerning minors and consists of:

A presiding judge appointed in the same way as the children's judge; and

One or more clerks of the court.

The prosecution is brought by the public prosecutor in the court of first instance, or one of his or her deputies, or by the judge in the district court with extended jurisdiction.

The special division for minors in the appeal court consists of the judge responsible for child protection (who is appointed by order of the first president of the appeal court) together with two appeal court judges or two ordinary judges. The clerk of court is selected from the staff of the appeal court registry.

The assize court for minors sits either in the appeal court or any other place within the appeal court's jurisdiction. It consists of:

The first president of the appeal court or the judge responsible for child protection;

Two judges appointed by order of the first president; and

Two children's judges drawn by lot from a list drawn up in each appeal court.

#### **IV. SIGNING AND IMPLEMENTATION OF THE NATIONAL PACT**

Between 1960 and 1992, northern Mali was the scene of two rebellions which at times posed a challenge to national unity and were largely due to the country's general state of underdevelopment, which was worse in the north after many years of drought. This extremely complex problem touches on the very essence of national unity and territorial integrity, but has often been misunderstood and misinterpreted.

In seeking a definitive solution to it, the Government has chosen the path of dialogue.

Negotiations with the coordinating office of the Azawad Unified Fronts and Movements thus led to the signing of the National Pact in Bamako on 11 April 1992.

The Pact consists of seven sections dealing, among other things, with:

Guiding principles (such as allegiance to Mali's Constitution);

A complete halt to hostilities and the settlement of issues arising from the armed conflict (such as the recruitment of combatants and inhabitants of the north into national uniformed units and government services and the repatriation of 100,000 refugees);

The special status of northern Mali (including decentralization and the establishment of the Northern Commission to implement the National Pact); and

Practical action to build up national solidarity and unity, including the preparation of a special programme for the north.

The National Pact has in the main been implemented to the satisfaction of all the parties involved in its preparation and implementation.

This satisfaction is reflected in the “Flame of Peace” ceremony organized in the mythical city of Timbuktu on 27 March 1996. In the course of the ceremony, in which the arms used in the rebellion were burned, and in front of an audience that included well-known figures such as John Jerry Rawlings, President of Ghana and acting president of the Economic Community of West African States (ECOWAS), and Federico Mayor, Director-General of UNESCO, the leaders of the Azawad United Fronts and Movements and the leaders of the Ganda Khoy movement for the self-defence of sedentary populations recognized that Mali was indivisible, disbanded their organizations and undertook to work together to strengthen national unity and the economic and social development of the country.

The Northern Commission was subsequently replaced by the Authority for the Integrated Development of Northern Mali (ADIN).

Under the authority of the Prime Minister, ADIN aims to complete the implementation of the National Pact and to support local authorities in programming and coordinating development activities in the northern regions.

## **V. RIGHTS OF THE INDIVIDUAL**

### **5.1 Right to equality (art. 3 of the Covenant)**

According to article 2 of the Constitution, “all Malians are born free and equal in terms of rights and duties. All discrimination on grounds of social origin, colour, language, race, sex, religion and political opinion shall be prohibited”.

This provision confers formal equality on men and women in Mali. An affirmative action policy is pursued in this area; there is a ministry specifically responsible for the advancement of women, children and family.

Despite this progress, there are still shortcomings, particularly in the area of inheritance rights.

However, laws are being drafted with the participation of all concerned parties to ensure that the legislation is based on consensus.

These laws will take account of the provisions of the various international legal instruments intended to establish equality before the law between men and women.

In addition, Mali is in the process of reviewing its legislation on associations, the Penal Code and the Code of Criminal Procedure, the Electoral Act and the law on the age of criminal responsibility and the establishment of youth courts.

Anyone who feels he has been injured by a measure taken on behalf of the State or one of its agencies may challenge it in the courts of law or administrative courts. It may be affirmed that the State has no immunity in cases involving human rights violations.

All residents of the country, whether they are Malians or foreigners, are, in the absence of any legal provisions to the contrary, equal before the law and have the right without any distinction to equal protection under the law. Their right to take action in the courts is also guaranteed. No one may be deprived of the right to take legal action except under special legal rules and procedures relating, for instance, to depositions by the Head of State, the Head of Government and representatives of foreign powers (arts. 604-608 of the Code of Criminal Procedure) or to proceedings against members of the Government, members of the judiciary, members of parliament and certain officials (arts. 613-625 of the same Code and art. 75 of the Penal Code).

The few exceptions relating to court privileges for these categories of office-holders are justified by the sensitive nature of their responsibilities.

### **Equality before the courts of law (arts. 14 and 26 of the Covenant)**

Equality before the law is a constitutional right explicitly referred to in the Code of Criminal Procedure and the Code of Civil, Commercial and Social Procedure. Judgements in criminal and civil matters are made public, except where the best interests of a minor require otherwise (in proceedings in youth courts) or where the case concerns matrimonial disputes or the guardianship of children.

According to article 9 of the Constitution, “every accused person is presumed innocent until proven guilty by the competent court. The right to a defence, including the assistance of a lawyer of one’s choice, is guaranteed from the beginning of the investigation”. The accused is therefore informed promptly of the nature and grounds of the accusation against him or her. A court-appointed defence counsel may be allocated to the accused free of charge if the latter cannot afford to pay for one (Act No. 01-082 of 24 August 2001 on Legal Assistance). The accused may also have access to the free services of an interpreter and is free to plead guilty or not.

Every person found guilty of an offence may appeal against the guilty verdict and sentence.

### **Legal assistance (art. 14, para. 3, of the Covenant)**

Legal assistance is governed in Mali by Decree No. 99-254/P-RM of 15 September 1999 on the Code of Civil, Commercial and Social Procedure and by Act No. 01-082 AN-RM of 24 August 2001 on Legal Assistance.

According to article 38 of the Code of Civil, Commercial and Social Procedure, the parties are free to choose a counsel either to represent them or to assist them, depending on what is allowed or required by law.

The person appointed to provide judicial representation has the authority and duty to carry out procedural acts on behalf of the principal. The person providing legal assistance has the authority and duty to advise and defend the party, but does not legally bind the party. Representation involves the provision of assistance unless otherwise stipulated or agreed. A party may not be represented by more than one of the natural or legal persons authorized by law. The judge must be notified of the representative's name and status by means of a statement sent to the court registry. Anyone intending to represent or assist a party must produce evidence that he has been appointed or entrusted with the task. Lawyers, however, are exempt from this requirement.

In addition, article 1 of the Act on Legal Assistance provides that legal assistance may be granted, in any case, to all persons and to private associations providing assistance which have legal personality, but cannot afford to exercise their right to take legal action, either to make a complaint or to defend themselves.

Legal assistance is available in all litigation before the ordinary and administrative courts. It covers as of right the enforcement measures and procedures related to the decisions in respect of which it was granted. It may also be granted for all enforcement measures and procedures related to decisions obtained without the benefit of this assistance and for all acts, even those based on agreements, that the party concerned cannot afford to have implemented.

Eligibility for legal assistance is determined by a panel set up in the court of first instance or the district court with extended jurisdiction. The panel consists of:

- (1) The chief of the registration and State property service, or that person's representative, or the official responsible for registration and State property matters;
- (2) The prefect, the mayor or their representatives;
- (3) A member of the petitioner's village council;
- (4) Three members and three alternates appointed by the civil court meeting in private and chosen from the lawyers and leading citizens domiciled or resident within the jurisdiction of the panel. The term of office of these panel members runs out in January and they can be re-elected.

Membership of the panel is recorded in an ordinance of the president of the court or the district court with extended jurisdiction.

Anyone claiming assistance has to submit their application, together with documentary evidence, either in writing or in person to the public prosecutor's department in the place where his local legal assistance panel is based. The panel must take a decision promptly, examine the applicant's circumstances and grant or turn down the application for assistance.

Legal assistance is granted automatically to anyone taken before an assize court and to every minor.

However, this assistance is rarely sought in civil matters because of widespread ignorance of the relevant legislation and because of systemic failings.

Human rights associations have opened legal clinics that provide free advisory, guidance and assistance services.

## **5.2 Right to non-discrimination (art. 2 of the Covenant)**

Article 2 of the Constitution is backed up by article 58 of the Penal Code, according to which "any statement or deed which establishes or gives rise to racial or ethnic discrimination, any statement or deed aimed at provoking or maintaining regionalist propaganda, any dissemination of news which is detrimental to the unity of the nation or the reputation of the State and any manifestation contrary to freedom of conscience and freedom of worship that is likely to bring citizens into conflict with each other shall be punishable by a prison sentence ... or ... prohibition of residence".

### **Condemnation of all racial propaganda and organizations that produce it (art. 20 of the Covenant)**

In accordance with the provisions of articles 1 and 2 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 43 of the Charter of Political Parties, article 179 of the Penal Code considers racist behaviour at cultural and sporting events as an offence.

In Ordinance No. 85-13 of 12 February 1985, Mali ratified the Convention on the Elimination of All Forms of Discrimination against Women. Since then, efforts have been made to improve legislation, but in practice discrimination persists (with regard to access to land, the right to inherit, the right to work, the right to own property, etc.).

### **Foreigners living in Mali (art. 13 of the Covenant)**

Under Malian legislation, foreigners are subjects at law, but have a different status from nationals: they enjoy all civil rights, but not political rights. Nevertheless, foreigners have the right to form non-political associations. Nowadays there are many associations for foreigners in Mali. Foreigners are not allowed to join the civil service.



Foreigners may be expelled from Malian territory only in pursuance of a decision reached in accordance with the law. They are allowed to submit reasons against their expulsion and to have their case reviewed.

In short, Mali clearly follows a flexible, non-discriminatory policy of openness to foreigners in general and an integrationist and pan-African policy in particular.

### **5.3 Right to life and protection of the individual (arts. 6, 7 and 8 of the Covenant)**

In accordance with article 1 of title I of the Constitution on the rights and duties of the individual, “the human person is sacred and inviolable. Everyone has the right to life ... and to integrity of person”. This right is protected by law (Act No. 01-079 of 20 August 2001 on the Penal Code).

Articles 2, 3, 4, 5, 9, 10 and 12 also contain guarantees against arbitrary arrest and detention, torture and other cruel, inhuman or degrading treatment. “No one shall be subjected to torture or inhuman, cruel, degrading or humiliating treatment” (art. 3, para. 1, of the Constitution); furthermore, “anyone subjected to a custodial penalty shall be entitled to be examined by a doctor of his choice” (art. 10, para. 1, of the Constitution).

The above constitutional provisions are based on the Universal Declaration of Human Rights, the African Charter on Human and Peoples’ Rights of 27 June 1981, which was ratified by Mali in Ordinance No. 8 of 29 October 1981, and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by Mali in 1995.

They have also been incorporated in the Penal Code, which defines torture as “any act by which pain or acute physical or mental suffering is intentionally inflicted on a person” and which punishes it with 1 to 5 years’ imprisonment, 5 to 10 years’ imprisonment if the acts of violence result in mutilation or amputation or the death penalty if they result in death (art. 209).

Accordingly, anyone arrested or imprisoned must be treated in such a way as to preserve his dignity and ensure his physical and moral integrity. The Code of Criminal Procedure stipulates that the judicial police responsible for recording criminal offences, collecting evidence and finding the perpetrators shall operate under the direction of the public prosecutor, the supervision of the Attorney-General and the scrutiny of the Indictment Division. The judicial police consists of duly authorized officers, officials and State employees (art. 31).

For the purposes of an investigation, the Code, in its article 76, authorizes judicial police officers to keep any person except a minor in their custody for 48 hours. This period of custody may be extended by 24 hours on written authorization of the public prosecutor. In all cases, anyone suspected, prosecuted or charged is presumed innocent until proven guilty. He has the right to be informed of the charges brought against him and to be assisted by a counsel of his own choosing.

In this respect, it should be pointed out that the Minister of Justice (*Garde des Sceaux*) has expressly instructed attorneys general, public prosecutors and district judges systematically “to subject the police, gendarmerie and prison services to strict supervision in order to put an immediate stop to all forms of human rights abuses”.

Lastly, it should be noted that the provisions of the Code of Criminal Procedure concerning defence rights (arts. 103-108, 110, 112, 128, 135 and 136) must be observed, failing which the indictment and subsequent procedure may be invalidated.

A body was set up by Decree No. 96-149/P-RM of 15 May 1996 to provide advice to the Prime Minister. This body is called the National Advisory Commission on Human Rights and its task is to “promote and publicize human rights in the Republic of Mali”. However, it is not yet operational.

All observers agree that non-governmental organizations (NGOs) and associations such as the Malian Human Rights Association (AMDH) and the Coordinating Organization for Women’s Associations and Organizations in Mali (CAFO) contribute to the process of democratization in Mali, not only through their activities to promote and defend human rights, but also through the practical proposals they regularly submit to the authorities with a view to ensuring that human rights are taken more fully into account in the preparation of new legislation.

In all criminal matters, the investigating judge may remand the accused in custody by means of a substantiated order or place him under judicial supervision. In the latter case, the order does not need to be substantiated and is not subject to appeal (arts. 122-147 of the Code of Criminal Procedure).

Whatever the offence concerned and at any stage of the procedure, release with or without judicial supervision may be ordered by the investigating judge either at the request of the accused or the accused’s counsel, on the order of the public prosecutor’s office or *proprio motu* (arts. 148-158).

In judicial or administrative proceedings, every person has the right to a fair hearing and to be tried without undue delay by a competent, independent and impartial tribunal established by law.

#### **5.4 Death penalty (art. 6, paras. 2 and 4, of the Covenant)**

The death penalty is part of an array of punishments available in Mali, but it should be pointed out that no judicial executions have been carried out in Mali since 1979.

The new Penal Code which was adopted by the National Assembly and is the subject of Act No. 01-079 of 20 August 2001 no longer provides for the death penalty for offences against public property, and this is a significant step forward.

Similarly, the new Code of Criminal Procedure, which is the subject of Act No. 01-080 of 20 August 2001, made far-reaching changes to the decision-making procedure in assize courts, requiring a qualified majority before the death penalty can be handed down. This is a healthy development given the irreversible nature of the punishment.

Moreover, anyone sentenced to death is entitled to apply for a pardon or commutation of the penalty. Under the Third Republic, as a result, death sentences have been commuted to life or fixed-term imprisonment by the Head of State, acting on his prerogative to grant pardons under article 45 of the Constitution.

### **5.5 Right to work (art. 8 of the Covenant)**

Article 19 of the Constitution recognizes the right to work and to rest. It also prohibits forced or compulsory labour, as follows: “No one may be forced to do a particular job except in cases where an exceptional service of general interest is being provided, on an equal basis for all and in accordance with the conditions prescribed by law.”

Forced labour, in the sense of a service required of an individual under threat of punishment and for which the individual has not volunteered, does not exist in Mali.

It could hardly be otherwise, given that, immediately after gaining its international sovereignty, Mali ratified the two main International Labour Organization (ILO) conventions on forced labour (No. 29) and the abolition of forced labour (No. 105). These provisions are supplemented by the Labour Code and collective labour agreements in the private sector, civil service regulations and various individual or independent regulations governing public sector employees.

### **5.6 Freedoms (art. 9 of the Covenant)**

Under article 1 of the Constitution, cited above, everyone has the right to liberty and integrity of person. Thus, in Mali, “no one shall be prosecuted, arrested or charged except under a law enacted prior to the acts of which they are accused. Every accused person is presumed innocent until proven guilty by the competent court ...”. The right to the assistance of a lawyer of one’s choice from the beginning of the investigation is laid down in the Constitution. The new Code of Criminal Procedure also provides for the presumption of innocence, listing it as one of the guiding principles in criminal proceedings, and guides lawmakers in all criminal reform policies (arts. 1 and 2 of the Code on preliminary provisions).

Under the provisions of the Code of Criminal Procedure, the legal limit for custody is set at 48 hours, but this period may be extended to 72 hours on written authorization from the public prosecutor.

In Mali, unlike in some countries, no derogation is possible that would allow these limits to be extended, however serious the acts may be.

In cases of illegal detention, there is no automatic compensation process, although the victim is entitled to file a complaint against the wrongdoer. In any case, the wrongdoer may be prosecuted directly by the public prosecution service even in the absence of a complaint from the victim, who may then bring criminal indemnification proceedings.

**(a) Freedom of movement (art. 12 of the Covenant)**

This is a constitutional right. Article 5 of the Constitution stipulates that, under the conditions prescribed by law, the State recognizes and guarantees freedom to come and go and to choose one's residence.

According to paragraph 5 of the Treaty of the West African Economic and Monetary Union, entitled "Free movement of persons, services and capital", and the Protocol of the Economic Community of West African States on the free movement of persons, residence and establishment, every person who is legally in the territory of a State has the right to move around and choose a place of residence freely. Every person is free to leave Mali. However, such restrictions may be placed on this right as are necessary to protect national security, public order, public health or morality and the rights and freedoms of others.

**(b) Freedom of thought, conscience and religion (art. 18 of the Covenant)**

Mali is a secular republic in which several ethnic groups and religions coexist peacefully. The Muslim religion is most widely practised, followed by Christianity and animism. All are freely practised in accordance with their various rites and ceremonies, teachings and forms of worship.

Harmony has prevailed essentially because the followers of the various religions and beliefs very quickly realized that civil rights are based on citizenship, not race or religion. For that reason, no mention of religion or race is made on the birth certificates, identity papers or travel documents of Malian citizens.

Furthermore, article 58 of the Penal Code prohibits all acts infringing on freedom of thought, conscience and religion: "Any manifestation contrary to freedom of conscience and freedom of worship that is likely to bring citizens into conflict with each other shall be punishable by a prison sentence of 1 to 5 years, or optionally by a prohibition of residence of 5 to 10 years".

Children are brought up according to their parents' religious and moral beliefs.

**(c) Freedom of expression (art. 19 of the Covenant)**

The principle of freedom of opinion and expression is laid down in article 4 of the Constitution. The Democratic Discussion Forum (EID) is the best example of the effective exercise of this freedom.

Mali is actually the only country in the West African subregion, or even on the African continent, to have launched such a democratic communication forum since 1994. Every year since the forty-sixth anniversary of the Universal Declaration of Human Rights, the Government has, on its own initiative, organized an annual forum in which a reasonably representative cross section of Malian society can put questions live on national radio and television to government ministers about all aspects of national life, particularly human rights issues. One of the aims of the forum is to inform a national and international audience about the human rights situation in Mali, hiding nothing and providing information on the action taken or planned and on any subsequent complaints. The forum was institutionalized by Decree No. 159/P-RM of 31 May 1996.

At the end of each session of the forum, which is held on 10 December each year, a panel of national and foreign personalities makes recommendations to the Government with a view to achieving increasingly effective protection of human rights. The implementation of the recommendations is then assessed by the panel prior to the opening of the following session.

**(d) Freedom of the press (art. 19 of the Covenant)**

A free press is crucial to a democracy. At the national level, the Malian Constitution of 25 February 1992 reflects a desire to protect the various freedoms.

*Laws governing freedom of the press in Mali*

Article 7 of the Constitution of 25 February 1992 recognizes and guarantees freedom of the press, stipulating that “freedom of the press is recognized and guaranteed” and “exercised under the conditions prescribed by law”. Against this background, the National Assembly adopted Act No. 92-037/AN-RM of 24 December 1992 on the rules governing the press and offences under the press regulations, replacing the Act of 1988.

Overall, the media have been enjoying a real boom, with the emergence of many new written and spoken press organs.

The State no longer has a monopoly on communications. It shares the press and audiovisual sector with private firms. In Mali today, there are about 30 independent newspapers, 100 independent FM radio stations and two private television broadcasting channels (Klédu and Multicanal).

**(e) Right of assembly (art. 21 of the Covenant)**

The rights to freedom of assembly, procession and demonstration are also effective in Mali. They are primarily governed by Ordinance No. 36/PCG of 28 March 1959 and, secondarily, by the Charter of Political Parties.

According to article 6, paragraphs 1 and 2, of this Ordinance, advance notice must be given to the administrative authority (the mayor, prefect or sub-prefect) by the organizers of demonstrations held on the public highway (a procession, march or gathering of persons). This advance notice, signed by three organizers of the demonstration, must be submitted at least 24 hours, and at most eight days, before the date of the event.

The limits imposed on freedom of demonstration arise chiefly from a concern to maintain public order. The mayor, the representatives of the State (the prefect, sub-prefect or high commissioner) or, as a last resort, the minister responsible for local government may ban a demonstration if it is likely to disturb public order. The administrative authority also has the power to stop any procession, parade or gathering on the public highway and in public places if necessary for the maintenance of public order. It may, after issuing a warning, intervene to disperse and ban any demonstration which becomes disorderly. A warning may not, however, be required "if the forces of law and order are attacked or assaulted or are unable properly to defend their positions or the stations for which they are responsible".

It should be noted that some demonstrations did get out of hand in 1997 and ended in arrests and injuries to both demonstrators and law enforcement officers.

**(f) Freedom of association, trade union rights and the right to strike  
(art. 22 of the Covenant)**

Freedom of association is a reality in Mali. There are only two basic conditions for obtaining authorization: the association's aims must be lawful and it must be of a non-ethnic or regionalist nature. There are today approximately 12,000 associations registered with the Ministry of Local Government.

Trade union rights are guaranteed by the Constitution and the various laws regulating working conditions.

Article 20 of the Constitution stipulates the following: "Trade union rights are guaranteed. Trade unions shall perform their activities without constraint or limit other than those prescribed by law."

In accordance with the provisions of ILO Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organize, the establishment of a trade union is not subject to any prior administrative authorization.

The founders of the union are required at most to register its statutes and the names of those who, in one capacity or another, are responsible for its administration or management. Registration takes place at the office of the administrative district in which the union is established.

Thanks to this favourable legal environment, numerous trade unions have sprung up alongside the National Union of Workers of Mali (UNTM) and go freely about their business.

There are at present 12 national unions affiliated to the National Union of Workers of Mali, in addition to the Trade Union Confederation of Malian Workers (CSTM) and a plethora of independent trade unions, such as those representing judges, teachers and local government officers.

Extensive negotiations on the unions' demands led to the signing of memorandums of understanding, which have significantly improved employees' living and working conditions (new individual statutes were adopted, new salary scales prepared, bonuses and allowances introduced, etc.).

Lastly, on the subject of industrial relations, employers' organizations and workers' trade unions are increasingly involved in formulating and implementing economic and social policies. For this purpose, various consultation mechanisms have been established, including the "State/Private Sector Consultation Framework" and the "Solidarity Pact for Growth and Development" signed on 14 August 2001.

Various provisions of the Labour Code protect union rights. For example, article 306 "prohibits any employer from taking membership of a union or union activity into consideration in reaching decisions regarding recruitment, the performance and distribution of work, vocational training, promotion, remuneration, the granting of social benefits or disciplinary steps and dismissal".

The same guarantees are given in article 21 regarding the right to strike.

In the case of public services, the exercise of the right to strike is regulated by Act No. 87-47/AN-RM of 10 August 1987.

With regard to the employment situation, it should be pointed out that the gross employment rate, that is, the proportion of persons aged 16 and over who have worked or sought employment out of the total population, amounts to 41.4 per cent (54.9 per cent for men compared with 28.2 per cent for women).

The working population consists of employed and unemployed workers. In 1998, Mali had 4,060,639 workers, of whom 4,032,973 were employed and 27,666 unemployed, giving an employment rate of 99.3 per cent and an unemployment rate of 0.7 per cent.

The establishment of the National Employment Agency (ANPE), the Public Works Employment Agency, the Support Fund for Vocational Training and Apprenticeship (FAFPA) and training and enterprise support units (UFAE) reflects the Government's stated policy of taking effective action against unemployment in general and youth unemployment in particular.

Unemployment affects men (0.8 per cent) more than women (0.5 per cent), who account for 69.4 per cent of the unemployed.

Economic activity in Mali is largely dominated by the primary sector (83.4 per cent of the working population). Besides an emerging secondary sector (4.1 per cent), the country has a relatively large tertiary sector (12.5 per cent).

Independent workers account for the majority of the employed working population (47.8 per cent), followed by low-paid family workers (45.8 per cent), where women are in the majority (62.8 per cent). Men, on the other hand, represent the majority of independent workers (55.8 per cent). Furthermore, there are more men than women among paid workers, with men representing 75.6 per cent of all salaried workers.

The right to work, trade union rights and the right to strike are the same for all without any racial discrimination.

### **5.7 Recognition of national languages (art. 27 of the Covenant)**

According to article 25, paragraph 9, of the Constitution, “measures to promote national languages and make them official shall be determined by law”.

Accordingly, since independence, Mali has made considerable efforts to describe the national languages, as the following achievements show:

13 national languages have been documented;

11 national languages have been described phonetically, phonologically, morphologically and morphosyntactically; and

11 national languages have been provided with spelling rules, primers, basic lexicons and a collection of texts (based on the oral tradition or promotional material for agricultural, plumbing and other technologies).

All the languages described are in formal and informal use as a means of communication and as subjects in their own right.

In this connection, the public and private national media reserve daily timeslots for broadcasting news in national languages and publicizing the cultural and artistic heritage of the country's various ethnic groups and regions.

A language institute has been set up in the University of Mali to:

Help define language policy in the educational, cultural, social and administrative fields;

Identify and promote all the national languages used in the various socio-linguistic areas of the country; and

Promote cooperation with other African countries, particularly those sharing one or more languages with Mali.

As part of this cooperation, the African Language Academy, which was established on the initiative of the Government of Mali, has been included among the institutions of the African Union.



### **5.8 Family rights (arts. 23 and 24 of the Covenant)**

In its Constitution, Mali endorses the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights, two instruments which recognize the legal personality of every individual. The domestic legislation implementing these instruments protects the individual against arbitrary or unlawful interference with his or her privacy, family, home or correspondence. It also affords protection against unlawful attacks on a person's honour and reputation, the punishments for such attacks being set out in the Penal Code.

The Constitution proclaims the determination of the sovereign people of Mali to defend the rights of women and children.

Article 4 of Act No. 62-17/AN-RM of 3 February 1962 on the Marriage and Guardianship Code stipulates that men below the age of 18 and women below the age of 15 may not marry. The age at which a person is entitled to marry and start a family is 18 for men and 15 for women. However, these provisions are sometimes ignored when the wedding ceremony is not performed by a registrar.

Nevertheless, the Minister of Justice may, in a non-appealable decision, grant a dispensation in respect of the age requirement.

Article 10 of the same Act states that no marriage can take place without consent.

However, given the weight of tradition in some circles, parental authority plays a crucial role in this regard.

Formal measures to ensure that spouses have equal rights and responsibilities when entering into marriage, during the marriage and during divorce proceedings are provided for in the above-mentioned Code.

The Code contains provisions to ensure that children are afforded the necessary protection in the event of a divorce.

The major initiative in respect of the implementation of the International Covenant on Civil and Political Rights concerns proposals to reform family law; in this area, the question of parental authority is a concern of the authorities. The future family code will therefore contain specific provisions regulating the relationship between children and their parents.

Mali ratified the Convention on the Rights of the Child in 1990. In order to give effect to the principle embodied in article 12 of the Convention, the Children's Parliament was set up in 1996. Its members are aged between 10 and 18.

A children's complex called the "Cité des enfants" was set up by Ordinance No. 99-035/P-RM of 15 September 1999. The complex is designed to meet children's needs in terms of social, cultural and scientific activities and to give them a chance to become aware of their abilities, develop their personality and prepare them to become active members of a democratic society.

In ratifying the international instruments on the rights of the child, Mali has committed itself to promoting these rights and has consequently adapted its domestic legislation with a view to eliminating all forms of exploitation and abuse of children.

Major reforms of the law on families and children are under way and will shortly lead to the adoption of a family code. Mali has already adopted Ordinance No. 02-062/P-RM of 5 June 2002 on a child protection code.

One of the aspects of child labour is child trafficking. In response to questions put to it at the Democratic Discussion Forum, the Government has taken steps to set up a commission to study the phenomenon of child trafficking and international adoption. After meetings in Cotonou and Libreville, the Government, with the support of its partners, drew up a national emergency action plan to combat cross-border trafficking in children. The number of children repatriated or intercepted has now reached 522. With a view to achieving synergy in the various actions at the subregional level, Mali has chosen to emphasize cooperation with neighbouring countries, in particular by signing a memorandum of understanding with Côte d'Ivoire (in September 2000) and strengthening partnerships between certain Malian NGOs and NGOs from these countries in the area of community monitoring.

In accordance with Act No. 87-27/AN-RM of 19 January 1987 regulating civil status, births are registered in registry offices, giving the child's name and surname, and recorded in the register of civil status. However, the low level of birth registrations should be noted.

In accordance with Act No. 62-18/AN-RM of 3 February 1962 on the Nationality Code, every child born to Malian parents or born in Malian territory acquires Malian nationality (arts. 8-12). The application of these provisions of the Code thus avoid cases of statelessness at birth in Mali.

Lastly, it should be pointed out that human rights education has been incorporated in the basic education curriculum.

## **VI. POLITICAL RIGHTS (art. 25 of the Covenant)**

Political rights are recognized and guaranteed by the Constitution and by other legislation currently in force.

As an independent, sovereign, indivisible, democratic, secular and social republic, Mali is based on the principle of government of the people, by the people, for the people.

Article 26 of the Constitution, for example, provides that "national sovereignty belongs to the whole people, who exercise it through their representatives or by way of referendum. Neither any section of the population nor any individual may lay claim to exercising it".

The guarantee of political rights protects freedom of opinion and the expression of the wishes of citizens.

Article 27 stipulates that voting is universal, equal and secret, while article 28 stresses the role of political parties in working together to ensure that voters can express their preferences. Political parties “shall be formed and shall freely exercise their activities under the conditions prescribed by law” and shall respect “the principles of national sovereignty, democracy, territorial integrity, national unity and the secular nature of the State”.

Mali has promulgated an electoral law, which was adopted by consensus by all political parties, from both the majority and the opposition. The entitlement to vote depends essentially on nationality and age (electors must be over 18 years old), the enjoyment of civil and political rights, and residence. To be eligible for election to the National Assembly or to a regional assembly, district council or town council, the same conditions apply. All candidates for the presidency, whether they are members of a political party or independent, must, in addition to meeting the residence requirement, have Malian nationality of origin, be over the age of 35 and pay a deposit of 5 million CFA francs when they submit their candidacy. They must also enjoy their civil and political rights. However, there are no requirements in terms of race, colour or religion for anyone running for an elected post or public office.

### **6.1 Formation of political parties**

Political parties are formed and exercise their activities freely within the framework laid down by the Charter of Political Parties.

In practice, there are no obstacles to the exercise of this freedom, as is attested by the fact that there are today more than 80 legally recognized political parties. Their activities are governed by the Charter of Political Parties and the Political Opposition Act.

Article 43 of Act No. 00-45 of 7 July 2000 on the Charter of Political Parties lays down limits to parties’ political activities, expressly prohibiting them from:

Breaching security and public order or infringing individual and collective rights and freedoms;

Setting up military or paramilitary organizations;

Establishing and organizing themselves on an ethnic, religious, linguistic, regionalist, sexist or occupational basis.

The national budget contributes to party funding on the terms set out in the relevant laws.

### **6.2 Equality between political parties and candidates in elections**

Candidates, political parties and political coalitions may make use of State media (radio, television and press) in their campaigns, under the supervision of the National Committee on Equal Access to State Media.

### **6.3 Transparency in electoral procedures**

The Electoral Act contains a number of provisions for ensuring transparency in electoral procedures. They relate particularly to the establishment of the Independent National Electoral Commission and the Elections Authority, as well as to action by the Ministry of Local Government.

#### **Independent National Electoral Commission**

The Independent National Electoral Commission (CENI) was set up in accordance with the Electoral Act and is responsible for supervising and monitoring referendums and presidential, parliamentary and local elections. It is also responsible for supervising national and international observers.

It is a national body consisting of 15 members, of whom:

Five represent the majority political parties;

Five represent the opposition political parties;

One is nominated by the Bar Council;

One is nominated by human rights associations; and

One is nominated by the Coordinating Organization for Women's Associations and Organizations (CAFO).

#### **Elections Authority**

The Elections Authority (DGE) is responsible for:

The preparation and maintenance of the electoral roll;

The manufacture and printing of electors' cards; and

Public funding for political parties.

It provides assistance to the Independent National Electoral Commission in the exercise of its duties, at the request of the latter.

Its head is appointed by presidential decree.

#### **Ministry of Local Government**

Without prejudice to the prerogatives of the Independent National Electoral Commission and the Elections Authority, the Ministry of Local Government, through an inter-ministerial committee, is responsible for carrying out the technical and physical preparations for elections,

making the practical arrangements, preparing the relevant procedures and legal documents, collating and announcing the provisional results of referendums and presidential and parliamentary elections and forwarding the records of referendums and parliamentary and presidential elections to the Constitutional Court.

Provision is also made for the annual review of electoral lists by administrative committees, the scrutiny of voting operations by representatives of the candidates and parties, the imposition of penalties in cases of fraud and appeals against suspected irregularities.

Despite of these safeguards, the 1997 elections were full of incidents. In particular, numerous cases of fraud due to poor organization and errors in the electoral lists were recorded and, by its Decision No. CCL-97-046 of 25 April 1997, the Constitutional Court consequently nullified the results of the first round in the parliamentary elections of 13 April 1997 throughout the country.

This courageous decision, which was unique in the history of Mali, was welcomed by politicians and by the general public.

After this setback, the electoral lists were reviewed. However, despite this review, a coalition of some of the opposition political parties called for a boycott of the presidential and parliamentary elections.

The boycott gave rise to violent political demonstrations which led to a number of deaths and to the arrest and conviction of many opposition supporters, who have since received presidential pardons in a move designed to calm the political climate.

It was precisely because of these displays of violence that leaders of opposition parties were arrested, charged and released on bail by judges acting quite independently.

Nevertheless, most political parties took part in the local elections in 1998 and 1999.

#### **6.4 The 2002 parliamentary elections**

Whereas the 1997 elections were fiercely contested, the same could not be said of those held in 2002, which went off quite well on the whole. However, the 2002 ballot was also criticized, basically because of the cancellation of votes by the Constitutional Court for fraud.

In its Decisions No. 02-137/CC-EP of 23 May 2002 and No. 02-144/CC-EL of 9 August 2002, the Constitutional Court officially announced the final results of the presidential election and the parliamentary elections. It also ruled on 47 complaints relating to the second round of the presidential election and 505 complaints relating to the second round of the parliamentary elections.

Independently of these complaints, the Court applied its own criteria, examining electoral documents (official reports, tally sheets), reports from its representatives throughout the country and reports from its members who had been assigned to the various electoral districts.

A study of its decisions basically shows that the Constitutional Court verified the validity of some of the complaints and then made the necessary cancellations and rectifications in accordance with article 142 of the Electoral Act, which provides that “the Constitutional Court shall draw up a comprehensive list of the votes, verify the legality of the ballot and announce the final results”. The Constitutional Court drew up the list of votes, corrected various factual errors and made the necessary adjustments. This meant that the results from some polling booths were partially or completely cancelled and those from certain districts cancelled altogether. In these districts - Ti-n-Essako and Sikasso - parliamentary by-elections were organized later.

The Elections Authority’s final figures for the 2002 elections show that 5,746,202 electors, including 506,631 expatriates, were identified.

The electors voted at one of 12,004 polling booths, of which 463 were mobile booths. The booths were distributed on the basis of proposals put forward by prefects.

There were 25 candidates, including one woman, in the 2002 presidential election. Only one candidate was rejected, on the grounds of non-payment of the required deposit of 5 million CFA francs.

As a result of the parliamentary elections, eight political parties are represented in the National Assembly. Eight independent deputies sit alongside them. The National Assembly consists of 147 elected representatives, 15 of whom are women.

## **VII. OTHER IMPLEMENTATION MEASURES (art. 2, paras. 2 and 3, of the Covenant)**

Since Mali submitted its last report in 1981, several steps have been taken to implement the provisions of the Covenant. Some of these steps are described below.

### **7.1 The Ombudsman**

Act No. 97-002 of 10 March 1997, establishing the post of Ombudsman, stipulates that the latter is appointed for seven years by the President. Any citizen, association or organization may take a complaint to the Ombudsman about the administration’s dealings with citizens.

However, cases that are the subject of judicial proceedings, other than failures to carry out a judicial decision, may not be referred to the Ombudsman.

After examining the cases referred to him or her, the Ombudsman makes recommendations on how to settle the disputes.

As an independent authority, the Ombudsman receives complaints from natural or legal persons about the way government offices, local authorities, public institutions or any public service deal with citizens.

Mali has so far had two ombudsmen; the current holder of the post is a woman.

## **7.2 Regulations governing the opposition**

The regulations governing opposition political parties in Mali are to be found in the Political Opposition Act (No. 00-047 of 13 July 2000). The Act grants the opposition a legal status within the democratic and pluralist system in order to ensure that political debate remains within the bounds of legality and that there is a democratic alternation of power.

## **7.3 National Committee on Equal Access to State Media**

In accordance with article 7 of the Constitution, the National Committee on Equal Access to State Media was set up by Act No. 93-001 of 6 January 1993.

The Committee is an independent body and ensures equal access for all to State media under the conditions prescribed by law and under current regulations in Mali.

As such, it ensures:

Balance and variety in the presentation of information, taking into account the different political, economic, social and cultural sensibilities in the country; and

A fair share of broadcasting time and editorial space for candidates and political groups during election campaigns.

## **7.4 Higher Council on Communication**

This body, which was established by Act No. 92-038, can make recommendations on any questions concerning the production, programming, broadcasting and publication of written and audiovisual communications, as well as those concerning the guarantee of freedom of communication.

Without prejudice to the regulations on the conditions and procedures for obtaining, suspending or withdrawing the licences of private radio broadcasting and television services, the Higher Council on Communication regulates the allocation and withdrawal of frequencies for radio and television stations.

## **VIII. CONCLUSION**

**The Malian Government believes that the duty to implement the International Covenant on Civil and Political Rights is an ongoing and long-term task. It is making great efforts, together with its partners (including NGOs), in the field of civil and political rights to bring domestic legislation and regulations into line with the Covenant. Thanks to these efforts, Mali has been able to make significant progress towards democracy, good governance and the rule of law and thus towards the observance and protection of civil and political rights.**

**Annex**

**MAIN INTERNATIONAL AGREEMENTS RATIFIED**

International Covenant on Civil and Political Rights: acceded to by Ordinance No. 25/CMLN of 3 July 1974

Optional Protocol to the International Covenant on Civil and Political Rights: ratified by Ordinance No. 00-001/P-RM of 9 February 2000

Convention on the Political Rights of Women: acceded to by Ordinance No. 23/CMLN of 3 June 1974

Geneva Conventions of 12 August 1949, relating to international humanitarian law

Protocols Additional to the Geneva Conventions of 12 August 1949, relating to humanitarian law: acceded to on 8 February 1989

ILO Convention (No. 138) concerning Minimum Age for Admission to Employment: ratified by Act No. 061 of 3 July 2001

ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour: ratified by Act No. 00-54/AN-RM of 9 August 2000

Supplementary protocols on the implementation of the various phases of the Protocol relating to Free Movement of Persons, Residence and Establishment in the Economic Community of West African States

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