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Defending Civil Society

*Report on the Laws and Regulations
Governing Civil Society Organizations*

in

Mali

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*Statements and views expressed in this report are those of the author and do not necessarily reflect that of the World Movement for Democracy, the National Endowment for Democracy, or the International Center for Not-for-Profit Law.

INTRODUCTION

The events of March 26, 1991, which led to the downfall of Mali's Second Republic, resulted in the immediate establishment of a fully democratic system and followed popular demand that the State fully recognize and respect civil liberties. This subsequently led to the adoption of new constitutional provisions, such as freedom of assembly, association, and expression to all persons. Indeed, the Preamble of the Third Republic's Constitution declares the people's commitment to improving quality of life, as well as protecting the environment and the country's cultural heritage.

Ever since these reforms, the proliferation and mobilization of civil society organizations have become necessary not only because of the State's increasing unwillingness and inability to acknowledge the people's concerns, but also because of the evident weakening of opposition parties, traditionally thought of as the State's counterweight. Civil society's nature and composition make it a heterogeneous, yet indispensable, participant in policy debates about the country's development. Indeed, given its contribution to national development, its proximity to the neediest communities, and its legitimacy, civil society expects to participate fully in the dialogue among development stakeholders. As a result, civil society has begun to organize and strengthen itself, and engage in an effective, substantive dialogue with the State, local authorities, technical and financial partners (TFP), and the media. This process has led to the establishment of an informal network, called the Mali Civil Society Organization Forum (*"Forum des Organisations de la société civile au Mali"*), that works to foster collaboration among the various CSOs.

Like elsewhere in the world, the proliferation of associations, the implementation of decentralization laws, and a wider distribution of responsibilities across society speak to the rebirth of civil society in Mali.

Law No. 04-038 / ANRM of August 5, 2004, pertaining to associations, repealed the previous Ordinance No. 41/P-CG 28 of March 1959, which governed the same systems. Article 2 of the Law defines "association" as the agreement by which several people commit to pooling, on a permanent basis, their knowledge or activities for purposes other than profit-sharing. Trading companies, mutual benefit societies, cultural and religious associations, congregations, cooperatives, trade unions, political parties, professional associations, and foundations subject to special regulations do not fall within the scope of this law.

However, apart from the associations defined in Article 2 of the Law, any body of persons independent from State institutions whose purpose is to contribute to the social welfare must also be considered a part of civil society.

LEGAL BASIS FOR CIVIL SOCIETY ORGANIZATIONS

Mali is a decentralized unitary state. From an administrative standpoint, its functions are essentially divided into: eight regions, 49 *Cercles* (the second level administrative unit), and 703 Communes, including 19 urban Communes and 684 rural Communes.

The Constitution

The Constitution of February 25, 1992 (Third Republic's Constitution) states a commitment to defend the rights of women and children, along with the cultural and linguistic diversity of the national community, and to improve citizens' quality of life, protect the environment, and defend the country's cultural heritage.

In Article 5 of the Constitution, the State recognizes and guarantees, under conditions defined by law, freedom of movement, freedom to choose one's residence, and the freedoms of association, assembly, procession, and demonstration.

Laws

As noted above, Law No. 04-038 AN-RM of August 5, 2004 repealing Ordinance No. 41/P-CG of March 28, 1959, governs associations in Mali, except for the following groups:

- Trading companies;
- Mutual benefit societies;
- Religious associations;
- Congregations;
- Cooperatives;
- Trade unions;
- Political parties;
- Professional associations; and
- Foundations.

These particular bodies or associations of persons are governed by specific provisions.

For example, the creation and operation of religious associations and congregations are regulated by Ordinance No. 59-42 / PCG of March 28, 1959, whereas political parties are regulated by Law No. 00-045 of July 7, 2000. This law repealed Ordinance No. 91-075 / PCTSP of October 10, 1991 that established the Charter of Political Parties. Article 2 of this ordinance defines political parties as "civic organizations united by a concurrence of ideas and feelings embodied in a social agenda, which they strive to realize through democratic means."

Malian legislation thus makes a fairly clear distinction between associations commonly labeled as "*de type loi 1901*" (i.e. non-profits under a law modeled after the French "Law of 1901"), which are governed by Law No. 04-038 AN-RM of August 5, 2004, and other organizations. The purpose of the former, by process of exclusion, is neither religious, economic, nor corporatist.

Components of Malian Civil Society: Civil Society Organizations (CSOs)

Although the concept of civil society is still not fully defined and continues to foster great debate about what it encompasses in Mali it includes (in practice at least) all non-political and non-state actors working in any field to further the people's interest, namely associations regulated by Law No. 04-038 AN-RM of August 5, 2004, cultural associations, non-governmental organizations (NGOs), and foreign associations.

ESTABLISHMENT & REGISTRATION

Under Article 3 of Law No. 04-038, pertaining to associations in Mali, all are free to join with others to form associations, and may do so without prior authorization. However, an association has no legal capacity unless it complies with the declaration requirements prescribed in Article 6 of the Law.

Declaration of Association: Contents and Conditions

The Declaration must be filed with:

- The Ministry of Local Government (*Ministre chargé de l'Administration Territoriale*), in the case of political, humanitarian, and foreign associations; and,

- State representative in the District of Bamako, as well as in the *Cercles*, in the case of other types of associations.

The Declaration must contain the following items:

- Name of the association;
- Purpose;
- Addresses of its headquarters and other offices; and,
- Names, occupations and addresses of its administrators.

The minutes of the organizational meeting and the Declaration of the Association must be included with this document. Once the Declaration of Association has been filed, the Administrative Authority issues a receipt certifying it. The founders are required to publish the Declaration of the association in the Official Journal (*“Journal Officiel”*) within three months.

Legal Effect of the Declaration

The Declaration in proper form and its publication give the association the legal capacity:

- To party to legal proceedings (sue and be sued);
- To acquire property for consideration; and,
- To hold and administer membership dues, as well as own administrative offices and buildings necessary to accomplish its mission.

Dissolution of an Association – Penalties

Being governed by the general principles of Mali’s contract laws, an association can be dissolved in accordance with the procedure laid out in its statutes or by resolution of the members assembled in a general meeting. An association can be invalidated if its objectives or mission is contrary to laws and morality, or if its activities are likely to undermine the territorial integrity and the republican character of the State. In addition, an association may be dissolved by court order consequent to a petition by any interested person, or under Article 13 of Law No. 04-038, by a Decree of the Council of Ministers, in cases of violations of public order.

If an association is invalidated or dissolved, its premises are closed and it is prohibited from undertaking any activities under risk of criminal penalties.

In practice, no difficulties or legal disputes have arisen as a result of the application of Articles 12 and 13 of Law No. 04-038.

Tax Treatment of CSOs

There are no special tax benefits for associations in Mali’s Tax Code (*Code Général des Impôts*). They are therefore subject to the taxes applicable to the activities they are licensed to carry out in Mali.

These are primarily:

- Value Added Tax (VAT);
- Payroll tax on labor contracts;
- Tax on salaries and wages, borne by workers, but levied and paid to the State by employers; and,
- Customs import taxes.

However, in accordance with the provisions of Articles 37 to 40 of the Law on Associations, associations and NGOs (both domestic and foreign) can enter into a framework agreement with the

State, which defines the commitments incumbent upon both parties and that may, under certain conditions, provide for exemptions and other tax benefits.

Contributions to CSOs do not receive special tax benefits. Given the increasing role played by civil society in every domain, the establishment of a tax system which encourages donations is highly desirable.

RULES SPECIFIC TO PUBLIC INTEREST & FOREIGN ASSOCIATIONS

a) Associations recognized as public interest organizations

If they meet certain conditions, officially registered associations that pursue public interest objectives can apply for and obtain the status of a public interest association. These associations are eligible for state assistance, and may receive donations and bequests from any person or entity. This legal status also facilitates the process of obtaining tax benefits with a certain framework agreement.

The application to obtain public interest status, signed by duly authorized persons, must be addressed to the Ministry of Local Government, and must contain the following:

1. Copy of the Official Journal ("*Journal Officiel*") excerpting the Declaration of Association or a certified copy of the Declaration;
2. Brief statement indicating:
 - the association's origin,
 - the public purpose of its activities, and,
 - where appropriate, the structure and operating framework of its local committees and their relationship with the association;
3. Ten copies of the articles of association;
4. List of its offices and their addresses;
5. Association's membership roll;
6. Financial statements for the last three years, certified by a licensed accountant, as well as the budget for the current year;
7. Statement of the association's tangible and intangible assets;
8. Document certifying that the association owns the securities that will serve as the basis for its endowment;
9. Statement of the association's liabilities, if applicable; and,
10. Ten copies of the association's General Assembly resolution authorizing a filing for recognition of public interest status, bearing, in particular, the names of the two delegates responsible for allowing amendments to the articles of association.

Under Article 16, paragraph 2 of the law, recognition of the association's public interest status can only be granted after a five-year probationary period of its operation.

The decree granting recognition of public interest status is issued after the application has been reviewed and approved by the Ministry of Local Government and after the Supreme Court has rendered an opinion.

Given how burdensome any dealing with government bureaucracy can be, the length of time required to obtain the decree granting public interest status can vary. The speed of the process may depend on personal relationships.

Recognition of public interest status can be withdrawn in cases of mismanagement and violations of the statutes, or when the association has been inactive for two years.

b) Foreign Associations

Any body of persons constituted as an association, as defined by Law 04-038 of August 5, 2004, is considered to be a foreign association if its headquarters are based abroad, some or all of its directors are foreigners, or at least a quarter of its members are foreigners.

To carry out its activities in Mali, any foreign association must obtain prior approval from the Ministry of Local Government. The request must include:

- Name and purpose of the association or office;
- Place of operation; and,
- Names, occupations, addresses and nationalities of its foreign members and of those who, for whatever reason, are responsible for the administration or management of the association or office.

This authorization, which may be withdrawn if the association violates its obligations, is required for all of the association's offices (if applicable).

CSO COORDINATION

Given the great number of national and foreign associations operating in Mali – often working in the same sector simultaneously – CSOs have decided to organize and unite to coordinate their activities and enhance their effectiveness. Coalitions of associations, variously structured into umbrella groups, federations, networks, joint committees, *groupes pivot* (NGO consortia involved in specific fields), etc., have been created, and there are now umbrella groups and networks for all types of CSOs. These umbrella groups serve as venues for exchange, communication, and consultation among member organizations and constitute a valuable service-delivery tool in areas such as capacity building, protection against external threats/interference, defense of common interests, etc.

There are national umbrella organizations, such as CCA/ONG, SECO/ONG, and CAFO, as well as regional ones, that tend to assert their independence on every level, along with sectoral coordinating networks, such as the *Fédération Nationale des Associations de Santé Communautaire* (FENASCOM – National Federation of Community Health Associations), the *Fédération Nationale des Parents d'Élèves et Étudiants du Mali* (FENAPEEM – National Federation of Malian School Children's and University Students' Parents), the *Association des Organisations Professionnelles Paysannes* (AOPP – Association of Professional Farmers' Organizations), and the *groupes pivot*, such as the *Groupe Pivot PME/PMI* (small and medium businesses and industries), the *Groupe Pivot Éducation de Base* (education), the *Groupe Pivot Santé et Population* (health and population), the *Groupe Pivot Droits et Citoyenneté des Femmes* (women's rights and citizenship), and the *Groupe Pivot Développement Social* (social development).

With a similar goal in mind, most CSOs working in Mali ratified the creation of an apolitical, non-denominational, and non-profit entity, called *Conseil National de la Société Civile* (NCSC - National Civil Society Council), at a General Organizational Assembly held on March 27, 2008. The objectives of this entity include:

- To contribute to the development of policies, programs, and projects at the local, regional, and national levels;

- To develop collaborative relationships between CSOs and the State, civil society and the private sector, and civil society and development partners, to create, maintain, and strengthen a tradition of open consultation and dialogue;
- To create the best environment for dialogue and consultation among CSOs, and strengthening their negotiating, advocacy, and lobbying abilities; and,
- To bring points of view to the table and defending positions in the sole interest of citizens.

CONCLUSION

Priority Issues

The concept of civil society does not currently have a precise regulatory definition. In practice, it is not uncommon to find that some civil society actors are also political party activists or even elected government officials, a situation which can create conflicts of interest.

Civil society would only be able to fully play its role of counterweight, mediator, and watchdog if it is considered in its narrowest definition, and stands totally independent of political power and the government. With this narrow definition, there will be a greater appreciation for civil society's contributions to society and complement that it provides to the state.

Strategic Responses

The National Civil Society Council, which is the largest CSO umbrella organization, must take the necessary actions to achieve the following:

- To develop a clear definition of the concept of civil society to ensure the independence of CSOs from political power and the government;
- To increase the legal means and avenues available to civil society to access government information;
- To improve the image and credibility of CSOs through technical, financial, and organizational capacity building, and through the exercise of greater rigor in the selection of representatives and the management of association and NGO resources;
- To review the relationships between civil society and its partners to ensure a better balance in the dialogue among CSOs, the government, and financial partners;
- To review and revise the National Civil Society Council's relationship with institutions to establish a new form of civil society in which CSOs have a separate place in the decision-making process at all levels and in all sectors.