

Mali Access to Information Mission

June 2004

Consultants' Report

Introduction: Terms of Reference, Background & Methodology

1. At the invitation of President Touré, on behalf of the Carter Center we conducted an assessment visit, 14-17 June 2004. Our Terms of Reference were:
 - To assess the opportunities for developing an access to information regime in Mali;
 - To advise the government of Mali on the options for the way forward;
 - To make recommendations as to design of an appropriate project and action plan, in relation to potential Carter Center support.
2. At present there exists a law passed in 1998 and implemented and put into effect in December 2003 through a Presidential Supreme Decree. This law 98-012 "Governing the Relations Between the Administration and Public Service Users", contains a provision related to accessing certain administrative documents and properly implemented could serve to increase transparency, but is not intended to be nor is it a comprehensive access to information law.
3. We conducted a series of meetings with relevant stakeholders (a full list is attached as an appendix), all of which were very helpful and informative. Despite the obvious shortcomings of such a condensed mission, we feel that we gathered sufficient information to provide a set of recommendations about the way forward.
4. In doing so, we are fully cognizant of the limitations of our knowledge about Mali. Moreover, we are very cautious about what we advise, given the manifest difficulties of the Malian context. Mali is constrained by the level of its institutional and socio-economic development. It is very important that any action plan be realistic in its range and objectives. We do not want to fall into the trap of offering ideas that would serve merely as "window dressing" with little or no prospect of success or implementation, as this would only serve to further frustrate government and civil society.

5. Hence, our recommendations are primarily directed towards conceptualizing and supporting a process of strategic planning that will enable the Malian government, Parliament and relevant civil society stakeholders to make their own choices about the priorities and what is achievable.
6. Access to information (ATI), properly implemented, can make a huge difference to both people and their governments. There is a body of knowledge from around the world that demonstrates the multi-dimensional value of transparency and access to information, which is now considered by many as a universal human right:
 - 6.1 ATI is good for government, as it helps it to modernize its approach to providing public services, through among other things establishing effective record-keeping and records management and thus being more efficient and more responsive to the needs of its users;
 - 6.2 ATI helps in the fight against corruption: “Sunlight is the best disinfectant”;
 - 6.3 ATI helps business and encourages investment: the private sector likes to know the rules of the game; openness inspires confidence;
 - 6.4 ATI gives people the right to know: holding government to account is impossible without information. Moreover, with information people can realize other human rights, especially socio-economic rights such as clean water, adequate housing and health care etc., and can help protect their other rights, such as the right not to be discriminated against.
7. In preparing this report, we draw on our own experiences working in the realm of transparency in a range of countries, including Bolivia, Jamaica, Nicaragua, the United States, South Africa and Mozambique. As we pointed out during our visit, in the past decade there has been an explosion of ATI activity around the world. Many of the forty-five or more countries that have passed ATI laws are developing countries and so there is a new body of experience on how to implement an ATI regime in the context of severe institutional, resource and other socio-economic constraints.
8. Thus, the principles that guide our approach are:
 - 8.1 **Realism**: we want to support a process and a plan of action that is doable in practice;
 - 8.2 **Complementarity and Value Added**: the ATI project should be complementary to existing initiatives – whether governmental, donor or Carter Center. The project design should take account of existing initiatives and strategies and should aim to supplement them and not distract scarce resources from them.

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

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

Key Findings

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

capacity for delivery in the public service through activities such as strengthening management, facilitating de-centralization and re-organizing central government agencies. The sixth pillar of the program, Communications and relations with public service users, is of direct relevance.

13. The 1998 “Governing the Relations Between the Administration and Public Service Users” law was intended, as its name suggests, to help improve the quality of service being offered to the public by government. As discussed above, part of the law provides for access to public documents and to a limited extent provides for a right to access information. We say ‘limited extent’ because it does not bear comparison with what we would regard as a comprehensive or viable ATI law, based on the many lessons learned from the international experience of the past decade.
14. For example, the law provides very broad exceptions to information that will be released, without consideration of the public interest, and makes minimal provision for procedural issues such as user guides to assist applicants in understanding what information is available, information officers responsible for implementing the law, mechanisms for transfer of requests, sanctions or clear appeals provisions. Having said this, we recognize that the law was passed with a very specific intention, namely, to buttress citizen-public service delivery and not to give a comprehensive right of access.
15. In December 2003, a Supreme Decree was passed giving effect to the law and, in essence, repeating the main provisions of the law with some additional details in parts. The Decree is now in effect and so, in theory at least, citizens of Mali may now request access to public information, subject to the rather broad exemptions listed in the law and the Decree. However, there does not appear to be a high degree of awareness regarding either the law or decree.
16. On the civil society side, we understand that there is a reasonably vigorous group of NGOs, some of whom we met with. The media enjoys a large degree of freedom, certainly compared with some neighboring societies. This is important because in any ATI regime and its development, the media is a primary – though not *the* primary – stakeholder. We want to emphasize this point. ATI laws are for the benefit of all citizens, especially the more disadvantaged and socially and economically excluded, and not solely for the elites.
17. The community radio sector is particularly vibrant, with some 200 radio stations. This is a critical asset given the very high level of illiteracy (up to 90%) and provides an opportunity that should be grasped when planning the enactment of an ATI plan.

Primary Issues:

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

Options:

22. Based on our brief mission and analysis we suggest that the Malian government has the following basic options at this time:
- a. Implement the 1998 Law and more recent Supreme Decree, thus providing “users” a limited access to some critical documents, such as birth certificates, but do not undertake any other initiatives to extend people’s broader rights to information;
 - b. Halt the process of implementing the 1998 Law, rescind the bill, and begin drafting a new comprehensive right to information; or
 - c. Begin efforts toward implementing the 1998 Law and 2003 Decree, and use this as a platform (or pilot) for a more comprehensive access to information regime in the future.
23. We would advise the government against halting the process and rescinding the law, (i.e. choosing option b), as this could result in de-legitimizing efforts towards greater transparency and good governance if interpreted as a sign that the government is either not committed or not capable of moving forward.
24. Choosing option (a) would demonstrate the government’s commitment to improving public service, but would not serve to provide the more far-reaching access to information regime that most people we spoke with indicated they preferred. If the decision is made to focus solely on implementing the present law, the limits of the right to information should clearly be stated so that civil society expectations are reasonable and in conformity with the limited access law 98-012 provides.
25. Option (c) would allow government and civil society to treat the current period, with the Supreme Decree now in effect, as a Pilot phase while concurrently, giving consideration to the development of a more comprehensive right to information. The advantage of this approach is that a number of lessons can be learned by assessing the impact of the Supreme Decree in terms of how it is applied by government and used by citizens. During this period, government can begin preparations for a broader right to information, and an awareness-raising campaign could commence. A pilot phase would also provide a basis for the diagnostic testing we propose below. If option c is preferred, it would be important to clearly communicate the pilot ‘learning-by-doing’ approach adopted so that public expectations are reasonable.

Recommendations

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

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

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

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

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

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

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

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

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

Phase One: Full Assessment and Consultation:

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

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

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

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

¹ The results from the Senegalese study can be shared with Mali as soon as ODAC has them.

29. Legal Review:

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

In addition, in the context of the review of the Malian constitution, the inclusion of a right to access to information could be considered, in line with newer constitutions, such as the South African constitution.

30. Stakeholder Mapping & Awareness-Building:

As we explained during our visit, our working hypothesis for the successful implementation of ATI regimes is the creation of both a supply and a demand for information. On the one hand, government must deliver an effective supply. This is a necessary but not sufficient condition for success. On the demand side, civil society must be prepared to request information. The trajectory of the two lines, and their point of intersection, determines the quality of the information regime. In cases where there has been a strong demand for an ATI regime, such as South Africa, India, Bulgaria, Mexico and Jamaica, the law has a far greater chance of meeting its stated objectives. Concerted civil society action increases the prospects of the law being both implemented effectively by government, and used properly by civil society to request and attain important information that can make a difference to people's lives.

Therefore, we propose that during this second phase, the principal appropriate stakeholders be identified and consulted, and if agreed, an information-sharing program be prepared and conducted for them. Usually, the main stakeholders are:

- Democracy and Human Rights' orientated NGOs and Institutes
- Development NGOs and Networks
- Umbrella organizations for community organizations, and social movements
- Trade Unions
- Representative religious organizations
- The Media
- Public Service Unions
- The Private Sector
- Relevant government agencies and departments
- The Legislature

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

Mali may be different, however. Hence the need to conduct a brief mapping exercise. The initial awareness-building program can be short and intense and could rotate around the visit of appropriate international experts. Seminars and public meetings can be conducted; and the media enlisted to disseminate information about the issue. We have stimulated such a discourse in Jamaica and elsewhere; in Mozambique, a facilitated “Open Democracy Week” was supported in September 2003. The object would be to stimulate interest in the subject and to inform the debate. We recommend that where possible, Mali draw on the growing African experience of organizations such as ODAC and its parent NGO, the Institute for Democracy in South Africa (IDASA), as well as the Carter Center experiences.

Phase Two: Consensus Building

31. It is well established that a good *process* is a necessary ingredient in building a new ATI regime. ATI is essentially about changing the rules of the political game and building a new relationship, based on trust, between government and citizens. Hence, the process of law-making must be credible and participatory. No society is going to easily accept a law-making process that is forced upon it or conducted in a rushed and secretive fashion. Proper consultation and participation is essential. Developing strategic plans for the government supply side and the civil society demand side in parallel has considerable advantages, as we have discovered in Jamaica and Bolivia. It enables both sides to develop a common understanding of the challenges and what needs to be done. We recommend that such a process be facilitated by the Carter Center, by the holding of workshops.
32. Specifically, we recommend the creation of a Stakeholder Reference Group containing representatives of government and civil society.
33. In addition, the most important government departments and agencies must be consulted and where their internal co-operation is vital for the development of the project, this should be supported. For example it is clear, that the Ministry of Public Administration and State Reform and the Ministry of Communications should consider coordinating their activities and strategic approach.

Phase Three: Strategic Planning

34. In our experience, all governments benefit from independent, external assistance when it comes to strategic planning; a detached viewpoint can contribute to the intellectual integrity of the thought-process. The aim, therefore, would be to support a process that produces a credible and viable Logical Framework (Logframe) – a planning tool that can exist as a lynchpin for the implementation and capacity-building effort that must follow. Logframes are commonly used by the major donors, such as the EU and DFID, to help them and their partners develop a focused project, with appropriate and agreed indicators for success. Good logframes are produced following the sort of detailed stakeholder mapping and environmental scanning that we propose above. Outcomes for the project can then be identified and agreed and appropriate activities designed.

Phase Four: Implementation

35. The Fourth Phase would be the unfolding and implementation of the action plan agreed during the previous phases. This may include efforts to implement the 1998 Law and 2003 Decree (capacity building for responsible public servants, development of records management etc.); awareness raising; public information campaign; and discussions regarding the more comprehensive right.

Phase Five: Review

36. We suggest periodic reviews take place, desirably after each phase, and a broader review be held in about 12 months time, depending on the commencement and duration of Phase One.

Conclusion

37. Lastly, the role of the Carter Center must be considered. Given the limitations of its own capacity, it may be best for the Carter Center to continue to focus on government, and to bring in other partners, ideally from Africa, to support the civil society side of the project in the longer term. During each of the phases, The Carter Center can play an important role as independent facilitator and convener of relevant stakeholders; by informing the debate by bringing in appropriate experts; as a technical advisor; and by supporting the strategic planning as recommended.

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