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**STUDY REPORT FOR THE OECD DEVELOPMENT ASSISTANCE COMMITTEE**

**THE MALI DONORS' PUBLIC PROCUREMENT PROCEDURES:**

**TOWARDS HARMONISATION WITH THE NATIONAL LAW**

by

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**- JULY 2000 -**

## REPORT SUMMARY

The Mali Aid Reform Secretariat appointed Eric Garandeau, Inspector of Finance, and Jean Ruche, General Engineer for Agriculture and Forestry Engineering and Water Development, to assess donors' public procurement procedures.

This mission is part of the OECD Development Assistance Committee's (DAC) pilot review of the international aid system in Mali in order to "*analyse the strengths and weaknesses of the system and make recommendations to improve its impact and effectiveness*".

The harmonisation of donors' public procurement procedures is a particularly acute issue in Mali due to the predominance of foreign financing in the country's public investments. This issue should be considered in terms of ownership by the aid programme recipient country in keeping with the objectives defended by the donors themselves.

The mission took place in Bamako from 22 May to 2 June 2000. During their visit, the auditors met with the Malian administrations (the Foreign Affairs, Finance and Health Ministries, the Public Procurement Directorate-General (*Direction générale des Marchés publics*, DGMP), the Decentralisation and Institutional Reforms Mission, and the delegate works body<sup>1</sup>) and the representatives of the relevant donors<sup>2</sup> and NGOs<sup>3</sup>.

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The main finding is that, although Malian government and donors apparently subscribe to common rules and objectives, they use a multitude of different public procurement procedures. This creates a breach between:

- **A consistent national procedure** controlled by a central authority, the Public Procurement Directorate-General, extensively engaged in the decentralisation process. Yet this procedure has certain effectiveness, transparency and efficiency shortcomings. In particular, procurement lead times are too long, which undermines effectiveness;
- **And the many, complex procedures specific to each donor** and linked to the national mechanism in different ways.

These procedures all present the same objectives of free competition as a condition for transparency and effectiveness, with the result that they have the same legal rules and similar award and auditing procedures.

However, they are very different in terms of the devolution of decision-making power to the local agencies, procurement thresholds and specific award and payment methods. They often give rise to the creation of specific management cells separate from the Public Procurement Directorate-General.

This produces a number of failings in terms of aid effectiveness and Mali's ownership of it.

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<sup>1</sup> AGETIPE (Agence d'Execution de Travaux d'Interêt Public pour l'Emploi).

<sup>2</sup> Germany, the World Bank, Belgium, Canada, the United States, France, the Netherlands, the UNDP, Switzerland and the European Union. (However, they were unable to meet a German or Canadian representative).

<sup>3</sup> Comité de Coordination des Actions des ONG (committee for the co-ordination of NGO action).

A choice of one of two means of improvement is proposed to remedy this situation: either alignment by means of internal co-operation among donors or alignment with an external target, the national procedure.

The first option assumes that the donors, possibly under the auspices of a lead manager, can manage to agree on the definition of a common procedure or at least uniform and internationally acceptable standards. This option is complicated by the observed differences between donors, how established and complex their procedures are, and the risk of the idea of a lead manager being rejected. In trying to find a consensus, it could end up with a form of compromise that the donors and the Malian government are unlikely to find satisfactory.

The option of alignment with the national procedures appears to be easier to implement, since it does not imply the predominance of one system over another and allows each donor to progress at their own pace towards a clearly identified target. It is also in keeping with a fundamental development assistance objective, i.e. Mali's management of its own institutions and development.

The recommendations made relate to this second option. Some of them concern the donors:

- **Withdrawal of exclusivity clauses and rules of origin;**
- **Use of the threshold notion to fit in with the national procedure;**
- **Devolution of responsibilities to local representatives;**
- **Harmonisation of payment procedures and gradual integration into Mali's public accounts.**

At the same time, a set of provisions is proposed to improve Mali's national mechanism:

- **Modernisation and adaptation of the public procurement code.** In particular, simplified procedures should be defined for small contracts and consumable supply contracts, the committee's bid consideration methods should be stipulated and the number of decision-making channels reduced;
- **Use of aid programmes to support the Malian administrations' management of procedures:** transfer of the mechanism to the Ministry of Finance, its continued adaptation to decentralisation, and strengthening of the Public Procurement Directorate-General and the departments that prepare and manage public procurement.

Assistance to the Public Procurement Directorate-General should concentrate on improving its overall performance by means of formalising the procedures, preparing standard bidding documents, updating the computer equipment, and organising the dissemination of information on invitations to bid and their results.

Assistance to the Malian administration should take the form of a drive to train all the managers concerned: the DGMP and the ministry and local authority financial and technical departments, and also small businesses and local suppliers.

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There is a risk of deadlock in the current situation, since each partner could find it worthwhile to maintain the status quo: the Malians because they benefit from project structures financed by the donors, and the donors because they would continue to control the execution of their programmes.

The recommendations can only form a realistic package if at least two conditions are met. First of all, a strong political will on the part of both the donors and the Malian party is required to change the traditional rules and intervention frameworks. Secondly, harmonisation should be established step by step, with suitable evaluations and auditing mechanisms so as to maintain programme effectiveness, sustain the confidence of donors and public opinion, and guarantee the continuity of development assistance.

The steps towards harmonisation could be based on carrying on and completing the think tank work started by the aid secretariat in the form of working parties of public procurement practitioners. The aim of this is to make a point-by-point study of the harmonisation methods to be used to attain the dual objective outlined : convergence towards national procedures and improvement of these national procedures, in particular by using the best practices developed by the different donor systems.

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## INTRODUCTION

This report has been written for the OECD Development Assistance Committee's (DAC) pilot review of the international aid system in Mali to "*analyse the strengths and weaknesses of the system and make recommendations to improve its impact and effectiveness*".

It addresses part of the second point on the work programme – harmonisation of co-operation action procedures and execution conditions – in the form of a study of public procurement and fund raising procedures.

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Harmonising donor public procurement procedures is a particularly acute issue in Mali in view of the preponderant share of foreign financing in the country's public investments. It is hard to measure the real magnitude of these aid flows, since a large proportion is managed by parallel management structures that do not come under the budget and public accounting procedures used by the administrations. The World Bank<sup>4</sup> estimates that 64% of public procurement is financed by foreign resources for a total of approximately 78 million dollars. Half of these contracts are works contracts, one-third are supply contracts and the rest are service contracts.

The juxtaposition of procedures and parallel structures makes it hard to evaluate the real weight of aid in Mali's total GNP and probably minimises the GNP itself. It also means that the government has less economic and political control and less of a hand in the country's development.

Public procurement procedures should therefore be studied from the point of view of their ownership by the recipient country of the aid programmes. This approach is also being studied by the Development Assistance Committee and is approved by most of the donors, especially the multilateral donors such as the United Nations Development Programme (UNDP) and the World Bank. For example, the UNDP procedures manual states that, "*national execution should be the norm for programmes and projects supported by the United Nations system, taking into account the needs and capacities of recipient countries*".<sup>5</sup>

However, some donors are apprehensive about the capacity of the developing countries to take on the full responsibility of managing public procurement. They believe that effectiveness and transparency concerns justify adopting specific procedures and management structures that can easily be controlled by the donors, at least during a transitional period.

To resolve this dilemma between programme effectiveness and procedural transparency on one side and local accountability and recipient country ownership on the other, it was necessary to make an objective inventory of the procedures and management systems based on the collection of data on the donors and the Malian party.

Part of the data was collected during a fifteen-day mission in Bamako. A table was then drawn up to compare the different systems at each stage of the procedure, from the competitive bidding to the disbursement of funds. The rest of the data was collected by correspondence. However, not all the requests were answered despite appeals from the donors via the Aid Reform Secretariat. This report is therefore more of a starting point than a result, which is in fact in keeping with the mission's terms of

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<sup>4</sup> Analytical report on procurement procedures in Mali, World Bank, 24 December 1998.

<sup>5</sup> UNDP procedures applicable to national execution, February 1998.

reference whereby “*the objective is not to make recommendations, but to provide food for thought for a seminar*”.<sup>6</sup> The report nevertheless makes proposals, which are open to discussion.

This report starts with an inventory of national procedures and donor procedures. Although the Malian government and the donors have common rules and objectives, public procurement continues to be managed by a multitude of procedures. In the light of this, the mission recommends that the donors steer their practices towards greater harmonisation with the national procedures, by putting part of their assistance into improving these procedures.

## **I. ALTHOUGH THE DONORS AND THE MALIAN GOVERNMENT HAVE COMMON RULES AND OBJECTIVES, PUBLIC PROCUREMENT CONTINUES TO BE MANAGED BY A MULTITUDE OF PROCEDURES.**

The in-depth interviews with the donor representatives, arranged with the help of the Assistance Reform Secretariat, provided information on the general framework of procedures used (legal framework, ways of selecting consultants and companies, and financial regulations). They also provided an opportunity to find out about the actual execution methods used for the complex, divergent mechanisms that provide for a multitude of possibilities and have often developed over time in keeping with each donor’s assessment of the local situation.

The emphasis on enhancing national capacity-building entailed looking at the Malian public procurement management procedures first before seeing the extent to which they concur with the different donor procedures.

### **A. A consistent national procedure, but practices could be improved**

The procedures laid down in the public procurement code are described in detail in the appendix. The Code and its implementing decrees can be consulted in the documents attached to this report<sup>7</sup>. The main points are summarised below.

#### ***1. An increasingly devolved and decentralised procedure still controlled by a central authority, the Public Procurement Directorate-General.***

Mali’s public procurement code dates from 1995.<sup>8</sup> It is based on French public law principles and applies to public procurement contracted by the government, decentralised authorities, public establishments, state-owned companies, companies in which the state has a controlling interest, and private legal entities acting on behalf of the state.

##### ***a. The public procurement code is based on the principles of transparency and effectiveness***

The Malian public procurement code is based on the principles of transparency and the pursuit of effectiveness and efficiency. The basic rule is the “*competitive bidding in accordance with all forms of appropriate procedures*” irrespective of the sum of the contract. Open bids are recommended for contracts of over 10 million CFA francs for the government and public administrative establishments and over 250 million CFA francs for public industrial and commercial establishments. Dispensations

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<sup>6</sup> See terms of reference, Appendix 11

<sup>7</sup> See Appendix 1.1. for the detailed sheet, Appendix 3.1. for the procedures grid and appendices 8 and 9 for the associated regulations.

<sup>8</sup> Decree No. 95-401/P-RM of the President of the Republic, amended by Decree No. 99-292/P-RM of 21 September 1999.

are provided for a limited list of cases (limited bids and negotiated contracts) and are subject to prior authorisation from the Public Procurement Directorate-General.

*b. A decentralised organisation with a supervisory unit at the DGMP*

The public procurement preparation and execution tasks are devolved to the relevant administrations and state-owned companies. The contracting authority has the decision-making power. In the technical ministries, the administrative and financial directorates (DAFs) prepare the bidding documents. The only exception concerns works contracts and supply contracts “*of a particularly technical nature*”. These are the exclusive responsibility of the relevant technical departments. The Ministry for Public Works, Town Planning, Infrastructure, Public Works and Rural Engineering and the Ministry for Rural Development manage most of the government’s public procurement.

The DAFs are responsible for publishing the invitations to bid and receiving bids. They also play a major role in the bid analysis procedure. The director of the DAF presides over the bid examination committee. The members of this committee are DAF and technical department officials and, where appropriate, a representative of the authorising officer for the donor involved in the financing. A DGMP representative attends the opening of the bids, but does not take part in the committee’s discussions.

The Public Procurement Directorate-General (DGMP) is the mechanism’s cornerstone and supervises the procurement procedure. This supervision takes the form of declarations of no objection or amendment requests issued at each step of the way, from the approval of the bidding documents through the crucial stages of choosing the procurement method (granting dispensations from the open bidding procedure) and then examining the approval proposal made by the bid committee (approval or rejection of the committee’s decision) to the signing of the contract. The DGMP’s opinions and amendment requests are binding. An appeal to the Council of Ministers is the only way of possibly circumventing a rejection of the committee’s choice.

The technical administrations and ad hoc project structures are responsible for contract performance, the supervision of which is shared between the Financial Audit Directorate, which gives advanced approval for the commitment appropriations (conformity and legality checks), and the Public Accounting Directorate, which carries out a prior conformity audit to round out the audit by the administrative and financial directorates that give the authority for payment.

*c. The effect of decentralisation*

The decentralisation process is currently complicating the Malian institutional structure. Some 682 new communes were created in 1999 following the creation of the regions and circles established by the decentralisation law of 16 October 1996. One of these new local authorities’ responsibilities is to deliberate “*the works and supply contracts, leases and other agreements*”. The contracts for the communes cover a wide variety of sectors: “*roads, drainage and sewage collectors, public transport, the organisation of agricultural, pastoral, forestry, fishery and hunting activities, the creation and maintenance of wells and watering places, the installation and management of public amenities, etc.*”. The regions create and manage “*the regional interest public amenities especially in the following areas: secondary education, regional hospitals, road and communications infrastructures classified as regional, and tourism and energy*”.

Both the public procurement code and the local authorities code provide for the application of the public procurement regulations to all local authorities. However, the implementing decree provided for by Article 44 of the public procurement code has not yet been issued. This puts the local authorities in an awkward situation.

**2. Effectiveness and transparency deficiencies due more to the organisation and practices than the legislation.**

*a. DAF instability, partially offset by the DGMP's action.*

A study was made of some twenty public procurement contracts awarded in accordance with national legal rules. Any generalisations based on the study's findings should be made with care given the small size of the sample.<sup>9</sup> Nevertheless, the shortcomings found were acknowledged by the Malian authorities that the mission met with, especially the DGMP, which is actively endeavouring to remedy the situation.

One of the main problems concerns the preparation of the bidding documents. The administrative and financial directorates sometimes lack means and skills. Non-specialist officials generally work on this in addition to their everyday work. Moreover, turnover is particularly high in these departments, which makes it impossible to build up the DAF officials' skills and make them procurement professionals. This weakness is not offset by the use of standard documents, whether for the bidding document itself or the contract or bid evaluation report models. The World Bank criticised this situation in its last report on the subject (1998).

The DGMP's involvement has improved the quality of the bidding document, but this is not always enough to solve all the problems of content and form. The DGMP is a young institution whose current responsibilities only date back to the 1995 public procurement code. In addition to the Director and Assistant Director, the DGMP has only eight expert advisers to manage some 52 new dossiers per week. Only two of these ten officials are legal experts. The others are engineers and economists. DGMP staff turnover is also particularly high and the organisation suffers from being rather behind with computerisation, dossier filing and especially work methods (no internal procedures manual or standard documents able to be provided to the DAFs to help them prepare the bidding documents). This lack of means is responsible for the postponement of the project to publish an official bulletin on public consultations and their results, which is an important tool for transparency and effectiveness.

*b. Particularly long procurement lead times undermine effectiveness.*

The procurement lead times are made longer by all the toing and froing between the DGMP and the technical and financial administrations, sometimes with working sessions between the DGMP and these departments' officials. This is a vital point, since some donors defend their use of specific procedures that bypass the national authorities based on the fact that Mali's lead times are so long.

The mission set out to objectively observe this situation by examining some twenty contracts managed by the DGMP and a sector ministry (health). It broke down and identified the lead times at each stage in the procedure. Some contracts were entirely financed by the national budget, whilst others drew on foreign financing. In this latter case, the donors' own lead times (declarations of no objection) added to the national lead times.

The findings are summarised in the following table, which compares the theoretical lead times laid down by the legislation with the significantly different observed lead times.<sup>10</sup>

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<sup>9</sup> It was impossible to add to this sample from the donors' bid examination grids based at least partially on Mali's national procedures, since no responses were received in the time allowed the mission, with the exception of some Canadian and Swiss aid cases.

<sup>10</sup> See the document attached to Appendix 7.1. for the contract-by-contract details of these lead times.

Summary of the lead times for each player in the procedure (in days)	Legal lead times (theoretical)			Nationally financed contracts			Contracts with partial donor financing						Average real lead times	
	Min	Max	Cas particulier (*)	BN	BN	BN	I F A D	I F A D	IDA	AFD	IDA	IDA		IDA
DGMP lead times	7	30	35	29	31	34	21	19	35	77	49	47	109	36
DAF lead times	9	32	32	111	45	61	36	19	53	214	81	76	328	101
Committee lead times	15	15	30	0	25	17	8	29	15	7	46	11	16	18
Signing and registration lead times	8	24	24	48	76	13	0 (**)	0 (**)	5	12	8	0 (***)	5	31
<b>Total lead time for the entire procedure (***) inclusive</b>	<b>56</b>	<b>141</b>	<b>181</b>	<b>249</b>	<b>421</b>	<b>231</b>	<b>137</b>	<b>93</b>	<b>341</b>	<b>417</b>	<b>281</b>	<b>391</b>	<b>606</b>	<b>317</b>

(\*) These are particularly complex contracts.

(\*\*) Incomplete data: they are not included in the average signing lead times.

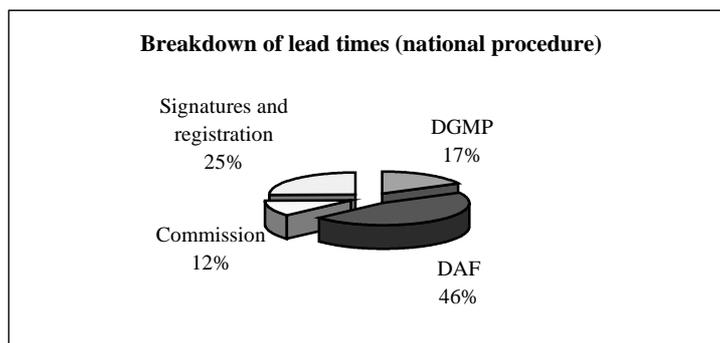
(\*\*\*) The lines do not add up to the total, since other lead times have been included (donors' declarations of no objection, etc.).

The differences found between the dossiers make it hard to make generalisations. The data collection and analysis work started by the consultants would benefit from being carried on locally. This said, there are huge differences between the legal and observed lead times. The legal lead times are between 56 and 141 days, and sometimes 181 days for highly complex contracts. This compares with an average observed lead time of 300 days for a procedure financed entirely nationally and 317 days when foreign financing is involved. The ministries' administrative and financial directorates account for a large proportion of these lead times: nearly half, with extremely long maximum lead times (214 days and 328 days for two IDA dossiers).

This is partially due to the fact that information circulates entirely on paper. Furthermore, there is no mechanism to encourage or impose compliance with the legal lead times. The only exception is the DGMP's tacit approval rule, which applies two weeks after the documents are sent and entails relatively strict DGMP management. The DAFs are not subject to this constraint and laxity consequently creeps in.

A detailed study shows that the procurement lead times are only partially justified by transparency requirements, which impose giving the bidders enough time to present their bids and the commission enough time to analyse and make its choice with the necessary distance and availability. The study of

the Health Ministry contracts<sup>11</sup> found that the bid consultation and selection phase only took up half of the procedure time. The other half is taken up by approval, signature and registration formalities.



The slow procurement contract approval and signature channels account for 25% of the lead times. Their cumbersome nature is due to the involvement of the political authorities at a very high level. Despite the efforts already made to speed the process up (six signatures are now required as opposed to twelve in the past), the two submissions to the Minister of Finance or the Council of Ministers, first to approve the procurement and then to approve the procurement contract, is a particularly long-winded procedure. Moreover, responsibility thresholds are very low. The Council of Ministers is responsible for deciding on all works and supply contracts over one billion CFA francs and all design contracts over 750 million CFA francs.

Then there are the registration formalities, which can be very long due to submission to the Government General Secretariat and especially the dysfunctions observed in the management of the 3% registration fee (ADIT). Last but not least, certain associated procedures such as obtaining the tax exemption order can also take an extremely long time, since the application cannot be made until the contract has been awarded<sup>12</sup>. These applications should therefore either be made upstream of the award of the contract or the dossier should be processed as urgent.

Add to these factors the financing agreement adoption and ratification lead time prior to bids for contracts that are at least partially made up of foreign financing<sup>13</sup>. It is not unusual to find an interval of six months between the signing of the agreement and the preparation of the bidding document. This is due to the constraints associated with its ratification by Parliament: before being voted on, the agreement has to go to the Ministry of Foreign Affairs and the Ministry of Finance and be examined by the Council of Ministers and then the Supreme Court.

Most of the donors moreover impose approval or a declaration of no objection at each major step of the procurement procedure, which adds even more to the lead times.<sup>14</sup> For example, the AFD and the World Bank issue five declarations of no objection for each contract (not counting the subsequent opinions for each payment or for technical adjustments, dispensations and so on). In the case of the AFD, this can add up to two to three extra months, since the opinions are systematically issued by the Paris head office. European Union lead times are also long, since the opinions are issued by the Commission in Brussels following examination by two separate departments. The World Bank's procedures are more satisfactory: although handled by the head office in Washington, response time is often only a few days.

<sup>11</sup> See Appendix 7.2.

<sup>12</sup> In one case, exemption application time added 10 months to the procedure.

<sup>13</sup> In theory at least, since certain procedures are launched at the same time precisely to minimise the lead times.

<sup>14</sup> See part I.B.

*c. Procedural transparency can also be improved.*

A study of certain public procurement dossiers shows that transparency conditions are not always optimal, even though definite progress has been made. This shortcoming is due to a lack of legislative precision and certain practices.

**- A considerable use of restricted competition procedures (negotiated contracts and limited bids).**

In its 1998 report, the World Bank stated that the procedures provided for by legislative texts were on the whole satisfactory. It placed Mali at the top of the list of the Sahelian countries in this regard. Nevertheless, certain criticisms were made of their application and especially of the large number of negotiated contracts, which accounted for 43% of all procurement in 1997.

Since the legislation is relatively restrictive in this area, it is the practices that have to be improved. The practice of passing adjustment contracts after “accidentally” overrunning the threshold should therefore be curbed by improving the expenditure estimation system.

The use of limited bids can also greatly reduce the amount of competition, especially where batch contracts are concerned. This procedure is justified above all for complete contracts requiring extensive experience and technical skills that few companies are supposed to have<sup>15</sup>.

The above two issues are often interlinked. The Code could therefore stipulate that, in the event of an abortive limited bid, the launch of a new procedure should take the form of an open bid if the number of compliant bids is low.

There is also some overuse of limited procedures for reasons of urgency (in one case, the dossier sat in a DAF for 45 days when it was supposed to be urgent).

In addition to the practices, the legislation itself has certain shortcomings or is not always precise enough to prevent interpretations that can undermine procedural quality.

**- Implementing legislation has not yet been issued for semi-public companies, state-owned companies and local authorities.**

The DGMP’s audit thresholds for semi-public companies and state-owned companies have not yet been defined, a deficiency already mentioned by the World Bank in its 1999 report. The same goes for public procurement by the local authorities.

**- Imprecision as to the composition and running of the bid committees.**

The public procurement code states that the bid examination committee is “*set up for each consultation, by a decision of the contracting authority; its composition depends on the envisaged operation and the financing method*”. The absence of a standing committee should normally be positive for transparency in that changing the members provides better resistance to the various forms of pressure and ensures more independence. However, the code could do with being more precise about the fact that the committee members are appointed *intuitu personae* and not merely because they belong to the department concerned. A study of the dossiers reveals that the committee’s

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<sup>15</sup> The mission studied one limited bidding case where six companies were selected to compete for all five batches when some batches had only received one bid. This constitutes excessively restrictive competitive conditions.

composition can fluctuate a great deal, and that replacements and absenteeism are not uncommon. The same holds true for the technical sub-committee responsible for the studying the technical and financial aspects of the bids. The decree governing this committee stipulates that it has to have a minimum of three members, but does not specify that they are appointed by name and are personally accountable.

These problems are sometimes due to organisational constraints. The fact that the DAFs frequently have no procurement experts and that committees are not standing means that these tasks are assigned to officials who are already working full time on standard management tasks and receive no extra pay for the additional load. The problems are also due to the committee members' lack of information about the tasks and responsibilities assigned to them.

A lack of consultation personalisation, sometimes seen in reports lacking the signature of the members present, inevitably undermines the quality and transparency of the procedure.

- **Imprecision as to the bid examination and consideration criteria.**

Bid analysis and consideration is a crucial moment in the procurement procedure. Yet the public procurement code's provisions on the consideration criteria are rather general, especially when compared with certain donors and more especially the World Bank's procedures.

The public procurement code stipulates that all the criteria must be in the bidding documents, that the price must be the predominant criterion for works and supply contracts, and that all the other criteria used must be expressed in a monetary form.

Yet a study of the dossiers shows that, in practice, liberties are sometimes taken with the legislation. The lack of definition of bidding document criteria can therefore lead the committee to interpret and add to the bidding documents to set more defined criteria and sub-criteria, which sometimes results in new criteria being invented. This work is sometimes carried out after the bids have been opened, when the committee members realise that it is hard to decide between the bids based solely on the criteria provided for by the bidding documents.

Similarly, the ways of deciding on technical bids do not always follow the public procurement code to the letter. The three-part bid procedure, with a technical examination before the financial bid is opened, is only required for design contracts. For the other contracts, Article 39 on bid opening stipulates that the table summarising the bids must contain the bid figures, lead times, variants and discounts. This means that the financial bids have to be opened at the same time as the technical bids. Yet the technical bids for works contracts are sometimes analysed before the financial bids. This can result in too much importance being placed on the technical aspect compared with the cost criteria.

Moreover, the criteria other than price are rarely expressed in monetary terms. They are often given in points, even for the works contracts, and the price is not always the predominant criterion. In fact, the financial bid is sometimes itself converted into points and the points weighting sometimes defined when the bids are examined.

- **The weakness of post audit procedures**

The DGMP's concomitant audits could do with being supported downstream by post audits of the procurement procedures used by the different technical ministries, or at least those used by the two main ministries (public works and rural development). There is currently no either private or public auditing body working on this. In theory, the finance inspectorates and the financial audit should audit the technical aspect of procurement and contract performance, in particular to make sure the contracts are not split up. However, the people that the mission met reported that this work is not done, with the exception of some rudimentary action by the financial audit directorate.

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The consequence of all these elements is that, despite the introduction of anti-corruption clauses into the public procurement code in 1999, influence and undermined transparency are very real risks in Mali. Obviously, no procedure or clause can absolutely and *a priori* guarantee the security and integrity of a contract awarding process. Indeed, donor clauses prohibiting exceptional commercial expenses have the same limits. Yet the fact is that the more detailed and binding the procedures as regards transparency, the harder they would be to circumvent. It is especially important to guard upstream against ethical risks since the Malian legal system, which is supposed to correct infringements downstream, itself has shortcomings.

## **B. Fragmented donors with their own procedures linked differently with the national procedures.**

The consultants met the representatives of eight donors in Bamako: the World Bank, Belgium, the United States (USAID), France (SCAC and AFD), the United Nations (UNDP), the Netherlands, Switzerland and the European Union (EDF). The field mission was preceded by working sessions in Paris to study the AFD and Malian PRODESS programme's mechanisms and also to gather information on the procedures used by KfW (Germany) to compensate for there being no permanent KfW representative in Mali. However, the mission was unable to meet any Canadian aid (CIDA) representatives in Bamako.

Some documents were provided in the form of specific guides (manuals for the World Bank, Canada, France, the UNDP, Switzerland and the European Union), some in a fairly unusable form<sup>16</sup> and some not at all since the document was only provisional (Belgium). Some donors have Internet sites providing information on their procedures (the World Bank, USAID, CIDA, KfW and the European Union).

### ***1. Common donor objectives reflected by similar principles and rules governing the most important points.***

#### *a. Identical objectives: free competition as a condition for transparency and effectiveness.*

The procedures of the ten donors in the study (Germany, the World Bank, Belgium, Canada, the United States, France, the Netherlands, UNDP, Switzerland and the European Union) are detailed on information sheets in the appendices.<sup>17</sup> The study covers eleven different procedures to take account of France's two-tiered aid mechanism (Services de Coopération et d'Action Culturelle and the Agence Française de Développement). The study paints only part of the picture, since other donors work in Mali (Denmark, Japan, the Scandinavian countries, the African Development Bank, the West African Development Bank, the Islamic Development Bank, Decentralised Co-operation, NGOs, etc.).

Before being incorporated into this report, all the procedures documents were sent by the Aid Reform Secretariat to the relevant donors for their comments. It would be worthwhile following up this database enhancement work on a local level so as to produce a document that relates the situation in great detail and can be used in later work co-ordinated by the Aid Secretariat. This work would probably have to take the form of working groups of procurement experts to address each point

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<sup>16</sup> USAID provided a 1,600-page manual in English and the Netherlands a manual in Dutch.

<sup>17</sup> See Appendix 2, sheets 1 to 11. The detailed grid presentation of the procedures (Appendix 4) is based on a single framework also used to analyse Mali's procedure. This approach is necessary to be able to make a comparative analysis of the different steps in the procedure. However, the type of presentation and certain features specific to each donor make this hard to do in practice.

requiring convergence. The matrix presentation can be used for many purposes (outflows by donor and sector, donor-to-donor comparisons, donor-to-Mali comparisons, etc.).

The ten donors' procedures all have a common three-way objective: effectiveness (economic, technical and lead time), free competition and transparency.

This is reflected by a set of mechanisms that are relatively similar both legally and in terms of their award and financial payment procedures, which form a common core among the donors.

*b. Identical legal rules*

The financing conventions and agreements make specific reference to the procedures used. In all cases, these procedures provide for the following elements:

- Free competition to obtain the best technical and financial bid (performance, lead times and guarantees);
- Honesty and transparency in the procedure: local and/or international publicity and anti-corruption clauses;
- The aid recipient's accountability in programme execution;
- Right granted to the donor to ensure compliant use of funds (prior, concomitant and post audits).
- Tax exemptions;
- General conditions covering guarantees, penalties, exclusions, cancellation, insurance and *force majeure*;
- Dispute settlement provisions;
- Internal audit mechanism at local agency level.

*c. Similar award procedures.*

The donors' systems identify three to four types of contracts: supplies, works (or "services") and sometimes a specific system for consultants and/or consulting firms. They define the financial thresholds by contract type.

All the donors provide for two general types of consultation: open and limited bids (following prequalification of bids or preselection from a list) in an international competitive (ICB) or local competitive (LCB) form.

They also all provide for specific procedures generally associated with thresholds and/or specific services: negotiated contract procedure, range contracts, running contracts and intended procurement. These specific and/or simplified (framework contract) procedures are managed specifically, since they partially depart from the competitive bidding and transparency principles and are only used in a limited number of cases with the approval of the donors.

The bidding documents (BD) must contain the same elements: general administrative and technical conditions of contract (GATCC) and special administrative and technical conditions of contract (SATCC); bid eligibility and evaluation criteria; references, norms, lead times and methods; guarantees; bid submission and bond forms; and price details, sub-details and estimate.

The bidding documents must be precise and devoid of any ambiguity. They are generally submitted to the donor for approval. Donors usually provide standard documents, but may accept the national model provided it does not contradict their standard documents. If needs be, the SATCC can contain clauses specific to the donor. All the donors consider the quality of the BD and the launch of the consultation to be fundamental to the smooth running of the entire procedure.

The principle of public bid opening in the presence of a donor representative is also accepted by all the donors with the exception of Canada, which provides for the possibility of opening bids behind closed doors.

The committee is appointed by the aid recipient a short time before the bids are opened. Formal conditions commit the committee members to confidentiality and forbid them from having any ties with the bidders. The bids have to be analysed on the basis of the selection criteria defined in detail in the bidding documents. A detailed analysis report signed by the chairman and all the committee members should normally be provided.

A technical evaluation decides on the acceptability of bids for works and supply contracts. The lowest bid is then generally chosen. The second lowest bid may nevertheless be chosen on the basis of its bond, lead time and after-sales service clauses.

For consultant contracts, the technical bid has the dominant weight (60% to 80% of the evaluation) over the financial bid (20% to 40%). The bid chosen is the one with the best overall score. All the donors place the utmost importance on the choice of consultants and often use a preselection procedure that provides extra guarantees.

Contracts can only be awarded after the donor has issued a declaration of no objection or given its approval. A cancellation clause enables the contractor to cancel the procedure if no proposal is satisfactory and to relaunch the bidding on new bases.

*d. Auditing method similarities.*

Auditing methods are relatively consistent. All the donors (with the exception of the Netherlands for budgetary aid) perform audits during the procurement procedure and then concomitant or post audits during the execution phase based on receipts and expenditure statements.

Three-quarters of the donors (all except the UNDP, Canada and France's SCAC) apply approval or declaration of no objection throughout the procedure, i.e. from procurement to the final disbursement. This is a concomitant audit in the form of a declaration, which is binding and is issued before the event in question becomes definitive and is sent to its recipient.

The post audits are more varied. Aside from the overall evaluations of the effects of the projects themselves, only a limited number of donors carry out audits to ensure that spending has been made in a proper manner. As regards the procurement procedure, the World Bank performs a post audit for all contracts not subject to a prior agreement (based on what is stated in the loan agreement).

As regards contract performance, the World Bank systematically audits the financial statements sent to it on what will be a quarterly basis with the introduction of its new integrated management system<sup>18</sup>, which also provides for a systematic independent annual audit. The UNDP also requires at least one independent audit to be carried out for each programme and project. The Swiss co-operation agency appoints a local auditing firm every year to certify its co-operation project accounts.

The other donors reserve the right to demand audits, but the reality of this practice is hard to measure. The French AFD carries out audits on samples.

**2. Elements of differentiation between the donors.**

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<sup>18</sup> Loan Administration Change Initiative (LACI), see Appendix 2.2.

Notwithstanding the common objectives and major guidelines of the OECD donors working in Mali, there are some points of divergence. These can be explained by the donor countries' different practices and even cultures.

A study of the different steps in the procedure could be made based on the analysis of each donor's procedures, detailed in the appendix.<sup>19</sup> The following two tables describe the main characteristics of the different donors' systems.

Donor procurement methods: main characteristics	
<b>World Bank (ICB IBRD/IDA)</b>	Mali's national procedure combined with specific provisions, especially for international competitive bidding: compliance with standard dossiers and specifications
<b>UNDP</b>	"In principle, the government's procurement, staff recruitment and contracting policies, procedures and rules are applied in compliance with the principles based on the UNDP rules and procedures". However, the UNDP applies fairly specific rules in Mali.
<b>European Union</b>	The EU is not a direct party to the procedure organised by the contracting authority, but the procedure is consistent with Commission regulations: specific thresholds, preparation of bidding documents by a procurement cell reporting to the Ministry of Foreign Affairs with the participation of the Commission delegation.
<b>Germany (KfW)</b>	KfW is neither in charge of the award procedure nor party to the contracts, which are the responsibility of the recipient country's contracting authority. Nevertheless, it has to make sure that the use of funds is as economical, efficient and transparent as possible. The KfW examines the proposed procurement submitted to it as part of the award procedure to see whether it respects international trade practices, especially as regards accountability, terms of payment and guarantees.
<b>Belgium</b>	Mali's procedures combined with donor audits in the form of declarations of no objection.
<b>Canada</b>	The contract award powers can be delegated to the recipient country, but the general rule for countries with relatively poor technical potential such as Mali is rather that the aid should be managed by CIDA in accordance with specific procedures.
<b>France (AFD)</b>	Mali's procedures combined with prior audits (declaration of no objection)
<b>France (SCAC)</b>	Application of the French public procurement code and associated rules when the French regulations contradict the national legal public provisions. Procedures managed by the French co-operation agency departments with consultative involvement of national partners.
<b>Netherlands</b>	The recipient country is made responsible for executing the projects and managing the contracts. The Dutch Ministry of Foreign Affairs ensures that procedures comply with the programmes' needs: compliance with cost-effectiveness, efficiency and transparency principles and no discrimination between applicants.
<b>Switzerland</b>	The Swiss co-operation agency uses an "institution" responsible for implementing the contracts. The institution must "endeavour to constructively co-operate with the administration in the country of the place of the contract" (conditions for financial management mandates). In practice, specific procedures are used in Mali.
<b>United States (USAID)</b>	Two possibilities: direct management by a specific USAID procedure or management by the partner country using a joint procedure. The possibility of using national procedures is no longer applied in Mali, even though it exists in the legislation.
<b>PRODESS sector programme involving a number of donors</b>	Application of procedures based on Mali's public procurement code. The donor can, however, require compliance with certain specific rules for all of part of the programme it is financing.

Two types of systems stand out from this table: the systems that use the recipient country's procedures, generally combined with control mechanisms in the form of declarations of no objection or approval, and the systems that use specific procedures.

The proportion of donors using one or the other system varies according to the country studied. In theory, nine of the eleven donors studied have the possibility of using the host country's procedure, provided that certain procedural transparency and effectiveness conditions are met. Of these nine, three donors have two types of procedures, one of which is a specific procedure used in the case where the recipient country's procedure is not in line with the donor country's rigour. These three donors are USAID, Canada and the UNDP. Switzerland is a case apart in that the applicable procedures depend on the aid management body (the institution), which varies by country and programme. This institution is supposed to "co-operate" with the contract country's administration. In practice, however, *Helvetia* has established specific procedures for Mali for reasons of efficiency.

<sup>19</sup> See Appendix 2.1 to 2.11.

In Mali, all the donors with a two-pronged system use specific procedures on the grounds that the transparency and effectiveness conditions are not sufficient to warrant using the host country's procedures.

The other donors adopt a clearer stance: the SCAC and the European Union use their own specific procedures and rules. The AFD, Germany, the World Bank, Belgium and the Netherlands use first and foremost the host country's national law, including in Mali.

Donor procurement methods	Use of own procedures	Use essentially of national procedures with audit mechanisms	Existence of declaration of no objection or approval procedure
<b>World Bank (IBRD/IDA)</b>		X	X
<b>UNDP</b>	X (Mali)	X	
<b>European Union</b>	X		X
<b>Germany (KfW)</b>		X	X
<b>Belgium</b>		X	X
<b>Canada</b>	X (Mali)	X	
<b>France (AFD)</b>		X	X
<b>France (SCAC)</b>	X		
<b>Netherlands</b>		X	X
<b>Switzerland</b>	X (Mali)	X	X
<b>United States (USAID)</b>	X (Mali)	X	X
<b>Proportion of donors using national procedures</b>	2 to 6	5 to 9	8
In practice in Mali	55%	45%	73%
In theory in more developed countries	18%	82%	

This table is not intended to typify the different systems. There are nuances between the donors. The systems linked to the national procedures include auditing mechanisms: declaration of no objection or dual signature system (eight of the eleven donors) and post audits (the Netherlands and the World Bank).

Moreover, there are certain similarities between the European Union (procedures specific to the EDF) and the World Bank (national procedure). The World Bank generally advocates international competitive bidding, which entails the application of highly precise rules that may depart from the national legislation. Conversely, a national authorising officer is responsible for the EDF's execution, which shows a concern for a link with the national administrations. However, this authorising officer reports to the Ministry of Foreign Affairs (as does the UNDP's). This somewhat undermines the national system, which is based on the role of the Ministry of Finance and the Public Procurement Directorate-General. Hence the ranking of the European Union and the UNDP in the category of specific systems.

Comparative analyses were made of various elements to provide more detailed comparisons (shared elements and elements of differentiation). These analyses focused on legal data (rules of origin), award procedures and payment procedures. The fact that the basic data are presented as a matrix means that other comparisons can be made to meet other objectives and a chart can be drawn up displaying more nuances than a simple two-data table.

#### *a. The rules of origin*

Three donors – Germany, Canada and France (AFD) – apply rules of origin in different forms. KfW's financing agreements generally provide for a clause stipulating that, provided there is enough competition, bidding can be limited to companies that have their head office in the Federal Republic of Germany and make a large part of their business in the country in the Federal Republic of Germany. In France, this clause is less conditioned by the extent of competition.

The multilateral donors (the World Bank and the UNDP), Belgium, the Netherlands and Switzerland do not have rules of origin. The European Union has a clause that extends to all the Member States

and associated and aided countries. Its application is not systematic. USAID does not strictly speaking have rules of origin, but has a list of countries excluded from commercial transactions with the United States (essentially for political and strategic reasons). If this list were to increase, it could be likened to rules of origin.

*b. The procurement thresholds*

The following table presents the donor thresholds for the choice of each type of procedure. It is simplified, since most of the procedures guides round out this approach with qualitative considerations. For example, open bidding is often recommended as a first choice, even when below the legal monetary threshold. Conversely, special dispensations apply to exempt procedures from formal competitive bidding irrespective of the sum of the contract.<sup>20</sup>

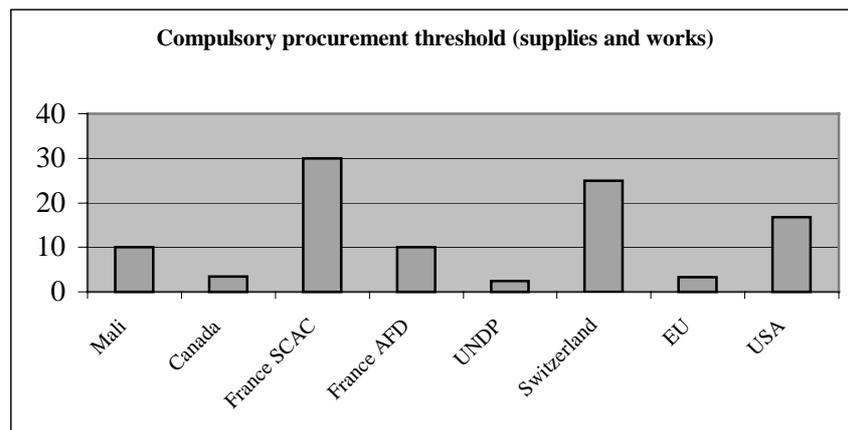
The World Bank (IBRD and IDA financing) has the most pragmatic system. No monetary threshold is normally defined. Despite the decision to use national procedures, a strong emphasis is placed on the international competitive bidding procedure: in most cases, “*these needs and interests [effectiveness, transparency and supporting the local economy] can be realized through international competitive bidding*”, but “*where ICB is clearly not the most economic and efficient method of procurement, other methods of procurement are specified in the Loan Agreement.*”<sup>21</sup> This system is different to the European Union’s system, which lays down extremely precise thresholds for each type of procedure.

Threshold-based procurement methods (in millions of CFA francs)								
	Mali	Canada	France SCAC	France AFD	UNDP	Switzerland	EU	USA
Free consultation Or informal competitive bidding	<10	<3.4	<30	<10	<10	< 25	Services <130 Supplies and works < 3.3	< 16.8
Procurement threshold	>10	>3.4	>30	>10	>2.5	>25	Services >130 Supplies and works >3.3	>16.8
Simplified form		<17 (sup. and works) <34 (consultants<			<10		Supplies and works <19.8	< 67
Negotiated contract		17<M<68	30<M<70 (after competitive bidding)				(If urgent) Supplies <99 Works <198	
Limited bidding	<50	>68	>70	<50	<68		Supplies <99 Works <198	
Open national bidding		No			>68		Supplies >99 Works >330	
Open international competitive bidding		No	Supplies >87 Works 3,400 Services >138		>68		Supplies >99 Works >3,400 Services >138	>67

This table shows that the donors’ monetary thresholds, before even looking at restrictive conditions and particular cases, are already quite different and will not be easy to harmonise. The following chart shows that the average threshold above which procurement is compulsory in Mali, possibly in a simplified form, is approximately 12.5 million CFA francs. The median is situated at 10 million CFA francs, which corresponds to the Malian procurement code’s 10 million CFA francs. This is explained by the fact that nearly half of the donors apply the local legal rules, at least in part.

<sup>20</sup> The detailed table gives more details on the differences between each donor’s procedures.

<sup>21</sup> Guidelines: Procurement under IBRD Loans and IDA Credits, January 1995



*c. The award procedures*

In addition to the distinction between donors using specific procedures and those using the national procedures, slight and sometimes large differences are found between the systems at each step of each group's procedure.

*- Approval and the declaration of no objection*

Eight of the eleven donors use the declaration of no objection procedure, but their methods differ. The UNDP, Belgium, the Netherlands, Switzerland, the United States and Canada generally issue declarations locally via donor representatives. However, the head office of the donor country's organisation issues the declarations in the case of France (AFD), the European Union, Germany (no local KfW agency), the United States and Canada (for large transactions) and the World Bank (although a reform has been announced to decentralise the issuance of DNOs to the recipient country).

In some cases, a *stricto sensu* declaration of no objection is issued (AFD and KfW). In others (USAID and the World Bank), it is a written and formal approval that is virtually an authorisation decision (even though provisions stipulate that the donor is not legally a party to the contract and that it is therefore not liable for its execution).

*- Donor participation in the bid examination committee.*

All the donors using the national procedures can attend the public bid opening meeting. Some of them also take part in the work of the bid examination committee. These are the World Bank (sometimes with a consultant), Germany (with a consultant in certain cases) and Belgium (co-management).

However, France (AFD), the World Bank (generally), the UNDP, USAID, Canada, Switzerland and the Netherlands do not provide for such participation.

The other donors have a specific organisation with a specific committee. Those concerned are the European Union and France (SCAC), and also the UNDP, Canada and the United States when implementing their own procedures.

The selection and award procedure is sometimes conducted directly and entirely by the donor. This case concerns consultant contracts in particular. It is applied by KfW, the World Bank, USAID and the UNDP.

#### *d. Payment procedures*

The donors have different authorizing officers. The authorizing officer for the European Union and the UNDP is the Minister of Foreign Affairs. For the other donors, it is the Minister of Finance.

Methods of payment also vary depending on the circumstances and the donors. Some, such as the French AFD, impose a procedure and others propose a number of methods (e.g. KfW and the Netherlands).

The World Bank, the UNDP bureau and Belgium systematically practise payment by advances. This is optional for KfW (financing of many small, specific projects and day work). Belgian aid is paid into the project's account in one lump sum.

The other donors make payments for services rendered, with the exception of mobilisation advances made by all the donors for works contracts. These donors are France (AFD and SCAC), Switzerland, the Netherlands and the European Union.

Payments are made either to the project's own bank account, directly to the contracting firm or by documentary credit. These latter two methods are used by France (AFD), KfW (optional) and the Netherlands (excepting budgetary aid).

### **3. An attempt at a classification**

The mission endeavoured to classify the different donors' procurement management systems by choosing "positioning" criteria compared with the Mali system. The idea was to measure how close each donor's systems are to Mali's. Another classification could be to measure each system based on its intrinsic qualities compared with the objectives (effectiveness, transparency and simplicity).

#### *a. Criteria that could be used to compare donor procedures.*

##### *- Effectiveness and transparency:*

It is not easy to classify the procedures in terms of these criteria, since none of the donors can imagine that their often long-standing, complete and highly detailed procedures could possibly have any failings. Besides, this requires more comprehensive information than is available to the mission. For example, not all of the donors filled in the lead time analysis grids. This makes it impossible to make an objective and rational judgement of the speed of each system's lead times. Only the Malian administrations agreed to lend themselves to this exercise.

Nevertheless, we could assume that the agencies with the most local autonomy are more effective than those that have to systematically obtain head office's opinion. For example, the Netherlands, the United States and the UNDP have fairly substantial local decision capacities. This reduces lead times and, to a certain extent, gives the agency a stronger political profile with the Malian authorities.

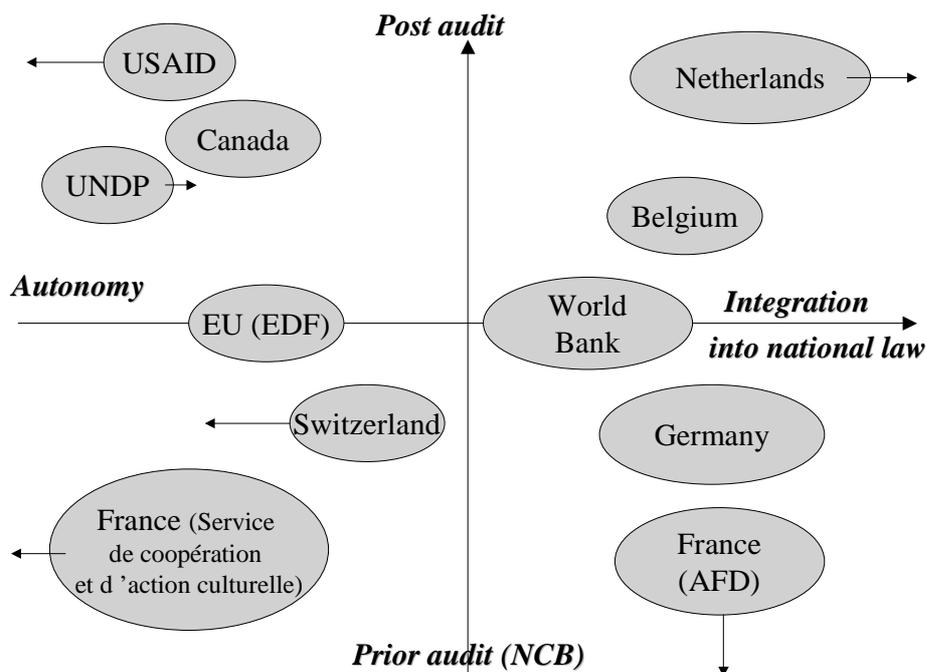
Conversely, the most complex system is most certainly the European Union's (especially as regards obtaining declarations from the Commission). This is shown by the often long lead times for project execution procedures and even inconsistencies in the technical choices made. This situation can be particularly detrimental as regards projects/programmes co-financed by several donors.

##### *- Duality – ambiguity:*

Some donors have a procedure for using the national structures. In practice, however, they reserve the right to implement their own procedure (France-SCAC, the United States and the UNDP) or to organise a procedure that creates a parallel system (European Union and the UNDP). Yet they refer for the most part to the 1992 UN General Assembly decision that “*national execution should be the norm for the programmes and projects assisted by the United Nations system, in view of the needs and capacities of the recipient countries*”.

*b. Criteria for comparing donor procedures with Mali’s procedures.*

Two positioning criteria:



- *The extent of integration into Mali’s procedures.* This identifies three donor groups:
  - The systems integrated into Mali’s procedures: the World Bank, Belgium, France (AFD), KfW and the Netherlands;
  - The systems that, in practice, function separately from Mali’s procedures: Canada, the United States, France-SCAC, the UNDP and the European Union.
  - The intermediate systems: Switzerland.
- *The audit method* (prior and/or post):
  - Prior audit prioritised: Germany, France and Switzerland;
  - Post audit prioritised: Belgium, the United States and the Netherlands.
  - Intermediate group: the World Bank and the European Union.

The following chart presents a simultaneous representation of these two criteria (the arrows show the trends observed for certain donors over the last ten years).

#### **4. The system's shortcomings.**

##### *a. Shortcomings associated with the procedures themselves.*

Certain conditionalities, especially the rules of origin (France, the European Union, Germany and Canada) inhibit the principle of competitive bidding, make the process even longer and sometimes make the choice of equipment and supplies problematic. This becomes a serious problem for the programmes where a number of donors are involved.

The wide variety of thresholds for the same types of contracts also creates complications for the recipient and problems in the case of co-financing.

In practice, the complexity of each procedure and its specific features is such that each donor hardly knows anything about the other donors' methods. Moreover, the donors tend to consider that their own procedures are operational and satisfy the objectives, which is unlikely to encourage them to harmonise their procedures. The multilateral donors (the World Bank and the UNDP) actively defend their own procedures, which are added on top of the governments' procedures. Some of them, the European Union for one, have been assigned the leadership if not the co-ordination of the different member countries' actions (namely Germany, Belgium, France and the Netherlands).

Lastly, it goes without saying that the consequence of different, co-existing systems is that the Malian administrations have to learn to master a multitude of procedures that the mission found to be not only complex, but also not very forthcoming in terms of reference documents (Switzerland and Belgium have no procedure manual, the Netherlands' manual is only available in Dutch, etc.).

##### *b. Shortcomings associated with the extent of local agency responsibilities*

The sometimes considerable concentration of decision-making power at head office limits the capabilities of the donors' local agencies, often makes lead times longer and frequently gives the agency problems with the Malian authorities.

This lack of local autonomy and even absence of representatives (KfW) also reduces the donors' co-ordination capacities on the ground.

##### *c. Shortcomings associated with Mali's system (DGMP and Ministry of Finance)*

The donors know little about the DGMP's efforts to improve the quality of the public procurement procedures and assists them even less. This does nothing to help the much-needed development of the Malian system towards more effectiveness and transparency. It also gives the donors arguments to justify their scant involvement in the national procurement structure.

Only the World Bank has taken a range of concrete actions to assist the DGMP (development of standard documents and training actions). At the same time, the offset equipment financed by USAID is not operational since the DGMP has insufficient operating means.

This consequence of this lack of co-ordination is that parallel management structures are set up (the European Union cell attached to the Ministry of Foreign Affairs) or structures are attached to the donor itself (NEX cell for the UNDP). This diversification makes the organisation of procurement more complex and creams off the most competent national managers from the active administrations,

which weakens the national structures' capacities (DGMP<sup>22</sup> and technical departments), which counters the goal.

*d. Shortcomings associated with the duality of the national authorising officer.*

The fact that there is no one national authorising officer creates a situation detrimental to the management of all the aid and does nothing to help the much-needed posting of all official assistance flows in Mali's budgetary documents.

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<sup>22</sup> For example, two GPPD managers left the directorate in the late 1990s and were not immediately replaced. One of them joined the World Bank.

## **II. DONOR ALIGNMENT WITH BETTER NATIONAL PROCEDURES IS THE MOST PROMISING ROAD TO HARMONISATION.**

### **A. The two options: harmonisation via internal donor alignment or alignment with an external target.**

#### *1. The option of internal donor alignment*

There are a number of different ways to harmonise donor procedures. The first would be to find a mutually agreed way for the different donors to present a single package to the Malian party, which would lighten its management load.

This internal alignment method would entail studying the procedures for all the donors, whose number exceeds the eleven cases studied. In addition, there are such donors as Japan, the African Development Bank, the Islamic Development Bank and the West African Development Bank. This study would determine the compromises acceptable by all for each point and each stage of the procedure: defining thresholds; setting rules for the use of the different forms of competitive bidding and limited bidding; and composition and running of the bid committees.

Such an approach assumes that the donors can agree amongst themselves, which seems hard to achieve without an external reference and a lead manager. Also, there are considerable risks of deadlock, especially as regards the rules of origin and the other conditionalities.

Alignment could be facilitated by appointing co-ordinators, who could be multilateral or bilateral donors.

Some multilateral donors have a policy of furthering the harmonisation of procedures, such as the European Union as regards its Member States. The World Bank could likewise play an important role in view of its efforts to draft highly detailed guidelines on procurement procedures accompanied by standard specifications. The World Bank's procedures are already used by the Netherlands, precisely "*in an effort to develop uniform internationally acceptable standards for procurement.*"<sup>23</sup>

Nevertheless, the multilateral donors also act as fully-fledged players with their own rules in addition to the bilateral donors' rules. The bilateral donors could therefore take on this lead manager role just as well, possibly on a rota basis or according to the issues addressed by the different working groups.

Some harmonisation approaches have already been undertaken among certain donors, especially with the execution of common programmes such as the PRMC Cereal Market Restructuring Programme (which does not actually manage contracts). The NGOs, faced with the same problems as the Malian administrations as regards managing a large number of specific procedures, have likewise grouped together into action units. One of these action units, the committee for the co-ordination of NGO action (CCA-ONG), has developed a procurement procedure approved by several donors.<sup>24</sup>

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<sup>23</sup> Guidelines for the procurement of works, goods and consultancy services with financial development assistance from the government of the Netherlands.

<sup>24</sup> The CCA-ONG is made up of 135 NGOs working in Mali (out of an estimated total of over 1,000 NGOs). Its brief is to strengthen the capacities of the action unit's members by providing legal assistance, financial management consultancy and human resources management advice. See Appendix 2.12.

Nevertheless, these are limited exercises. Mutually agreed internal alignment based on average standards is made difficult by the observed donor divergences, the maturity and complexity of their procedures, and the risk of the idea of a lead manager being rejected. Even if this type of alignment were to be achieved, it might be in the form of a compromise different to all the existing systems and therefore unsatisfactory for both donors and the Malian government.

## ***2. Alignment with the national procedures***

The other option is alignment with Mali's national procedures. It appears easier to implement in that it entails neither a lead manager nor the predominance of one system over the others. It also allows each donor to move towards a clearly identified target at its own pace.

Moreover, it corresponds to a development objective. The main aim of co-operation is to help the recipient countries to become developed and autonomous states in control of their own institutions and development. The adaptation of each donor to the national procedures while improving these procedures is in line with this primary goal. This option does not exclude the possibility that special procedures could be adopted in agreement with the Malian party in the case of particular operations involving a major interest for a donor.

Likewise, the shortcomings observed in the execution of Mali's national procedures call for corrective action. The donors could assist such action as part of their programmes to strengthen institutional capacities.

## **B. Concrete methods for aligning the donors' procedures.**

Efforts to align the donors' procedures and Mali's procedures are currently underway in Mali, in particular with the ten-year health infrastructure development program (PRODESS).<sup>25</sup>

However, this exercise is still limited. Its outcome is less the definition of a single legal system than a juxtaposition of national Malian law and donor guidelines. This does not resolve any contradictions, even though the public procurement code (Article 5) provides for their settlement: in the event of a conflict between two sources of standards, the donor guidelines apply.<sup>26</sup>

If this exercise is to be taken further, these specific rules would have to be aligned one by one with the national law. The long-established nature of certain mechanisms and the sometimes centralised nature of the donor agencies would mean that solutions of principle would require a great deal of pragmatism in their execution. In particular, in addition to political obstacles, legal questions will surely arise. The use of special procedures exempt from the national law is sometimes provided for by the international legal standards, which are harder to change than an internal procedure guide or an ad hoc financing agreement. This point should be studied by each donor.

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<sup>25</sup> See Appendix 3.2.

<sup>26</sup> The PRODESS regulations place the national law on an equal footing with the donors' procedures: "the legal regime for administrative contracts is determined by the origin of the financial resources, the legal nature of the recipient structure and the financial agreements and conventions." Hence as regards thresholds, "procurement is compulsory for all expenditure equal to or above the public procurement threshold set by the national regulations or by the donors' guidelines" (Article 4.1).

### ***1. Withdrawal of exclusivity clauses and rules of origin***

The rules of origin defended by certain donors such as France and Canada are inherited from a distant past when international trade was strictly regulated. In a globalised economy, a given country's market share depends first and foremost on the competitiveness of its companies and its economy; not on political treaties and administrative clauses. Keeping rules of origin in aid programmes can therefore only negatively affect the way the donors using them are seen, since they result in Northern firms being favoured for contracts performed for the aided countries. Admittedly, the rules of origin often include exceptions that benefit the recipient country and even other Southern developing countries. Moreover, some donors would be willing to accept the idea of waiving the rules of origin for firms from developed countries making identical development assistance efforts.

Yet the fact is that it would be preferable to purely and simply drop the rules of origin, even if nothing prevents a country from trying to give preference to its own companies for major contracts. It is not necessary to adopt as strict legal mechanisms for this, since these sometimes create just as many problems for the donor as for the aided country (especially when the contracts are small and when the supplies in question are only produced by a very small number of firms in the donor's country).

The withdrawal of the rules of origin would concern mainly Germany, Canada and France. The European Union could also be concerned, since it applies rules of origin for supply contracts, which stipulate that supplies have to come from Member States or from an "eligible" country (list stipulated by regulations).

### ***2. The use of the threshold notion to further alignment with the national procedures.***

The donors with specific procedures, such as USAID and the UNDP, state that their reasons for not using the host country's procedure more have to do with the lack of reliability of Mali's procedure and pressure from their head office (and from Congress for USAID).

However, the Netherlands has a much higher tolerance "threshold", since it accepts making payments to the Malian government's budget without having the guarantee that the aid will really be spent on the programme in question. It has to be said that the principle of fungibility leads regardless to compensation phenomena, even when the aid is paid into specific accounts and managed by dedicated structures.

The mission proposes choosing a pragmatic method to take account of the differences in the rigour of audits on the use of aid funds. Below a defined monetary threshold, all donors would adopt the host country's procurement procedure. Above this threshold, international competitive bidding would be compulsory. Defining a monetary threshold may be somewhat arbitrary, but it does have the advantage of avoiding qualitative debates, which would make it hard to develop a common standard.

This threshold could initially differ by donor to take account of the different countries' perceptions. Alignment with a single threshold would be gradual. The donors would progress at their own paces, albeit in keeping with commitments and a schedule that would be presented, discussed and endorsed with the other donors in an informal body such as the OECD Development Assistance Committee. If these solutions were extended to other aid programme recipient countries, the threshold level could also differ by country based on the reliability of the national procedures. The reliability of the national system could moreover be evaluated by a joint donor analysis to avoid divergent approaches.

The declaration of no objection could also be maintained temporarily, since its effects are curative (preventing irregularities before suffering their consequences), preventive (dissuasive effect) and educational (improvement in the quality of documents and procedures). Nevertheless, the way it is run needs to be reviewed and responsibility devolved to the local agencies.

There are two other options in addition to the threshold for the use of national procedures. The first is to maintain the use of the different donor procedures, as is the case today. The second is to work towards alignment based, for example, on the definition of common standards and standard specifications. The mission recommends this second option. A consensus could be sought for extreme cases: conditions for using international competitive bidding and conditions for using negotiated contracts. The cases of compulsory use of international competitive bidding by donors should be aligned: e.g. above a certain threshold and excepting limited listed dispensations. In the case of negotiated contracts, however, a complete limited definition would be required of the cases in which the absence of competitive bidding is authorised.

These systems can only be precisely defined after the donors have held in-depth discussions based on the work of subject working groups addressing each stage in the procedure. The mission can but outline certain possibilities and give examples. The international competitive bidding procedure described by the World Bank guidelines forms a reference basis that could be adopted by other donors, as it has already been adopted by the Netherlands.

Below the threshold, using Mali's procedures would mean simultaneously improving their quality and effectiveness, as covered in point C below.

### ***3. Harmonising the disbursement and audit procedures and integrating them into Mali's public accounting.***

The current disbursement procedures system suffers from a lack of integration of aid flows into the Malian government's public accounting. Programme management effectiveness might be improved with "short" channels, whereby payments are made to project bank accounts in the form of advances or for services rendered or even direct payments to successful bidders. Nevertheless, these "parallel plug-ins" deprive the government of all auditing power over a dominant share of public investment and all capacity for setting its budget in line with its national priorities.

Hence the mission can only recommend, in the long run, using national ordinary law procedures: payment of aid to the state's budget with parallel opening of lines of credit for projects financed by pluriannual allocations (to commit appropriations) combined with annual payment appropriations (to make payment). The use of special Treasury accounts could also be suited to the individual management of project accounts in compliance with the single paydesk principle, provided that the use of these accounts was strictly controlled.

Integration into the mechanics of the government's general budget nevertheless implies the satisfaction of a number of conditions beforehand.

The integration of all the projects and corresponding financing into the budget calls for close co-ordination between donors and the Malian government right from the budget preparation stage, even if it remains possible to use the cost-sharing contribution budget formula to integrate new financing decided on during the financial year.<sup>27</sup>

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<sup>27</sup> The cost-sharing contribution is provided for by Article 28 of Law No. 96-060 concerning the Budget Act. It ensures that funds paid by natural persons or legal entities to contribute with government funds to public interest expenditure are allocated to the general budget or a specific budget.

Realistically, this option requires that the donors secure the possibility of auditing the part of the government's accounts that concerns them (which implies setting up cost accounting). Direct payments to the government's budget would be the ideal way to integrate this resource and ensure that the recipient government owned its management.

This also implies that the Malian Public Treasury offers successful bidders satisfactory terms of payment. Payment currently takes a long time, which is probably due partly to low administrative department productivity and not enough computerisation of tasks.

Intermediate solutions, such as the common basket with administrative and financial autonomy, could hence initially be used. The common basket could be applied, for example, to the ten-year health infrastructure development program (PRODESS) and to the National Fund for Local Authority Investment.

The use of delegate works structures subject to private law, such as AGETIPE<sup>28</sup>, is also a way of offsetting the government's payment failings while applying national law, using a particularly short decision-making channel. The agency director makes award decisions following an opinion from a bid committee. The DGMP is not involved (delegation of power). The commitment, authorisation and payment stages are likewise carried out by the agency by means of the technical director (following appraisal and certification), the project manager (decision) and the administrative and financial director (execution of payments). The total time between the technical department's reception of the breakdown and payment to the company (or sending of the transfer order to the bank) should therefore not exceed fifteen working days. However, it is not really feasible to make this a widespread system, since it would be seen as a dismemberment of the state. Moreover, the delegation and concentration of contract awarding and performance would present risks if the auditing means were not strengthened in return (audits of receipts and on-site audits).

#### ***4. The devolution of responsibilities to local representatives***

The harmonisation of donor procedures in Mali should considerably simplify the management of the selection of successful bidders. Integration would give the national authorities more control over payments.

However, harmonisation with national procedures will complicate matters for the donors, since they will have to adapt their rules and guidelines to each recipient country. The development of a capability to manage diverse national procedures calls for an organisational change, especially in the most centralised agencies. In a rapidly changing environment, this could take the form of the devolution of responsibilities to the agencies. The head office would find it hard to manage the national procedures of all the countries concerned on a daily basis, but would nevertheless continue to play a useful role in post auditing and shared knowledge.

Devolution would also satisfy a second effectiveness concern as regards issuing declarations of no objection and approvals. The fact that these systematically go through head office currently lengthens lead times.

Another movement that could go hand in hand with this is the greater sector-based specialisation of aid, based on each co-operation body and each country's specific skills. Specialisation would make it easier to master local project management. This is, for example, the choice made by the Netherlands and Belgium. Specialisation would help eliminate redundant donor work and sterile competitive behaviour in competitive projects.

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<sup>28</sup> See Appendix 1-3.

## **C. Ways of simultaneously improving the national procedures.**

### ***1. Modernising and adapting the public procurement code***

#### *a. Defining simplified procedures for small contracts and consumable supply contracts.*

It would be useful to have a simplified competitive bidding procedure for small contracts, “shelf” supplies and even local authority contracts. Existing procedures used by donors such as the World Bank and USAID could be used as a model. The principle stipulated in the PRODESS regulation for negotiated contracts with informal competitive bidding could also be used: “*the authority is bound to use competitive bidding for bidders likely to perform a given contract, wherever possible and by all appropriate means, by requiring at least three quotes from suppliers with good reputations, three estimates from businesses or three proposals from consultants for which a comparison of CVs is required.*”

The procurement threshold might also be raised since the current threshold is low, even though it has already been recalculated<sup>29</sup>: 10 million CFA francs compared with the \$100,000 applied by World Bank and USAID procedures. However, this measure is not recommended by the DGMP, which considers that raising the threshold would exclude a large number of contracts comprising significant risks of non-transparency of choice.

Cases where limited bidding can be used could also be better defined by the legislation. This option could be ruled out for works contracts and replaced with open bidding for batch contracts and contracts for relatively uncomplicated works.

#### *b. Specifying the committee’s bid examination and consideration methods.*

The distinction made by some donors between works, supply and consultancy contracts could be incorporated into the Malian public procurement code to give a firmer idea of bid assessment methods. All the works and supply contract criteria would be monetary and the lowest bid would be chosen provided the bid were technically compliant. The two-stage process (examination of technical bids before financial bids and a points system) would be reserved for consultant and design contracts.

A methodological guide could also be produced with the help of the DGMP and the donors. This guide would define the bid examination committee’s ways of operating and its analysis methods. It would be used by the DAFs and all the committee participants and could be rounded out by a form letter sent by the DGMP to each committee member on his or her appointment. This letter would stipulate the committee member’s independence and attendance obligations and responsibilities as well as penalties in the event of corruption (new Article 90 c of the public procurement code).

#### *c. Shortening the decision-making channels.*

The channels could be made less cumbersome by getting rid of certain intervention levels. Submission to the Council of Ministers could be dropped or at least reserved solely for the largest national or international contracts. The Minister of Finance’s involvement threshold could also be raised to include contracts that currently come under the Council of Ministers’ jurisdiction. This would reduce the number of associated tasks: detailed report to the Council of Ministers, etc. Approval from the government’s Secretary-General could also be dropped or moved to after the notice of contract award.

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<sup>29</sup> The threshold was three million CFA francs up until 1992.

Following approval by the relevant authority, the DGMP could be made responsible for getting all the signatures promptly. At the moment, no one is really accountable for lead times for the entire procedure.

Moreover, the development of the Internet in Mali is such that document transmission could be computerised. This would save a lot of time. E-mail would also offer better control of compliance with deadlines by the different players in the chain (identification of responsibilities by acknowledgements of receipt, possibility of sending reminders, etc.).

However, this requires a major IT modernisation programme covering everything from installing up-to-date computers in the ministry DAFs to setting up an Intranet providing a secure link between the DAFs and the DGMP in order to guarantee the confidentiality of the information transmitted. This confidentiality concern covers everything from the first stages of the procedure to the transmission of the bid assessment report. The donors could be called upon to help build this network in which the DGMP has shown a great deal of interest. It would probably substantially cut the time taken over declaration requests and especially obtaining approval and signatures and registration.

## ***2. Using the aid programmes to assist the Malian administrations with their procedure management action.***

### *a. Shifting the procurement and execution mechanism to the Ministry of Finance.*

In most developed countries, the Minister of Finance centralises all the government's financial and accounting information. This is not the case in Mali as regards foreign financing in the form of grants. Loans are normally subject to examination and posting by the General Public Debt Directorate.

In procurement, donors first go through the Ministry of Foreign Affairs, which is considered to be the national authorising officer for funds disbursed by the donors. They then negotiate directly with the technical ministries. The UNDP and the EU have also set up their procurement procedures management assistance units in the Ministry of Foreign Affairs. The UNDP has the NEX (national execution) unit and the EDF has an advisory unit to the national authorising officer.

From the point of view of effectiveness, it would be better to transfer the national authorising officer task to the Minister of Finance. This minister is more likely than his foreign affairs colleague to have the technical and legal know-how required to manage the contracts, since he has at his disposal the DGMP for procurement and the Budget Directorate and the Public Accounting Directorate-General for contract execution.

As regards contract execution, the state's treasury unity, theoretically managed by the public treasury network, only covers a small part of Mali's public expenditure. Most of the investments are actually financed by foreign resources and very few of the donors accept paying their contribution into the national budget (only the Netherlands have converted to the idea of budgetary aid). Payments are generally made into well-identified double signature bank accounts. Or they are sent directly to the companies or suppliers awarded the contracts and the disbursements are made in the form of advances or for services rendered. In this case, concomitant or post audits of receipts are carried out.

The Budget Directorate does not therefore incorporate foreign cost-sharing contribution into the national budget. Consequently, when the budget is executed, the financial controller can only check whether the national counterpart has been budgeted and whether the appropriations are available for the sums corresponding to the commitment requests. The same goes for the public accountants when payments are made. The perverse effect of this situation is that it is impossible for the government to decide between priorities and to practise effective budget management for all the public funds paid into the national economy throughout the financial year.

However, the study of the question of reincorporating all the project management structures into the Malian administration and integrating foreign financing into the general national budget structure is beyond the scope of this report. A Development Assistance Committee working group should look into this issue.

*b. Adapting the public procurement code and the administrations to decentralisation.*

A workshop made up of the different administrations addressed these issues in July 1999. In attendance were the DGMP, the Decentralisation Mission, the Contrôle Général d'Etat, the Bamako Communes, the Administrative Reform Commission and the Association of Mayors of Mali. The workshop outlined ways of adapting the public procurement code to local authority contracts. These courses of action are summarised in the appendix with comments and additional proposals.<sup>30</sup>

Commune contracts are generally small at approximately 10 million to 15 million CFA francs per year for investments. The average amount of commune public procurement is therefore low and often much lower than the procurement threshold provided for by the public procurement code (10 million CFA francs). It may consequently be preferable to establish specific thresholds for these contracts and/or define simplified procedures for small contracts.

The discussions held at the workshop in July 1999 focused on defining lower thresholds for communes and circles: 10 million CFA francs for the regions and the Bamako district, 5 million CFA francs for circles and 3 million CFA francs for communes. Nevertheless, a simplified consultation procedure could also be established at some 3 million to 10 million CFA francs, with formal bidding procedures reserved for sums over the current thresholds of 10 million CFA francs.

The DGMP currently has no local representative, even at regional level. In 1999, the World Bank advocated creating three or four regional representatives. The 1999 workshop recommended avoiding creating new structures by using the Ministry of Finance directorates, which already had local departments, especially the regional tax directorates and the tax offices (at circle and commune level). The mission met the Advisor to the Minister for Regional Administration and Local Authorities, who considered that the DGMP could be represented at commune level by the tax collector, a public accountant, and at regional level by the regional financial controller.

In both cases, this would mean strengthening these directorates' human and material resources. This is especially true of the public treasury, which currently has one local tax collector per circle making a total of 49 tax collectors for 682 communes. Books are still kept manually using the single-entry system. A gradual transition to double-entry bookkeeping is underway, which in itself already entails a training effort.

The Decentralisation Mission has plans to set up an execution assistance network for the authorities. If the budgetary aid to be distributed by ANICT is to be used better, then the local authorities need technical assistance to properly carry out their activities (planning and making investments).

A modular execution assistance network could be set up in the form of Commune Advice Centres (CACs), using the existing ground structures and with the appropriate means. These centres would be co-ordinated centrally by the National Co-ordination Cell (CCN) reporting to the Decentralisation and Institutional Reform Mission.<sup>31</sup> The programmes to assist institutional improvement could help set them up.

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<sup>30</sup> See Appendix 1.1.

<sup>31</sup> A FICT procedure project is being adopted and is presented in Appendix 1-4.

*c. Assisting the improvement of the DGMP's means and contract management and audit departments.*

The donors' reaction to the poor (and sometimes overestimated) effectiveness of the Malian administrations is currently to tend to use parallel procedures and short decision-making channels. The most negative aspect of this type of action is that the most skilled officials in Mali's administrations leave to join the international donor representatives and management structures, where they enjoy better working conditions and much higher wages.

What is now needed, therefore, is a move in the opposite direction to align the defended principles (enhancing the governments' capacity-building) with the reality. The Malian officials and project units should be reintegrated into the national administrations. At the same time, the officials' capabilities should be enhanced by the targeted provision of foreign skills in the form of technical assistance.

Action should focus on both the technical ministry officials who manage procurement, which would entail training in particular, and the central link formed by the DGMP, which could work in closer liaison with the donors.

- Training the officials.

Public procurement experts could train Malian managers in handling procurement procedures in support of the programmes currently conducted by the DGMP, which has already trained 200 to 300 officials.

Steps should likewise be taken to check that the teaching given in the initial and in-service training establishments for administrative and technical officials includes a module on public procurement management procedures.

The mission supports the World Bank's proposal to create, within the civil service organisational framework, a corps of civil servants specialised in procurement. It also supports the proposal to establish per diems to pay officials who sit on bid committees in addition to their daily activities.

- Increased technical assistance for the DAFs and the DGMP.

In addition to training, donor-financed experts could be asked to help draw up the bidding documents with the DAFs and to sit on the bid committees. This would also probably reassure the donors as to the transparency of the procedures.<sup>32</sup>

The DGMP is at the core of the procedures and is meant to guarantee their quality and transparency. Improving the DGMP's overall performance should therefore be an aid priority. The first step could be an external audit of the procedures and functions used to perform its tasks with a view to eventually establishing a quality assurance certification process.

A higher level of donor intervention would consist of associating them with the DGMP by means of technical assistance based on expert secondment.

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<sup>32</sup> There is some criticism of an adverse effect in the form of a foreign expert being tempted to favour a firm from the donor country. Although no one is safe from pressure, the two forms of aid (technical assistance and aid programme) could be separated and the administration could choose an expert of a different nationality to that of the donor. This could prompt some donors to review their procedures: the German KfW currently insists on using a German consultant for its contracts.

*d. Using the national structures to jointly improve donor co-ordination.*

Enhancing the DGMP's means of action could take more innovative forms than traditional technical assistance. Since procedure quality and transparency is a concern shared by both Malian administrations and donors, methods could be studied to enable all partners to work together.

One option would be to create a DGMP department led by all the donors involved in aid programmes in Mali. It would operate under the joint authority of the Director-General of Public Procurement and the donors, in line with the co-management principle practised by Belgium. Its brief would be to prepare donor procurement and supervise its smooth running in direct liaison with the relevant technical ministries. This structure would also be given the authority to issue approvals and declarations of no objection (DNOs) on behalf of the donors in co-ordination with the DGMP's DNOs. If this logic is followed through, a single declaration could eventually be issued containing the DGMP and donors' observations.

This solution would be a midway point between the total internalisation of procurement management in line with national rules and the current juxtaposition of procedures and structures. Given the fact that some donors are reticent to delegate procurement management to the national administrations, this compromise could form a stepping stone to the total ownership of procurement management by the national authorities. In addition, this concentration of donor management and auditing power would lighten the management loads of those who maintain delegations in the field for that purpose. It would also strengthen the donors' supervisory capacities, which are currently lacking.

Downstream, donor controls and post audits of contract performance could be co-ordinated in liaison with the national authorities based on the same model. This would require the national authorities to first improve their auditing capabilities. The State Audit Office and the Inspectorate General of Finance are currently reported to be in the same situation as the DGMP and lack means to carry out their tasks.

## CONCLUSION

The review of aid procedures in Mali reveals a certain number of weaknesses on the part of all the parties involved, but more especially Mali itself.

**As regards the national procedures laid down by the public procurement code**, we have found real effectiveness and transparency failings that burden the sound execution of projects and programmes in spite of the objectives stated by both Mali and the donors. The main criticisms concern procurement lead times, which greatly slow down the pace of project execution and aid disbursement when these projects are financed by foreign funds. In addition, the technical choices and ways of choosing successful bidders are also sometimes questionable.

Despite these substantial shortcomings, the mission did observe that the Malian administrations have made a considerable effort to improve the quality and speed of procedures, whose legal basis and administrative organisation form a solid and consistent foundation.

**In this context, donor action**, in terms of ownership and capacity-building objectives rather than the results of a given project, sometimes **contains a certain number of paradoxes. Indeed, the situation could be considered to be doubly inequitable for the Malian party.**

Although the Malian administrations still have limited skilled human resources, they have to know and practise a multitude of procedures that are riddled with complexity and even ambiguities. How can Mali be expected to properly practise all these procedures when many donors do not have an in-depth knowledge of the national Malian system and most of them have only superficial information about other donors' procedures?

Moreover, the practices set up by several donors, often in contradiction with the fundamental principles of development assistance, externalise the management of aid and encourage the active administrations' officials to leave to join project and assistance structures.

This adverse chain of events is due particularly to the predominance of disbursement and execution objectives over ownership. Yet it continues because it creates obstructing forces. **Here is actually a double ambiguity.**

Although the Malian authorities lament the current situation<sup>33</sup>, they take advantage of the multitude of partners, procedures and rivalries between donors. Many Malian officials themselves also find attractive employment possibilities in the structures set up by the donors.

Although the donors state their will for a close partnership and a spirit of co-operation with Mali, they are quick to seize an opportunity to promote their national interests. They maintain their own procedures on the pretext that the Malian party has not applied strict enough standards.

Therefore, despite the shows of good will by all the partners, **the situation could stagnate or even deteriorate.**

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This report has made concrete recommendations **to remedy the situation**. They form a realistic holistic approach provided that at least two conditions are met. Transcending the traditional intervention frameworks and rules calls for a strong political will shared by the donors and the Malian

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<sup>33</sup> See the speech by the Minister of Finance, Mr Soumaila Cisse, to the OECD in Paris on 1 December 1998.

authorities. Harmonisation should be introduced step by step and combined with suitable evaluations and supervisory mechanisms to maintain programme effectiveness, the confidence of donors and public opinion and, at the end of the day, guarantee the continuity of development assistance.

The alignment stages should therefore be based on the continuation and completion of committed discussions in working groups made up of procurement experts from the donors and the Malian administrations. These groups should make a point-by-point study of the harmonisation possibilities to attain the two-pronged goal of: alignment with national procedures and the improvement of these procedures drawing on the strengths of the different existing systems.

These discussions could give rise to legislation and organisational proposals for both Mali and the donors (definition of thresholds triggering the use of Mali's procedure and auditing methods). They could also result in a programme to strengthen Mali's capacity-building in the field of procurement and procurement management (financial aid for modernisation, preparation of internal and communication documents, computerisation, aid for a quality assurance organisation, training, etc.).

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