

IMPLEMENTING IN LAW POST-KEITA MALI'S RETREAT FROM
'SCIENTIFIC SOCIALISM'

John N. Hazard*

With Modibo Keita's ouster from the Presidency of the Republic of Mali on November 19, 1968, his junior army officers announced a sharp change of program with two essential objectives: recoupage of public finances and reorganization of commercial structures.¹ To the outside world the coup looked like a rejection of what had been the most orthodox Marxist program in Africa. Keita and his monopoly political party had claimed to be introducing the "universal truths" of Marxian scientific socialism.² Although Keita told his Soviet hosts at a Kremlin banquet in 1962 that his methods would differ from those of the Communist Party of the Soviet Union, he expressed his confidence in the triumph of the socialist idea and declared his purpose in visiting the U.S.S.R. to be a viewing of the source of the idea. The program he instituted in his eight years as President became a model for study by Africans wishing to institute socialism upon their continent.

Keita's model incorporated the key elements of what Lenin had prescribed for his own people in 1917: state ownership of the means of production, cooperative agriculture as a transmission belt to socialism for a tradition-bound peasantry, cooperative marketing to replace private merchandising, severe taxation of such private enterprises as were permitted to continue functioning, leadership by a monopoly political party supported by a

* Professor of Public Law, Member of the Staffs of the African and Russian Institutes of Columbia University.

1. See Déclaration de la Nation, in REPUBLIQUE DU MALI, DEUX ANNEES DE GESTION DU COMITE MILITAIRE DE LIBERATION NATIONALE: DECLARATIONS DU LIEUTENANT MOUSSA TRAORE (Kouloba, no date, but distributed in 1971) p. 3.

2. I have reviewed Keita's views and their implementation in Mali's Socialism and the Soviet Legal Model, YALE LAW JOURNAL, vol. 77 (1967) pp. 28-69.

militant youth organization, politicization of the state bureaucracy, discouragement of customs that impoverished or degraded women and the family generally, reorganization of the judiciary to emphasize political orientation, and development of a trade union movement with a mission of production.

Keita placed strong emphasis upon revolutionary rhetoric, utilizing his monopoly newspaper, l'Essor, to exhort the people as Pravda had long done in the U.S.S.R., calling for politicization of all aspects of life through his state radio, initiating construction of "Houses of the People," and drafting the corporate charters of his public corporations so as to appeal to the workers in terms that made state enterprise the "property of the people" and "a decisive conquest of the workers."³

Keita's successors proved to be men of less ideological emphasis than he. They published their creed on November 22, 1968 in their leader's "Declaration to the Nation," setting the two goals indicated above, and stating their determination to preserve the values of Keita's period; even promising to reinforce them to the extent they really served the two goals. The State sector of the economy was therefore to be maintained and the State economic enterprises were to retain their dominant position in the economy. A change was to be made, however, in giving greater emphasis than had been the case under Keita to two other sectors: the mixed-capital sector, in which Malian State capital would be associated with foreign capital to foster large investment beyond the capability of the treasury or requiring techniques and cadres not available in Mali, and the private sector, which would utilize both traditional and modern forms. This third sector seemed to be gaining a reprieve from Keita's discriminatory policy and to be released from his ideological whip, for the "Declaration" stated that support of a private sector corresponded to the sociological and social

3. For text of Keita's charter, see Loi No. 64-20 AN-RM, 15 July 1964. Journal Officiel de la République du Mali, No. 183, p. III. [Hereafter the Journal Officiel will be cited by number and page only, the numbers being chronological from the inception of the independent state of Mali. Normally, the page numbers begin with the earliest number in each year of publication, but special issues distributed ahead of the regular schedule of publication bear Roman numerals to indicate pages].

bases of the country. Indeed the "Declaration" asked the rhetorical question, "Is not the Malian first of all a merchant without being, however, a capitalist, in the sense of the word so much decried by the former regime, which claimed to be socialist?"

After the initial "Declaration" the rhetoric of revolutionary socialism began to fade from the public press. The monopoly newspaper turned to news of the world to attract interest; abandoned the daily entreaties for politicization of labor in the production process; and emphasized factual reporting with human interest aspects. The model statute for public corporations was reenacted to eliminate the flamboyant phrases of Keita's epoch.⁴ The new regime's Ordinance No. 1 declared Mali "to be founded on an ideal of liberty and justice with the aim of creating conditions necessary to the harmonious evolution of the individual and of the family within the womb of modern society and with respect for the African personality."⁵

Even the public construction program was revised to terminate work on those "Houses of the People" which had not been completed during Keita's regime. While the completed building stands in Timbuctu, there is an unfinished frame in the important provincial city of Mopti; mute evidence of the end of propaganda even though an outsider would think it desirable to complete the building as a public hall or moving picture house.

The new President of the Republic restated his goals to a correspondent of the British Broadcasting Company in May, 1971, with no revolutionary rhetoric at all.⁶ His mind seemed focused on production alone when he stated that the objectives for the coming years were: to develop agricultural and livestock production so as to create the capital necessary to import equipment; to accelerate industrialization by encouraging the construction of plants whether by State, mixed societies or private capital so

4. The post-Keita model public corporation statute is published as Ordonnance No. 23 CMLN, 11 April 1969, JORM, No. 299, p. 259.

5. Ordonnance No. 1 CMLN, 28 Nov. 1968, JORM, No. 288, p. 1.

6. L'ESSOR HEBDOMADAIRE, 13 année, No. 610 (31 May 1971) p. 1.

as to increase the value of products and to avoid the necessity of burdensome imports; to balance the State budget; and to direct and control the national economy so as to improve the standard of living of the laboring elements, but according at the same time the guarantees necessary to investors. On the political front, he intended to return to normal constitutional life, but he thought it useless to fix a date since the results of the program for economic and financial revival would naturally advance or retard such an achievement. He was willing to state only that the government would work toward reestablishing constitutional life, but it would do so "without making much noise."

The government appears to be seeking to pacify a people, thoroughly tired of Keita's repetitious exhortations to produce; his utilization as the major instrument of his policy of a monopoly political party; his impoverishment of the treasury by wasteful administration of State enterprises; his strictures of an ideological character on merchandising by private traders; his development of a youth movement lacking in discipline but favored as a tool of rejuvenation; his depreciation of the currency; his suspension of the National Assembly; and his vigorous emphasis upon reconstructing the traditional village as an agricultural cooperative.

In spite of the hostility created in much of the population by Keita's policies, it has been thought undesirable or impossible by his successors to adopt a policy of constitutional democracy and economic laissez faire. Something less liberal is planned, for there seems to remain in the minds of the general public and perhaps also within the leadership, a residue from the Keita years. One of Keita's close associates now resident abroad believes that this residue rests upon two pillars: an ineradicable Marxist residue ingrained by him in the public consciousness, and fear lest departure from a state owned economy might open the door to the return of powerful French entrepreneurs.

To determine the extent to which Mali's new leadership has taken steps in law to implement its new policy this study was undertaken. It assumes that a chronicle of what appears in the Journal Officiel can reveal social plans, for Africans rely upon law to create their future. Gabriel D'Arboussier, one of those who shared in developing the new states of West Africa when

independence was gained from France, has said as much. In his words, "We know that Law is the creator of the future. What we can do is to foresee and construct, through the techniques of the Law, the framework of the evolution of the African future."⁷ The paper is based, therefore, upon examination of the published record; as well as upon a personal visit during the summer of 1971, and interviews both within and outside Mali with persons at various levels with knowledge of events sufficient to give some clue as to motives of the principal actors.⁸

The end of a monopoly party

To the junior Army officers who ousted Keita, the public seemed thoroughly tired of the pressures exerted by the monopoly political party with which Keita had ruled. Perhaps this fatigue stemmed from an often-observed Malian antipathy to being driven to depart from customs, many of which had become cloaked in superstitions; perhaps it stemmed from revulsion against perpetual exhortation to exert oneself beyond what seemed to many to be the limits of physical endurance; perhaps it was because some of the leadership of that party had begun to show the marks of corruption from association with nearly absolute power. Whatever the reason, and all of these propositions find support among educated Malians, Keita's party leadership had made a host of enemies.

The party might have weathered the storm had it been supported by a host of friends, but it lacked deep rooted support from a sufficiently large militant minority to carry it through its time of trial. In the villages, the party had never taken deep roots. Its village comités were usually composed of the very same village leaders who had ruled the village before Keita introduced his system of monopoly party rule augmented by women and youth representatives. The village chiefs, with varying degrees of imperiousness, remained the masters of their villages, subject only to the limitations upon their power exercised by

7. Gabriel D'Arboussier, New Problems Faced by African Law, PRESENCE AFRICAINE, vol. 22 (1964), No. 50, p. 7.

8. Documentation was found at the Faculty of Law, University of Dakar, Senegal, the library of the United States Embassy at Bamako, and the Government Printing Office in Bamako.

the village councils composed traditionally of the seniors among the active participants in village life. There was no commitment to party rule, but only lip service in the adoption of rhetoric of revolution which made of the traditional ruling group the party comité. In the cities the commitment was deeper, but the discipline associated with monopoly parties in Eastern Europe was lacking. When the coup came, few, if any, fought to save the party or the political system it espoused. Keita is reported to have been offered a program of retreat proposed by his junior officers and to have chosen prison over acquiescence. Several of his less committed associates, including some who had been his Ministers, placed their skills at the service of the new leadership immediately after their President's arrest.

Keita's variation upon Lenin's formula for maintaining monopoly party power may have been his undoing. He had rejected Lenin's axiom that only an élite party can succeed; a party whose members are wholly committed professional revolutionaries prepared to devote their lives to the cause. Keita, like most of the party leaders in the States surrounding Mali, thought élite rule unAfrican. Consequently, he opened party membership to all who wished to join. His party was a mass party, in which membership became meaningless because of its near universality among those who were prepared to take an active part in state affairs. In consequence, the party lacked commitment, militancy, and even prestige. Keita realized this not long before the end, when he suspended meetings of his Political Bureau and directed the party from his personal headquarters with the help of only a few close associates who were ultimately prepared to accept prison with him because of their commitment to an idea.

On Keita's ouster party comités faded away, or more precisely, those who had been meeting as members of the party ceased to meet as such but reverted to their pre-Keita capacities as the traditional rulers of the villages and small towns. The administration was returned to the old pattern at all levels below the very top. At the top the junior officers created their Comité Militaire de Liberation Nationale⁹ to provide the ideas which would guide a newly established provisional government on a new

9. A legal status was created for the CMLN by Ordonnance No. 2 CMLN, 28 Nov. 1968, JORM, No. 288, p. I.

course.¹⁰

The sole manifestation in the official record of the demise of the party was an arrêté annulling credits in the previously existing State budget for the national commissions of the party.¹¹ No decree abolished the party. On the contrary, Ordinance No. 1, creating the provisional organization of public authority, included a paragraph saying, "Parties and political groups compete normally in the expression of the suffrage. They are formed and exercise their activity freely while respecting democratic principles, and the interests and regulations of the state."¹²

Although this provision gave formal approval to multi-party activity, none developed. Party life is wholly absent from the contemporary political arena, although some clandestine activity is believed to continue among the relatively few militants who remain secretly faithful to Keita's ideas, especially among those of the youthful bureaucrats who gained their education in Eastern European universities on scholarships during Keita's presidency. For them, in spite of some disillusionment with Eastern Europeans because of their hostility toward Blacks, confidence in the Marxist analysis of the role of property in history and in the Soviet model of political organization as a means of achieving the goals of development, is said by those close to them to remain unshaken. While their orders now come from an Army leadership intent upon a relaxation of Keita's policy of "étatisation" and "dirigisme," their execution of orders is colored by their Marxist convictions. To the extent that a bureaucracy can influence policy through its execution, these junior officials are thought by some Malians to be building a base for a return to the fundamentals of Keita's policy.

In view of this situation some thoughtful Malians believe that eventually the military must either recreate a party to which they will confide the popularization function, as Boumedienne

10. Ordonnance, No. 2 CMLN, 28 Nov. 1968, JORM, No. 288, p.III.

11. Arrêté, No. 754 MF-PAE, par. 31, 19 Dec. 1968, JORM, No. 292, p. 11.

12. Par. 3.

is trying to do in Algeria and Mao in China, or they will ultimately be ousted by a people discontented with the inevitably slow progress toward development and prepared to revert to a pattern which seemed anathema when it was discarded in 1968. Under this theory, Mali's future cannot be assured without personal sacrifice of present satisfactions for long range investment in the tools from which future production will come; tools taking the form not only of factories and machines but also of social organization along community rather than the narrower lines of the African family. To the extent that a monopoly party of the militant propagandistic type provides the political orientation likely to stimulate support for a policy of self-denial, its function may be necessary to successful achievement of current economic goals. Seen in this light, a party may become acceptable eventually to a people presently tired of organizational activity and determined to proceed with "as little noise as possible." Some of Keita's old henchmen think this reverse swing is sure to occur.

An alternative to restoration of a monopoly party of the militant enthusiastic type might be the introduction of popular representation in the policy making process. The current leaders see the possibilities this offers for mustering support for development, as indicated by the President's report to the B.B.C. correspondent. He indicated his desire to proceed eventually to constitutional government, by which he meant presumably a government directed by a National Assembly, as provided in Mali's first constitution, which Keita had suspended as his power waned.¹³

A first step in this direction on a national level seemed to be in the offing when a "Conseil National Consultatif" was ordered established by Ordinance of July 7, 1969.¹⁴ Its statute foresaw assemblage for consultative purposes of a group of "representatives of all socio-professional groups" of the nation. This semblance of popular participation has never been brought into being. The reason lies perhaps in the President's explanation of his reluctance to return to constitutional government: he does not wish to face a possibly hostile audience until its

13. I have chronicled Keita's restrictive measures in Marxian Socialism in Africa: The Case of Mali, COMPARATIVE POLITICS, vol. 2 (1969) pp. 1-15.

14. Ordonnance, No. 37 CMLN, 7 July 1969, JORM, No. 305, p. 483.

hostility can be dissipated by economic results proving the validity of the line his military committee has taken.¹⁵

Likewise at the local level of government there is provision for popular participation, but it may be restricted. By Ordinance of March 1, 1969, the Municipal Councils may be dissolved and a special delegation may be appointed by the Council of Ministers in their stead.¹⁶ A new statute for the capital city of Bamako has given to the municipal council limited powers of proposal on economic matters, but the Minister of the Interior is authorized to veto its proposals.¹⁷ In the villages, the new regime has maintained Keita's procedure under which village chiefs have to be approved by the commandant of the cercle in which the village was situated.¹⁸ This provision, however, is currently not applied to exclude traditional chiefs from selection, for Keita's efforts to replace established family heads with youthful militants intent upon innovation has been abandoned.

Reverting to Capitalism

A distinctive feature of Keita's creed was a belief that he could develop Mali without native capitalists. While he was prepared to invite foreign states and even private foreign entrepreneurs to invest in developmental projects, he was determined to create no Malian capitalist class. Under his creed, Mali entered the new era as an essentially pre-class society of the type that Marx and Engels had found among the Iroquois of New York State and in Rome and Greece before the emergence of the concept of private ownership of property. Keita seemed to believe that Mali could move from a primitive socialism to advanced industrial socialism without passing through the classical epochs of slaveholding,

15. This position may account for Amendment to Ordonnance No. 1 to eliminate the word "provisional" from the title of the government. See Ordonnance, No. 47 CMLN, 29 Aug. 1969, JORM, No. 308, p. 619.

16. Ordonnance, No. 16 CMLN, 1 March 1969, JORM, No. 297, p. 177.

17. Ordonnance, No. 20 CMLN, 15 March 1969, Arts. 23, 24 and 28, JORM, No. 297, p. 179.

18. Ordonnance, No. 43 DI, 23 March 1959 of the République Soudanaise, predecessor to Mali. This Ordonnance was continued in force by Keita.

feudal, and capitalist societies to which Engels had devoted his attention in The Origin of the Family, Private Property and the State. In this Keita was not innovating, for earlier Marxists had envisioned the skipping of epochs under circumstances like those existing when the preclass Germanic tribes conquered Rome to move directly into feudalism without passing through a slave-holding epoch. The Communist International's program of 1926 had foreseen just such a process of vaulting over epochs for Africa, assuming that when the time came to develop, Africa would be aided by the Marxian socialist countries of Eastern Europe.

Keita's creed had been given concrete form in the formulation of a policy directed against Malian private entrepreneurs and those Lebanese residents who had long been entrepreneurs within her economy. On the positive side, he had created a State sector with the primary responsibility of building the infrastructure for an industrial economy, and a cooperative sector with the task of modernizing agriculture. As a result of his opposition to the activities of merchants, not only the Lebanese emigrated to Senegal, Liberia and the Ivory Coast, but, many of the Malian merchants and small scale entrepreneurs also left for more hospitable economies, notably the Ivory Coast. Smuggling expanded across Malian frontiers shared with the states to which the refugees had gone, reducing the revenues of Mali, and undermining a currency which Keita had separated from the French franc zone in the belief that an independent currency was not only a mark of sovereignty but an essential barrier against the penetration of French traders into the Malian economy.

Keita realized his mistake not long before his downfall by re-creating a link between the French franc and the Malian franc, and by restoring French financial advisers to his Treasury, but he held to his policy of emphasis upon the State sector as the bulwark of his economy. When foreign aid was sought, it was primarily to develop this sector. Eastern European states and the People's Republic of China found this policy in accord with their own hopes for the Malian economy, and they contributed new factories to share with the Western powers in an effort to revitalize the economy.

It was against this creed of Marxian socialism that Keita's junior officers lashed out when they gained power. As has been indicated their "Declaration to the Nation" of November 22, 1968 stated that the private sector corresponded to the sociological and social bases of Malian society. The Malians were declared to be "first

of all merchants," although the Army lieutenants would not let them be called "capitalists" because this term had acquired a pejorative meaning under Keita. In spite of their hostility to Keita's anti-capitalism, the new leaders were not prepared to fight an open battle with a creed which had found adherents, especially among some of the militant young bureaucrats. Their attack was "noiseless" and subdued.

Some time passed before the new dispensation to private enterprise took concrete documentary form. While the provisions of Ordinance No. 1 declared that "the legislation in force shall remain in force to the extent that it is not contrary to the present Constitution and to the extent that it is not made the object of an express abrogation,"¹⁹ arrêtés began to appear in the Journal Officiel as early as January 1969 authorizing private entrepreneurs to operate stone quarries subject to the approval of the Director of Mines of the exploitation plan.²⁰ The early concessions were for renewable two year terms, but a year later they were granted only for three months, renewable for similar periods and terminable at will without compensation.²¹

Private foreign investment was sought and encouraged by enactment in May 1969 of new codes for investment,²² petroleum

19. Par. 20.

20. Arrêté, No.34 MEI,17 Jan.1969, JORM, No. 293, p.58. Similar orders are in No. 294, p.89; No. 300, pp.307, 310, and 311.

21. Arrêtés, No. 103, 104, 105, and 106, 30 Jan. 1970, JORM, No. 319, pp. 114-118.

22. Ordonnance, No. 29 CMLN, 23 May 1969, JORM, No. 302, p. 366. It created as priority projects: fishing, metallurgy, power generation, tourist infrastructure and housing construction. Purely commercial enterprises were denied inducements. By Décret No. 133 PGP, 22 Aug. 1969, JORM, No. 308, p. 621, tax benefits were granted to industrial enterprises under terms of the Investment Code when investment fell between \$100,000 and \$600,000. If the investment exceeded this sum, a set of terms was to be negotiated independently of the Investment Code under Décret, No. 137, 26 Aug. 1969, JORM, No. 308, p. 623. This decree required specified minima of investment for certain categories of industry.

exploration,²³ and mining.²⁴ While those codes continued to authorize exploration and development by Malian state enterprises they covered also private individuals or corporations having the skills and financial resources necessary to undertake and conduct the work in good faith. Friedrich Krupp soon came in from Germany with a consortium, URANKON, to prospect for and exploit radio-active minerals,²⁵ and TEXACO followed with a five year contract, renewable for three year terms, under which they were to discover and exploit petroleum resources.²⁶

While private enterprise was being restored to respectability by the codes, continuation of a policy relying heavily on state industry indicated the caution with which the new regime was moving on the economic front. On the one hand, private enterprises with great amounts of capital were few, and on the other public hostility to abandonment of state ownership was evident among trade unionists. As has been indicated, private enterprise on a large scale was associated in trade union minds with France and colonialism. Those who anticipated trouble in a sharp swing to foreign investment noted that some 15,000 jobs had been created by Keita's state enterprises, and if account is taken of the extended African families, a considerable number of people would have been affected by any change in employer, especially if the private enterprisers' desire to improve efficiency had led to reduction in the obviously overstaffed personnel roles of the state enterprises. In a sense state enterprise had become for the employees a form of social insurance, and these employees formed a politically important segment of the urban population represented by the trade unions.

The labor unions had demonstrated their political strength at the moment of Keita's ouster, for their leaders had insisted that the Army officers who had seized power continue to recognize the importance of the State sector to development of the economy. Malians who knew the unions differ as to the basis of this labor

23. Ordonnance, No. 30 CMLN, 23 May 1969, JORM, No. 302, p.369.

24. Ordonnance, No. 31 CMLN, 23 May 1969, JORM, No. 302, p.377.

25. Décret, No. 185 PG-RM, 29 Oct. 1969, JORM, No. 312, p. 819.

26. Arrêté, No. 404 MDITP, 4 May 1960, JORM, No. 327, p. 378.

union insistence; some thinking that it was a simple bread and butter position based on the desire to retain jobs for their members, and others that it rested on firmly entrenched Marxist positions taken against capitalism. Whatever the motivation, the labor unions showed themselves to be potentially a major form of political opposition to a program deemphasizing the Statist element in the Malian economy, and the leadership immediately gave evidence of its concern lest this opposition become the rallying point for the disparate dissident elements who opposed a change in the regime.

To cope with potential labor union opposition, the junior Army officers suspended all officials of the Union Nationale des Travailleurs du Mali immediately after seizure of power, but the unions themselves were left intact. By February, 1969, the danger seemed to be waning, and a provisional committee was appointed to manage the affairs of the labor union federation. Elections were then called in the twelve union affiliates of the federation, and they were held at every level from local to national during 1969 and 1970. By September 1970 the government felt itself on sound enough ground to permit the calling of a Congress of the Labor Unions to be charged with the task of restating policies and electing officers to a new federation of labor unions.

When what was called the "second Congress" of the "Union Nationale des Travailleurs du Mali" met on September 25, 1970, the President of the Republic noted that the Comité Militaire de Liberation Nationale could have suspended the labor union movement completely immediately after the events of November 19, 1968, but that it had not done so "because it thought and continues to think that the salaried workers constitute the social stratum /couche/ which has contributed most of the sacrifices for the conquest and consolidation of the national independence of our country."²⁷ Nevertheless, he felt it necessary to tell the delegates that they were being permitted to gather and to elect new federation officers only on the basis of acceptance of certain terms prescribed by the government.

These terms were of two sorts: (1) conscientious work to increase production, coupled with education of the workers to understand better the national realities, and (2) cessation of political

27. Déclaration, cit. supra, note 1 at p. 213.

activities. On this latter, the President said, "It seems indispensable to me that the workers be put on guard against those who, under cover of trade unionism, would try to embroil them in political adventures which can have no future." He urged them to focus their efforts on the achievement of the new three year plan.

In spite of these admonitions the Labor Union Congress proceeded to concern itself with politics, and the government decided to retaliate. It annulled the elections and disbanded the federation of labor unions, but it did not wipe out labor unions completely. The twelve labor unions constituting the federation were permitted to function, each with its Secretary General and to perform the duties established for labor unions in the Labor Code of 1962.²⁸ By July 10, 1971 the danger from the Unions seemed again to be containable and a Comité de Coordination des Syndicates du Mali, composed of the elected officers of the unions, was formed. Unions thus continue as a stimulus to production and as an instrument protecting the workers on the job, but their leadership is not permitted to become a national political force. The Army officers who lead the state have shown their determination to perform their policy making function without competitors, whether they be political parties or a labor union movement.

The Three Year Plan to which the President referred in his speech to the labor union congress had been approved on July 22, 1970 after consultation with experts from the International Labor Office.²⁹ It had been prepared by planning commissions established for each sector of the economy on August 26, 1969,³⁰ to be coordinated by a Conseil Supérieur du Plan created two days

28. Loi No. 62-67 AN-RM , 9 Aug. 1962, JORM, No. 128, p. 708.

29. The plan has not been published in the JORM, but its approval was announced in L'ESSOR, No. 5913, 23 July 1970. It was issued in mimeographed form by the Direction Générale du Plan et de la Statistique in two volumes entitled PROGRAMME TRIENNAL DE REDRESSEMENT ECONOMIQUE ET FINANCIER 1970-1972 (Bamako, June 1970). It is supplemented by a third volume entitled RAPPORT SUR LE PROGRAMME TRIENNAL DE REDRESSEMENT ECONOMIQUE ET FINANCIER 1970-1972 (Bamako, June 1970).

30. Décret, No. 138 PGP, 26 Aug. 1969, JORM, No. 308, p. 624. See also Décret No. 145 PGP, 28 Aug. 1969, Ibid. p. 627, establishing details of organization.

later.³¹ These were the executive arms which were to function under a Social and Economic Commission created at the same time "to bring into participation in the elaboration and execution of the plan the different economic and social forces of the nation."³² Its members were to be the Labor Union Federation, the Chamber of Commerce, Agriculture and Industry, and the Directing Committee of the Plan.

When the Three Year Plan emerged to guide development during the years 1970-73, it proved to be a restatement of the same goals as had appeared in the Declaration to the Nation of November 22, 1968, with the addition of more detailed "orientations." These were expenditure of exceptional efforts to promote rapidly the rural economy so as to achieve the level of production required at any cost; consolidation of the State Sector to make existing State enterprises profitable and to create some new industrial enterprises "which would surely be profitable;" encouragement of private initiative to participate in investment in producing sectors especially in agriculture, animal husbandry and industry; promotion of a tourist industry; consolidation of a transportation infrastructure sufficient to meet the needs of commerce and industry; reorganization of trade based upon a judicious use of existing trained cadres and of state intervention; consolidation of the achievements on the social front by planning the use of human resources while orienting education toward the rural sector and the annihilation of endemic diseases; initiation of systematic studies in preparation for future plans for long term development; and preparation of the socio-political conditions required for return to a normal constitutional life.

The schedules of investments which followed indicated in the words of the plan a great increase in the investment in the primary sector (from 20% of the total in the preceding 5 year plan to 26%); a slight retreat in the second sector (from 20% to 19%) and in the social sector (from 14% to 13%), a noticeable retreat in infrastructure (from 35% to 32%) and in transportation (from 8% to 4%), this being explained as a feasible step in view of the heavy investment in these fields under the 5 year plan.

The primary sector was designated as the production of food and such industry as would increase the value of agricultural products

31. Décret, No. 141 PGP, 28 Aug. 1969, JORM, No. 308, p. 625.

32. Décret, No. 143 PGP, 28 Aug. 1969, JORM, No. 308, p. 627.

(textile, vegetable oil, cigarette, canning, fruit juice, food drying factories and flour mills). The secondary sector was to include other industry, artisan production, power generators and mines. Priority was to be given producers when they added value to primary materials, augmented production in the agricultural sector and replaced imports. No program of investment was provided for the artisans, but encouragement was promised in the initiation of studies looking to the creation of a National Office of the Artisans' Trades. Artisans were said to have lost the importance given them earlier, but were still encouraged to produce quality goods and to introduce these goods into commerce.

The general aim of balancing the budget by 1973 was set, and the plan in its conclusion stated that this would be possible if the various strata of the population participated effectively in realization of the plan and respected the indispensable self denials required for its realization. The Comité Militaire de Liberation Nationale pledged itself to take the necessary structural steps to permit achievement of the plan.

The names of foreign investors began to appear in the Official Journal with announcement of formation of private producing enterprises³³ and the publication of charters of new mixed societies in which foreign and Malian capital were combined to produce consumers' goods.³⁴ The régime expressed its disappointment that so little private capital of Malian origin was risked in production. The returning merchants preferred to limit themselves to commerce in which relatively little investment was required and from which returns could be obtained quickly. Malians were proving themselves to be merchants rather than industrialists, perhaps because their training under the French colonial system had been in the direction of commerce rather than industry or perhaps because

33. See announcement of private corporation to manufacture metal objects, JORM, No. 297, p. 210.

34. Ordonnance, No. 39 CMLN, 11 July 1969, JORM, No. 305, p.484, approving a charter for a mixed economy corporation for Société Malienne d'Etudes et de Construction de Matériels Agricoles (SMECMA). The charter runs for 99 years. The government has 62.5% of the stock. The President and 3 Directors must be Malians, while the French investors have 3 Directors.

they had little confidence in the stability of the long range future in spite of the present regime's declared purpose of fostering private production.

A new registration of merchants was undertaken,³⁵ and the published lists of licensed merchants testified to the revitalization of the merchant community,³⁶ as did the authorization to various merchants to take title to plots of land for the construction of their private homes.³⁷ The suburbs of Bamako bear witness to the extent to which private homes have been developed since Keita's ouster, some by merchants and some by affluent bureaucrats. They stretch along the principal exit roads, many of them in the construction stage.

The State Sector

While new blood and heightened expectations were notable in the private sector during the months following announcement of post-Keita policies, there was clear indication that the state sector remained a major pillar of the new economy. Although the new leaders were not prepared to permit the labor unions to dominate the formulation of policy and force retention of the full status quo in state enterprise, they were prepared to utilize state initiative when projects were beyond the capacity of private enterprise. Thus "Operation Ris" was created to regroup, coordinate and use rationally all methods of improving rice production.³⁸ "Operation Haute Vallee" was formed to regroup, coordinate and use

35. Ordonnance, No. 12 CMLN, 1 March 1969, JORM, No. 297, p. 174. The sale tax was revised by Ordonnance, No. 9 CMLN, 21 Feb. 1969, Ibid., p. 165.

36. See Communications of Minister of Finance and Commerce, JORM, No. 301 p. 362 and No. 303, pp. 423 and 453.

37. See Notice of Land Transfer, Arrêté, No. 167 MFC-DNID, 18 March 1969, JORM, No. 297, p. 192. Land transfers are invalid unless approved by the state. Décret, No. 37 PGP-RM, 10 Feb, 1969, JORM, No. 295, p. 103. This required approval of transfer on death to heirs of a plot owned by a mother. Décret, No. 102 PG, 14 Aug. 1970, JORM, No. 333, p. 520. If land is abandoned for 10 years, it is transferred to the state domain. See one such transfer, Decret No. 103 PG, 14 Aug. 1970, Ibid., p. 521.

38. Arrêté, No. 221 MP-CAB, 27 March 1969, JORM, No. 298, P. 241.

rationality all necessary means to permit an integrated zone called Haute Vallée.³⁹ The Minister of Production was to name its Director, while its operations were to be supervised by the Ministry's "Service de l'Agriculture" to assure that it introduce and develop new crops, improve the producing units of the area, and facilitate commercialization of the crops. Although indications are that it has functioned poorly, two other state agencies have done better, these being "Operation Cotton" and "Operation Arachide."⁴⁰

New directors and administrative councils were named for various state companies,⁴¹ and new charters published.⁴² As has been indicated, these removed the rhetoric of revolutionary socialism from the text,⁴³ but they preserved the legal structure of the Keita organizations in that the enterprises were to be established as government corporations with fiscal autonomy and legal personality. The major change was in the administrative structure. As before, there was to be a director appointed by the Council of Ministers, but he was to be assisted under the new scheme by both an Administrative Council to serve as a policy making board, and a consultative board representing the labor unions and department managers to whom was given the task of "associating the workers with the administration of the enterprise." Previously, the functions of the

39. Arrêté, No. 342 MP-CAB (no date), JORM, No. 302, p. 389.

40. The zones within which Operation Arachides is to conduct its activities were established by Décret, No. 222 PG-RM, 22 Dec. 1969, JORM, No. 317, p. 10.

41.. See Décrets, No. 84 PGP, 31 May 1969 and No. 118 PGP, 9 July 1969, JORM, No. 302, p. 381 and No. 305, p. 510.

42. See Décrets Nos 105-109 PGP, 4 July 1969 and No. 113, 7 July 1969, JORM, No. 305, pp. 494-507.

43. Comparison is between Keita's last model statute established by Loi, No. 67-40, 18 July 1967, JORM, No. 257, p. 433 and the post-Keita model established by Ordonnance, No. 23 CMLN, 11 April 1969, JORM, No. 299, p. 259. Reference may also be made to an earlier Keita model established by Loi, No. 64-20 AN-RM, 15 July 1964, JORM, No. 183 p. VII.

Administrative Council and consultative board had been combined in one body, with the result that the officials representing the Ministry and the planning agencies had been charged with the details of managing labor as well as the matters of high policy concerning the functioning of the enterprise.

Taxation

Reemphasis upon capitalism was accompanied by revision of statutes relating to state finances. It was evident that while the new leadership was prepared to open the door to private enterprise far wider than Keita had done, it was going to demand of those who profited extensive participation in financing the operations of the state. Although the French Government contributed a subsidy of 3 billion Malian francs (\$6,000,000) to meet the deficit in the 1969 accounts,⁴⁴ citizens were called upon to increase their contribution through taxes. The 1962 law on business taxation was revised in February 1969⁴⁵, and its rates increased a year later.⁴⁶ The increase did not, however, apply to critically needed transportation or public works, and sporting events and amusements of an educational nature were exempted entirely by the 1970 revision.

A new personal income tax was enacted in December 1969⁴⁷ to replace the 1961 tax on salaries. Its rates began at 10% on incomes of 75,001 Malian francs (\$150) and increased to 70% on incomes over 2,520,001 Malian francs (\$5,040). Various deductions were permitted in computing taxable income. The business and personal income tax statutes were consolidated with other tax laws in a consolidated tax code in February, 1970.⁴⁸ Some measure of its importance is to be found in the fact that it was published not only in the Journal Officiel, but in a loose leaf edition with provisions for

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- 44. Ordonnance, No. 24 CMLN, 5 June 1970, JORM, No. 328, p. 408.
 - 45. Ordonnance, No. 9 CMLN, 21 Feb. 1969, JORM, No. 321, p. 165.
 - 46. Ordonnance, No. 9 CMLN, 27 Feb. 1970, JORM, No. 321, p. 161.
 - 47. Ordonnance, No. 65 CMLN, 5 Dec. 1969, JORM, No. 316, p. 947
 - 48. Ordonnance, No. 6 CMLN, 27 Feb. 1970, JORM, No. 323, p. 232. The published text omitted Section I.

keeping it up to date.⁴⁹

The new tax code did not stem the wave of new legislation, for a week after its enactment, there was published a tax law on the ownership of draft and farm animals.⁵⁰ This would reach the villagers whose total income would be less than the minimum taxed under the income tax.

The desire to stimulate foreign investment was reflected in the concessions given to large private corporations which concluded agreements with the Government of Mali. Friedrich Krupp's consortium received tax exemption for five years and a reduction of 40% in the corporation tax thereafter during the 25 year life of the concession.⁵¹ TEXACO was exempted under its contract from all taxation on payment to the state of 50% of its net profits annually, from which it might deduct losses for any previous years.⁵²

The Social Fabric

Keita's régime had tried to modernize not only the economy but also society generally. A new family code had attacked polygamy by authorizing husbands and wives to make contracts of monogamy to be enforced by the state in the event of breach.⁵³ Restrictions on the amount of the bride price had been established.⁵⁴

Customary law was not abolished, but its enforcement was taken away from special courts supported by the French colonial government previously and placed in the new general state courts. These were augmented when necessary by specialists in custom chosen from the

49. République du Mali, CODE GENERAL DES IMPÔTS (Choisy-le-Roi, France, Prache-de-Franclieu, no date) Section I appears in this edition.

50. Ordonnance, No. 12 CMLN, 6 March 1970, JORM, No. 322, p. 200.

51. Cit., supra, note 25.

52. Cit., supra, note 26.

53. Art. 7, Loi, No. 62-17 AN-RM. 3 Feb. 1962, JORM, No. 111, p.1, amended by Loi No. 63-19 AN-RM, 25 Jan. 1963.

54. Art. 3.

elders who knew it.⁵⁵

None of the family or judicial arrangements introduced by Keita were changed after his ouster. Only a few amendments were adopted; the principal ones concerning the Supreme Court, the Code of Criminal Procedure, and the Criminal Code.⁵⁶

The Supreme Court came under pressure for personal reasons: its President being called to the portfolio of the Ministry of Justice which he held simultaneously with his judicial position.⁵⁷ This duality of function created what seemed to his colleagues of the court to be a conflict of interest and a violation of the separation of judicial and political functions. Under this stimulation the new government asked the President to resolve the conflict by resigning his judicial role, but he indicated his desire to retain it. To solve the impasse, Keita's law of March 13, 1965 on the court was amended to provide for termination of the mandate of judges at the will of the government,⁵⁸ and he was removed from his judicial position. On reflection both the members of the court and the Minister of Justice concluded that in removing one evil, the law had created another, in that it eliminated the independence of judges from the government. A draft law was in preparation during the summer of 1971 designed to correct this situation. A new President, Vice President and Procureur Général were appointed to the Supreme Court on September 4, 1969,⁵⁹ the President being a Senegalese. Citizenship was conferred upon him to regularize the situation.⁶⁰

A court for the Security of the State was created on September 15,

55. Loi No. 61-55 AN, 15 May 1961, JORM, No. 90, p. II.

56. These amendments bear examination for the light they throw on the post-Keita regime's orientation toward the individual.

57. Ordonnance, No. 2, 28 Nov. 1968, JORM, No. 288, p. I at Art.3.

58. Ordonnance, No. 1 CMLN, 5 Feb. 1969, JORM, No. 295, p. 98.

59. Décret, No. 149 CMLN, 4 Sept. 1969, JORM, No. 308, p.635.

60. Décret, No. 150 PG-RM, 4 Sept. 1969, JORM, No. 308, p. 636.

1969⁶¹ with competence over offences against state security. It was given three chambers: Investigation, Accusation, and Judgment. An investigating judge presides over the investigation; while Accusation is the duty of a magistrate sitting with assessors, at least one of whom must be an officer of the Army. The Judgment chamber is also presided over by a magistrate with the rank of Judge of the Court of Appeal. He sits with eight assessors.

The Criminal Code was amended to provide for a penitentiary regime for persons convicted of crimes against public property; the sentences to be served in the salt mines of Taoudénit located in the central Sahara or such other places as the government may determine.⁶²

The Code of Criminal Procedure was amended to give the Army an investigatory role comparable to that of the judicial police,⁶³ and to give to the Criminal Chamber of the Supreme Court jurisdiction over crimes committed by the President of the Republic, a Minister or any person with comparable rank, a member of the Supreme Court, a Provincial Governor, or a magistrate.⁶⁴

Two amnesties have been issued: one of September 2, 1969 to release those convicted of offences of speech, association or distribution of certain news during the Keita régime,⁶⁵ and another on June 29, 1970, releasing a very long list of prisoners including four serving life terms for participation in the attempted coup of 1962 against Keita.⁶⁶

61. Ordonnance, No. 49 CMLN, 18 Sept. 1969, JORM, No. 309, p. 690.

62. Ordonnance, No. 32 CMLN, 6 June 1969, JORM No. 303, p. 407. Modobo Keita is reputed to be held at Taoudénit, noted for its desert salt mine.

63. Ordonnance, No. 45 CMLN, 29 Aug. 1969, No. 308, p. 618.

64. Ordonnance, No. 9 CMLN, 24 Dec. 1968, JORM, No. 292, p. 4.

65. Ordonnance, No. 48 CMLN, 2 Sept. 1969, JORM, No. 308, p. 620.

66. Décret, No. 85 PG, 29 June 1970, JORM, No. 331, p. 452.

In the family field the amendments were still under discussion during the summer of 1971. They were seen as necessary to bring Malian family and civil law into conformity with international undertakings of the Malian state, these being the United Nations Convention on the Rights of Women and the Rights of Children. To bring women into equality with men in inheritance, there must be a change in the ancient custom prohibiting their inheritance of any share in the family home, and limiting their share in the family herd of cattle. A change will also be required in the law regarding illegitimate children who are currently ignored under customary law which regards the idea as abhorrent. The proposed draft will require the fathers to support them. A third draft concerns the institution of adoption, which currently creates only the duty of the adopting parent to care for a child. In the future the child will have the same rights as blood children to inheritance, and the same obligations to support aging adopting parents.

In general the Keita legislation modernizing the social order is being permitted to stand. Such retreat as has emerged can be found in the failure of the public to avail itself of some of the options which have been offered. Thus the marriage contract of monogamy is being used in what is estimated in various places to be no more than 2% of the marriages. The limits on bride price and expenses for traditional ceremonies are ignored. Communal working of the fields has been abandoned, and each family has returned to the farming of its own traditional plot. The Women's Organization which Keita formed as an adjunct of his unique political party to propagandize his reforms among women and to foster their cause in a male oriented society has been allowed to die. In consequence women now lack any formal organization through which to improve their social position. While none of these developments is dramatic, they indicate in some measure the extent to which tradition has regained its place in the Malian way of life.

Conclusion

The four years that have passed since Modibo Keita's ouster from the political leadership of Mali have indicated that the thrust of the Marxian socialist program for development has been weakened. Traditional ways of life have reemerged as the propaganda function formerly exercised by Keita's unique political party has been permitted to lapse with the demise of the party. Yet, there has been no complete reversion to laissez faire politics and private enterprise. A middle ground has been found. State economic planning

remains a noteworthy factor in development, and state enterprise continues to be its principal instrument of realization.

While some Malians believe that retention of state enterprise was to have been expected, given the lack of Malian private capital to buy out what Keita had created and the reluctance of such capitalists as returned from abroad after Keita's ouster to risk their fortunes in anything but commerce, others note deeply rooted political pressures for retention of Keita's emphasis upon state economic initiative. Some of these exist because of the reluctance of labor union members to risk loss of their state jobs; some to fear lest French capital dominate Mali's politics if there were a reversion to capitalism, but some also reflect the depth to which Marxist thinking penetrated the working class in urban communities under Keita's leadership.

While villagers promptly abandoned their collectivized agricultural programs as soon as they were liberated from the pressures of Keita's militant socialists, the urbanized workmen were vigorously opposed to a return to an economic system which they had been taught to believe exploitative of the laborer.

The conclusion from Mali's experience is that once Marxist ideas are widely taught and steps taken to implement the ideas by étatizing the economy, there can subsequently be no total retreat in the industrial sector, although the peasantry can be expected to return immediately to traditional African village ways. Society becomes a mixed type, with traditional structures and practices being restored in the village, while state economic forms are largely retained in industry.

The verbalizations of Marxists have faded away, but some of their institutions remain as key instruments available for use in revival of a Marxist oriented program should the present leadership fail to improve the economic well being of the people. Some Malian intellectuals believe the pendulum to be reaching the end of its swing towards capitalist forms, and they expect the socialists to reassert themselves unless there is soon to be evidence of a massive improvement in economic conditions. If this occurs, and the instruments of pre-1968 are utilized again, Mali's experience may prove that institutions are not as impotent as political factors as they are sometimes thought to be.

One institution is, however, missing, and experience with developing countries whose leaders have been inspired by the Marxist approach suggests that this instrument is the key instrument of mobilization, namely the élite monopoly party. Without creating such a party to enthuse the masses to accept personal sacrifice for general welfare, the chances of speedy resumption of a program of development in the Marxian socialist mold are limited.

If Mali's masses were to overcome their hostility to mobilization because of despair over economic stagnation, and if a new leadership in the vanguard of which might appear intellectuals trained in Eastern European universities were to play upon this despair in gaining acceptance for recreation of a militant, avant garde, élite party, a new course reminiscent of Keita's might be taken. The major question is whether such leadership would be accepted. Experience to date suggests that it is hard in Africa to organize against Army leadership, but if corruption and despair reach revolutionary proportions, and if dedicated leadership is able to reassert itself, a resumption of a Marxian socialist path is not impossible. A revolutionary situation requires the presence of two factors: despair and leadership. At the moment, the Army seems to have kept hope shimmering before the people, and it has prohibited the emergence of any political opposition to its direction of affairs. Its laws have been revised to create expectations of wealth on the part of an increasing number of citizens, and to retain political and economic levers in the state apparatus dominated by the Army. If great mineral resources were to be found by Krupp and TEXACO, the future might be assured as it has been in Algeria. Subsidies from France could be reduced, and the specter of neo-colonialism removed as a factor threatening continued Army leadership.

The economy would remain largely in the hands of state enterprise, and state planning would rule supreme. Socialism would be on the lips of leaders as it is elsewhere in Africa, but it would not be the Marxian type, much less the East European model. By degrees the Army would bring the masses into the policy making process, beginning at the local level, and a new Malian model would emerge to add to the other socialisms in Africa. The key to such a stable society is resources. The Army has given every indication that it knows this. It has prepared the inducements to those who have the technology to conduct the explorations, and to its own merchants to fill in the gaps around the fringes of an economy essentially state oriented. The Sahara holds the key to success in

this policy.

The Malian legal system is like an architect's blue print. It establishes the pattern for the new house which is to be Malian society of the future. It creates the inducements to build, and the instruments with which to build, but there can be no house if resources are not discovered and exploited. Stability and abundance hang on the success of the great international companies being brought into Mali in search of the earth's riches.