

NDI ASSESSMENT OF THE MAY 9 SENEGALESE LEGISLATIVE ELECTIONS

INTRODUCTION

The National Democratic Institute for International Affairs (NDI) continued to monitor the Senegalese electoral process by organizing an international assessment team for the May 9 legislative elections. The assessment team included Hannah Baldwin, Deputy Director of Sub-Saharan Africa Bureau, Foreign Service Institute, and Chris Leguede, Secretary-General, GERDDES TOGO. NDI staff members Gerald Mitchell, Program Officer, and Maryam Montague, Program Assistant, completed the delegation.

The assessment team convened in Dakar several days before the election for briefings and meetings with electoral officials, political party representatives, civic leaders, journalists and others. These meetings addressed the political and campaign environment since the February 21 Presidential election, as well as preparations for the Legislative elections. Specific questions relating to the electoral code, campaign activity, access to media, election administration and security issues were discussed.

On election day, the team deployed throughout Dakar and nearby regions. Dividing into pairs, the team was able to assess the voting and counting process in more than sixty polling sites. The team reassembled in Dakar after the election for de-briefing and further informational meetings.

EXECUTIVE SUMMARY

The legislative elections resulted in a large parliamentary majority for the ruling Parti Socialiste (PS). The PS won 84 seats out of the 120 seats in the national assembly. The Parti Democratique Socialiste (PDS) won the greatest number of seats among the opposition parties, receiving 27 seats in the assembly. The coalition Jappoo Ligeyal Senegal received 3 seats. The Ligue Democratique / Mouvement pour le Parti du Travail (LD/MPT) received 3 seats. The Parti de l'Independence et du Travail (PIT) received two seats. The Union Democratique Senegalaise - Renovation (UDS/R) received one seat.

The results give a large parliamentary majority to the PS, but the solid numbers are somewhat deceiving unless one considers the urban/rural split of the vote. The PDS won handily in Dakar and other major urban areas, where their rallying cry of *sopi* ("change" in the Wolof language) has caught on in recent years. Given the fact that Diouf was elected President by a rural constituency, and that PDS again won the major urban centers in the legislative elections, a political consensus will need to be reached to avoid further stress on the social fabric of the country.

Although the elections have met the minimal standards of a legitimate election, they have been characterized by some seriously divisive issues. The new code governing these elections has broad based support, but the PDS has refused to officially accept the election results on the grounds that the ruling party failed to uphold the integrity of the code. The PDS charge that the government's partisan application of the code, along with unilateral changes, led to a legitimation of fraud that benefitted the ruling party.

The PDS initially claimed that according to the results received from their party representatives who observed the polling place count, their unofficial party tabulation gave the PDS 63 seats in the assembly. Although no body of evidence has been produced that would account for such a large discrepancy with the official results, there is strong evidence that fraud, to some degree, was perpetrated by both the ruling and the opposition parties.

The PDS also claim that the one party dominated state apparatus was not always able to discharge its election related responsibilities in an impartial manner. This, they claim, was especially true of the judiciary. The perspective that the Senegalese judiciary is not a sovereign branch of state, has also been stressed by respected, retired magistrates, from the Senegalese bench.

This issue became particularly important, since the ruling party took a unilateral decision to abolish the National Vote Counting Commission (NVC), a nine-member body comprising a representative from each of the contesting parties, and replace it with a commission composed of three Court of Appeal magistrates. This commission was responsible for the national vote count and the announcement of the official election results. Although party representatives could be present during this process, they had no right to participate in deciding disputed results.

There were, however, noticeable improvements in some areas over the February 21 presidential election. With the assistance of donor nations including the U.S., election materials such as ballot boxes, secure voting booths, and indelible ink were upgraded.

In many polling places, election officials seemed more confident in their duties. This resulted in a more calm and cooperative voting atmosphere in many regions, largely in conformity with the provisions of the electoral code. For the most part, relatively minor difficulties focused on questions of conformity between electoral and national identity cards, and on difficulties in folding the large ballot sheet in a manner that would easily fit in the narrow slot in the ballot box.

However, these improvements were not enough to cancel out significant problems in some regions, and the fear that Senegal is locked into a perpetual pattern of chronic electoral crisis.

Following February's controversy-riddled presidential poll, it was hoped that serious problems such as the circulation of unofficial ordinances granting special dispensations to vote, could be avoided. The elections confirm that despite confidence in the new electoral code, serious gains in Senegal's democratic process will not be made without the political will or nonpartisan institutional framework necessary to achieve consensual results.

THE PERCEPTION OF FRAUD: PRE-ELECTION GRIEVANCES

In any transitional political environment, the perception of intent to commit electoral fraud can be as damaging as fraud itself. Since the ruling party is normally in the most dominant position to engage in fraud, confidence in the electoral system is strengthened if the government makes administrative concessions to reduce the perception of fraud. The legislative elections present two clear examples where the ruling party could have made administrative concessions to reduce the fear of fraud.

After the February 21 Presidential election, the government made a unilateral adjustment to the code. The National Vote-Counting Commission (NVC) was abolished. It was replaced with a commission composed of three magistrates from the Court of Appeals. The logic for this change focused on the fact that in the Presidential election, there was virtual deadlock in the counting process over the dispute of whether unanimous or majority voting should guide the work of the commissions.

The opposition PDS did not disagree with this decision, but wanted to play a role in the selection of magistrates to the National Vote-Counting Commission. The PDS proposed that the PS nominate one magistrate, the PDS the second, and between these two magistrates, a third would be chosen. The PS unilaterally selected all three magistrates. If the Senegalese judiciary is truly independent from the executive branch, this should have made no difference to the work of the commission, but would have been a sensible concession to the perception of fraud on the part of the ruling party.

Another unilateral decision by the ruling party allowed the President of the polling place to personally bring the results from the polling place to be counted at the local tribunal. In the Presidential election, this was the responsibility of the gendarmerie, who did not always arrive to fulfill this duty. In order to prevent a long delay in receiving the results, the amendment allowed the President to bring the votes in if the gendarmerie were not able to.

This raised much suspicion among opposition parties, who felt that too many of the polling place presidents had been chosen for their service because of their loyalty to the PS. The suspicion that the Procès Verbal (PV) could be altered before it reached the National Vote-Counting Commission was widespread, and in some documented cases, became a validated fear.

Opposition party representatives often admitted to following the President to the tribunal. An alternative compromise could have been reached allowing some or all of the party representatives to accompany the President to the tribunal. Again, a simple compromise could have avoided a great deal of suspicion.

VOTER APATHY

A significant feature of the legislative elections was voter apathy and abstention from voting. With less than 40% of registered voters turning out to vote, as opposed to 70% for the presidential poll, it is feared that the disaffection with the electoral process could ultimately undermine Senegal's democratic aspirations.

People either do not understand the voting system, or they feel that their vote will have little effect. For those who don't understand the system, voter education projects may be able to engage them in the electoral process next time. For those who are disaffected, this could signal resignation from the democratic principles of consensual and participatory government.

If this growing disaffection with the democratic process continues among Senegal's electorate, it would be unfortunate since Senegal's democratic aspirations have long remained a beacon of hope on the African continent. Evidently, Senegal's political leadership is still trying to break free from the myth that has plagued African politics since independence; that decentralization of power equates with loss of power.

ELECTION DAY ISSUES

Problems that persisted during the May 9 Legislative elections were:

- 1) Fraudulent use of voter ordinances on a large scale and by more than one party;
- 2) Problems with timely distribution and accuracy of national identification and voter registration cards;
- 3) the selection and training of election bureau officials;
- 4) The overall problem with inaccuracy of voter registration lists.

ORDINANCES

The day before the election, a panicked Minister of Interior received reports that there were large numbers of fraudulent ordinances being circulated. This should have come as no surprise to the minister, as exactly the same problem occurred during the Presidential election. During the Presidential, more than 46,000 people had voted using ordinances. This figure conflicted with the official number of 26,000 ordinance that were issued by local magistrates, granting dispensation to those ineligible to vote at time of registration but qualified on polling day.

Along with other opposition leaders, Abdoulaye Bathily, leader of the LD / MPT, claimed that the PS had duplicated thousands of ordinances, "which they gave to their partisans who were able to vote several times". According to Bathily, the fraud is documented and evidence given and acknowledged by members of the ruling party itself. Even senior PS members were implicated in the production of fraudulent ordinances.

Even though there were large scale problems with ordinances in the Presidential election, the Government maintained that these serious problems were outweighed by the right of every Senegalese to vote, if they had a legitimate reason why they were not on the voter registry. However, no legal action was taken against those participating in election fraud, in contravention to the Election Code.

The fact that confidence in the voting system was seriously undermined by the use of twenty-thousand false ordinances in the Presidential election, was never properly addressed by the government. It may be true that 20,000 votes could not have had a large impact on the final results of the Presidential election. But the fact that ordinance fraud was permitted to happen without fear of punishment, gave the perception that mass fraud is tolerated by the government.

The case of Minister of Equipment Robert Sagna, whose deputy acknowledged that the minister had overseen the mass production of ordinances claiming the magistrates were not able to handle the demand for ordinances fast enough, remains a case in point that the Socialist Party is somehow immune to legal prosecution. Other high level PS members have also been accused by the PDS of ordinance fraud, including Mamadou Diop, Mayor of Dakar.

A larger point which this again raises, is to what extent the judiciary is actually independent from executive order. How long can the ruling Party maintain the legitimacy of its governing role, when it continues to confuse the separate duties of state with party politicking.

Fara Ndiaye, PS spokesman, said that although he personally disagreed with the need to use ordinances, he had to respect and uphold the government's decision to allow every Senegalese citizen to exercise their right to vote. Kadar Boye said that he opposed the use of all ordinances, since they have caused problems since 1983. Boye unsuccessfully lobbied to do away with voting by ordinance when he was on the election commission.

The legislative elections, however, do mark a turning point for the Senegalese electoral process. The perception before and after the the Presidential election, was that the Socialist Party was in the unique position to manipulate the electoral process for its political gain. With all legal avenues of redress exhausted from the Presidential round, however, the hapless opposition attempted to exploit the ordinance loop-holes to its advantage.

During the legislative elections, therefore, more than one party gained access to fraudulent ordinance. The Minister of Interior received these reports and made an eleventh hour attempt to control the use of ordinance. The Minister announced once on television and twice on the radio, that signature specimens of the President of the Regional Tribunal and Deputy, would be circulated to all polling places in order to control the use of ordinances in the election.

This meant undertaking a nearly impossible attempt to distribute the signature specimens to every polling place in the country within eighteen hours before the polls opened. One magistrate from the National Vote-Counting Commission, who had just two days before told a political party representative that this type of ordinance would be impossible to accomplish in time, now acquiesced to the Minister's decision. The NDI Assessment Team personally witnessed many polling places where the signature specimens did not arrive until noon, if at all, which created much confusion in the polling places and a general air of suspicion.

However, as a lawyer representing forty defendants in the Senegalese High Court stated Friday on the Friday following the elections, these simple people charged with ordinance fraud are only the victims of organized electoral fraud from above. "How can we charge these people, without having Mamadou Diop (Mayor of Dakar and implicated in ordinance fraud) in the dock with them. With growing evidence that the Socialist Party/State has not done all it could to deter electoral fraud, its electoral strategies will be more closely scrutinized in the future.

Had measures been taken after the presidential election to address causes of concern, particularly the problem with ordinances, a lot of the confusion surrounding the legislative elections could have been avoided. However, as ordinance fraud and a partisan interpretation of the electoral code had been seen to benefit the P.S. in the presidential election, there was not great impetus on the part of the government to address charges of electoral manipulation.

It is likely that this administrative crisis for the government was created by the PDS's decision to fight fire with fire. Having complained about ordinance fraud in the Presidential election, and with no measures taken to address this problem by the government, the PDS seems to have decided to exploit the ordinance question as much as possible to its own advantage.

Whether the PDS actually had the means to produce false ordinances is questionable. Abdoulaye Wade himself denied this charge to the NDI team. However, Ousmane Ngom did state that PDS supporters were instructed that if they had the opportunity to be pressured to vote for the P.S. with false ordinances, to accept the false ordinance and use it to vote for the P.D.S.

From the NDI team observations on election day, the PDS certainly shared in a bumper harvest of fraudulent ordinances. The significance of this development for its implication on both Senegalese politics and African politics in general, is that electoral manipulation and corruption can forcefully be democratized. The opposite point of view is that there is no longer a moral barometer in Senegalese politics with which to gauge the development of democracy, and its moral standards, to which Senegal claims to aspire.

The opposition could be accused of sharing in a culture of fraud, in an election system that may be fraud proof only on paper. It would be ironic if the liberal opposition has become rooted enough in society, that it too has acquired the ability to manipulate parts of the system. An interesting criticism of the PDS came from a P.S. candidate in Matum, who accused the PDS of nominating good candidates from socially important families.

ELECTORAL AND NATIONAL IDENTITY CARDS

As in the Presidential election, there were reports of voters not receiving the election cards in time for voting. Whether this was just an administrative problem, or whether there is some ulterior motive for these delays, has not been determined. The PDS charges that electoral cards were withheld by local authorities, with the complicity of the Prefet and Sous-Prefet from those people known to be opposition party activists or supporters. The PDS claim that in Kanel, 45,000 cards were withheld by a local official who sympathized with the P.S. Similar cases were reported in Mbacke and Velingara, although not as flagrant.

The same problem was reported with the distribution of identity cards. Cards were late in being delivered, or were delivered without a photo or the proper name, so that they could not be used. The PDS charge that these tampered cards were distributed exclusively by PS supporters.

Numerous conformity checks slowed the voting process, generated ambiguity over which voters to allow to vote and which to reject, and were the most frequent cause for invoking the mechanisms of consultation with party representatives provided for in the electoral code. In some cases party representatives were excluded from this process, drawing protests which often led to their expulsion from the polling place. Party representatives were more marginalized in this election, regarding their ability to check voter identification, than during the Presidential election.

Most polling places treated minor discrepancies between identity and electoral cards as subjects for discussion and verification among officials and party representatives. Presidents often asked all the local party representatives to personally identify voters. In cases of minor discrepancies between cards, local consensus on identity was generally sufficient grounds to let someone vote.

In some cases, if the President noted that the errors of non-conformity were "more serious," he unilaterally decided that the person should not vote. In these cases party representatives were sometimes given notice of this decision, which they could protest on the PV, although they rarely took advantage of this provision. More serious errors tended to consist of dates of birth which differed by more than five years or complete lack of correspondence between names of parents on the two cards.

The certificates of conformity themselves sometimes increased the ambiguity because a number of these documents only noted that a discrepancy existed, but did not officially state a correction. In a few cases, would be voters carrying such certificates were turned away.

ROLE OF ELECTORAL OFFICIALS

The selection of election officials remained a source of contention throughout the legislative elections, as opposition parties charged that the majority of those chosen to administer the polling places were partisan PS supporters. The election officials were chosen by the local prefect from the A and B categories of civil servants, and if more people were needed, anyone on the regional voter registry could be selected. Former magistrate Kadar Boye, criticized the Ministry of Interior for selecting Presidents of the polling places who were illiterate. Boye implied that the government has an agenda in its selection of the presidents of voting bureaus.

In most cases, electoral officials seemed to be doing their best to apply the electoral code as they understood it, and at the same time to ensure that everyone who came to vote had the right to exercise their suffrage. This generally meant that Presidents tried to build and manage consensus among the party representatives, especially with regard to the problem of non-conformity of electoral and national id cards. Most of those chosen as election bureau officials acknowledged having undergone an afternoon of training in the election procedures, organized by the Ministry of the Interior.

However, the assessment teams did visit some polling places where a tense atmosphere existed, and shouting and accusations became the ordinary means of communication between the President and the party representatives. One of the most blatant breaches of the code by an election official, was committed by a polling place president who asked everyone else to leave the bureau for fifteen minutes before voting began, claiming he had organizational things he had to attend to. When the votes were counted there were 32 additional ballots than voters on the registry.

In another polling place, a woman whose papers said she had not yet voted and whose finger had not been dipped in red indelible ink as a sign of having voted, was being denied the right to vote.

She was told that she had already voted, and the president of the polling place showed her that her name had already been crossed off the registry. This case occurred a few other times in the same polling place, and it appears that these unfortunate people arrived after someone else had already taken the decision to vote for them.

Another disturbance occurred in Wakhaldiame, when the president of the polling place refused to accept the credentials of the PDS representative designated as an observer. The local PDS candidate was summoned, who attested to his representatives credentials. An extended shouting match ensued, and voting ground to a halt for over thirty minutes.

The candidate eventually withdrew, and the PDS representative was accepted. After his visit however, the President refused to continue to consult with the party representatives over matters of conformity of electoral and identity cards, and began making unilateral divisions without regard for their presence.

In some cases, electoral officials relied on short cuts in controlling the identity of voters. If they recognized someone who had been rejected in the Presidential round of voting but had since obtained a certificate de conformity, this personal recognition added to the credibility of a voter's claim, and abbreviated the identification process.

Officials also relied on the stamp indicating that an individual had voted in the Presidential round as proof that the person's papers were in order. One president stated that if they had the stamp indicating that they had already voted this year, control of their paperwork could be less severe. This seemed to come into play particularly during the morning rush of voters.

Some irregularities were observed by the NDI assessment team with regard to electoral officials who did not arrive for duty. In one polling place the President of the Bureau de Vote never arrived for work, and the Secretary and the Assessor administered the voting themselves. They seemed reasonably well trained for this task, although they were observed accepting at least one photocopied national ID card. NDI received a report that one polling place in ----- never opened for voting, but this report was not confirmed.

VOTER REGISTRIES

A fundamental problem for the Senegalese electoral system is the large number of inaccuracies in the voter registries. This was noted by the NDI delegation to the Presidential election, who advised delaying the May 9 legislative vote until this issue had been addressed. If this problem could be solved, then the ordonnance and identity card confusion could also be largely defused. A grassroots registration drive is needed in Senegal. In a move that would translate democratic standards into the national environment, some Senegalese magistrates have suggested that the

local elder in each neighborhood, the Chef de Quartier, could be responsible for such a grassroots registration drive.

ROLE OF PARTY REPRESENTATIVES

In most polling places, the party representatives and electoral officials worked together and cooperatively in administering the vote. Party representatives were usually fully consulted on questions of non-conformity of electoral and national id cards. In many cases representatives were consulted on all matters concerning the administration of the vote. One president would not rearrange the physical placement of the isolation booths until all four party representatives had been informed and consented to the procedure.

In some cases, party representatives shared roles undertaken by electoral officials, including distributing ballot sheets and ensuring that voters understood the mechanics of the voting procedure. Particularly in cases where party representatives were more passive and less vocal, their absorption as electoral staff sometimes went further. Party representatives knowledge of their duties and rights, and willingness and ability to play an active role in the activities of the polling place varied widely.

VOTER FAMILIARITY WITH ELECTORAL PROCEDURES

Voters were generally familiar with the overall procedures of the vote. Many voters reported attending party-run training seminars prior to the Presidential vote, where they learned about control of their identity and electoral cards, the various ballot sheets, the envelopes, the isolation booth, the indelible ink and other mechanisms of the new electoral code.

The only unknown area for many voters seemed to be a topic which had not been anticipated by the by the pre-Presidential training sessions: what to do with the large legislative ballot sheet. The single most important technical flaw and the source of much frustration and confusion among voters had to do with the increased size of the ballot slips. Voters were asked to put the much larger legislative slips in the same small 3 x 5 envelopes used in the Presidential election.

REFLECTIONS

The legislative elections were seriously marred by the May 15 assassination of Constitutional Court Justice Babacar Seye. NDI sent a letter of condolence to President Diouf (Appendix). In his letter to President Diouf, NDI President Kenneth Wollack expressed his hope that " recent events will strengthen the resolve of Senegal's political leaders to work together in a spirit of tolerance and compromise. If not, the perpetrator of Justice Seye's murder will have achieved his ultimate goal."

However, Wollack also expressed concern over the fact that opposition leader Abdoulaye Wade, along with two of his deputies, were taken into 48 hour custody for questioning. NDI urged that the rights of all Senegalese citizens be upheld during the course of the investigation.

Justice Seye's memory would be best served by convincing Senegal's political leadership of the threat to Senegal's progressive image abroad, and relative substantive progress at home, if they do not heed the warning signs surrounding this election. Despite the rubber stamp of approval given by some international observers shortly after the polls closed, closer scrutiny of the election process reveals serious irregularities.

Senegal's next elections will be local elections in two years time. The contentious issues surrounding this election must be put to rest, so that the legitimacy of future elections are not recurrently tainted. The many cases of election fraud, attempted by members of more than one party, make this a ripe moment to convince the Senegalese government that only by safeguarding the election process to all partisan assaults, will Senegal's long term stability and democratic aspirations be assured. If the lessons of the legislative elections are not taken seriously by the Senegalese government, they might find it is too late to resuscitate the potential corpse of Senegalese democracy.

The NDI Assessment Team was thankful for their access to government and party officials, both before and after election day. The team was disappointed, however, with the difficulty in arranging meetings with officials from the Interior Ministry. As this Ministry plays a large role in administering the election, it is important for international observers to have access to a Ministry spokesperson. This would give international observers more confidence in the ultimate goal of a transparent electoral process.